139364

This volume is for public dissemination, CONFIDENTIAL material has been deleted.

DETAILED NARRATIVE SUMMARIES FOR DEATH ELIGIBLE CASES

New Jersey Proportionality Review Project

David C. Baldus,
Special Master

DEATH PENALTY PROPORTIONALITY REVIEW PROJECT
NARRATIVE SUMMARIES

The following are detailed summaries of the facts and procedural history of all cases which were eligible for the death penalty in New Jersey since the re-enactment of capital punishment on August 5, 1982. Death eligibility was determined according to standards set by the Special Master for the Proportionality Review Project. These criteria are set forth in the Final Report of the Special Master for the New Jersey Proportionality Review Project to the New Jersey Supreme Court.

These summaries are based primarily upon the facts of each case as found in appellate opinions where available or as found in pre-sentence reports. Where an appellate opinion is used to recount the facts, information in the presentence report relating to the defendant's background is included at the end of the summary. The normal convention of single space and indent for quoting opinions was not used for ease of reading since the excerpts were quite lengthy. Other sources of information utilized were comments from trial counsel, and other public documents such as police reports, appellate briefs and judgments of conviction. Trial transcripts were reviewed for some cases but not generally.

Each summary is preceded by a brief thumbnail sketch of the facts and the outcome, as well as relevant aggravating and mitigating factors as found by juries, or by the Special Master where cases were not tried to a penalty phase.

TABLE OF CASES

Table of Cases

Table of Cases

[redacted] #0197

[redacted]

[redacted]

STATE V. BEY (1)

[redacted]

D, 17 years old, [redacted] met V, a female acquaintance, on the boardwalk. D and V share a marijuana joint, have sexual intercourse. V refuses D's further advances, D beats V with a 2x4, causing several fractures to her face and skull. D then strangles V. Jury verdict: murder 12/13/83. Penalty trial. Two aggravating factors: 4c, 4g. Three mitigating factors: 5a, 5c, 5h. Death.

The following factual summaries have been partially excerpted from State v. Bey (1), 112 N.J. 45 (1988).

"Early in the morning of April 2, 1983, Patrolman Kenneth Whritenour of the Neptune Police Department responded to a radio call directing him to a vacant lot adjacent to the boardwalk in Ocean Grove. Whritenour discovered the nude and battered body of a young, [redacted] female subsequently identified as the victim (V). [redacted] A bra was knotted loosely around the victim's neck.

"Investigators from the Monmouth County Prosecutor's Office called to the scene found the victim's clothes balled up in the doorway of one of four nearby, abandoned bathhouses, along with various cosmetic items strewn about. A single trail of footprints ran from the bathhouse to the victim's body, and from the body towards Spray Avenue. A dented "two-by-four" piece of wood with blood on the end was recovered as well." 112 N.J. at 52.

"Slightly more than a month later, on May 6, 1983, at approximately 5:15 p.m., officers from the Asbury Park and Neptune Police Departments arrested the defendant at his mother's home in

Neptune for suspected involvement in another incident, [redacted]

"The police began questioning Bey about the [redacted] matter ... he confessed ... He was informed that the officers now wished to question him about the murder of [redacted] ... By 1:00 a.m. defendant had orally confessed to [redacted] murder ...gave and signed a written statement ... 112 N.J. at 52-53.

The confession, read into the record in its entirety at trial, disclosed that defendant had met [redacted] three years earlier. They met again by chance, near the beach, on the night in question. Bey said he had already smoked six or seven marijuana cigarettes that night, and had drunk at least one forty-ounce bottle of beer. After smoking another "joint" with [redacted] the two agreed to have sex and walked over to the nearby row of bathhouses. The statement reads in part:

> "'We went inside of one (1) and we both took our clothes off. She layed her jacket down and laid on top of it. Then I got my nut and I wanted to start again and she didn't. She [sic] we just started kissing again and I started again and she wanted to stop and she started hitting me. Then I got dressed and I had got down to the sand and I dropped her in the sand. I know I beat her but I don't remember how I did it. Then I remember running. I was going home. I ran down the street behind the Palace and then I went home. I ran down Lake Avenue in Asbury Park and I turned down Fisher and I turned on Stratford and then to Drummond Avenue. I stayed

home all night. I woke up the next morning and I heard that someone got killed. I didn't know who it was at that time. I didn't know that it was her until I saw it in the paper.' "The statement also reveals Bey claimed to be 'high' during the encounter and that his recollection of some details was flawed. He said he had become angry when V declined to have sex a second time and began to hit him, and that he did not know 'the reason why [he] did it * * *." 112 N.J. at 54.

V's body was found face up. Violent blows with a blunt object had "extensively damaged" her face and had driven her head three inches into the sand. Her left eye had been destroyed. A bra had been knotted around her neck, and her neck had several marks on it. Several abrasions of between one and a half to two inches across marred her chest. She had been beaten so badly that identification had to be done through dental charts.

An autopsy was performed. The physician who performed the autopsy (W1) found multiple fractures to V's facial bones and skull. V's jaw was broken in four or five places. The root of her nose was completely flattened. Several teeth were loose and a couple were missing.

Superficial abrasions on the shoulder and forearm indicated feeble attempts at defense. Heavier abrasions on her chest indicated more beating, which resulted in a small laceration of the heart and a massive laceration of the liver.

Abrasions around the neck were consistent with strangulation. W1 testified that the multiple injuries to the face, head and

abdomen were the main cause of death. W2, a state expert witness who reviewed W1's work, said the head wounds and the liver injury were the main cause of death.

The lab recovered blood and semen from V's jacket, found in the bathhouse. The blood was of the V's type. The seminal fluid was consistent with that of the Marko Bey.

A rectal swab showed evidence of semen and blood, but they could not be typed. A vaginal swab showed positive for sperm, but the blood type was not that of Bey. W3, a forensic chemist, testified that she did not believe Bey had "contributed to the spermatozoa that was found in that area."

V's mother had last seen her daughter alive at about 12:30 a.m. on April 2. She had been sitting on a concrete embankment outside her house. Her mother had not noticed her missing until 1:45 a.m. She waited up until 4 a.m. When she awoke and found V was still missing, she began making phone calls to try to find her.

Bey, 18 at the time of the arrest, was 17 at the time of the homicide. He was unemployed, had held unskilled jobs in the past and had dropped out of school in junior high, although he did receive the GED.

On July 5, 1983, the Monmouth County Grand Jury returned indictment No. 904-7-83, charging Bey with purposeful and knowing murder, felony murder, aggravated assault, aggravated sexual assault, robbery, and theft.

On July 11, 1983, the State filed notice of aggravating factors (4)(c) and (4)(g). D failed, before trial, to file notice

of mitigating factors. However, raised during the penalty phase, were (5)(a), emotional disturbance; (5)(c), age of Bey (17); (5)(d) intoxication; and (5)(h), any other factor.

Trial before a jury lasted from December 8 to December 13, 1983. The defense presented no witnesses and Bey did not testify. The defense consisted of arguing that Bey had not intended to kill V. The jury found Bey guilty on all counts.

The penalty phase lasted from December 14 through 15. The State relied substantially on the evidence adduced at the guilt phase and introduced photographs and slides to establish torture or aggravated battery. Bey testified and presented three witnesses.

Bey's uncle, CH, testified of the poverty Bey grew up in, of his mother's alcohol problems, and of Bey's alienation from his father, who left his family when Bey was two and had little contact with them over the years. (Bey stayed with his father for about a year as a teenager.) He said Bey had been a good student until junior high, when he apparently lost interest in school and dropped out. He later got a GED.

Bey testified that he had started smoking pot and drinking when he was 14 or 15. He claimed he had a problem with drugs and drink. He said he had held odd jobs since leaving school. He apologized for the murder. Bey has prior convictions for robbery, aggravated assault and criminal restraint.

Bey's mother also testified about the poverty of the family. An investigator testified that Bey's father had shown no interest in his son's present plight.

The jury found the following: the State had proved aggravating factors (4)(c), outrageous and wanton, and (4)(g), contemporaneous felony, beyond a reasonable doubt and the defense had established the presence of mitigating factors (5)(a), extreme mental or emotional disturbance, (5)(c), his youth, and (5)(h), other factors. The jury determined that the mitigating factors did not outweigh the aggravating factors.

The judge imposed the death sentence. Counts 2 through 4 merged into count 1.

On appeal, the New Jersey Supreme Court reversed the conviction and ordered a new trial.

The Court ruled that the 1986 amendment to the death penalty act, which excludes juveniles tried as adults from execution, applied retroactively so as to exclude Bey from punishment. Continuing police interrogation into the murder after the D stated he did not want to talk about it, violated Bey's fifth amendment safeguard against compelled testimony. A written statement that immediately follows an unconstitutionally compelled oral statement is inadmissible if it directly flows from the tainted statement. Police may not cleanse such a written statement of its compelled-testimony taint by giving a new Miranda warning.

The court also ruled that Bey was entitled to a new trial because the trial judge refused to poll the jury concerning prejudicial mid-trial publicity, and a realistic possibility existed that prejudicial information had reached the jurors. State v.Bey I, 112 N.J. 45 (1988).

STATE V. MARKO BEY (2)

D, (an 18 year old male), approached V to rob her. D took V to a shed and stole $8. Once V saw his face, D beat V severely, raped her, and strangled her. D also stole V's car. Jury verdict: murder 9/27/84. Penalty trial. Two aggravating factors found: 4c, 4g. No mitigating factors found. Death. Re-trial of penalty phase. Two aggravating factors found: 4a, 4g. Two mitigating factors found: 5a, 5h. Death.

The following factual summary is excerpted from State v. Bey II, 112 N.J. 123 (1988).

"On April 26, 1983, around 9:20 p.m., the victim (V) [redacted] left Neptune High School, where she had attended a computer course, and drove away in her Ford Granada. V, [redacted] who was divorced and living alone, neither returned to her apartment nor reported to work the next day." 112 N.J. at 131

"... the police discovered her body in a shed near the building. An autopsy performed the following day, May 4, disclosed that V [redacted] had been dead for several days. The autopsy further disclosed that she had been beaten, sexually assaulted, and strangled. From a sneaker imprint on her chest and from evidence of fractured ribs and hemorrhaging of the right lung, vertebral column, and right atrium of the heart, Dr. Stanley Becker, the Monmouth County medical examiner, concluded that V's [redacted] assailant had stomped on her chest. Dr. Becker determined that the ultimate cause of death, however, was ligature strangulation. Subsequent police investigation revealed that characteristics of

spermatozoa found on the victim's coat were consistent with those of defendant's saliva, and that D's sneakers made an imprint that was similar to the impression on the victim's chest." 112 N.J. at 131-132.

Bey, 19, was arrested on May 6, given his rights, and interrogated. After a period of time: "Questioning resumed and continued until about 10:05 p.m., when defendant confessed to the crime. Approximately fifty minutes later, Bey was again read his Miranda rights, which he waived. He then gave a written statement, in which he admitted that he accosted [redacted] in front of her apartment building and demanded money from her. The statement continued that when he heard someone coming, he grabbed her and led her to the shed. In the ensuing events, he repeatedly struck [redacted] sexually assaulted her, and took eight dollars as well as the car keys from her pocketbook. While on his way to Newark in her car, he collided with an iron fence alongside a graveyard, and abandoned the car." 112 N.J. at 133.

"The defendant's fingerprints were found on the rear view mirror." 112 N.J. at 131.

"... The defendant testified in the guilt phase of the trial that beginning approximately four and one-half hours before the incident and continuing until shortly before he first saw [redacted] he consumed one hundred and twenty ounces of malt liquor, some straight rum, and smoked a considerable quantity of marijuana. Referring to the incident itself, he admitted to killing [redacted], but stated he did not know why he did it, and

acknowledged that it never should have happened ... He explained that he became scared when he saw [redacted] looking at him as he went through her pocketbook. He struck and sexually assaulted her, but did not recall stepping on her chest. The only thing he remembered was that once [redacted] saw his face, "that's when I started hitting her, it just went too far, something that shouldn't have went on."" 121 N.J. at 143.

Bey was unemployed at the time of his arrest, but had held unskilled jobs in the past. He had dropped out of school in junior high, but had received his GEO. Before his conviction for this offense, [redacted] Prior to the homicide, Bey and victim had never met.

"Defendant's aunt testified about defendant's parents and childhood, stating that defendant was an illegitimate child whose father rejected him and whose mother, the sister of the witness, became an alcoholic and abused defendant. According to his aunt, when defendant was fourteen years old, he began to drink alcoholic beverages and use drugs. He overdosed on alcohol and marijuana, and was hospitalized twice. Defendant's mother confirmed her sister's testimony and placed the blame for her son's conduct on herself. Defendant testified on his own behalf, apologized to Ms. Peniston's family, and stated that "maybe if I never would have taken drugs it would never have happened."" 112 N.J. at 147.

The grand jury on July 6, 1983, handed down Indictment No. 905-7-83, charging D with: 1. purposeful murder 2C:11-3a(1); 2. felony murder 2C:11-3a(3); 3. kidnapping 2C:13-1b(1);

4. aggravated assault 2C:12-1b(1); 5. aggravated sexual assault 2C:14-2a(3); 6. robbery 2C:15-1a(1); and 7. theft 2C:20-3a.

On July 11, the State filed a notice of aggravating factors: 4(c) extreme suffering; and 4(g) during the course of a felony.

[redacted] The State had earlier served notice of its intent to use this conviction as an aggravating factor, prior murder, 4(a) in the present trial. Defense moved to bar the sentence as inadmissible. The trial court found for the State; the New Jersey Supreme Court reversed, holding that the earlier conviction could not be admitted to the present jury while it was on appeal.

On September 27, 1984, the jury found Bey guilty on all counts. During the penalty phase, held on September 30, 1984, the State relied on the evidence introduced during the guilt phase, with the addition of several photographs.

The defense presented Bey, his aunt, his mother, and the director of the Center of Applied Social Research at Northeastern University.

The director testified that he had analyzed the death penalty and found that it was not a deterrent.

The jury found that the State had proved both aggravating factors and that the defense had not proved any of its mitigating factors: 5(a) extreme mental or emotional disturbance; 5(d),

impairment by intoxication; 5(c) his age; and 5(h) any other factor.

Bey was sentenced to death.

On appeal, the New Jersey Supreme Court reversed the death penalty because the trial judge erred in charging the jury that mitigating factors must be found unanimously. The Court ordered a new penalty trial. State v. Bey, II, 112 N.J. 123 (1988).

In the retrial of the penalty phase, the State served aggravating factors 4(a), prior murder; 4(c), extreme suffering; and 4(g), contemporaneous robbery, sexual assault. The 4(c) factor was withdrawn prior to the trial. The jury found factors 4(a) and 4(g) present. The defense served mitigating factors 5(a), emotional disturbance; 5(c), age; 5(d), mental disease; and 5(h), any other factor. Bey presented the testimony of a neuro-psychologist that Bey had frontal lobe impairment, the testimony of a psychiatrist that Bey had an organic personality disorder, and the testimony of a neurologist that D had a rage reaction and an inability to control his anger. The jury found factors 5(a) and 5(h) present. The jury determined that the aggravating factors outweighed the mitigating factors beyond a reasonable doubt. Bey was sentenced to death.

Revised 8/8/91

#200, #3002

STATE V. BIEGENWALD (I)

D approached V, who was walking on the boardwalk and offered her marijuana. V got in D's car. Later, D shot V four times in the head. Jury verdict: murder 12/8/83. Penalty trial. Two aggravating factors found: 4a, 4c. Two mitigating factors found: 5d, 5h. Death. Re-trial of penalty phase. Two aggravating factors found: 4a, 4c. Two mitigating factors found: 5d, 5h. Death. Second death sentence vacated on 8/8/91.

The following factual summary is excerpted from State v. Biegenwald, 106 N.J. 13 (1987), and was referenced in State v. Biegenwald, _____ N.J. _____ (1991).

"On the night of August 27, 1982, 18 year old victim (V) and a friend, Denise Hunter, drove from Camden to Neptune City planning to stay at Denise's uncle's house. They went over to the Asbury Park boardwalk. V and Hunter sat on a boardwalk bench to listen to the music coming out of a nearby club. Hunter left for a short while to use a bathroom, and when she returned, she found that V was no longer on the boardwalk bench where she had left her. After she failed to find V, Hunter returned to her uncle's home and filed a missing persons report the next morning.

"On January 14, 1983, the skeleton of a female body was discovered in a vacant lot behind a fast food restaurant on Route 35 in Ocean Township. By matching dental charts, authorities identified the body as that of V. When the body was discovered, it was clothed in the items V was last seen

wearing--blue jeans and a dark shirt--except that a black and gold ring was missing from her finger. In the skull were four bullet holes, and three of the bullets were lodged within the skull. Testimony at trial indicated that the victim died as a result of the bullet wounds. It was estimated that death had occurred several months prior to the autopsy. Inadequate tissue remained to enable blood alcohol or chemical tests to be performed on the body.

"One week after the body was discovered, 22 year old Theresa Smith, who had shared an apartment with the defendant, 42 year old Richard Biegenwald, and his wife, Diane, came to the police and recounted a story implicating Biegenwald in the shooting. This story was essentially the same as that to which she testified later at Biegenwald's trial.

"Smith had previously worked as a waitress with Diane Biegenwald and lived with the Biegenwalds from June through October 1982 in a multi-apartment house in Asbury Park. Shortly after she moved in with the Biegenwalds, Smith and the defendant became friends.

"Smith told how during the course of their relationship she became the defendant's protege and he encouraged her to find and kill a "victim" to prove to him that she was "tough." They discussed that Smith should murder "Betsy," Smith's co-worker. On Friday, August 27, the date of [redacted] disappearance, Smith drove around shore towns with Betsy, having contemplated and discussed with Biegenwald a plan to murder Betsy. Smith, however, called the defendant and told him that she could not go through

with the murder plan, and she returned alone to the Asbury Park apartment to sleep. Smith testified that Biegenwald awakened her later that same night, although she did not recall why. Unable to return to sleep, she went to the kitchen, and looking out the window toward the driveway, saw a "shadow of a body" sitting in the car that Biegenwald had given to her. She returned to sleep.

"At the end of the next day Biegenwald took Smith into the garage where he lifted a mattress to show Smith a female body in unzipped jeans, a dark shirt and no shoes. Smith did not see the face because a large green plastic bag covered the head and was secured around the neck. Biegenwald asked Smith to touch the body--to "pick her leg up" and tell him how it felt. The defendant told Smith he had shot the victim in the head after meeting her on the boardwalk, telling her he had marijuana, and taking her back to the house. Biegenwald told Smith that [redacted] had been intended to be Smith's first victim but when he had tried to waken Smith while the victim was still alive, Smith would not get up. Biegenwald removed from the victim's finger a black and gold ring which one month later he gave to Smith. The next day Biegenwald and Dherran Fitzgerald, a friend of the defendant, who lived in the neighboring apartment, disposed of the body behind the fast food restaurant.

"The police arrested the residents of the Asbury Park house--Richard and Diane Biegenwald, Dherran Fitzgerald, his girlfriend, and her daughter--based on Smith's statement. In the basement of Biegenwald's apartment the police discovered three weapons, ammunition, and controlled substances later determined to have been

stolen from the hospital where Diane Biegenwald worked. The murder weapon was found in Fitzgerald's apartment as was an extensive cache of weapons. The black and gold ring missing from the victim's finger was discovered in Diane Biegenwald's jewelry box. Smith testified that after wearing the ring for several weeks she gave it to Diane Biegenwald. The only ammunition found that fit the .22 Short, the murder weapon, was discovered in a bag near the basement room where Biegenwald slept. The ammunition sales registry at a sporting goods store in Ocean Township showed that both Diane Biegenwald and Dherran Fitzgerald had purchased .22 Short ammunition." 106 N.J. 18-20.

"The case received extensive pretrial publicity in the local press. The defendant was linked to possibly four or five previous local murders, most of teenaged girls. Local and regional papers covered the Biegenwald arrest, investigation and trial extensively, nicknaming him the "thrill killer" because, it was reported, he killed only for pleasure." 106 N.J. at 21.

"At trial the State's main witnesses were Theresa Smith and Dherran Fitzgerald. Smith testified to what she had told the police in January. Fitzgerald testified about his friendship with Biegenwald, statements made by defendant to him about the murder, and the disposal of the body behind the fast food restaurant.

"Biegenwald's defense was that Fitzgerald, an admitted contract killer, had murdered [redacted]" 106 N.J. at 23.

"Defendant was found guilty of five counts: murder, possession of a weapon for an unlawful purpose, two counts of

possession of a weapon without a permit, and possession of a controlled substance." 106 N.J. at 23.

"At the sentencing trial, the prosecutor introduced as an aggravating factor evidence of defendant's 1959 murder conviction, for which he had served 17 or 18 years in prison. Sec. 4(a). The prosecution also asked that the jury consider as an aggravating factor that the murder of [redacted] was "outrageously or wantonly vile, horrible or inhuman in that it involved ... an aggravated battery to the victim." Sec. 4(c).

"Defendant sought to establish three mitigating factors: 5(a), that defendant was under the influence of extreme mental or emotional disturbance insufficient to constitute a defense to prosecution; 5(d), that his ability to appreciate the wrongfulness of his conduct or to conform it to the requirements of the law was significantly impaired as a result of mental disease or defect but not to a degree sufficient to constitute a defense to prosecution; and 5(h), any other unspecified factor that was relevant to his character or record or to the circumstances of the offense. Defendant introduced testimony from a forensic psychiatrist that Biegenwald suffered from a severe personality disorder known as anti-social personality with paranoid traits. The psychiatrist explained that Biegenwald was abused as a child and was institutionalized at the age of eight, diagnosed as schizophrenic and given 20 electro-convulsive shock treatments. Biegenwald subsequently entered a state hospital. On returning home he was beaten again by his father, stole from his mother, and routinely

escaped from his house for days at a time. At age 18 he was convicted of a murder committed while robbing a store, for which he served the 17 or 18 year prison term. A psychiatrist who had initially been called by the defense in preparation of an insanity defense but had advised counsel that the defendant was not legally insane testified that Biegenwald lacked the emotional capacity to appreciate the wrongfulness of his act or to conform his behavior to the law." 106 N.J. at 24.

"The jury found both aggravating factors offered by the State to exist beyond a reasonable doubt. The jury found two mitigating factors--that the defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired as a result of mental disease or defect, and that another unspecified factor existed that was relevant to the defendant's character or record or to the circumstances of the offense. The jury did not find that the defendant was under the influence of extreme mental or emotional disturbance. Finally, the jury found that neither aggravating factor was outweighed by the combined mitigating factors and, accordingly, the court sentenced defendant to death." 106 N.J. at 25.

The death sentence verdict was returned by a second jury and the defendant again sentenced to death. The death sentence was again vacated by the New Jersey Supreme Court on August 8, 1991, due to inadequacy in the jury voir dire and remanded.

STATE V. CLAUSELL

D and Co-D1 were paid $1,000 each to shoot V. They went to V's house, and when V answered the door, Co-D1 asked for [redacted], V said "You have the wrong guy," and tried to close the door. D fired two shots through the door hitting V once in the chest. Jury verdict: murder 4/18/86. Penalty trial. Two aggravating factors found: 4b, 4d. Three mitigating factors found: 5c, 5f, 5h. Death.

The following factual survey is excerpted from 121 N.J. 298 (1990).

"Shortly after midnight on August 12, 1984, [redacted] (the victim (V)) was shot and killed through the front door of his home in Willingboro, New Jersey. At approximately 10:45 on the evening of August 11, while [redacted] (V) was away, his wife and daughter, Tanya, responded to a knock at the front door. Two men who Mrs. [redacted] did not recognize were standing on the front step.... The man in front of the door asked, "[V]?" [redacted] and Mrs. [redacted] stated that he was not home....

[redacted] (V) returned home with his grandparents, Hubert and Bessie Dixon, a little after midnight. While he and his wife were in the kitchen, Tanya came downstairs and, through the window in the front door, saw that the two men had returned. She informed her parents that the men were at the door. As [redacted] (V) approached the front door, one of the men knocked. Mrs. [redacted] and Tanya followed [redacted] (V) to the foyer. Both grandparents were close by. [Mrs. [redacted] son] Darrell sat at the top of the stairs.

Vs [redacted] home had both a wood and glass interior door and an exterior screen door. When V [redacted] open the interior door, Dwayne stood in front and, as before, the other man, stood to one side. Through the screen door, Dwayne said, "[v]?" V [redacted] replied, "you got the wrong guy," and moved quickly to close the door. Darrell testified that as the door was closing, Dwayne moved out of the doorway. The second man stepped forward and, shooting through both doors, fired a shot at V. [redacted] As the victim fell, the other members of the family ducked.[1] The unidentified man moved closer to the screen door, and aiming downward, again shot through both doors. Then he ran away. Within hours of the shooting, V [redacted] died from a single bullet wound to the left chest. The other bullet, which did not hit him, was later recovered....

The State sought to establish that defendant and Wright had been hired to kill V [redacted] by Roland Bartlett, the Vs [redacted] neighbor and the alleged leader of a Philadelphia drug-distribution ring known as the "Mini Mob." Bartlett had quarrelled with the victim over Bartlett's dog.

At trial, Grant [a friend of Wright's] stated that in late June 1984, he had been approached by Anthony Bartlett, Roland Bartlett's son, who asked him to murder "someone" for $5,000. Grant claimed that he refused. He also claimed that he had been with defendant and Wright on August 11, 1984, when defendant's

---

[1]Note: the victims wife testified that the second shot narrowly missed their daughter.

beeper had signalled. According to Grant, members of the "Mini Mob" used the electronic-paging devices as a means of communication.

Grant stated that defendant had responded to the page from a pay phone. Defendant had placed a call and asked to speak to "D," allegedly one of Bartlett's ringleaders. After hanging up, defendant had told Wright, "[t]onight's the night. We need a ride tonight. We have to do it." According to Grant, Clausell and Wright had told him they would each collect $2,000 for the murder. Grant also claimed Wright had told defendant to "get the gun," and that defendant had responded by retrieving a .357 long-barrel Magnum from his house....

According to Schall, (a cocaine dealer, girlfriend, and friend of defendant brother) the group drove to New Jersey and parked the car down the street from the V's [redacted] home. The men removed a ball of newspaper from the trunk and went to see if the man they wanted was home. Schall waited in the car, and a few minutes later the men returned. The newspaper was gone, and defendant was carrying an object wrapped in his sweatsuit jacket. The men told Schall that the man's wife had said that he was not home, but that they wanted to wait.

After approximately an hour, defendant saw car lights approaching. As instructed, Schall returned to the V's [redacted] house. On turning to ask Wright if he was going to take to the man, she saw that Wright had a gun. Defendant asked Wright for the gun, but Wright replied that it was his turn. The two men left the car with

defendant carrying the gun, again wrapped in his jacket. Shortly thereafter, Schall heard two gunshots, and Wright and defendant ran back to the car. The three then returned to Philadelphia.

On the return trip, defendant and Wright discussed going to the Fleetwood Club, allegedly owned by Bartlett, to be paid. Schall dropped the two men at the club and went home....

A couple of days later, Schall saw defendant at the Clausell residence. Defendant told her that the victim had been shot because he had sued Bartlett after Bartlett's dog had bitten him, and Bartlett wanted him "hurt." In fact, V had filed a municipal court complaint against Bartlett for failure to provide water to his dog and for leaving excessive amounts of animal excrement for a lengthy period of time in the dog's kennel. Bartlett was acquitted of the charge of intentional cruelty by failure to provide water, but was fined for the failure to remove excrement."

At the time of V's death, D was 21 years old and lived with his girlfriend. Jennifer Schall testified that defendant committed the homicide in order to gain "points" with Roland Bartlett (Co-D3). D dropped out of high school after completing the 10th grade. He claims to have worked in the past as a clerk at two area supermarkets, and admits that at the time of the offense, [redacted] D also claims that, prior to his arrest, [redacted] for eight years. [redacted]

[redacted] for the instant offense. Also, when D was about 8 years old, he fell backwards from a high porch railing and suffered a head injury. Since that incident, D has experienced severe headaches. In addition, while a high school football player, D suffered another injury, one in which he was knocked unconscious.

D and Co-D1 were charged with own-conduct purposeful and knowing murder, 5 counts of aggravated assault, 2 weapons offenses, and conspiracy. Co-D2 was also charged with murder, but the charge was dropped and she was granted immunity in exchange for her testifying against D and Co-D1. A notice of factors was served, alleging: 4(b), grave risk; and 4(d), pecuniary motive. On April 18, 1986, in a joint trial, a jury convicted D and Co-D1 of purposeful and knowing murder, 3 counts of aggravated assault, and the 2 weapons offenses. The jury found that Co-D1 did not fire the gun, so he was not subject to a penalty phase. The defense submitted three mitigating factors, (5c) the age of the D, (21 years), (5f) no significant priors and (5h) any other factor (D presented five family members to testify in support of this factor). The jury found both aggravating factors and all of the mitigating factors. The jury determined that each aggravating factor outweighed all of the mitigating factors. On April 21, 1986, D was sentenced to death. The remainder of D's sentence is as follows: 9 months for each count of aggravated assault,

consecutive to the murder sentence and to each other; 4 years for unlawful possession of a weapon, consecutive to the other sentences. The other weapons offense, possession of weapon for an unlawful purpose, merged with the murder conviction.

On November 30, 1988, Co-D3 was convicted of murder.

The case had been tried as a capital case but the jury did not find that Co-D3 had intended to kill V so there was no penalty phase.

On December 1988 Co-D3 was sentenced to life imprisonment with a minimum parole ineligibility of 30 years.

On appeal, the New Jersey Supreme Court reversed D's murder conviction because the trial court failed to instruct the jury that D could be convicted of capital murder only if he purposely or knowingly caused the death of V, as opposed to causing only serious bodily injury. State v. Clausell, 121 N.J. 298 (1990).

On remand D was sentenced on a non-capital murder conviction that had been sustained.

Revised 8/5/91

#0520

STATE V. COYLE

D (age 28) lived next door to V (age 26). D had sex with V's wife. V went to D's house to retrieve wife after argument. Wife ran up street and V pursued her. D pursued V with a gun and shot V 3x including once in the head. One prior murder. Jury verdict: murder 3/14/85. Penalty trial. Two aggravating factors found: 4a, 4c. One mitigating factor found: 5b. Death.

The following factual summary is partially excerpted from State v. Coyle 119 N.J. 194 (1990).

"Shortly after his release in 1983 from an eight-year prison term for murder, defendant, Bryan Coyle, moved to Old Bridge, where he assumed the name Bryan Johnson. 119 N.J. at 201.

"In his free time Coyle practiced shooting with his nine-millimeter gun in the woods behind his home. He also participated in "neighborhood activities" and developed a close friendship with his next-door neighbors [the victim (V) and his wife.] Coyle frequently joined the [redacted] on their porch for late-night socializing, drinking, and "shooting the breeze."

"As time passed, defendant and Rhonda [redacted] drew closer. While V [redacted] was at work, Coyle would listen attentively as Rhonda discussed her unhappiness. She expressed distress over her parents' divorce and her own marital problems. She confided in Coyle that sometimes after drinking, V [redacted] would beat her and their children. Rhonda also revealed that her husband had been convicted in 1975 for assaulting two police officers. She further disclosed

that she feared [redacted] might eventually use a gun her father had left in the house.

"The neighborly friendship that defendant had established with Rhonda soon ripened into an ardent love affair, with disastrous consequences.

"The evening of July 28, 1983, began as many others had. While [redacted] was at work, Coyle and Rhonda engaged in sexual relations and then sat out on the [redacted] porch. Around midnight [redacted] returned from work with a six-pack of beer in hand and joined Rhonda and Coyle. As was their custom, the trio passed the time talking and drinking beer and whiskey. Within three hours Coyle and [redacted] had each consumed three to five beers and several shots of whiskey. In the early morning hours of July 29, the group disbanded and Coyle returned home.

"At that point an argument erupted between Rhonda and [redacted] Fearing that her husband might hit her, Rhonda left, walked down the street, and sat on a neighbor's curb for about twenty minutes. When she returned, she found the house locked. Because she had forgotten her key, she went next door to Coyle's house. Coyle attempted to soothe Rhonda by walking with her around the block for twenty to thirty minutes before returning with her to his house. According to Coyle, he had taken mescaline prior to Rhonda's arrival. Rhonda testified that she had known that Coyle had taken mescaline, and that she had taken some herself.

"Shortly thereafter, [redacted] banged on Coyle's door and demanded that his wife return home. When no one opened the door, he broke

the front window, cutting his hand in the process. Coyle retrieved his nine-millimeter gun, loaded it, and put it in his back pocket before opening the door. Ignoring Coyle's efforts to placate him, [redacted] strode towards Rhonda as she and Coyle retreated towards the kitchen. When Coyle fired a warning shot into the floor, [redacted] fled.

[redacted] called the police to report that his neighbor had shot at him. Although the police arrived within five minutes, their response was too late to avert tragedy.

"The ensuing events are in dispute. After calling the police, [redacted] apparently saw Coyle and Rhonda enter Coyle's car. According to Stanley Makson, who lived across the street, [redacted] ran out of his house with a "bath" towel wrapped around his hand. Amy Makson, Stanley's wife, observed that [redacted] had a "wad" of light-colored wrapping around his hand. Rhonda testified, however, that she had seen a gun, not a towel, in her husband's hand. [redacted] prevented the couple's escape by blocking Coyle's car with a discarded garage door. Rhonda told Coyle that "[redacted] going to kill us." She then fled from the car and ran down the street.

"Stanley Makson testified that [redacted] who had seemed "steamed up," had pursued Rhonda. Coyle, still armed with his gun, stood alongside the car. Rhonda and [redacted] engaged in a heated exchange as they returned home. She "whiningly" pleaded with him, while he gestured with disgust towards Coyle's house. After telling Rhonda to go back to her boyfriend, [redacted] stomped into his own house.

"Coyle and Rhonda then started walking down the block. [redacted]

stormed out of the house moments later, somehow passed Coyle, and hurried after Rhonda. Coyle then chased [redacted] Just as he passed the driveway of 17 Morsell Place, Coyle opened fire on [redacted] who was approximately twenty feet away. The shots missed. As he neared the driveway at 15 Morsell Place, defendant fired another round, this time hitting [redacted] in the leg. Stumbling to the ground near 13 Morsell Place, [redacted] crawled across the front lawn and hid behind a spruce tree.

"Coyle followed [redacted] behind the tree and fired three more rounds. Two of those shots hit the victim, one in the back of the shoulder, the other in the back of the head. According to the neighbors, the entire chase was accompanied by rapid-fire gunshots. Guy Midgely, who lived at 13 Morsell, and Christine Miladinov, who lived next door to Midgely, heard "yelping" that sounded like a "yahoo" during or immediately after the shots were fired. Coyle quickly ran down the block, away from the crime scene and his house.

"When he caught up to Rhonda, they walked to the school at the far end of their block. Shocked and dazed, Coyle then ran into the woods abutting Morsell Place until he reached Route 516. He called Susan Dealy from a pay phone to pick him up. Dealy drove Coyle to the Matawan train station. He took a train to New York and then caught a bus to South Carolina. 119 N.J. 201-204.

"After examining the victim's body the medical examiner, Dr. Marvin Shuster, concluded that [redacted] had been shot three times, once in the back of the left shoulder at close range, once in the

lower left buttock, and once in the back of the head, slightly above the left ear.

"After the police apprehended Coyle in Columbia, South Carolina, the Middlesex County Grand Jury indicted him for the purposeful murder of V [redacted], in violation of N.J.S.A. 2C:11-3a(1) (count 1), and the unlawful possession of a weapon for an illegal purpose, contrary to N.J.S.A. 2C:39-4(a) (count 2).

"The State notified defendant of its intent to prove two aggravating factors during the penalty phase: first, defendant had been convicted of another murder, N.J.S.A. 2C:11-3c(4)(a); second, the murder was outrageously or wantonly vile, horrible, or inhuman in that it involved depravity of mind, N.J.S.A. 2C:11-3c(4)(c).

"The State's and the defense's characterization at trial of the circumstances leading to V's [redacted] death differed sharply. Relying primarily on the testimony of neighbors, the State theorized that V [redacted] had been executed and that Bryan Coyle, a munitions buff, was the executioner. It blamed the murder in part on Coyle's antisocial tendencies.

"Although defense counsel admitted that Coyle had killed V [redacted], they disputed the State's characterization. They sought to show through the testimony of defendant and Rhonda [redacted] that Coyle had justifiably killed V [redacted] in defense of Rhonda. They pained Coyle not as an executioner but as a protective lover and guardian angel. Defense counsel argued in the alternative that the killing had not been purposeful because Coyle had been intoxicated." 119 N.J. at 205, 206.

Coyle pled non vult to a murder charge in 1975. [redacted]

After a trial held from February 26 - March 14, 1985, the jury in this matter returned a verdict of guilty to murder. A notice of factors was served, and, in the penalty phase, which was held on March 18 and 19, 1985, the jury found two aggravating factors -- the defendant's prior murder conviction, 4(a), and extreme suffering, (4c). The jury found a mitigating factor in the fact that the victim participated in the conduct which resulted in his death, 5(b), but did not find mental disturbance (5a), mental disease or intoxication (5d) or any other factor (5h). Since the aggravating factors were found to outweigh the mitigating factors beyond a reasonable doubt, Coyle was sentenced to death. Coyle appealed his conviction and the State Supreme Court reversed and remanded it on the ground that the jury had no opportunity to make a finding that Coyle may have intended to cause serious bodily injury, rather than death. State v. Coyle, 119 N.J. 194 (1990). The Court also found other reversible errors in the charge on passion/provocation manslaughter and the introduction or irrelevant and inflammatory evidence in the guilt phase.

Revised 7/30/91

#0595

STATE V. DAVIS

D, drunk, wanted to talk to V about $1,500 he owed her. D broke into V's home, began strangling her, and hit V 2 times in the head with a blunt object. D also tried stabbing V with a screwdriver and then stabbed V 49 times with a knife. Several wounds occurred after V's death. D pled guilty to murder 9/14/83. Penalty trial. Two aggravating factors found: 4c, 4g. Two mitigating factors found: 5f, 5h. Death.

The following factual summary is partially taken from State v. Davis, 116 N.J. 341 (1989).

"The case arises from the brutal killing of a twenty-three-year-old woman acquaintance of the defendant....

"On the morning of Monday, January 17, 1983, a worried next-door neighbor in [the victim's (V's)] [redacted] two-family duplex house in Buena, New Jersey, entered [V's] [redacted] apartment via the common cellar access. She found [V's] [redacted] body lying across her bed on her stomach, nude from the waist down. Her body was mutilated and bloodied. Around her neck was an electrical cord. Strewn on the floor was a blue pouch containing a certificate of title to a Vineland house trailer that she had sold to the defendant, Stephen Davis.

"A tip led police to arrest the defendant on Wednesday, January 19, 1983. He was arrested with a .357 Magnum revolver, a shotgun, and fifty-six shells of ammunition in his possession. The police confronted him with information they had received that he had killed the victim. Within hours he confessed to the murder. His confession and later testimony at the sentencing phase recount

the events.

"Through his friend, Mike Muccio, Davis had come to know V [redacted]. In Davis' words, he and V [redacted] were "real close" and he considered her "like a sister." V [redacted] was Mike's girlfriend, and they often double-dated with Davis. Although Davis lived in Pennsylvania, he had a child in the Buena area. Davis spent weekends in a Vineland house-trailer, which he had purchased from V [redacted], so that he could visit with his son. At the time of the murder, Davis still owed $1500 of the $6000 purchase price, which he had been paying off over time.

"He offered no explanation why he had gone to her apartment on that Sunday night. He had been drinking very heavily with friends on that day and admitted calling V [redacted] from the Bootlegger Bar in Buena. After the bar had closed at 2:15 a.m., he described himself as having become lost on the way to another party. Instead, he went to V's [redacted] home. When she did not answer the doorbell, he went back to his car and got a screwdriver and jimmied the door open. He took an appliance cord from an electric coffee pot in the kitchen and went upstairs to her bedroom. He heard her ask, "[w]ho is it?". He killed her by strangling her with the electric cord. He then stabbed and mutilated her body with a screwdriver and a knife. Davis then took from a blue pouch a paper that recorded his payment of debt, but left behind the bill of sale for the trailer. He also admitted stealing some articles of jewelry from the victim's apartment." 116 N.J. at 346-348.

"... the State argued that the defendant went to V's [redacted]

house with the purpose of stealing title to the house-trailer for which he owed V [redacted] money. With regard to c(4)c, the county medical examiner established that the cause of death was strangulation, and he estimated the time of death at about 2:30 a.m. on January 17. He also noted two blunt force injuries to the head, which could have produced severe pain and unconsciousness. He found multiple stab wounds, abrasions, and lacerations made on her body. He thought these were inflicted after death and could have been inflicted several hours later. The stab wounds he attributed to one weapon: a three and one-half-inch, single-edge knife. The abrasions, he thought, were caused by a screwdriver. A pattern of multiple laceration wounds were found on V's [redacted] left forearm and left calf. One laceration wound was found slicing between her buttocks and through her anus.

"Defendant testified in his own behalf, asserting that on the night of the murder he had been drinking heavily and using drugs. He claimed to have had no realization of what he had done. According to defendant, that night he had drank several beers and shots, taken two quaaludes, and injected himself with methamphetamine, a stimulant commonly called "speed" or "crank." He acknowledged the murder as being senseless. It was like "[s]omething weird": "It was like it was somebody else" was doing it. He denied any sexual motivation for the crime or any revenge based on the trailer-payment arrangements. He offered expert testimony with respect to mitigating factor c(5)h, that it would be unlikely that he would ever commit another serious offense. A

psychiatric witness on his behalf concluded that based on defendant's consumption of alcohol, quaaludes, and methamphetamine, his ability to exercise normal behavior control was substantially impaired, a mitigating factor under c(5)d. He was, in his doctor's expert opinion, an alcoholic and a drug abuser. The expert said that Davis had expressed feelings of remorse and guilt over the death of V. [redacted] He also thought defendant could be rehabilitated.

"Davis' father described his son as having a close relationship with V. [redacted] The entire Davis family viewed her as a friend. She often visited the family home. He saw his son as subject to drug- and alcohol-abuse problems, but was unable to help him overcome them. He could not explain why his son would kill someone who had been so kind to him and had done so many nice things for him and his family. Friends and family were unable to explain the murder. A religious counsellor cited Davis' repeated expressions of sorrow for the crime.

"The State countered with expert testimony to the effect that his complex actions and his sophisticated "goal-seeking" allayed any possibility of any sufficient degree of intoxication. The prosecution also presented Dr. Robert L. Sadoff, who concluded that defendant had "cognitive or intellectual awareness of what was going on about him and acted * * * with goal oriented behavior." He found emotional difficulties but no mental disease. The State rebutted some of the mitigating circumstances through other factual testimony."

Steven Davis was arrested in New Jersey, where he kept the trailer he was purchasing from V. When police arrived at the trailer, Davis was armed and about to enter his automobile. Davis was allegedly on his way to kill his friend, who informed Davis earlier via telephone that he had reported him to the police.

Davis is twenty-four years of age, and was both an athlete and honor student in high school. Davis was employed at a nuclear power plant, [redacted]

Davis was charged with capital murder, felony murder, burglary and weapons offenses. A notice of factors was served for outrageously or wantonly vile 4(c), and the contemporaneous felony, 4(g), statutory aggravating factors. Davis pled guilty to murder, and judgment was entered on September 14, 1983. At the penalty trial, held from April 17 to May 10, 1985, the jury was charged on both factors, and found both to exist. The jury was charged on mitigating factors 5(a) (extreme emotional disturbance); 5(d) (ability to appreciate wrongfulness of actions); 5(f) (no criminal record); and 5(h) (any other mitigating circumstances). The jury found that mitigating factors (f) and (h) existed, but that they were outweighed by the aggravating factors.

Davis received the death penalty, and was sentenced to life imprisonment with a (30)' year minimum on the felony murder and other counts. Davis appealed directly to the State Supreme Court.

The Supreme Court vacated Davis' death sentence and remanded the matter for further proceedings, on the grounds that the penalty phase jury was not instructed that, in order to impose the death penalty, it must find beyond a reasonable doubt that the aggravating factors outweigh the mitigating factors. In addition, the Court stated that since Davis pled guilty to an indictment charging him with two different forms of murder, it was not possible to distinguish what form of murder the plea established. Therefore, any further proceedings must distinguish between the capital and non-capital forms of murder. State v. Davis, 116 N.J. 341 (1989).

#0119

Revised 8/7/91

STATE V. DI FRISCO

D was offered $3,000 by a person he met in jail to kill V because V was going to inform about the person's drug business. D shot V in the head in V's pizzeria. Murder plea 1/11/88. Bench Penalty trial. Two aggravating factors found: 4d, 4f. 1 mitigating factor found: 5g. Death. Revised, Pending.

Anthony DiFrisco, defendant (D),age 25, and AF became friends in 1984 while both were serving time in prison. After both were released, AF asked D to kill a man for him.

According to D, AF had become convinced that victim (V), a pizzeria owner, intended to inform police about AF's drug business. He contacted D in July, 1986, and asked him if he would make the hit for him. D agreed, in return for $2,500 in cash and cancellation of a $500 drug debt. At the beginning of August, AF gave D a $700 down payment.

On August 12, 1986, AF picked D up at his home [redacted] AF drove D to the pizzeria. [redacted] They arrived there at about 7:30 p.m. AF described V, then parked down the street. D walked to the pizzeria.

A counter divided the pizzeria length-wise, with the oven on the right and tables on the left. Behind the counter stood a middle-aged man with sandy hair, a match for AF's description of V. As D chatted with V, a delivery boy entered. D ordered a pizza to

stall until the delivery boy left. He ate part of one slice of a cheese pie and drank a soda. The boy left. D asked for another soda. As V reached for it, D pulled his .32 caliber revolver and shot V.

Four bullets hit V in the head. One entered the right side of V's face, through the maxillary bone and lodged in the roof of the mouth. The second entered the right forehead, passed through the right side of the brain, exited the skull and lodged in the neck. The third entered through the left ear and passed through the brain to the right side. It apparently lodged in the skull. The fourth bullet entered almost on the top of the head, destroying part of the skull, then passing through the brain to lodge in the left temple. V also suffered a fifth gunshot wound to the arm, apparently after he had fallen.

D went out to AF's car, where AF asked, "Did you do it, is he dead?" D answered, "I think so." AF drove D home. The next day, he paid D the balance of his fee.

Police were unable to tie anyone to the slaying.

Some eight months after the slaying, on April 1, 1987, New York City Police arrested D on routine street crimes, car theft and reckless endangerment. [redacted] conviction would have meant a return to prison. D asked the arresting officer if there was anything he could do to alleviate the problem because "I can't do the jail time."

The officer told D that he could help himself by revealing what he knows about any major crimes, such as robberies or

homicides. After being given his Miranda rights and being handcuffed to a railing for a while, D asked the officer, who would be more guilty, a "guy who shoots a guy or a guy who pays him to shoot a guy?" The officer answered, "I have no problem. The guy who pays him to shoot the guy."

A few hours later, D waived his constitutional rights and confessed to slaying V. He implicated AF as the man behind the scheme and initially agreed to cooperate in efforts to build a case against AF.

The assistant prosecutor for the case had nothing more than D's allegations on AF, so he suggested that D call his old friend to try to get him to make incriminating statements about the murder before AF found out about D's arrest.

The prosecutor advised D of the meaning of aggravating and mitigating factors in a death case. D also spoke with a representative of the Office of the Public Defender. He nonetheless agreed to make the call the next day, a Saturday.

D, however, upon advice of his father, wanted to speak to private counsel before proceeding. The assistant prosecutor explained this was his last chance to cooperate because his arrest would be made public and he would not be given the opportunity to cooperate. Thereafter, he decided not to cooperate and asked to be returned to jail.

[redacted]

D was charged with purposeful, knowing murder and weapons offenses. In January of 1988, D pled guilty to purposeful, knowing murder and waived a jury for the penalty phase of his trial.

Three aggravating factors had been served 4(c), extreme suffering; 4(d), pecuniary motive; and 4(f) avoid detection. In support of 4(c) the prosecution presented medical testimony as to the cause of death. In support of 4(d) and 4(f) D's confession was submitted to the sentencing judge.

The trial court found two (2) aggravating factors: 4(d) and 4(f). Five mitigating factors were submitted to the sentencing judge; 5(c) the age of D, D and state's witnesses testified in support of this factor; 5(d) mental disease, intoxication, D and state's witnesses testified as to D's drug addiction; 5(f) no significant prior criminal history, D and state's witnesses testified to this; 5(g) substantial assistance to the state, D's confession was offered in support of this; and 5(h) any other factor.

The trial court found one (1) mitigating factor, that D rendered substantial assistance to the state in the prosecution of another person for the crime of murder 5(g). The trial court found that the aggravating factors outweighed the mitigating factors beyond a reasonable doubt. The trial court sentenced D to death.

On appeal, the Supreme Court affirmed D's conviction of murder. The court reversed D's death sentence, because of a lack of extrinsic corroboration of D's confession that he was hired by a third party (AF) to kill V, and remanded the matter for a retrial

of the sentencing proceedings. State v. DiFrisco, 118 N.J. 253, 571 A. 2d 914 (1990).

The state has not had the case against AF presented to a grand jury. It does not have a prosecution pending against AF and has not sought the cooperation of D in any possible proceedings against AF in the future. The trial judge indicated he was "perplexed" for the states failure to move an indictment against AF, but an assistant prosecutor testified that there was not sufficient evidence, and that it was DeFrisco had failed to cooperate.

#0662

Revised 8/9/91

STATE V. DIXON

During an alleged robbery attempt, D struggled with V (age 14). When V told D that she knew him, D stabbed V in the head with a nail or a spike. Her partially nude body had been dragged to a creek and lodged in the water under a car seat. Jury verdict: murder 1/30/87. Penalty trial. Two aggravating factors found: 4c, 4f. Two mitigating factors found: 5f, 5h. Death.

The following excerpt is taken from State v. Dixon, ___ N.J. ___ (1991).

"The case arises from the brutal murder of a thirteen-year-old girl as she walked home from school. To her last moment, she fought against her stronger assailant. The marks she left on his body and the telltale presence of fibers drawn from his clothing, along with eyewitness testimony of fellow students, sealed the case against her assailant, defendant, Phillip Dixon.

"As the young girl, [redacted] (the victim (V)), walked home from school on Friday afternoon, February 22, 1985, several of her fellow students saw defendant "on top of" her in an area of underbrush along a path between the children's school and homes. (The area was in the Borough of Woodlynne, although the children attended Camden High School.) Although at first the other students thought that there might have been nothing more than an innocent encounter between the two, their suspicions deepened when [redacted] (V) did not soon arrive home. The children alerted [redacted] (V's) mother of the fact that they had seen [redacted] (V) with defendant, an eighteen-year-old fellow student at the high school. Her mother went to defendant's house in search of

V [redacted], but he was not at home.

"The police were informed of the missing child. An intensive search disclosed her body approximately one hundred yards from the place of the sighting by the students. Her partially-nude body had been dragged through the underbrush into a creek. Her body was lodged in the water underneath a car seat and other discarded refuse. Only a foot was showing above the surface of the water.

"After his encounter with the victim, defendant went to his cousin's home, where he changed his clothes. He claimed that he had been in a fight and called his brother to bring the change of clothes. Later that afternoon, defendant returned home, where his mother told him that the victim's mother had been there asking about V [redacted]. Defendant again changed his clothes, and that evening went with his brother to Philadelphia. Later that night he went to his grandmother's home in Hempstead, Long Island. Having been informed by the school children that V [redacted] had last been seen with defendant, the police put out an all-points alert for him. They soon learned that he was in Hempstead at his grandmother's home. The Woodlynne police called the Hempstead police, who arrested defendant on Sunday afternoon, February 24, 1985.

"Defendant gave an oral confession to the Hempstead police. A Hempstead officer summarized defendant's statement as follows: On Friday afternoon defendant was walking with his mother to a local bank. He remembered that he needed money to see a movie later, so he returned home to get some money. While returning, he was walking along a path and saw a young girl. He decided to take

her pocketbook. He chased her, grabbed her, and forced her down to the ground in a "weeded [sic] area," at which point she was screaming and struggling. She eventually flipped onto her stomach and he straddled her with his knees. But she screamed as he tried to take her pocketbook. She looked at him and said "I know you, I've seen you." As she continued to scream, he reached for "a spike or a nail" lying on the ground and hit her on the head with it. Defendant did not know why he struck the girl and could not remember the amount of pressure he used or whether the nail had penetrated the girl's head. He said that the girl had been screaming "like in the movie '10 to Midnight.'" When the officer said that he had not seen the movie, defendant said, [I]t was like in that movie when the girl in the movie kept screaming and she wouldn't stop screaming and the guy stabbed her." State v. Dixon ___ N.J. ___ (1991) Slip Opinion at 1, 3-5.

"At trial, the State produced the school children who had seen defendant with V [redacted], on top of her, apparently engaged in a scuffle. They recalled that he wore a camouflage jacket. Another witness described seeing defendant drag V [redacted] into the woods towards the water. A fiber expert described the fibers found on her body as being identified with defendant's cap. A sneaker imprint was found at the scene that matched the Nike sneakers seized at defendant's cousin's home. A pathologist said that the victim had been struck by a pointed object, that the blow to V's [redacted] head had pierced her brain, and that death was inevitable from the blow, although she was probably alive when her body was

submerged under the water. Two scenes or segments from the movie "10 to Midnight" were shown in which a perpetrator in dissimilar circumstances was stabbing a screaming young woman." State v. Dixon (Slip Opinion at 5,6).

D is 18, 5'10 ½" and weighs 221 pounds. D had been dishonorably discharged from the reserves at the time of this offense, but an appeal was pending. D was a high school senior at the time of the offense.

[redacted]

D was charged with own conduct knowing murder, robbery, aggravated criminal sexual contact, 3 counts of hindering apprehension and two weapons counts. A notice of factors was served for: torture, aggravated battery, or depravity, 4(c), escaping apprehension, 4(f), and felony factor, 4(g). In a capital trial on January 30, 1987, defendant was found guilty of murder, aggravated criminal sexual contact, 3 counts of hindering apprehension, and 1 weapons offense. At the penalty trial, February 3, 1987, the jury was charged on 4(c) and 4(f) and found both factors. The jury was charged with mitigating factors: 5(c), age of defendant; 5(f), no significant prior record; 5(h), any other factor relevant to defendant's character; and found 5(f) and 5(h). The jury found that the aggravating factors outweighed the mitigating factors. D was sentenced to death. The New Jersey Supreme Court reversed and remanded D's death sentence because the trial court did not instruct the jury on the difference between acts that knowingly cause death and acts that knowingly inflict

serious bodily injury resulting in death. State v. Dixon, _____ N.J. _____.

Revised 8/8/91
#0728

STATE V. ERAZO

D and V (husband and wife) had a party. Both drank heavily. D and V argued and fought. V tried to leave, D brought her back. They continued fighting. D stabbed V 8x. D had a prior murder. Jury verdict: murder 10/14/87. Penalty trial. Two aggravating factors found: 4a, 4c. Four mitigating factors found: 5a, 5b, 5d, 5e. Death. Vacated 8/8/91.

The following summary quotes the facts of this case from State v. Erazo, _____ N.J. _____ (1991).

"The tempestuous marriage of Samuel and [the victim (V)] ended on December 20, 1986, when he stabbed her to death after an evening of drinking and quarrelling. Samuel's primary defense was that she had provoked him and that he had killed her in the heat of passion. As the court and counsel recognized at trial, the case turned on Samuel's mental state at the time of the homicide.... slip op. at 2.

"Samuel and [V] were married on May 19, 1982, at Rahway State Prison, where he was confined for the 1977 stabbing death of Gladys Colon, the daughter of a woman with whom he had been living. The relationship between Samuel and [V] was marked by passion, recriminations, and violence. Once, during a visit by [V] at the prison, defendant struck her because he saw her talking with other men. In April 1985, defendant was released on parole and went to live with [V] in an apartment in East Orange. After his release, they became embroiled in an argument at the home of one of [V's] daughters. Again defendant struck [V.] She started to call the

police, but when defendant pointed a knife at her and challenged her to "call the cops," she did not complete the call.... slip op. at 3.

"At the time of the homicide, defendant was employed as a security guard at a Woolworth store in Newark. Together with Anthony Baptiste, the cashier-supervisor at the store, Anthony's girlfriend, Maribel Santos, and Michael Harrison, another security guard, defendant went to the Erazo apartment to celebrate Harrison's birthday. On the way, they purchased a six-pack of beer, four wine coolers, and a pint of rum. During the course of the evening, Harrison and another guest, Blanca Flores, who also lived in the apartment complex, purchased a second bottle of rum. Throughout the evening both Samuel and V consumed alcoholic beverages. A test of V's blood taken during her autopsy yielded a blood alcohol reading of .195 percent.

"Tension started to build as soon as defendant arrived at the apartment. When he tried to introduce V to the guests, she refused to leave the kitchen until after dinner. Defendant became further disturbed when he discovered that the stereo was not working because V had disconnected it while rearranging furniture that day. After dinner, V and Blanca joined the party, and the group sat, talked, and listened to the stereo, which defendant and Blanca had fixed. Blanca showed Harrison how to dance the merengue, and the couples changed partners. At one point defendant told Harrison that "my wife is making me mad," and "she is going to make me do something I don't want to do." Defendant

recounted to Harrison that on the previous day V had angered him when he brought her flowers, which she threw in the trash can.

"When the party broke up around 11:30 p.m., defendant asked Blanca to drive his friends home. The victim, however, interrupted and told defendant, "no, they're your friends, you take them home." Blanca, however, agreed to drive them home. Embarrassed and angry, defendant accompanied Blanca on the drive. On their return home, defendant and Blanca met the victim, who was drunk and disconsolate, as she left the apartment house. Blanca unsuccessfully tried to persuade V to return to the apartment.

"At this point the parties' versions differ. The State contends that Blanca told defendant to follow his wife. According to the State, after threatening that if he went after V he "might have to kill again," defendant in fact brought her back to the apartment. Defendant denies that he followed V and assets that she returned voluntarily. Both parties agree that V returned to the apartment sometime after midnight.

"According to Blanca's sister-in-law, Anna, who also lived in the apartment house, after defendant and V had returned to their apartment, Anna heard the sound of glass breaking and V screaming "God help me. He is killing me." Defendant then changed his clothes and within minutes of V's return left the apartment house. Standing beneath the window of Blanca's apartment, he told her to call an ambulance.

"At trial, the State theorized that defendant's motive in killing the victim was that she had purposely cut her hand during

her walk and then threatened to call the police, with the intention of telling them that defendant had inflicted the wound. This, so the State would again revoke defendant's parole and return him to prison. In a telephone conversation with the victim's daughter on the morning after the slaying, defendant related that when the victim had threatened him, he had "lost his head" and stabbed her. To the extent that the State relied on the victim's threat to call the police, its theory coincided with that of defendant, who contended that her threat enraged him and that he killed her in the heat of passion.

"When emergency medical service and police personnel arrived, they found the victim lying on the floor. Next to her body was a blood-stained knife blade with a broken tip; the handle was on the vestibule floor. The apartment was in disarray, with glasses, a rum bottle, and a box of cassettes knocked to the floor. An autopsy revealed that the victim had sustained four knife wounds to her hands, arms, and chest; three slashes to the neck; and a single stab wound to the back that, according to the medical examiner, killed her instantly.

"After leaving the apartment, defendant went to his mother's home in Jersey City, where he told his brother, an unemployed police officer, that he had stabbed the victim. Later that day, defendant surrendered to the police." slip op. at 3, 4, 5, 6.

D was indicted and charged with purposeful and knowing, own-conduct murder and possession of a weapon for an unlawful purpose. In a jury trial lasting from October 5 to October 14, 1987, D was

convicted on both counts. In the penalty phase, held from October 19 to October 21, 1987, the State alleged that the following statutory aggravating factors were present: 4(a), prior murder and 4(c), extreme suffering. The jury found that both factors existed. D alleged that the following statutory mitigating factors were present: 5(a), extreme mental or emotional disturbance; 5(b), V solicited, participated in, or consented to the conduct resulting in her death; 5(c), D's age; 5(d), mental disease or defect or intoxication; 5(e), duress; and 5(h), any other relevant mitigating factor. The jury found that 5(a), 5(b), 5(d), and 5(e) existed. The jury also found that both combined aggravating factors outweighed beyond a reasonable doubt all mitigating factors, and that each of the aggravating factors independently outweighed beyond a reasonable doubt all of the mitigating factors. D was sentenced to death. His appeal to the New Jersey Supreme Court was decided on August 8, 1991. The judgement of conviction was reversed and the matter remanded for trial. The C(4)(c) factor may not be considered on remand.

Revised 8/7/91
#0868

STATE V. GERALD

D and Co-Ds break into Vs' home to rob them. They hit V in face with a golf trophy, stomped on V's face and threw a large television on his head. NV1 beaten badly, later dies. NV2 also beaten. D and Co-Ds leave with money and property. Jury verdict: murder 5/16/84. Penalty trial. Two aggravating factors found: 4c, 4g. Four mitigating factors found: 5a, 5d, 5f, 5h. Death.

The following factual summary is partially excerpted from State v. Gerald, 113 N.J. 40 (1988).

Non-decedent victim (NV1) [redacted] eighty-nine years old, lived with the victim (V) [redacted] age fifty-five, at the [redacted] home in Pleasantville, in Atlantic County. Their home was located on a dark wooded corner in a secluded area. The NV1 [redacted], disabled because of a stroke, could walk only with the aid of cane. Inasmuch as neither NV1 [redacted] nor V [redacted] was self-sufficient, two of NV1's [redacted] daughters, Helena Gaw and non-decedent victim 2 (NV2) [redacted], took turns staying in the home, cooking, cleaning, and caring for both men.

"On Friday, August 13, 1982, NV2 [redacted] was staying at her father's home. At approximately 6:30 p.m., NV1 [redacted] retired for the evening to his first floor bedroom. V [redacted] went to his upstairs bedroom where he watched television and later retired. In the living room NV2 [redacted] watched a baseball game on a new color television set, which sat atop an old console television set that no longer functioned. At approximately 9:30 she went to bed in her father's bedroom. Soon thereafter she heard a noise in the other first floor bedroom and went to investigate. As she opened the

door to that room, she was struck in the eye by someone standing behind the door. [redacted] was then attacked by two black males, one of whom she later described as husky, tall, with a round face and a mustache or beard. One of the intruders had a knife or blade, although [redacted] was unable to recall which of the two it was. She was thrown to the floor, punched and kicked in the face, and then hurled into the bathroom. [redacted] recalled lying on the bathroom floor being stomped on a number of times about the face and chest by someone wearing a white-soled shoe. This man told her, "Shut up or I'll kill you." When he asked where the money was kept, she revealed the location of her purse. When her brother [redacted] heard [redacted] screams, he came downstairs to investigate, whereupon two black males attacked him at the foot of the staircase. One of the men struck [redacted] in the face with a television set.

"Shortly after the foregoing events, and not knowing whether the intruders were still in the house, [redacted] arose and went to the kitchen, where she telephoned her sister and the local police. Then [redacted] entered the living room where she saw her brother [redacted] lying on the floor with the old console TV overturned on his face. After succeeding in lifting the set from his face and turning it upright, [redacted] found [redacted] face cold to her touch. [redacted] had been beaten and dragged from his bed into the hallway. He was leaning against the wall, bleeding profusely, still clutching the top portion of his cane, which was broken in half. Missing were [redacted] purse with about $60 in cash, the

new color television set, and an old black and white portable television set from V's upstairs bedroom. 113 N.J. 48, 49.

"According to Dr. Jason, V's death was caused by blunt force injuries to the head, specifically, cerebral concussions and a fractured nose, inflicted by blows of the fists and feet. These injuries resulted, respectively, in contusions and swelling of the brain, and aspiration of blood into the airway and lungs. Together, these conditions produced V's death. Because no blood was found in the victim's stomach, Dr. Jason concluded that V's nose was fractured after he lost consciousness. Had he been conscious, his gag reflex would have forced him to swallow the blood rather than inhale it into his lungs. Dr. Jason observed on V's nose a discernible sneaker print that could have been produced by the same force as caused the broken nose. He acknowledged as well that the console television set falling on V's face could "possibly" have fractured his nose, thereby resulting in the aspiration of blood as he lay unconscious on the floor.

"Concerning the blows to the head, Dr. Jason concluded that a single first blow could have fractured the nose and simultaneously caused unconsciousness, but he pointed out that at least some of the blows to the head, especially on the left side where the most severe contusions of the head and brain were found, were delivered after V was unconscious. Finally, Dr. Jason determined that a single blow could not have caused the brain injury or the other injuries that he observed. Rather, the doctor surmised that the

sum of the numerous blows and resultant various injuries caused the death; that it was medically impossible for him to differentiate the "fatal" blow from all others, and that this would have been so even had he watched the beating take place; and that while some of the blows might not have contributed to death, he could not specifically identify which ones had and which had not.

NV1 [redacted] suffered bruises and lacerations of the face from blunt-force injuries. There were indications that he had probably been beaten with a lamp. Those injuries required continued hospital care and convalescence treatment. He died on October 3, 1982, without ever having returned home. NV2 [redacted] suffered a broken nose, abrasions, lacerations and contusions of the face, neck, and chest due to several blows, as well as smaller contusions on the rest of her body. She was hospitalized until August 25, 1982; her jaws were wired together for six weeks following the attack." 113 N.J. at 50, 51.

Police received a tip that defendant had committed the murders. They arrested him on outstanding warrants and integrated him. After failing a polygraph, he confessed.

"Gerald said that he, Eddie Walker, and John Bland had entered the [redacted] house, intending to steal a television set that they previously had seen from outside the house. Gerald "had" the woman, and admitted striking her a couple of times. Walker had the younger man, V [redacted], while Bland aroused the old man NV1 [redacted] from bed. The young man was giving Walker a lot of trouble, so Gerald and Bland went to assist Walker. They beat the younger man with

their hands, then left him alone. Gerald went back to the woman, and Bland returned to the old man. Bland beat the old man with a lamp and a cane, or both. Gerald said that Walker "just went off" on the younger man, hitting him with a trophy, punching him, and throwing a television set on his face. Gerald also stated that on his way out of the house, he stepped on the younger man." 113 N.J. at 55, 56.

Gerald was indicted for murder and 12 additional counts including burglary, robbery, aggravated assault and felony murder of the second victim.

"The State offered defendant a recommended term of life imprisonment in return for a guilty plea to felony-murder, which Gerald rejected. During the two-week guilt phase trial, the State called twenty-four witnesses, including both Bland and Walker. Walker testified that Gerald and he beat V, that Gerald knocked V unconscious, and that Gerald continued thereafter to strike the victim. According to Walker, when he tried to remove the new color television set in the living room, the old console set on which it sat fell over onto V's face. When Walker asked Gerald whether he should pick up the console television, Gerald replied, "leave it there." ... Both Bland and Walker testified that all three had consumed large quantities of alcohol and drugs on the day of the murder." 113 N.J. at 61.

"The defense called six witnesses. One psychiatrist diagnosed Gerald as severely depressed and drug-dependent. A second psychiatrist furnished a diagnosis of severe personality disorder

and drug addiction. He also offered the view that Gerald's obsessive preoccupation with the need for drugs either rendered him unable to control his behavior or impaired his control. An anthropology and sociology professor testified about the "failure syndrome" and correspondent depression and alcohol and drug dependence in poor urban subcultures.

"Defendant testified, expressing his sorrow for what had happened to the [redacted] family and to his own family." 113 N.J. at 62, 63.

Gerald is 24 years old. He graduated from high school and entered college on an athletic scholarship. [redacted] Gerald returned home and attended a community college for three semesters. [redacted]

D was charged with knowingly and purposeful murder, felony murder and aggravated assault, conspiracy to commit burglary, robbery with bodily injury, robbery with bodily injury, aggravated assult and two counts of aggravated assault. A notice of factors was served for the grave risk, 4(b), outrageously vile 4(c), and contemporaneous felony 4(g), statutory aggravating factors. In a capital trial, which lasted from May 1 to May 16, 1984, Gerald was found guilty on all counts except the aggravated assault on NV1. With this not guilty verdict as to count 7, the prosecutor withdrew

the 4(b) statutory aggravating factor. At the penalty trial, which was held from May 17 to May 19, 1984, the jury was charged on both the 4(c) and 4(g) aggravating factors, and found both to exist. The jury was charged on mitigating factors 5(a), emotional disturbance; 5(c) age of D; 5(d) diminished capacity; 5(f) no significant prior record; and 5(h) any other relevant factor. The jury found mitigating factors 5(a), 5(d), 5(f), and 5(h). The jury further found that the mitigating factors neither outweighed the aggravating factors nor were they of equal weight, and sentenced the defendant to death. Gerald also received ten years with a five year period of parole ineligibility on count 4, a consecutive term of ten years with a five year period of parole ineligibility on count 6, and a concurrent term of five years on count 2. Counts 1, 3, 5, 8, 9, and 11 were merged into counts 2, 4, and 6 for sentencing purposes.

Gerald appealed his conviction to the New Jersey Supreme Court. The Court reversed Gerald's conviction and sentence on the ground that the jury was not instructed that it must find that the aggravating factors outweigh the mitigating factors beyond a reasonable doubt. The Court also held that a person convicted of purposely or knowingly causing severe bodily injury that results in death shall not be subject to the death penalty. Since the jury did not specify whether Gerald intended the death of V, the guilt phase of Gerald's trial must be retried. State v. Gerald, 113 N.J. 40 (1988).

Revised 8/5/91

#1031

STATE V. HARVEY

D burglarized V's apartment while V was asleep, and was stealing things when V awakened and confronted him. D hit V 15 times with a hammer-like object. Jury verdict: murder 10/10/86. Penalty trial. Three aggravating factors found: 4c, 4f, 4g. No mitigating factors found. Death.

The following facts in quotations are excerpted from State v. Harvey, 121 N.J. 407 (1990).

"After the victim (V) [redacted] failed to appear for work on June 17, 1985, a colleague went to her apartment at the Hunter's Glen complex in Plainsboro. When no one answered, he entered through the unlocked door and found V [redacted] dead on the bedroom floor. She had suffered severe head and facial wounds.

"The police found an empty box for a Seiko LaSalle watch on the dressing table in the bedroom. An empty camera box was in the closet, and an open purse sat atop the vanity in the bathroom. A pillowcase had a bloody sneaker print bearing a chevron design and the letters "PON". There were no signs of forced entry; the sliding glass door was closed but unlocked.

"Dr. Martin Shuster performed an autopsy. He concluded that V [redacted] had suffered numerous skull fractures, a fractured jaw, and a deep laceration on her skull. Dr. Shuster believed that she had been struck at least fifteen times with a blunt object. Pressure applied to her neck for an hour had caused contusions. In Dr.

Shuster's opinion, a brief interval separated the first blow and death. He could not determine which blows had been fatal and which had been inflicted after the victim's death.

"On October 28, 1985, the police arrested defendant on suspicion of kidnapping and burglary. Following several interrogations over the next three days, defendant admitted that he had killed V. [redacted] He said that on June 16 he had gone to the Hunter's Glen apartment complex. Entering V's [redacted] apartment through an unlocked patio door, he went into the bedroom, where he took a watch and some jewelry from the dresser. V [redacted], who had been sleeping, woke up and punched him in the nose, causing it to bleed. Defendant then struck her in the head with a "hammer-like" object, knocking her to the ground. Afraid that the blood from his nose had stained the sheets, he replaced them with clean ones from the closet. He then retrieved a towel from the bathroom and wiped the blood off of V's [redacted] body. After collecting the bed sheets, the towel, the watch, a camera, and other pieces of jewelry, he left the apartment." 121 N.J. at 411, 412.

[redacted] Nathaniel Harvey was charged with purposeful and knowing murder, robbery and burglary. A notice of factors was served for 4(c), intent to cause suffering; 4(f), escaping apprehension; and 4(g), contemporaneous felony statutory aggravating factors. In a jury trial, which lasted from September 29, to October 10, 1986, Harvey was found guilty of all charges. At the penalty phase, which was held from October 15 to October 17,

moral arguments against the imposition of the death penalty in support of mitigating factor 5(h), any other factor: (1) Harvey is a human being ... death is irreversible; (2) the death penalty is immoral; (3) the death penalty is arbitrary and racist; (4) the death penalty does not deter; and (5) D has a family ... his death in prison will indicate to him and others the error of his ways ... the death penalty will only anger, not guide.

The jury found all three aggravating factors present and did not find the mitigating factor. Harvey was sentenced to death. On the other counts, Harvey was sentenced to 20 years on the robbery count with a 10-year period of parole ineligibility and 10 years on the burglary count, with a 5-year period of parole ineligibility. Both sentences were made consecutive to each other and to the death sentence.

Harvey appealed to the New Jersey Supreme Court. The Court reversed the conviction because of the failure of the trial court to instruct the jury that they must find that Harvey intended to cause death, as opposed to serious bodily injury. A re-trial is pending. State v. Harvey, 121 N.J. 407 (1990).

#1080

Revised 7/30/91

STATE V. HIGHTOWER

D robbed a convenience store. D shot V, a female clerk in the chest, neck and head. Jury verdict: murder 10/30/86. Penalty trial. Three aggravating factors found: 4c, 4f, 4g. Two mitigating factors found: 5f, 5h. Death.

The following facts are excerpted from State v. Hightower, 120 N.J. 378.

"At 5:30 a.m. on Sunday, July 7, 1985, [redacted] (the victim (V)) drove her grey 1982 Dodge Omni to the Cumberland Farms on Pennypacker Drive in Willingboro, where she worked as a clerk. She received a call around noon from her husband, who noticed nothing unusual about her voice." State v. Hightower, 120 N.J. at 386.

During the next half-hour, several witnesses came to the store. An off-duty police officer and three other witnesses testified that they had seen defendant, Jacinto Hightower in the store that day. The three witnesses testified that Hightower had told them the store was closed.

"At about 12:40 Mark Thomas entered the Cumberland Farms. A number of other customers were inside. Thomas hollered for a clerk but received no answer. When he opened the door to the dairy case, Thomas saw a foot on the floor. He and Ronald Davis, another customer, opened the main door to the freezer and saw a woman lying on the floor. Her left eye was "messed up," and her skin was "off-colored." Blood was on the floor near her head. Davis touched her

neck but could not discern a pulse." State v. Hightower, 120 N.J. 387,8.

"Dr. Joseph DeLorenzo, the Chief Medical Examiner for Burlington County, performed an autopsy on [redacted] that same evening. The external examination of the body revealed three bullet wounds, one on the left side of her chest, another on the left portion of her neck, and the third on the left side of her skull. In Dr. DeLorenzo's opinion, the first shot had hit the victim's chest. Entering the body about two inches to the right of the nipple, the bullet had travelled downward, abraded the pericardial sac, penetrated the right dome of the diaphragm, and entered the liver. The next bullet had struck the victim three and one-quarter inches behind the left ear, lacerated her spinal cord, and lodged in the second cervical vertebra. The final shot had entered the victim's skull four inches to the left of the midline, travelled directly vertically, and stopped in the victim's brain. The path indicated that the victim had been in a "much lower position" than her assailant and had possibly been lying on the floor when the third shot hit her. Dr. DeLorenzo removed lead fragments and three bullets from the body. According to Dr. DeLorenzo, [redacted] had died from massive cerebral and abdominal hemorrhaging due to gunshot wounds.

"On leave from his army post at Fort Bliss, Texas, twenty-one-year-old Jacinto K. Hightower spent the July 4th weekend at his parent's house in Willingboro. He went out on the morning of July th to run some errands. After returning to pick up his wife,

Michelle, and his daughter, Asia, he drove to Michelle's apartment at 668 Brooklyn Street in Philadelphia. Although Hightower had told his parents that he planned to leave for Fort Bliss that night, he and his wife returned to Willingboro. Upset that Hightower had not yet departed, his stepfather dropped him off at the airport and then took Michelle to her apartment. When Michelle arrived home she showed her roommate, Irene Williams, a small gun and a box with some bullets that she had with her. Michelle and Irene put the gun in their bedroom to hide it from Hightower. Later that evening Hightower showed up at the apartment, having decided to go AWOL.

"At some point over the next few days, Hightower had a conversation with Williams' boyfriend, Christopher Forston. According to Forston, Hightower asked about a man named Carlton who was apparently having an affair with Michelle. Hightower wanted to meet Carlton in order to see "what his wife was sleeping with." If Carlton "didn't cooperate with him and talk right," he would kill him. Forston replied that Hightower could not "go around here killing people."

"Hightower responded, "I play dangerous games. People do not like the games that I play." He then told Forston of having once killed somebody, a woman in a "Pepperidge Farm Store." He said that he had gone to the store to buy Pampers; that he put the diapers on the counter and asked the clerk for a carton of cigarettes; that while the clerk retrieved the cigarettes, he walked to the door and changed the "open" sign to "closed:; that

after returning to the counter, he put a tote bag on the counter and pulled out a gun; and that he asked the clerk to open the register, but "[t]hat old bitch won't cooperate. So I shot her one time in her chest." The woman fell to the floor but got back on her feet. When she refused Hightower's second request to open the register, he shot her in the neck. The clerk fell to the floor again. Hightower jumped across the counter and started banging on the computer cash register because he did not know how to open it. When he felt the clerk touch him, Hightower shot her in the head. He then turned off the lights and left the store." State v. Hightower 120 N.J. 389,90.

Hightower was interviewed by police on August 20. After several differing stories, Hightower was confronted with the gun, with Forston's statement, and with the fact that he had bought diapers at the store, and then admitted he had been there, although denied the murder. He was arrested, and later had "a problem" with his responses to a polygraph exam, which showed he had been "directly involved in the shooting." When asked later if he knew the results of the ballistics test, Hightower replied they "matched". His eyes began to water and tears flowed from his eyes.

Hightower is 22 years old and was enlisted in the U.S. Army at the time of the murder.

Hightower was charged with purposeful, knowing murder by his own conduct, felony murder, robbery, second degree possession of a weapon for an unlawful purpose, and third degree possession of a weapon without a permit. A notice of factors was served for 4(c),

extreme suffering; 4(f), escaping detection or apprehension; and 4(g) contemporaneous felony statutory aggraving factors. Hightower was found guilty on all counts on October 30, 1986. At the penalty trial, the jury was charged on the above aggravating factors and found all to exist. Hightower insisted that the defense not present any mitigating testimony. In an interlocutory appeal, the appellate court reversed the lower court's ruling that no mitigating testimony had to be presented.

The jury was charged on mitigating factors: 5(a), extreme mental or emotional disturbance; 5(c), age of D; 5(d), D's ability to appreciate wrongfulness of his conduct; 5(f), D's lack of a significant criminal history, and 5(h), other factors relevant to D's character, record or circumstances of the offense. In support of these factors, the defense presented six expert witnesses: a psychologist, three psychiatrists, a social worker and a criminologist. Hightower testified that the jury should put him to death because if they sent an innocent man to jail for thirty years he would come out a monster. The jury found mitigating factors 5(f) and 5(h). The jury determined that each of the aggravating factors outweighed all of the mitigating factors.

Hightower was sentenced to death on the murder count. Hightower was sentenced to life sentence on the felony murder count with a parole ineligibility of 30 years, twenty years on the robbery count concurrent to the life sentence, and a total of fifteen years on the weapons counts concurrent to the life sentence.

Hightower appealed his conviction to the New Jersey Supreme Court. The court affirmed Hightower's conviction, but vacated the death sentence because, as the Attorney General conceded, the trial court's charge requiring juror unanimity on a mitigating factor violated principles subsequently set forth in State v. Bey (Bey II). A penalty phase re-trial is pending. State v. Hightower, 120 N.J. 378 (1990).

Revised 8/5/91

#1138

STATE V. HUNT

D stabbed V, the boyfriend of D's sister, 24 times after D found out that V was beating his sister. Jury verdict: murder 2/15/84. Penalty trial. One aggravating factor found: 4c. Four mitigating factors found: 5a, 5c, 5f, 5h. Death.

The following facts in quotations are taken from State v. Hunt 115 N.J. 330 (1989).

"During the morning of December 2, 1982, the victim, (V) [redacted] and Charlotte Hunt were watching television in their sixth-floor apartment at 306 Cooper Street, Camden. Charlotte Hunt was defendant's sister, as well as V's [redacted] live-in companion and the mother of his infant son. Around 12:30 p.m., V [redacted], who had taken some prescribed medication, fell asleep.

"About this time, Harold Hunt, defendant's cousin, left his apartment located at 311 Cooper Street, across the street from V's [redacted] apartment. Harold was crossing the street when co-defendant, Kenneth Thompson, attempted to speak with him about Charlotte, whom Thompson believed to be Harold's sister. Harold informed Thompson that Charlotte was his cousin, not his sister; and then shouted to defendant, who was living in Harold's second-floor apartment. Defendant left the apartment and joined Harold and Thompson. Harold left, and Thompson, who apparently had never before met defendant, told him that Charlotte had been looking for defendant three days earlier on November 29, 1982, because V [redacted]

had beaten her.

"Defendant asked Thompson to go to Charlotte's apartment and ask her if she would leave to talk to defendant. While Thompson went upstairs to get Charlotte, defendant returned to his apartment and entered the kitchen, where Patricia Fennell, Harold Hunt's live-in girl friend, was preparing food. Defendant opened the dresser in which Fennell kept her cooking utensils and grabbed a silver knife. According to Fennell, as defendant grabbed the knife, he said, "I told this motherfucker about fucking with my sister." From the kitchen, Fennell saw defendant run across the street to 306 Cooper Street, where Charlotte and [redacted] lived.

"Fennell rushed across the street, and on reaching the sixth floor, saw Thompson holding a knife and heard him say to defendant, "[c]ome on Man, we got to go. I'm going on up here and do what I got to do." Defendant replied, "I know what I got to do." Fennell, who also heard Thompson complain that [redacted] had refused to sell him valium, attempted to defuse the situation by telling defendant that Charlotte would return to [redacted] no matter what happened. Charlotte, who had left her apartment, joined the group in the hallway. On noticing his sister's broken lip, defendant expressed anger about [redacted] abuse of her. At this point, Fennell left, realizing that she could not dissuade defendant. Shortly thereafter, about 2:00 p.m., defendant and Thompson pushed their way into Charlotte's apartment and told her to leave. She pleaded with them to leave [redacted] alone because he was still groggy and able to defend himself. Nevertheless, defendant and Thompson

awakened [redacted] and began to scuffle with him. Charlotte unsuccessfully yelled at them to stop and threatened to call the police. As she grabbed her baby and fled for help, Charlotte saw defendant with a knife in his hand moving toward [redacted], whom Thompson was holding.

"Approximately one half-hour later, at about 2:30 p.m., Lucille Taylor, Thompson's live-in girl friend, was watching television in the bedroom of their fourth-floor apartment at 306 Cooper Street when Hunt burst into the room, followed by Thompson. When defendant entered the room, he was holding a knife. Taylor noticed blood all over Hunt's clothing, his face and hands, as well as the knife. At one point, defendant exclaimed, "I killed him. I broke the knife in him." Thompson told Taylor to get some clean clothes for defendant and some trash bags. According to a statement Taylor made to the police on December 2, after defendant left the room and entered the bathroom to clean up and change his clothes, Thompson said "he [as if referring to himself] just killed a nigger." 115 N.J. at 340-342.

"The pathologist who performed the autopsy, Dr. Catherman, testified that the cause of death was loss of blood due to multiple stab wounds. Although Dr. Catherman could not determine how long it took for [redacted] to bleed to death, he suggested a period of ten to twenty minutes, depending on the rapidity of [redacted] heartbeat, which would have determined how rapidly he lost blood. 115 N.J. at 343.

"Patricia Fennell testified that in October 1982,

approximately two months before the murder, she witnessed an argument between [redacted] and defendant, in which defendant accused [redacted] of beating Charlotte. According to Fennell, [redacted] reached into his pocket, and defendant responded by stabbing [redacted] in the left arm.

"Through expert testimony, the State established that there were twenty-four knife wounds on the victim, that some of the wounds were consistent with the use of the knife that defendant had taken from Fennell's apartment, and that others were consistent with the knife Thompson had been seen holding. 115 N.J. at 345.

"In support ... mitigating factors, defendant, his brother, and his mother testified that he was devoted to his family and was a reliable worker. A psychologist, Dr. Jerome Platt, testified in support of defendant's assertion that he was under extreme mental or emotional disturbance at the time of the offense. Dr. Platt recited that defendant has a limited intellectual capacity and suffers from a personality disorder that causes him to explode and strike out blindly in uncontrolled rage when he feels his family is threatened." 115 N.J. at 346.

Thompson pled guilty to murder after the State and Hunt had presented their cases, agreeing to testify as a rebuttal witness in exchange for a dismissal of all other charges. He received a life sentence, with parole eligibility after thirty years.

Hunt was 22 at the time of the homicide, had dropped out of high school in the 9th grade and was unemployed. [redacted]

Hunt was charged with 1) knowing murder, 2) unlawful possession of a weapon, 3) conspiracy to murder, 4) hindering apprehension or prosecution, and 5) armed burglary. Hunt was tried from January 23 to February 15, 1984, and convicted of all charges. A notice of aggravating factor 4c, was served. The prosecution relied on evidence adduced during the guilt phase and offered no additional proof at the penalty phase. Defense served the following mitigating factors: 5(a), emotional disturbance; 5(c), age; 5(f), no significant history of criminal activity, and 5(h), any other factor (devotion to family, extensive work history).

The jury found the aggravating factor to be present, and also found the following mitigating factors; the age of Hunt at the time of the murder,5(c), no significant history of prior criminal activity, 5(f), that Hunt was under the influence of extreme mental or emotional disturbance insufficient to constitute a defense to prosecution, 5(a), and other relevant factors, 5(h).

The jury initially told the judge in a note that they could not agree on the weighing question. When the judge told them to continue deliberating, they found that the mitigating circumstances did not outweigh the aggravating circumstances. Hunt was sentenced to death on Count 2. Counts 1 and 4 were merged into Count 2. For Counts 3, 5, and 6 Hunt received five-year terms concurrent with each other but consecutive to Count 2.

The sentence was subsequently overturned on appeal, and the imposition of a non-death sentence ordered because the trial judge

did not determine the jury's message that they could not reach a decision was a final verdict. A life sentence was then imposed. State v. Hunt, 115 N.J. 330 (1989).

Revised 8/5/91

#1158

STATE V. JACKSON

D broke into V's apartment, raped her, then stabbed her 53 times. Murder plea 9/19/86. Penalty trial. Two aggravating factors found: 4c, 4g. Two mitigating factors found: 5a, 5e. Death.

The following paragraph is taken from State v. Jackson, 118 N.J. 484 (1990), at 486

"On Labor Day, September 2, 1985, defendant brutally stabbed and murdered a female neighbor. That afternoon the victim had said to a visiting friend: "There's that creep again. He's always staring up here." After the victim's friend left, defendant entered her apartment and attacked her. She was found the next day, sprawled on the bed, with her night clothes pulled up over her head. A pillow covered her face. There was evidence of an attempted rape. Defendant stabbed the victim, in the words of the State, "wildly, viciously, repeatedly: 53 times." Defendant stabbed her eighteen times in the genital area with an obvious sadistic intent. After the murder, he stole her car and drove around casually with a man he happened to meet, drinking beer and looking for marijuana. Defendant was arrested two days later and confessed to the murder."

According to defendant, Kevin Jackson, (D), he and Victim (V) had been having an affair for a few months. V invited Jackson to her apartment on September 2, 1985, and Jackson went there between 9:30 and 10:00 P.M. Jackson claimed that after Jackson and V

smoked marijuana, they made love, both achieving orgasm. Because they did not use contraception, both worried that V might become pregnant. After Jackson and V made love, they argued about Jackson's desire to "play the field." Jackson said that V got very upset and threatened to cut Jackson's penis off. V scratched Jackson and Jackson grabbed his knife (that he allegedly always carried with him).

An investigation revealed multiple inconsistencies in Jackson's story. Jackson and V were not having an affair. When questioned, Jackson did not even know V's name. In addition, V's friends stated that they would have known if V had been seeing Jackson. Another inconsistency is that no marijuana was discovered in V's body. Furthermore, no evidence of either penetration or semen was found in V. Lastly, even if Jackson and V had engaged in sexual intercourse, V would not have worried about becoming [redacted]

Also, she was 51 years old at the time of the offense.

A psychiatrist testified for the defense, that Jackson went to V's apartment with the purpose of raping V. Jackson knocked on the door, then, realizing it was open, forced his way in. He testified that Jackson wanted to rape V, but was unable to perform. He then erupted into a tantrum and killed V.

Jackson is a 25 year old single male [redacted]

[redacted] Jackson worked at a concrete company at the time of the

offense.

Jackson was charged with own conduct purposeful, knowing murder, aggravated sexual assault and theft. A notice of factors was served for: 4(c), extreme suffering, and 4(g) felony factor. Notice of mitigating factors: 5(a), emotional disturbance; 5(c), age of D; 5(d), mental disease; 5(e), duress; 5(f), no significant criminal history; and 5(h) any other factor were served. On September 19, 1986, D pled guilty to murder and theft. The charge of aggravated sexual assault was dismissed.

At the penalty trial, both aggravating factors were found. Two mitigating factors were found: 5(a), D was under the influence of extreme mental disturbance and 5(e), duress. 5(c) D's age; 5(f), mental disease or intoxication; 5(h), no significant criminal history and any other factor were not found. The jury decided that the aggravating factors outweighed the mitigating factors. D was sentenced to death.

On appeal, the New Jersey Supreme Court reversed the conviction because Jackson's plea did not indicate that he purposely or knowingly intended to cause death. A penalty phase re-trial is pending. State v. Jackson, 118 N.J. 484 (1990).

Revised 8/5/91

#1227

STATE V. JOHNSON (WALTER)

D had done some carpentry work for V1 and V2, a married couple. D went back to their house and asked to use the phone. V2 caught D stealing jewelry. D shot V1 in the head and beat V2 to death with a poker. Jury verdict: murder 8/2/85. Penalty trial. For both murders, three aggravating factors found: 4c, 4f, 4g. Two mitigating factors found for V2: 5a, 5h. Death. One mitigating factor found for V1: 5h. Life.

The following facts in quotation are excerpted from State v. Johnson 120 N.J. 263 (1990).

"On April 30, 1984, Susan Sayer of Pitman received a call from the secretary of the Sewell School. [Victim 2 (V2)] a teacher at the school and Mrs. Sayer's neighbor, had not reported for work. The secretary had called the [Vs'] house, but no one had answered. She asked Mrs. Sayer to check on [V2].

"Mrs. Sayer went next door to the [Vs'] home. She found the [Vs'] cellar and back doors unlocked. When no one answered her calls, she entered the house. Beyond the dining room, in the center hall, she found the bodies of [victim 1 (V1)] and [V2].

"Police Officer Bates and Captain McHenry of the Pitman Police Department responded to Mrs. Sayer's telephone call. They ascertained that the [Vs] were dead, noted a broken vase and a fireplace poker lying near the bodies, discovered no signs of forced entry, and found that the upstairs bedroom had been ransacked. They informed the prosecutor's office. 120 N.J. at 267.

"On May 1st, Paul Godman, an officer in the Pitman Police Department, received a call from his nephew, Carmen Cattafi. Cattafi had read about the murders in the newspaper, and told his uncle that he knew something about them but was afraid to get involved. Godman set up a meeting between Cattafi and detectives from the Pitman Police Department and the Gloucester County Prosecutor's Office.

"According to Cattafi, he, defendant, and another acquaintance, Gerald Smith, had spent a couple of hours on the day of the murders drinking wine at Smith's house in Glassboro. At approximately 1:00 p.m., defendant borrowed Cattafi's gray bicycle, saying that he had to get some things that he had "stashed".

"Perhaps two hours later, Smith and Cattafi encountered defendant on the streets of Glassboro. Smith and Cattafi were driving in Smith's car to Smith's girlfriend's house. Defendant was riding the bicycle back towards Smith's house. Cattafi noticed that defendant was splattered with blood. Smith stopped the car and Cattafi talked with defendant, who suggested that they go to Camden. Among these friends, "going to Camden" was a euphemism for buying drugs.

"The threesome headed back to Smith's house, where defendant washed some of the blood from his face and arms with a garden hose. He disjointedly explained that he had killed one or more people. Cattafi, skeptical of defendant's assertions, thought it equally likely that defendant himself had been the victim of a beating, and that the blood was his own. After "ditching" the bicycle and

washing up, defendant, along with Smith and Cattafi, drove to Camden to buy heroin.

"During the car ride, defendant told his friends more about the murders. He explained in some detail how he had shot a man and bludgeoned the man's wife to death. Cattafi remained skeptical because he believed defendant to be an untruthful person. Defendant then showed Cattafi some jewelry and cash that he had obtained during the crime. Both the jewelry and the cash were stained with blood." 120 N.J. _____

Johnson was arrested and interviewed by Police. He eventually confessed, and the substance of his confession was as follows.

"[H]e approached the house and saw the Vs [redacted] working in the front yard. He identified himself and asked if they remembered him working on the house before. V1 [redacted] said he did remember him.

"They had a brief discussion whether they liked the job done at the house. The Vs [redacted] said they did. At that time Mr. Johnson told V1 [redacted] his car had broken down. He wanted to use a telephone to call for a tow truck. He was allowed to go in the house, [and] use the phone.

"V1 [redacted] and Mr. Johnson had a conversation about tools. At one point they went down into the basement of the house, where [redacted] V1 [redacted] showed Mr. Johnson an antique saw he had in the basement.

"V1 [redacted] then went back outside and Mr. Johnson then went to the upstairs bedroom and stole some jewelry from the bedroom. [redacted] V2 [redacted] caught him as he was going down the stairs and started to holler for her husband for help.

"At that point Mr. Johnson picked up a vase, a ceramic vase from the foyer area and struck her a few times with it.

"At that point V1 [redacted] came in, asked Mr. Johnson what he was doing, at which point he pulled out a handgun and told [redacted] V1 to lay on the floor.

"He then pulled the trigger on the gun. The gun misfired. He then pulled the slide back, chambered another round and fired into V1's [redacted] head.

"Then he tried to shoot V2 [redacted]. The gun would not operate. He was also out of bullets, so then V2 [redacted] was trying to get to the front door, so he grabbed a fireplace poker and struck her several times with the fireplace poker." 120 N.J. at 273.

At the penalty phase, in support of mitigating factors, a defense psychiatrist testified that Johnson grew up with emotional stress, lacked support, used drugs to cope, did not intend to kill or cause pain when he entered the home, and was remorseful when apprehended.

A doctor specializing in addictive diseases, testified that Johnson was in the worst stage of drug addiction when the murders were committed.

A psychologist testified that Johnson was depressed, had a personality disorder, was in stages of heroin withdrawal during the murder, had a borderline IQ, had low self-esteem and responds emotionally to situations without considering the consequences.

Many other witnesses testified that Johnson was an abused

child and a good person but for drugs.

Johnson was a 24 year old male. He was educated through the early high school years. He worked in a family bakery and did carpentry work in the past but was unemployed at the time of the murders. He was married and had one son. He and his wife later separated [redacted]

Johnson was charged with two counts of purposeful, knowing murder, armed robbery, theft, possession of a weapon with the purpose to use it unlawfully, possession of a weapon without a permit, possession of a weapon by a convicted felon. At trial, which was held from July 23 to August 2, 1985, the jury returned guilty verdicts on all but the last count, which was severed.

At the penalty trial, which was held from August 6 to August 16, 1985, the state served the 4(b) grave risk, 4(c), extreme suffering; 4(f), escape detection; and 4(g), contemporaneous felony factor for each murder. The jury found all but 4(b) existed in both killings.

The defense served, for both murders, mitigating factors 5(a), emotional disturbance; 5(c), age of D; 5(d), mental disease; 5(f), no significant criminal history; and 5(h), any other factor.

The jury found, for V1 only the 5(h) factor and determined

that the aggravating factors did not outweigh the mitigating factors beyond a reasonable doubt. With regard to V2, the jury found the 5(h) and the 5(a) factors and unanimously found that the aggravating factors outweighed the mitigating factors beyond a reasonable doubt.

Defendant was sentenced to death for the murder of V2, and to life imprisonment for the murder of V1. Defendant appealed his conviction and sentence to the New Jersey Supreme Court. The Supreme Court ruled that Johnson's confessions were illegally obtained and were inadmissible. The conviction was reversed and remanded. State v. Walter Johnson, 120 N.J. 263 (1990). A re-trial is pending.

Revised 8/6/91

#1329, 3001

STATE V. KISE

D, Co-D1, Co-D2, and Co-D3 were drinking in V's apartment. D heard V call D's girlfriend a "slut". D and Co-D1 severely beat V then brought him to the edge of a river. D held V's head under water. Jury verdict: murder 2/26/87. Penalty trial. Three aggravating factors found: 4c, 4f, 4g. Three mitigating factors found: 5e, 5f, 5h. Death. Trial court vacated death sentence. New penalty trial. Three aggravating factors found: 4c, 4f, 4g. Four mitigating factors found: 5c, 5e, 5f, 5h. Life.

During the predawn hours of January 1, 1986, Raymond Kise (D), Anthony Bartholomay (Co-D1), Patrick Riley (Co-D2) and Rodney Batchelor (Co-D3) were drinking in (V's) apartment. V lived in an apartment across the hall from Co-D2 and had invited the Ds up for a drink when he saw them standing in front of the apartment building. While V and Co-D3 were in the kitchen making drinks, Co-D2 stole money from V's bedroom. D and Co-D1 sat in the living room and D heard V call D's girlfriend a slut. When V came into the living room, D punched V in the nose. V went to wash the blood off and when he returned, Co-D1 attacked V for no apparent reason.

Co-D1 punched V in the chest, kicked him in the ribs and head, and threw him down two flights of stairs. There is some evidence that Co-D2 and Co-D3 carried V to a nearby river and placed him on the beach about 15 - 20 feet from the water's edge. Co-D1 claimed that he and D then agreed that the "best thing to do" would be to kill V because V could identify them as his attackers. D and Co-D1

went to the beach where they found V calling for help, not knowing where he was and unable to walk. Co-D1 then kicked and punched V until V stopped calling for help; D and Co-D1 carried V to the river's edge, where Co-D1 claims D held V's head under the water until V drowned. D claims he left Co-D1 and V on the beach approximately 15-20 feet from the water's edge, while Co-D1 was kicking and beating V.

D walked back to the foot bridge where he found a third party. When Co-D1 arrived at the foot bridge, he said, "I ought to kill V for getting blood on my pants." Co-D2, D and third party returned to V's apartment and stole some of V's property. Co-D2 told D not to say anything about the incident and D agreed. While D was driving home, he saw Co-D1 running across the foot bridge in the direction of V. After leaving V at the river, the Ds ransacked his apartment and stole various items.

On January 3, 1986, V's apartment was found by V's landlord to have been robbed. D, Co-D1, Co-D2 and Co-D3 were held responsible for the robbery.

On January 7, 1986, V's frozen body was discovered in the Delaware River. The medical examiner attributed V's death to "drowning: freshwater type and complicating multiple blunt force injuries of the face and skull," and found that V died "reasonably soon after being injured."

On January 8, 1986, D learned that the police wanted to talk with him. D turned himself in and confessed to the robbery and punching V in the face one time.

D is 23 years old and weighs 140 pounds. He dropped out of school in the eleventh grade.

D was charged with three counts of own conduct purposeful, knowing murder, two counts of kidnapping, two counts of robbery and one count of conspiracy. D identified Co-D1 as the main aggressor and was placed in a cell with W1. W1 later testified that D spoke about the incident and told W1 that he was afraid that the police would find a pair of blood stained sneakers in his car. Later, the police did find the sneakers in D's car.

W1 also testified that D approached him for legal advice on how to beat the charges against him. D told W1 that he and the other Ds beat V up and stole money. D told W1 that he was very involved with the beating and that it was he who held V under the water. (W1 was in jail on a robbery charge for which he had received 20 years, with 7½ years parole ineligibility. In exchange for his testimony, W1's sentence was reduced to 10 years, with a 5 year minimum.

W2, another jailhouse informant, testified that D told him that he had kicked V a few times and held V under the water to make sure he was dead. W2 further testified that about 2 weeks after D made that statement to him, D approached him again and offered him $400 to forget what he had said and to say that it was Co-D1 who had held V's head under the water.

D was tried before a jury from January 26 1987 to February 26, 1987, and was found guilty one count of own conduct purposeful, knowing murder and of all kidnapping, robbery, and conspiracy charges. The penalty phase was conducted on March 2 and 3, 1987. The State served aggravating factors 4(c), extreme suffering; 4(f), escape detection; and 4(g), contemporaneous felony. All were charged to and found by the jury. The defense served mitigating factors 5(c), age; 5(e), duress; 5(f), prior history; and 5(h), any other factor. 5(e), 5(f) and 5(h) were found by the jury. The jury also found that the aggravating factors outweighed the mitigating factors beyond a reasonable doubt. D was sentenced to death.

On April 27, 1987 the trial court vacated D's death sentence and granted a new penalty phase trial because of error in the charge on aggravating factors in conflict with State v. Ramseur, 106 N.J. 123 (1987). A new penalty phase was held on May 20 and 21, 1987. The State served aggravating factors 4(c), extreme suffering; 4(f), escape detection; and 4(g), contemporaneous felony. All were found. The defense served mitigating factors 5(c), age; 5(e), duress; 5(f), prior history; and 5(h), any other factor. Mitigating factors 5e, 5f, 5h, were found to exist. The court was not convinced that the aggravating factors outweighed the mitigating factors. D was sentenced to life imprisonment, with a thirty year period of parole ineligibility, on May 29, 1987.

D's sentence was as follows: the felony murder merged with the murder. The second kidnapping count merged with the first. On

one kidnapping count D was sentenced to 25 years with 10 years parole ineligibility to run consecutive to the murder sentence. The second kidnapping merged with the first. On one robbery count D was sentenced to 20 years to run concurrent to the kidnapping sentence. The second robbery merged with the first. On the conspiracy count, D was sentenced to 10 years with 4 years parole ineligibility to run concurrent with the kidnapping sentence. In an opinion dated October 22, 1990, the Appellate Division affirmed D's conviction.

Co-D1's case proceeded as a capital case but he was acquitted of own conduct murder and convicted only as an accessory. Co-D1 was sentenced to a life term with 30 years parole ineligibility, for murder, a 20 year consecutive sentence with 10 years parole ineligibility, for robbery and a concurrent 5 year sentence with 2½ years parole ineligibility, for conspiracy.

Co-D2 pled guilty to robbery under a plea agreement in which he testified against Co-D1 and Co-D3. Co-D2 testified that Co-D1 punched and kicked V, then dragged V to the stairs while D held the door open. Co-D2 further testified that D and Co-D1 ran when a car came, and that Co-D2 and Co-D3 carried V over the footbridge while V pleaded for mercy. Co-D2 and Co-D3 took V to the water's edge and left him there.

Co-D2 also testified that after the incident, Co-D1 told him that he was worried that D would talk to the police and that if he (Co-D1) "went down", D was going with him.

In an opinion dated July 3, 1990, the Appellate Division

remanded the case against Co-D2 for dismissal of the indictment because the prosecutor improperly presented D's oral statement to a grand jury in a breach of agreement not to use the statement.

Co-D3 was indicted for 2 counts of first degree murder, 2 counts of kidnapping, 2 counts of robbery and 1 count of conspiracy. He was convicted on all counts.

Revised 8/5/91

#1337, 3018

STATE V. JAMES KOEDATICH (I)

D kidnapped V from a shopping mall, sexually assaulted her, then stabbed her 2 times in the chest. Jury verdict: murder 10/26/84. Penalty trial. Two aggravating factors found: 4a, 4g. No mitigating factors found. Death. Re-trial, penalty phase. Four aggravating factors found: 4a, 4c, 4f, 4g. One mitigating factor found: 5h. Life.

The following facts in quotations are taken from 112 N.J. 225 (1988):

"In November 1982, the victim (V) [redacted] was an eighteen-year-old senior and a cheerleader at Parsippany Hills High School. She was employed part-time at the Surprise Store in the Morris County Mall. She was last seen alive at approximately 9:30 PM on November 23, 1992, shortly after she left work as she walked toward her car in the parking lot of the Morris County Mall. Two days later on Thanksgiving Day, November 25, 1982, the police discovered her body floating face-down in a water retention tank located in a wooded and secluded area of Randolph Township. V [redacted] had been stabbed several times, receiving a wound to the chest, which caused her to bleed to death. Medical evidence submitted at trial indicated that V [redacted] had been the victim of a sexual assault. Other medical evidence established that she died approximately three to four hours after she left the mall." 112 N.J. at 232

"Barbara Horwath left the Kodak Jewelers a few minutes earlier than V [redacted] had left the Surprise Store. Like V [redacted], she walked out of the main exit straight to the back lot; she walked with three

other employees, gradually splitting up until she remained with one colleague, Debby McLain. They stopped to chat for five minutes. While they were talking, Barbara noticed in front of them a greenish blue vehicle, with a vinyl roof and what she described as putty marks on the driver's side. The driver's side window was down four inches, and she could see the driver in profile. His eyes were "dark," his hair curly and "light, light colored blond, curly hair," and his nose was "pointy." At one point, the driver turned toward them. Barbara could see dark markings on the sides of his nose and under his eyes. His nose was "prominent," his hair was shoulder-length, and she saw "gold around the collar."

Barbara said goodnight to Debby McLain, then walked past the car she had observed; she saw six rear lights, three on each side, and identified the car as a Chevy similar to her sister's Chevy BelAir. She got into her car and drove down toward the Mall. As she left, she saw V [redacted] walking "up the parking lot' toward her car." 112 N.J. at 234

"On Thanksgiving Day, November 25, 1982, the police found V's [redacted] body in the center holding tank in the area known as "Old Mendham Water Works," located in Randolph Township. The holding tanks are made of cement and are in a very isolated area surrounded on three sides by woods. Combs Hollow Road is located about 100 yards to the west of the holding tanks with a dirt road actually leading to the tanks. A bridge separates Combs Hollow Road and the dirt road.

When discovered in the center holding tank, V [redacted] was wearing

the same panties, sweater, skirt and cowboy boots she had worn two days earlier when she was last seen. Cut hair was found around the body as well as on the ground outside the tank. There were blood stains on the sides of the tank. V's [redacted] ring was found on the ground near the center tank and her wristwatch was found in the holding tank. A kidney shaped pool of blood eighteen inches long and nine inches wide was found on the sandy ground near the tank. A trail of blood led from the kidney-shaped pool to the wall of the holding tank to the right hand corner of the center tank. The police removed V's [redacted] body from the water.

Dr. Fredrick L. Roddy, First Assistant Medical Examiner of Morris County, performed the autopsy. Dr. Roddy found a long open gash on the left side of the victim's head, an L-shaped wound to the victim's right shoulder, and "short injuries at the base of the victim's neck. The victim's left ear had been severed leaving a deep wound that, in Dr. Roddy's view, would not have caused death but would have prevented the victim from holding her head straight; this wound extended through all of the victim's soft tissue to the spinal column. There was a short laceration at the base of the victim's nose, and two severe chest wounds, one penetrating four and a half inches, the other penetrating more than seven inches; through the victim's lungs and to her back between the ninth and tenth ribs. Dr. Roddy concluded from the structure of theses wounds that they were caused by a single-edged knife held perpendicular to the victim's chest; he hypothesized that the knife was inserted, causing the four and half inch wound, then partially

withdrawn, then thrust in deeply, causing the seven inch wound. The victim had defensive wounds on her right hand, as though she had attempted to grasp the blade of the knife. There were also abrasions and bruises on the victim's left thigh and lower left arm, consistent with her having been dragged over the retention tank wall. 112 N.J. at 234;235.

"In his internal examination of V [redacted], Doctor Roddy also took swabbings of her oral cavity, vagina, and rectum, and made twelve slides from these swabs. He kept and examined six slides and sent the rest to the Medical Examiner's office in Newark. Sperm was found in the vaginal slides, which indicated that V [redacted] had sexual intercourse before her death. Dr. Roddy found no presence of sperm on the rectal slides. Dr. Robert Goode, the State Medical Examiner, examined the six slides that Dr. Roddy sent to him. He concurred with Dr. Roddy's finding of sperm in the vagina and estimated that intercourse occurred within twenty-four hours of death, His examination revealed, however, that sperm was present in the rectal slides a well. On the basis of the autopsy, Dr. Roddy concluded that the victim "bled to death and the cause of the bleeding was the stab wound in the right chest" (i.e., the seven-inch stab wound). 112 N.J. at 236

"V's [redacted] killing was followed two weeks later by the abduction and murder of another victim [redacted] on December 5, 1982.[1] As of January 15, 1983, no suspect had been

[1]Mr. Koedatich was ultimately convicted for the murder of [redacted] On January 5, 1983, there was a shotgun murder of twenty-seven-year-old [redacted] in Parsippany. No one has been tried for

arrested or charged with either [redacted] (V's) or [redacted] (the other victim's) murders. The defendant was a suspect in neither case." 112 N.J. at 238

"Defense counsel commenced the penalty phase by attempting to waive the jury. The prosecutor would not consent, however, so in accordance with Sec. c(1), the application for waiver of the jury was denied. Defense counsel then presented a signed statement by defendant in which defendant made clear that he wished no mitigating actors to be presented on his behalf during the penalty phase. He also expressly requested to be executed within sixty days of being sentenced to death, if in fact he were so sentenced. By making such a request, defendant was attempting to waive his right to appeal his conviction. Defense counsel followed his client's instructions. At the sentencing trial, therefore, defense counsel made no opening statement, presented no evidence of mitigating factors, and made no closing statement to the jury. The trial court informed the jury that defendant was entitled to remain silent throughout the proceeding and that the State still was obliged to prove its case." 112 N.J. at 248

On January 16, 1983, defendant (D), James Jerald Koedatich. reported to the police that he had been driving home when he was pulled over by a car with a flashing blue light and that the driver of the car stabbed him. D's car was taken to the police garage where it was inspected for any evidence. While a detective was inspecting D's car, he noticed that its tread pattern was similar

---

the murder of [redacted].

to the impression made at the scene of the abduction of the other victim.

A search warrant was obtained for D's car. Police took the car to a State Police Laboratory for extraction of possible fiber and foam evidence. The seat cover and carpet were taken to the Federal Bureau Investigation Laboratory in Washington, D.C., for analysis.

On January 19, 1983, police arrested D for the murder of V. The State did not charge D with V's murder until December 15, 1983 when fiber evidence, which proved that V had been in D's car only hours before she was murdered, was found. The evidence revealed that, at some time after 9:35 p.m. on November 23, 1982, D had kidnapped V from a shopping mall.

D is a 34 year old male who has worked as a superintendent and a gas station attendant. He has a ninth grade education [redacted]

On December 15, 1983, D was charged with own conduct murder, felony murder, kidnapping, aggravated sexual assault, unlawful

possession of a weapon and possession of a weapon for an unlawful purpose. On October 26, 1984, D was convicted on all counts.

The State served aggravating factors 4(a) prior murder, 4(c) extreme suffering, 4(g) contemporaneous kidnap, sexual assault and 4(f) escape detection.

At the penalty trial, the jury found unanimously that two aggravating factors existed: the prior murder conviction factor, (4a) and the murder in the course of kidnapping/sexual assault factor (4g). The defense served the 5(h) "any other" mitigating factor. It was not found by the jury. The court sentenced D to death.

On January 11, 1985, the trial court imposed a 30 year prison term with a 15 year period of parole ineligibility on the kidnapping count, and a concurrent 20 year term with 10 years of parole ineligibility for the aggravated sexual assault, the sentence to run consecutively to the sentence for murder.

The court merged all other counts into the murder, kidnapping and aggravated sexual assault counts.

On August 3, 1988, D's death sentence was overturned due to error in the trial court's penalty phase instructions. State V. Koedatich, 112 N.J. 225 (1988).

In the re-trial of the penalty phase, the jury found all four of the aggravating factors (4a, 4c, 4f, 4g). The mitigating factor served was 5(h) any other factor, including D's childhood trauma, failure of treatment, and the fact that D would spend the rest of his life in prison. The jury found only the childhood trauma

factor and, during the weighing process, could not agree so the penalty imposed was life imprisonment.

Revised 8/6/91

#1453

STATE V. LODATO

D had raked leaves for V in the past. D went to V's house and asked for a drink of water. V let D in. D sexually assaulted then bound V. D then stabbed and slashed V, torturing her before stabbing her in the heart. Murder plea 7/6/84. Penalty trial. Two aggravating factors found: 4c, 4g. Two mitigating factors found: 5a, 5d. Death

Victim (V) was 38 [redacted]

On December 10, 1982, defendant (D), Benjamin Lodato, male, age 33, left his parents' home and walked to V's home. D had raked leaves for V some weeks before. He asked her for a drink of water. She let him in. While in the kitchen, he took a large knife from a cabinet. He accosted V in the living room, forced her upstairs, tore off her clothes and raped her. He then permitted V to put on a robe and took her downstairs. In the living room, he forced her to lie face down on the couch, then bound her with an electrical cord and gagged her. He rolled her over onto her back and proceeded to stab and slash her. According to D, he left the house and was walking down the street when he heard a crash. D turned around and saw V with her head through a window she apparently had broken. D said that V yelled, then collapsed. He ran off.

The medical examiner, (W1) said that V's wounds were such that she could not have arisen after she had been stabbed. He said that the window, which had been broken from the inside, must have been shattered during a struggle.

In any event, D ran off and hid in the woods for the balance of the day, then returned to his parents' home.

V's body was discovered about 2:30 P.M. by her son when he returned home from school. V's body was slumped near the broken window, on the floor near the door. The body was covered in blood from numerous knife wounds of the chest down to the upper thigh. W1 testified that V had been stabbed twice in the heart, each of which by itself would have been fatal. He said V suffered nine deep and seven superficial slash wounds elsewhere in the chest, stomach and thighs, and that, because they bled, the slashes were inflicted before the fatal stab to the heart, indicating torture. V also had bruises consistent with a beating by blunt instrument or fists.

The knife used in the attack was found in the living room.

[redacted] suspicion quickly fell on D. D was arrested at the home of his parents shortly after 10 P.M. the day of the murder. After several hours of questioning, he confessed.

The grand jury indicted D on February 9, 1983 for murder and the lesser included charge of felony murder.

D subsequently pleaded guilty to the charge of murder, and judgment was entered on July 6, 1984.

At the time of the homicide, Benjamin Lodato (D) was 33 [redacted]

[redacted] He supported himself by doing odd jobs.

[redacted]

[redacted]

D was charged with and convicted of murder and sexual assault. At the penalty phase, which was held from July 7 to July 12, 1984, defense offered testimony about D's mental status and family history. D's parents were mentally defective and his three siblings are also retarded. Intelligence tests showed him with an I.Q. ranging from 53 to 68. An I.Q. of 70 is considered the bottom end of normal; the tests indicated his retardation was modest to moderate. He cannot read and can write only a few words. His arithmetic ability is limited to addition of single digit numbers.

At the penalty phase the State served aggravating factors 4(c), extreme suffering; 4(g), that the murder was committed in the course of a felony, and 4(f), that the murder was carried out to evade apprehension.

The jury found two aggravating factors offered by the state: (4)(c), and (4)(g). They rejected the contention that the murder was carried out to evade apprehension. The defense served four mitigating factors: D was under extreme emotional disturbance, (5)(a), and D. was unable to understand or control his conduct,

(5)(d), age, (5)(c), and any other factor, (5)(h). The jury found 5(a) and 5(d).

The jury found that the mitigating did not outweigh the aggravating, that they were in equipoise. The judge thereupon sentenced D to death.

The New Jersey Supreme Court following the decision of State v. Biegenwald, regarding the weighing of aggravating and mitigating factors, remanded the case to the trial court for resentencing. The death sentence was commuted to a sentence of life imprisonment. State v. Lodato, 107 N.J. 141 (1987).

Revised 7/29/91

#1459

STATE V. LONG

D stole his cousin's gun and attempted to sell it to non-decedent victim (NDV). When NDV refused to buy it, D shot NDV one time in the neck. D then robbed a liquor store and shot the clerk (V) in the chest. Jury verdict: Murder 10/18/85. Penalty trial. One aggravating factor found: 4g. Two mitigating factors found: 5f, 5h. Death.

The following facts in quotations are excerpted from State v. Long, 119 N.J. 439 (1990).

"The case has a very complex trial record but a very simple factual scenario. On December 11, 1982, a gunman clad in a red baseball jacket, wielding a silver revolver, shot to death [redacted] (the victim (V)), the night manager of the Holiday Liquor Store. There was a single bullet to the chest. There were not witnesses to the killing itself. There was one witness on the street who identified Ronald Long as being in the vicinity of the liquor store around the time of the crime.

"Earlier on the same evening, a similarly-clad gunman with a silver pistol had shot [redacted] (non-decedent victim (NDV)) at an apartment within walking distance of the Holiday Liquor Store. Several witnesses linked Ronald Long to the first shooting. If the same gun were used in the two crimes, Long would be a prime suspect. Ballistic tests proved that the same type of gun was used in both crimes. There was overwhelming evidence that defendant had access to such a gun, which was owned by his cousin, Harold Long. A major trial issue, then, was whether it was correct to try the [redacted] (NDV) and

liquor-store crimes together. A final wrinkle to the case was that a third holdup and shooting had occurred that same night with a perpetrator using the same type of revolver. The victim of this crime did not identify Ronald Long as the gunman.

"The trial was set against this general background. The State alleged that Ronald Long had perpetrated the first two crimes. It gathered scientific and testimonial evidence in support of those contentions." 119 N.J. at _____.

"NDV testified that he and defendant were friends who had met through defendant's brother Joseph. NDV said that defendant came to his apartment about 6:00 p.m. on December 11, the night of the crimes, asking to borrow money. NDV refused. NDV then took defendant to Helen Thompson's apartment. While they were at Thompson's apartment, a man named Oliver Johnson stopped by. Johnson and NDV returned to NDV's apartment, and defendant joined them shortly thereafter. After Johnson left, defendant again asked to borrow money. When NDV refused, defendant showed him a handgun and asked him if he wanted to buy it. NDV got up to take the trash out. As he was walking down the hall, he was shot in the neck, behind the left ear. The defense contended that NDV had been shot by another person, a fact he did not want to disclose to the police. NDV gave conflicting stories to the police. He told the examining physician that he had fallen down and struck his head. He repeated that story to the police and said nothing about defendant having shot him. He later said that a man named Jerome

Finch had shot and mugged him outside of his apartment between 9:00 and 11:00. He eventually told the detectives that defendant, not Finch, had shot him. NDV's [redacted] credibility was questioned because of his drinking habits and other behavior traits and other witnesses contradicted his testimony." 119 N.J. at _____.

"A key witness was Oliver Johnson, who told the jury that when he went to Helen Thompson's apartment, he saw a black male whom he had never seen before. Later, in NDV's [redacted] apartment, he noticed a red baseball jacket handing on a chair. NDV [redacted] told him that the jacket belonged to the other male.... He said he had been at a bus stop about 8:10 p.m. when he saw the "other man" walk past him wearing a red baseball jacket and cap....

"Johnson gave various conflicting statements to the police, but at the time of trial he claimed he was positive that when he saw defendant's picture in the paper, he made the identification in his own mind." 119 N.J. at _____.

"Johnson testified that the man with the red jacket passed him at the bus stop at 8:10 p.m. It was a ten-minute walk from that spot to the Holiday Liquor Store where V [redacted] was shot. Thus, if the man who passed Johnson also shot V [redacted], the shooting could have occurred no earlier than approximately 8:20 p.m. Another witness, who arrived at the scene and called the police, estimated the time of the murder between 8:00 and 8:30 p.m. The police found that V [redacted] had been shot in the chest. A single bullet pierced the liver and pancreas and came to rest near the spinal column. The medical examiner determined that excessive

blood loss caused the death. The owner of the liquor store established that the lottery machine had been closed as of 8:20 p.m. and the receipts of $795 were missing. There were no fingerprints at the scene. An empty shell case was on the floor." 119 N.J. at _____.

"Shortly before trial, Harold Long's mother, Herron Pate, told an Atlantic City detective that on Christmas night 1982 defendant had confessed the murder to her. She had previously furnished the police with his whereabouts. She explained that the subject of the confession came up by accident while she and the detective were at an airport shortly before trial. She denied that her last-minute revelation was an attempt to save her son, Harold, who was defendant's cousin, from an investigation of his involvement." 119 N.J. at _____.

Another witness at the scene before the shooting, and a jail inmate who met defendant in jail, gave conflicting testimony.

"The defense called many witnesses to prove defendant's character. His friends described defendant as the leader of his family after his father left when defendant was only ten. Various character witnesses asked the jury to spare defendant's life, but the court sought to restrain such direct appeals to the jury. Defendant's mother said that defendant was the one member of the family whom the others could count on for help after her separation from defendant's father. Defendant had served eighteen months in the Marines. He had been civic-minded. The defendant sought to prove a lack of significant prior criminal activity. To rebut that

evidence, the State introduced evidence of four offenses, including testimony from a purse-snatching victim from Philadelphia." 119 N.J. at _____.

Long is 24 years of age and, when discharged from the military because of a disability, went to work in the Merchant Marines.

[redacted]

Long was charged with theft, possession of a handgun without a permit, possession of a handgun for an unlawful purpose, aggravated assault, armed robbery, purposeful, knowing murder, felony murder, other counts of unlawful possession of a handgun and possession of a handgun for an unlawful purpose, attempted unlawful disposition of a firearm, possession of prohibited ammunition, attempted murder and armed robbery. A notice of factors was served for the 4(g) contemporaneous felony statutory aggravating factor. In a capital trial held from September 30 to October 18, 1985, Long was found guilty on all counts. At the penalty trial, held on October 23 and 24, 1985, the jury unanimously found that the aggravating factor existed. The jury was charged on mitigating factor (5c) age of D, (24), 5(f) no significant history of criminal activity, and 5(h) any other factor relevant to D's character or the circumstances of the offense. The jury was divided on the 5(f) and 5(h) factors, and did not find the 5(c) factor to exist.

The Jury unanimously found that the aggravating factors

outweighed the mitigating factors beyond a reasonable doubt.

D was sentenced to death on the capital murder count, and a total of 61½ year imprisonment with a 30 year and 1 month parole ineligibility period on the remaining counts.

On appeal, the New Jersey Supreme Court overturned D's conviction because of the failure of the trial court to instruct the jury that they must find that D purposely or knowingly intended death as opposed to serious bodily injury. State v. Long, 119 N.J. 439 (1990).

7/24/91
#1529

STATE V. MARSHALL

Co-D1, an acquaintance of D, put him in contact with Co-D2, a private detective, to arrange investigative services. D subsequently agreed to pay Co-D2 $65,000 to kill [redacted] V, so that D could collect over $1 million in life insurance and be free to live with his paramour. On September 7, 1984, as planned, D pulled his car into a highway picnic area, feigning car trouble. V was shot twice in the back while asleep in the car, and D was hit in the head to simulate a robbery. Co-D2 claimed the actual shooting was done by Co-D3. Jury verdict: murder 3/5/86. Penalty trial. One aggravating factor found: 4e. Two mitigating factors found: 5f, 5h. Death.

The following facts are excerpted from State v. Marshall 123 N.J. 1, (1991).

"The State's case against defendant was weighty and compelling... The State proved and Marshall acknowledged his long-standing extramarital relationship with Sarann Kraushaar, which had developed to the extent that both contemplated leaving their respective spouses and living together. Marshall had taken preliminary steps toward renting a house in Beach Haven West for that purpose. It was also uncontested that Marshall had substantial debt, including a $128,000 home-equity loan and short-term bank debt in excess of $40,000. The State's proofs suggested a connection between Marshall's indebtedness and the large amount of life insurance he concededly maintained on the decedent, in excess of one-million dollars at the time of her death. Several of the policies had been acquired within months of the homicide, and Marshall and decedent were examined for an additional policy on the morning preceding the victim's (V's) [redacted] death ... 123 N.J. at 28.

"The testimony of co-defendant, Billy Wayne McKinnon, was the most incriminating evidence against Marshall. McKinnon was a

former sheriff's officer from Louisiana who was referred to Marshall by co-defendant Cumber, whom Marshall had met at a party in New Jersey in May 1984. Marshall conceded that he had hired McKinnon to investigate [redacted], in order to determine whether she knew of his relationship with Kraushaar and to attempt to account for several thousand dollars in casino winnings Marshall had given [redacted]. Marshall admitted that he had met with McKinnon at least twice in Atlantic City, the last meeting occurring at Harrah's casino on the night of the murder. Marshall also acknowledged that he paid McKinnon $6,300 for his investigative services, without receiving any work product, and that the last payment of $800 was made in cash at Harrah's on the night of the homicide.

"McKinnon testified that Marshall hired him not to investigate [redacted] but to kill her. He testified that Marshall had paid him $20,000 or $22,000 prior to the murder, that an additional $15,000 was supposed to have been available for him in Marshall's pockets at the scene of the homicide, and that $50,000 more was to be paid to him out of the insurance proceeds.

"McKinnon testified that the Oyster Creek Picnic Area had been selected with Marshall's concurrence as the crime scene. By prearrangement, Marshall was to feign car trouble on the way home from Atlantic City and pull into the picnic area on the pretext of checking to see what was wrong with his car. According to McKinnon, he had dropped off co-defendant Thompson at the picnic area before the Marshalls arrived and then had driven back to the toll plaza just south of the picnic area to await their car. He

testified that the prearranged plan was for Thompson to hit Marshall on the head without seriously injuring him, and then to shoot and kill [redacted]." 123 N.J. at 28-29.

According to the Supreme Court's opinion the earliest evidence of the Marshall's premeditation occurred in 1983. "According to Investigator Mahoney's report of the Kraushaar interrogation, she told police of a conversation with Marshall prior to Christmas in 1983 in which, while discussing his financial difficulties, Marshall had observed that "the insurance on [redacted] would take care of his debts" and that he "wished she wasn't around." The report indicates that Marshall had asked Kraushaar whether she knew "of any one who could take care of it." Kraushaar had responded by identifying an individual who had been "in trouble with the law," but had stated that she "never wanted to be involved with him if he could do anything like that to [redacted]." 123 N.J. at 36.

The planning commenced seriously however in June of 1984 when McKinnon met Marshall in Atlantic City. "Marshall arrived at McKinnon's room at noon the next day. McKinnon testified that he "patted him down" to check for weapons or recording devices. According to McKinnon, Marshall began talking about an investigation of [redacted], ... 123 N.J. at 42.

"McKinnon testified that after 15 or 20 minutes Marshall told him that "what he really wanted to do was to get rid of [redacted]." McKinnon asked what he meant, and testified that Marshall replied, "I want her killed, done away with." Responding to McKinnon's question, Marshall suggested that the murder could take place that

evening at the Rams Head Inn where the Marshalls had dinner reservations, or after dinner at a place on Route 30 called the Porthole. McKinnon testified that he informed Marshall that he would not kill V [redacted], but could get someone else to do it.

"They then negotiated a price for the homicide. According to McKinnon, after asking for $100,000 he agreed to accept $65,000. McKinnon had already received $5,000, and Marshall agreed to pay an additional $10,000 in advance and $50,000 out of the anticipated insurance proceeds ... 123 N.J. at 43. McKinnon stated that after looking at those "places" --apparently referring to Rams Head Inn and the Porthole--he returned to Atlantic City.

"McKinnon testified that Marshall called him at his room the next morning to ask "why the job wasn't done." Although McKinnon testified that he had no weapon with him, he told Marshall that he had only a shotgun and would have to return to Shreveport to get what he needed. McKinnon left Atlantic City on June 19th." 123 N.J. at 43-44.

Marshall then sent numerous messages seeking to get the job done. Eventually they arranged to meet again in Atlantic City on July 19th. "According to McKinnon, Marshall expected that the homicide would occur that night, and described to McKinnon an all-night restaurant at which he would stop on the way home from Atlantic City. McKinnon testified that Marshall told him he would park behind the restaurant and leave the car, ostensibly to use the restaurant's bathroom. He said he would attempt to leave the car doors unlocked but that V [redacted] would probably lock them after he

left ...

"McKinnon testified that he ... had a pistol in his car. When he arrived at the restaurant, he observed several police cars parked in front. He waited 30 or 40 minutes, but Marshall did not arrive. McKinnon returned to the motel. He and Gentry left New Jersey for Shreveport the next morning." 123 N.J. at 45.

Marshall again urged in numerous messages that McKinnon should do what he had been paid to do. "McKinnon next heard from Marshall through Cumber, who informed him that Marshall had said there would be an "extra $15" for McKinnon if he would do the "job" before Labor Day. McKinnon testified that he assumed Marshall meant $15,000, and told Cumber he would try to do it ... 123 N.J. at 46. According to McKinnon, Marshall told him that he would be going to Harrah's that night, but asked McKinnon to meet him at 11:30 that morning in the parking lot of the Roy Rogers service area just south of Toms River. McKinnon testified that he and Thompson drove to the service area, arriving about noon. Thompson remained in the car. McKinnon walked to the north end of the parking lot and found Marshall there. According to McKinnon, he and Marshall then drove southbound on the Parkway in Marshall's car to check out possible sites for the homicide. After McKinnon rejected two other locations, Marshall drove into Oyster Creek Picnic Area and McKinnon said that it was satisfactory. They returned to the service area. McKinnon asked about the extra $15,000 and Marshall said it would be in his pocket that night ..."

"McKinnon testified that he met Marshall at about 9:30 that

evening outside of Harrah's. At Marshall's request McKinnon returned to him the pictures of [redacted] and of their residence that Marshall had given him when they met in June. Marshall told McKinnon they would be leaving Harrah's around 12:00 or 12:30. According to McKinnon, he and Thompson ate dinner, later stopping at a hardware store to buy a pair of rubber gloves. McKinnon stated that he had with him a .45 caliber colt pistol, Army special, from which he had eliminated any fingerprints by wiping it down. 123 N.J. at 47.

"McKinnon testified that he dropped Thompson off at the picnic area between twelve and twelve-thirty. Because it was cold, he gave Thompson one of his knit shirts to wear. McKinnon then drove southbound on the Parkway, exited, reentered the northbound lane, and waited for the Marshalls at the toll plaza. When they passed him, he delayed about two minutes and then drove northbound and entered the picnic area. He saw Marshall's car parked with the passenger door open and Marshall lying on the ground at the rear of the car. Thompson got into the car, put something on the floor, then got out and ran to the right rear tire of Marshall's car. McKinnon testified that he saw Thompson "squat down" and then heard air "hissing out" of the tire. Thompson reentered the car and they drove out of the picnic area onto the Parkway southbound lanes." 123 N.J. at 48.

The state trooper responding to the call, based on a report by people Marshall had flagged down to report the incident testified that he "saw [redacted] lying face down across the front seat,

both arms under her, and her head near the steering wheel. Mathis checked for a pulse but found none. The victim did not appear to be breathing ...

"Other police officers soon arrived at the scene,... Specifically, they found Marshall's wallet on the ground near the passenger door. The right rear tire was flat and had a clean one-inch cut on the upper sidewall. There was a puddle of blood on the ground to the rear and right of the car. The glove compartment and trunk of Marshall's Cadillac were closed ..." 123 N.J at 31.

"An autopsy performed on the victim revealed two entry bullet wounds on the mid-portion of the victim's back. The wounds were "very close together," about three millimeters apart. There were two corresponding exit wounds on the front of the chest, one near the collar bone and the other on the left breast. There was also an entry and exit wound, described as a superficial grazing wound, in the medial or inner area of the left forearm. There was also an entry wound without an exit wound in the left forearm, the bullet having been lodged in the rear of the forearm and protruding slightly through the skin. Based on the close proximity of the two entry wounds in the back, the pathologist who performed the autopsy expressed the opinion that two shots had been fired in succession and at very close range. The pathologist removed the bullet protruding from the left forearm during the autopsy. He identified it as a .45 caliber bullet, and indicated that it had entered the victim's back, passed through the chest, and lodged in the left forearm. The other bullet, following a similar course, had passed

through the left arm. The pathologist determined that when the shooting occurred, the victim was lying down with her left arm under her body. The cause of death was "massive hemorrhage due to laceration ... of the left lung and the main artery of the chest." 123 N.J. at 33-34.

There was testimony that the victim had hired a private investigator and was aware of the affair between Marshall and Sarann Krausharr, but continued to cook, clean, and sleep with the defendant.

Marshall told police that [redacted] was killed by unknown assailants who struck him on the head, rendering him unconscious, and then robbed him when he stopped to check a flat tire. Contrary to Marshall's story, a forensic chemist subsequently found no marking on the tire or rim that indicated that the car had been driven while the tire was deflated or semi-deflated.

Later that day police questioned Sarann Krausharr, who told them of Marshall's desire to be rid of [redacted], of the money Marshall gave her, and their plans to move in together.

On September 27, 1984, police searched a motel where Marshall was staying. There they seized an envelope Marshall sent to an attorney. Inside was an audio cassette tape, with a recording of Marshall discussing his relationship with Sarann Krausharr, his need to get out of debt, the hiring of co-defendant Billy Wayne McKinnon to "investigate" [redacted], and his intent to commit suicide because he feared being indicted and tried despite being "innocent".

On December 15, 1984, Billy Wayne McKinnon promised to testify against Marshall in exchange for a maximum five year jail term on a plea of guilty to conspiracy to commit murder. Prior to his arrest Marshall was an insurance broker and estate planner, who became engaged to [redacted] during their senior year of college. Marshall had a good reputation in his community as a law abiding citizen. Marshall was involved in many charitable, community and business organizations. [redacted] Marshall has no prior criminal record.

Marshall, Robert Cumber, Billy Wayne McKinnon and Larry Thompson were all charged in the same indictment. This indictment, filed on January 10, 1985, charged the defendants as follows: Count 1 charged all four defendants with conspiracy to murder [redacted]. Count 2 charged Robert Cumber and Billy Wayne McKinnon with the purposeful or knowing murder of [redacted] as accomplices. Count 3 charged Marshall as an accomplice to the purposeful or knowing murder of [redacted] by procuring her death by the payment of promise of money. Count 4 charged Larry Thompson with the purposeful or knowing murder of [redacted] by his own conduct.

Marshall and Larry Thompson were tried together on January 27, 1986. On March 5, 1986, Marshall was found guilty of conspiracy and murder, and Larry Thompson was acquitted of all charges.

Less than two and a half hours after the jury announced Marshall's guilty verdict, the penalty phase began. That entire hearing lasted 25 minutes. One aggravating factor was charged to

the jury -- that Marshall procured the commission of the offense by payment or promise of payment of anything of pecuniary value (4e). The defense submitted two mitigating factors: (5f) Marshall had no history of criminal activity, and (5h) any other factor relevant to Marshall's character or record or to the circumstances of the offense. On March 5, 1986, the jury found the aggravating factor and both mitigating factors present and further found that the aggravating factor outweighed the mitigating factors. Marshall was sentenced to death.

On April 8, 1986, Billy Wayne McKinnon entered his guilty plea to conspiracy to commit murder. He was sentenced to five years in prison.

Robert Cumber was found guilty of conspiracy to commit murder and murder as an accomplice and sentenced to 30 years without parole.

Marshall's conviction and sentence were affirmed by the Supreme Court of New Jersey. State v. Marshall, 123 N.J. 1 (1991).

Supreme Court Docket Number 25532.

7-2-91
#3032 (new)

STATE V. JOHN MARTINI

D and Co-D kidnapped V and held him for $25,000 ransom. After D received the ransom money, he shot V 3x in the back of the head. Jury verdict: murder 12/4/90. Penalty trial. Two aggravating factors found: 4f, 4g. Two mitigating factors found: 5c, 5h. Death.

In mid-January of 1989, Defendant (D) John Martini, age 58, met with JD, a long-time friend, at a diner. D told JD that he needed money, and JD suggested that D kidnap the Victim (V), a middle-aged businessman. JD told D that he had built a deck onto V's home and that, while working there, he had seen a bank book that had a balance of over $100,000. In addition, JD told D that there was a lot of cash in V's house and that there was also a safe. JD told D of V's daily routine, including the time V normally left for work, and drove D to V's home. JD also gave D written directions on how to get to V's home, a .32 caliber revolver, and $6,000 in cash. The $6,000 was considered a loan, and JD was to be repaid with a percentage of the money D received for kidnapping V.

Approximately two weeks later, on January 23, 1989, D and his girlfriend, co-defendant (Co-D) Theresa Afdahl, age 29, drove to V's home. JD had told D that V usually left for work between 9:30-10:00 a.m., so D and Co-D waited for V to come out of the house. At about 9:30 a.m. when V stepped out of the house, Co-D drove over and D stepped out of the car. D, who had known V about 30 years before, called over to V and asked V if he remembered him. V told D that he looked familiar and asked D if he had been in the Army.

D lied and said that he had been in the Army, and he suggested that he and V go for a ride. V agreed, so D stepped into V's car and the two of them drove off, with Co-D following in the other car. Shortly after entering V's car, D pulled out the gun and told V to go to a parking lot. D told V that he needed money and that he had to hold V until V's wife gave him some money.

V, followed by Co-D, drove to a nearby mall. There, D and V entered the car driven by Co-D and left V's car in the parking lot. D, Co-D, and V drove to an apartment that D and Co-D shared. D called V's wife, W1, told her that he was holding V, and demanded 100,000 for V's safe return. D also repeatedly instructed W1 to not call the police, and threatened that both she and V would be killed if the police were notified.

Approximately 15-20 minutes later, V called W1. Under orders from D, V told W1 to pay the money and not to contact the police. He then hung up the phone.

After V called W1, D took V to the bedroom and bound his wrists, feet, and ankles with masking tape. D also tied V's hands together with an extension cord. At about 12:10 p.m., D went to a pay phone and again called W1. D asked W1 if she had gotten the $100,000, and W1 replied that she had no way of getting that kind of money. D asked W1 if she could get $25,000, and W1 said that she was scared and that she didn't know, but that she could try. Before hanging up, D again threatened that both V and W1 would be killed if the police were notified. D also told W1 that he would

call back at approximately 6:00 p.m. with instructions on where they could meet so that W1 could give him the money.

At about 12:15 p.m., W1 called the police and explained that V had been kidnapped. The police in turn notified the FBI and detectives from the county prosecutor's office. The police also contacted the security officer of V's bank, informed him of the situation, told him that W1 would be picking up $25,000 at about 2:45 p.m., and requested that he mark as much of the money as possible.

When W1 returned from the bank, FBI agents installed equipment to record any telephone conversations. They also began recording the serial numbers on the ransom money. At about 5:40 p.m., D called and asked W1 if she had gotten the money. W1 asked D if he knew what he was putting her through and added that "This is hell. I love my husband so much." D replied that he didn't ask W1 about that and again asked if she had gotten the money. W1 told D that she did get the $25,000, and D instructed her to meet him at a diner at about 7:30 p.m. and to put the money in a plain brown paper bag. D told W1 that he'd be wearing glasses, a dark blue jacket, and light blue slacks. D also told W1 that when he saw her he would wave his arms over his head, at which time W1 was to drop the bag of money from her car and leave the area.

W1 arrived at the diner at about 7:30 p.m. Officers from the FBI, prosecutor's office, and the police department were also present at the diner. In addition, an FBI agent, hidden in the back seat area on the floor, accompanied W1 in her car.

At approximately 7:30 p.m., D, driving V's car, arrived at the diner. W1, following D's earlier instructions, had left her car's lights on, and when D exited V's car, he looked over at her and waved his arms over his head. W1 then dropped the paper bag from her car and left the parking lot. As W1 left, D picked up the bag, looked in it, and then walked back to V's car. D left the diner parking lot, followed by a surveillance team. The surveillance team followed D throughout the area, but lost sight of him as he entered New York City. D later confessed that he suspected that he was being followed, so he drove around for over an hour before returning to the apartment where V was being held.

After returning to the apartment, D untied V, packed a suitcase, and then left along with V and Co-D. They left in V's car, with V driving, Co-D sitting the front passenger seat, and D sitting in the back seat. D instructed V to drive to the mall, where D had earlier exchanged his car for V's car before going to pick up the ransom money. V parked next to D's car. According to D, as he was exiting from the back seat of the car, he saw V's door open and saw V's foot step out of the car. D thought that V was attempting to run away, so he shot V three times in the back of head. At trial, however, an expert on gunshot wounds testified that, because of the position and appearance of V's wounds, and because of where blood was located in the car, the killing could not have occurred as D described it. According to the expert, if V was getting out of the car he would have turned his body to the left when doing so, leaving the left side of his head facing D.

Thus, when D shot V, the wounds should have been on the left side of the back of V's head, especially if D, as he claimed, was getting out of the car at the same time. V's wounds, however, were on the right side on the back of his head. In addition, two of V's wounds were described as "contact wounds," meaning the gun had been placed directly against his head when fired.

After killing V, D and Co-D got into D's car and went back to their apartment, [redacted] They then took a ferry to New York. While on the ferry, D threw the gun and V's car keys into the water.

The next morning, January 24, 1989, security officers discovered V's body in his car. The police were notified, and as part of the ensuing investigation, they developed information that D was involved in V's kidnapping and murder. On January 25, 1989, D and Co-D were apprehended after stepping into a taxi at a gas station. D was carrying a bag which contained the .32 revolver JD had given him and almost all of the ransom money. Shortly after being apprehended, D met with Co-D for a short while and then confessed to kidnapping and killing V. Co-D also gave a statement to the police.

At the time of the offense, [redacted] D was divorced in June of 1989 after almost 40 years of marriage. [redacted] adult children. D had an 8th grade education and had worked as a truck driver and tavern owner in the past. He also bought old

houses, repaired them, and then sold them for profit. D is 5'11' tall and weighs 225 pounds. [redacted]

D was indicted and charged with own-conduct purposeful and knowing murder, felony murder, possession of a firearm for an unlawful purpose, kidnapping, and unlawful possession of a handgun. A notice of aggravating factors was served, charging that the following factors were present: (4f), the murder was committed for the purpose of escaping detection for another offense; and (4g), the offense was committed while D was engaged in the commission of a kidnapping. D alleged that the following statutory mitigating factors were present: (5a), D was under the influence of extreme mental or emotional disturbance; (5c), D's age; (5d), mental disease or defect or intoxication; (5g), D rendered substantial assistance in the prosecution of another person; and (5h) any other relevant factor. In a jury trial lasting from November 14, to December 4, 1990, D was found guilty of all charges. Before the beginning of the penalty phase, the court granted a prosecution motion to dismiss mitigating factor (5g). The penalty phase lasted from December 6 to December 12, 1990, and the jury found both

aggravating factors present, as well as mitigating factors (5c) and (5h). In addition, the jury found that the aggravating factors outweighed the mitigating factors beyond a reasonable doubt, and as a result, D was sentenced to death. The remainder of D's sentence is as follows: for felony murder, D received a life sentence, with 30 years parole ineligibility, that merged with the death sentence; for kidnapping, a life sentence with 25 years parole ineligibility, consecutive to the death sentence; and for the two weapons offenses, four years each, concurrent to each other and to the death sentence. D's death sentence was automatically appealed to the New Jersey Supreme Court.

Revised 7/31/91

#1598

STATE V. McDOUGALD

D, 27, had been dating the 13 year old daughter of V2 (mother) and V1 (father). The Vs fought with D because they didn't want him to continue having sex with their daughter. One night, D and a 13 year old Co-D kicked in the door of the Vs' home. He attacked V1, cutting his throat, stabbing him and hitting him with a baseball bat. D then hit V2 with a cinderblock and a baseball bat and cut her throat. Jury verdict: murder 3/27/86. Penalty trial. Three aggravating factors found for each victim: 4c, 4f, 4g. Two mitigating factors found: 5a, 5h. Death for both victims.

The following facts in quotations are excerpted from State v. McDougald, 120 N.J. 523 (1990).

"[redacted] (Victim 1 (V1)) and [redacted] (Victim 2 (V2)) resided in Newark with [redacted] (V2's) natural daughter and [redacted] (V1's) stepdaughter, Antoinette James. The family first met and befriended Anthony McDougald sometime between 1982 and 1983 at the home of their then-downstairs neighbor and mutual friend, Arlene Euggey. The family continued its friendly relationship with McDougald even after it moved to 14 Bedford Street in Newark in the early months of 1984. Antoinette became romantically involved with McDougald shortly thereafter. Antoinette was thirteen years of age, and McDougald was twenty-seven. They began having sexual relations in February of 1984.

"During this time, McDougald was living in an apartment at 69 Somerset Street in Newark with Bernice Simmons. He had married Bernice in January of 1983, apparently without first having divorced his prior wife." 120 N.J. at 529.

"In April of 1984, Antoinette James informed her mother and McDougald that she believed she was pregnant with McDougald's

child. When a subsequent pregnancy test proved negative, Antoinette was too embarrassed to admit her mistake. Instead, she told McDougald she had had an abortion. She never gave her parents any explanation. Presumably the [redacted] continued to believe that until the date of their deaths she was pregnant.

"The relationship between defendant and the [redacted] turned hostile once they discovered that McDougald was having sexual relations with their daughter. [redacted] forbade her daughter from seeing McDougald. Nevertheless, Antoinette defied her mother and continued her sexual relationship with McDougald. [redacted] then apparently threatened McDougald with filing statutory-rape charges against him. He responded by telling Antoinette he would "get" her parents "one way or the other." 120 N.J. 529, 530.

"There were several altercations between defendant and the [redacted] during that late spring and early summer. On two such occasions [redacted] called the police." 120 N.J. at 530.

"McDougald was the source for many of the details surrounding the crimes. His statements and admissions were virtually uncontested at trial. The series of events that culminated in the murders began on the evening of August 18th sometime before 11:30 o'clock. McDougald started a fire on his bed in his apartment. He purportedly wanted to obliterate the bad memories he associated with the premises. McDougald was distraught over his failed marriage to Bernice. He enlisted Michelene ("Kisha") Williams, a thirteen-year-old girl, with whom he apparently was romantically involved, to help burn the bed. He then called his mother at her

residence in the Newark YMCA and, along with Kisha, told her of having set the bed on fire.

"Later, at approximately 2:00 o'clock on the morning of August 19th, defendant and Kisha Williams arrived at the home of the [redacted]. McDougald, by his own admission, was armed with a knife and may also have been carrying a baseball bat. Although McDougald claimed to have found the baseball bat in the home, Antoinette testified that the family did not possess such a bat. McDougald kicked open the front door and entered the bedroom where the couple was sleeping with Arlene Euggy's two-year-old son whom they were watching.

"Defendant awakened [redacted] and ordered him to come into the other room. [redacted] requested time to put on his pants, but defendant refused to allow him to do so. Defendant then asked where Antoinette was, and [redacted] responded truthfully that she was staying at a cousin's home that night. The three of them then proceeded into Antoinette's bedroom, where Mr. McDougald repeatedly asked "why was they trying to hurt [him], why?", saying "I never did anything to hurt you" and "I only tried to help you." [redacted] responded "I'm sorry," at which point, defendant described the incident as follows: "I then cut him across his throat with a knife and he told me" "Tony, don't." Then I stabbed him in the chest. I was holding his neck with my hand. Then I think I stabbed him again two times. He fell on the floor. I told Kisha to watch him.

"Defendant proceeded into the bedroom where [redacted] and the

infant were sleeping. Kisha called him back, however, because V1 had begun crawling from the back bedroom toward the kitchen. This is when Mr. McDougald claims to have found a bat in the apartment, which he used to "hit V1 on the head * * *. He was on his knees and he fell back to the floor." Returning to V2's room, defendant heard V1 moaning, and heard Kisha saying to V1, "What did you do to Tony?" McDougald then heard Kisha hit V1 three more times with the bat.

"Kisha then went into the room where defendant was standing over the sleeping V2 and the baby. McDougald asked her if V1 was dead, and she answered affirmatively. McDougald claims that Kisha then stated she "wanted to help with V2." McDougald sent Kisha back to get the bat. He asked her if she was sure she wanted to participate, and then moved the baby away from the bed and instructed Kisha to hit V2 with the bat. V2 moved to get up. Defendant described his subsequent actions: "I went and got a cinderblock that was in the house and I hit her in the head with it. V2 moved again. Then I hit her with the bat once. Then I took the knife out of Kisha's hand and cut V2's throat." Defendant then sliced the bra V2 was wearing in half with the knife, pulled her underpants down onto one ankle, and inserted the bat approximately three inches into her vagina, saying, "That's for having Antoinette." McDougald and Kisha then left the V3 apartment.

"McDougald called his mother again. This time he informed her that he had killed two persons. He also asked her if he could

borrow forty dollars to get a place to stay. Ms. McDougald told him to come over." 120 N.J. at 531-533.

"Dr. Melczer, from the Essex County Medical Examiner's Office, outlined the findings of his autopsy examinations of the victims' bodies. Dr. Melczer explained that both victims had suffered two distinct sorts of injuries; those caused by stabbing and those caused by blunt force. V1 [redacted] had two fatal stab wounds to the left side of his chest, as well as superficial stab wounds to the abdomen and neck. He also suffered serious head injuries caused by a blunt instrument. His left ear was completely crushed, and his skull was fractured on both sides of his head. The doctor posited that both the stab wounds and blows to the head were capable of causing the victim's death. In Dr. Melczer's opinion V1 [redacted] had survived for about ten to fifteen minutes. V2 [redacted] had multiple blunt-force injuries to the head, which crushed her skull and were determined to be the cause of her death. Her left ear was crushed and the skull underneath fractured like an egg shell. Additionally, there was a deep slash to her neck and a baseball bat protruded from her vagina. Dr. Melczer said that V2 [redacted] lost consciousness within a few minutes but survived for five to ten minutes." 120 N.J. at 540.

At the penalty phase "The defense sought to portray Anthony McDougald as a product of a violent and deprived youth whose severe despondency over the loss of his wife and newborn son caused him to lose self-control. As portrayed by the defense through the testimony of persons who knew McDougald, the ultimate acts of

violence on August 19th were the product of a deprived background and of recent precipitating events." 120 N.J. at 542.

"Ms. McDougald testified that later, in the early hours of August 19th when Kisha and McDougald came to see her, they both appeared "high" and left her when Kisha whispered to her son that she wanted to "get some stuff to get high with."

"Ms. McDouglad also testified extensively about defendant's childhood. She was single when defendant was born, and shared a four-room house with her parents and sister in North Carolina. She told the jury of instances during McDougald's infancy when her sister, apparently angry with her, burned and cut the child. In one instance, when the two sisters were having a fight, McDougald's aunt grabbed the child and cut his face with a razor blade, from the mouth to the ear.

"Ms. McDougald left Anthony McDougald and his younger brother with her parents for two years while she came to Newark to work as a live-in maid. When the boys were later brought to New Jersey to live with their mother and her boyfriend in a drug-infested area of Newark, they once more were subjected to abuse. Ms. McDougald's boyfriend hit the children "more than . . . most parents beat their kids." The children also had to watch their mother be repeatedly beaten. Ms. McDougald labeled her son a "hyper" child who got into fights. He had once perched on the school roof and threatened to jump off.

"Finally, Mrs. McDougald told the jury how Anthony McDougald's close relationship with his brother ended abruptly when his brother

was thrown off a bridge onto the Garden State Parkway and killed sometime in 1983." 120 N.J. at 545.

The state presented two witnesses who refuted that defendant was intoxicated or impaired on the night of the murders.

Anthony McDougald was charged with two counts of purposeful knowing murder and two counts of felony murder, second degree burglary, possession of a weapon, hindering apprehension, attempted murder, arson, sexual assault and burglary. A notice of factors was served for both murders: intent to cause suffering, 4(c); the murder was committed for the purpose of escaping detection (for the statutory rape of V's daughter) 4(f); and the murders were committed while the defendant was engaged in the commission of a burglary, 4(g).

On March 27, 1986, the jury returned a verdict of guilty on all counts except count 2, on which they fund a lesser charge. The murders were found to be committed by own conduct. The penalty phase began April 1, 1986. D alleged the following mitigating factors for both victims; that he reacted under the influence of extreme mental or emotional disturbance, factor, 5(a); that his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired by mental disease and/or intoxication, factor 5(d); and circumstances concerning his background and character, factor 5(h).

On April 4, 1986, the jury found aggravating factors 4(c), 4(f), 4(g) and the mitigating factors 5(a) and 5(h) both for both

victims. The jury found that the aggravating factors outweighed the mitigating factors for each victim. The judge thereupon imposed two death sentences. On the non-capital counts, D was sentenced to 10 years with a 5 year mandatory minimum on count 5, burglary; 18 months on possession of a weapon, count 6, to run concurrently with counts 5; 4 years on hindering apprehension, count 8 to run concurrent; 10 years with a 5 year minimum on attempted murder, count 9, to run consecutive to count 5; 10 years with a 5 year minimum on arson, count 10 to run consecutive to count 5 and 9; 10 years with a 5 year minimum to on sexual assault, count 11 to run consecutive to the other counts and 4 and 7 years on sexual assault, counts 1, 2 and 13 to run concurrent with the other counts.

On an appeal to the New Jersey Supreme Court, McDougald's convictions for murder were affirmed. State v. McDougald, 120 N.J. 523 (1990). The death penalty was vacated because the trial court's charge on the (4)(c) factor did not clearly delineate that McDougald must have intended to cause suffering and that the Vs had in fact experienced such suffering. The court ruled that there was sufficient evidence in the case to re-submit the (4)(c) factor in the re-trial of the penalty phase, which is now pending.

Revised 8/5/91

#1717

STATE V. MOORE (MARIE)

D, over a period of more than 2 years, orchestrated the physical and mental abuse of a group of adolescents and an adult woman. D had Co-D, age 14, act as her disciplinarian, and claimed that the punishments were dealt out under the direction of "Billy Joel". One day, while trying to pick up V, who after months of physical and sexual abuse could no longer stand under her own power, Co-D dropped her. V hit her head on the bathtub and the floor and died. D and Co-D hid V's body inside a wall. Jury verdict: murder 11/15/84. Penalty trial. Three aggravating factors found: 4c, 4f, 4g. Four mitigating factors found: 5a, 5c, 5d, 5h. Death.

The following summary contains excerpts in quotations from State v. Marie Moore, 113 N.J. 239 (1988).

"On December 22, 1983, the police searched an apartment that the defendant formerly occupied, and discovered in a crawl space behind the bedroom wall the partially mummified body of [redacted] (the victim (V)). The investigation into the young girl's death revealed the bizarre pattern of conduct that occurred in defendant's household for a period of time commencing in September 1981 and ending in December 1983." 113 N.J. at 242.

During the summer of 1981, Marie Moore, defendant, age 35 became quite close to a group of adolescents who were her daughter Tammy's (12) friends. This group included Ricky Flores, age 14, and the victim (V), a 12 year old girl. Two other people also lived with Moore and her daughter: a female friend, [redacted] (non-decedent victim 1 (NDV1)), age 50, and another friend's daughter, [redacted] (non-decedent victim 2 (NDV2)). Moore's home became a

gathering place for this group, who visited nearly every day.

"On or about September 13, 1981, changes began to occur in the Moore household. At that time, defendant informed the children that her ex-husband was the famous singer and songwriter, Billy Joel.... that Billy Joel had returned to establish some order in the household ... that things had gotten too wild in the house, and that Billy would see to it that matters were straightened out....

"... She described to them that Billy Joel was a member of the mafia, that he would be assigning household chores to each child, and that he would have a bomb go off in the house if the children were to disobey his orders or tell anyone outside the household what was going on at 1031 Madison Avenue. Marie also told the children that Billy Joel or other members of the mafia would harm the children's family members if they disobeyed. According to Marie, Billy wanted to put Ricky Flores in charge of the household in order to see if he could be an effective head of household once he married Tammy. Marie then instructed the children to return to the house on a daily basis.

"Throughout this first time period, Marie would give the children a list of rules and chores that she said she received from Billy over the phone. Their chores would change on a weekly basis on orders from Billy. After school, the children arrived at the Moore household as requested. Shortly thereafter the phone rang. [Defendant arranged for the phone to ring.] ... While ostensibly speaking to Billy, Marie instructed the children to recite the list of rules she had given them earlier that morning. If one of the

children did not recite the rules correctly, Marie informed Ricky that Billy wanted him to discipline that child so that the child would remember the rules in the future. Thus began the cycle of punishments in the Moore household." 113 N.J. at 244-45.

The punishments and beatings intensified and two children eventually left the house.

"... on or about October 25, 1981, two important events occurred: Ricky Flores became a permanent resident, and Billy began to speak and issue instructions through the body of Marie Moore.... They were sitting in the kitchen drinking coffee and then Marie put her hands over her face, removed them and said, "I'm not Marie, I'm Billy."

"The children and [redacted] believed that Billy was in Moore's body because she sounded different. Her voice was "really cold," and she began "talking like a man [and] her voice got deeper." In addition, she sounded more demanding, had a "meaner voice" and "she swore a lot," which was something that Moore had not done before...." 113 N.J. at 247.

"Moore and Flores were not sexually intimate during this first time period. However, during this time period, Flores and Tammy discontinued their relationship. The break-up occurred because Billy told them that they could not see each other anymore. Moore and Flores were physical in other ways. Moore hit Flores for failing to keep the other children in line, or for supposedly lying to Billy on one occasion, and she would tell him that Billy had ordered the punishment. Flores would hit Moore approximately twice

a day with either the bat, his hands, or a book. At times, Moore seemed to enjoy the punishment, teasing Flores that he did not hit hard enough." 113 N.J. at 248.

"Throughout this period, Ricky continued to administer beatings and other punishments to [NDV2] and [redacted] [the victim] at Moore's direction. Ricky continued to beat [NDV2] and [V] with the whiffle ball bat numerous of times each day. Ricky also beat [NDV2], [V], and [NDV1] with medical books, instead of the bat. Flores began to use the books in early October because Moore said that Billy, who was on the phone, had told her that the bat was not hurting them enough." 113 N.J. at 249.

"After two failed attempts, [NDV2] finally escaped from the Moore household on November 27, 1981, ending the punishments and beatings for her. On the day of her escape, ... policemen caught up with her and took her to the station. At the police station, [NDV2] gave a long statement in which she told the police what happened....

"[NDV2] stayed in the hospital for a week and during that time talked to two DYFS caseworkers ... presenting the two caseworkers with a dilemma because [NDV2's] story was quite incredible, yet she had been beaten, and at the same time Moore's denials seemed believable." 113 N.J. at 249, 50.

"During this second time period, there were only two victims left in the house, [NDV1] and [V]. The punishments during this six month period became increasingly severe. The household relocated from 1031 Madison to the second

floor of 989 Madison, a home owned by Ferdinando Ragusa. Ragusa was close to Moore, and she said that he was Tammy's grandfather. In January 1982, shortly before moving to 989 Madison, Ricky and Marie became sexually involved....

"The punishments that Flores inflicted on [redacted] (NDV1) and [redacted] (V) were more severe than those he meted out in the first time period, and they increased in severity over time. During the first two weeks after [redacted] (NDV2's) escape, Flores and Moore introduced the use of thumbcuffing, which was a very painful procedure in which one thumb would be cuffed to one big toe while the victim was lying on her stomach. Flores would thumbcuff [redacted] (NDV1) and [redacted] (V) in the nude and force them to remain in that position for close to an hour at a time. Ricky would supplement the thumbcuffing with variety of other punishments, including kicking, blows with a bat or book, and cigarette burns." 113 N.J. at 251.

"[redacted] (NDV1) left the home on Memorial Day, May 31, 1982.... The allegations that [redacted] (NDV1) made against Flores and the fact that these events were said to occur at Moore's home in Paterson against [redacted] (V), a juvenile, led the police to refer the matter to Passaic County DYFS and to the Juvenile Division of the Paterson Police Department. DYFS assigned the matter to one of its social workers, Ms. Cathy Della Pesca, on June 7th....

"... Inside the home, Della Pesca and Most questioned Moore about the alleged beatings and sexual abuse, which she continued to deny. Della Pesca then asked [redacted] (V) to undress. When [redacted] (V) undressed, Della Pesca saw numerous bruises on her body....

"Della Pesca then made an appointment with a doctor, Mercedes Lecesne, who then examined [redacted] two days later, on June 9th. Della Pesca also took photographs of [redacted] body in order to document her injuries. Dr. Lecesne found that the bruising was not consistent with a fall and that it was consistent with beatings, cigarette burns, and other repeated serious physical abuses." 113 N.J. at 252, 53, 54.

"[redacted] finally became a permanent resident of the household on September 22, 1982. [redacted] came to stay permanently because of a phone conversation that same day between her grandmother and Moore. [redacted] grandmother told Moore that DYFS workers and detectives were interested in speaking to [redacted]. Marie became fearful that [redacted] would disclose what was going on in the household....

"... she continued to suffer terrible abuses. During the day, Flores kept [redacted] cuffed to a hook on the kitchen wall. At night, Flores would transfer her to the bathroom, where he would cuff her to the bathtub. Flores also sexually abused her, and for some period of time Moore would take [redacted] down to the elderly Ragusa, who would pay Moore to have [redacted] perform oral sex. Moore and Flores also stopped feeding [redacted] once they moved to the third floor and no longer allowed [redacted] to use the bathroom. At first, they gave her a pot, and Moore later purchased disposable diapers. The Pampers were the only things that they permitted [redacted] to wear.

"One morning before her death, this continued treatment caused

[redacted] to lose consciousness. Moore helped [redacted] to come out of this condition, and for this short time Moore released her from the cuffs, even though Flores insisted [redacted] was faking. However, after bringing [redacted] out of this "seizure," Moore put [redacted] back into the thumb cuffs.

"On the eve of her death, [redacted] slept cuffed to the bathtub, as usual. On the morning of her death, Moore told Flores to get [redacted] out of the bathroom so that Tammy could wash up for school. Flores would do this every morning by releasing [redacted] from her cuffs, permitting [redacted] to walk on her own to the kitchen, where he would then recuff her. Following his customary procedure, Flores uncuffed [redacted], who had been lying facedown. Noting that she was not getting up on her own, Flores lifted her up by her shoulders, bringing [redacted] to her knees. He let go of her and instead of getting up, [redacted] fell, striking her head on the bathtub and then the floor. Flores then picked [redacted] up and took her into the hallway, where he checked [redacted] breathing and noted that she was moaning. When she ceased moaning, he pushed down on her stomach, producing a sound "like the sound of someone going to the bathroom." Marie interpreted that to mean that [redacted] was dead. 113 N.J. at 255, 256.

"... Moore gave Flores the duct tape and two plastic garbage bags. She told him to put one bag over the head, one over the legs, and then to wrap [redacted] body with the eight rolls of duct tape.... Flores then placed [redacted] bagged and taped body in the part of the attic where the slanted roof met the third floor

ceiling, and covered it with insulation.... In May or June 1983, Moore and Flores moved the body from the attic to the wall space in the bedroom ... The body remained in this location until the police discovered it in December 1983." 113 N.J. at 256, 257.

Eventually, Flores' parents contacted the police [redacted]

[redacted] While on bail, she endeavored to start another group and was beginning to repeat her prior bizarre activity. She was concerned about Flores, and thus endeavored to get police to believe that he was involved in [redacted] disappearance, and later that he had killed her. She eventually led police to the body. However, after investigation Moore was charged, and Flores eventually testified against her.

"On December 22, 1983, the medical examiner, Gertha Natarajun, performed an autopsy on [redacted]. Her autopsy revealed that the blow to her head and face had killed her, but that she had been alive for a number of hours after it, albeit in a coma. The blow to the head was consistent with falling on a bathtub or hard floor, while the injury to the face could have been caused by falling against a bathtub or by a direct blow, such as a hard kick. The blood that had gathered around the blow to the face and head indicated that [redacted] had been alive when wrapped and taped. The extent of the hemorrhaging suggested that she lived as long as four to eight hours after the injuries. There was not enough soft tissue remaining to determine whether [redacted] had suffocated as a result of the taping and wrapping. The examiner did testify,

however, that this kind of wrapping could suffocate a living person." 113 N.J. at 263.

Marie Moore, at the time of her arrest, was 35 years old. She had some education after high school and had been unemployed for some time. [redacted] She had no prior criminal history.

At trial, Flores testified about the abuses he inflicted at Moore's, as well as Billy's, direction, from September, 1981 until V's death in January, 1983. He also testified about hiding V's body, about his sexual relationship with Moore, and about the other events leading to his return to his mother's custody in July, 1983. In exchange for his testimony, Flores entered into a plea agreement whereby he was charged as a juvenile with a maximum sentence of three years.

NDV1 [redacted] testified about the abuses she and V suffered at Flores' hands, and also how Moore and "Billy" directed those abuses. Her testimony covered the period from September, 1981, until her escape on May 31, 1982.

NDV2 [redacted] testified about how she was punished by Flores, also at Moore's and "Billy's" direction, from September, 1981, to her escape on November 27, 1981. She also testified about Moore's transformation into Billy.

NDV3 [redacted] testified about the abuses he suffered at Flores' hands, at Moore's and Billy's direction, from September, 1981, until his

NDY3

escape on October 25, 1981. [redacted] also testified about the threats he received later from Moore, warning him not to say anything to the police.

W2 testified about the reappearance of Billy through Moore, and also about Moore's claim that Billy would pay him to "do in" Co-D.

W3 and W4 testified about how Moore tried desperately to contact Flores after he returned to his family. They also testified about Moore rehearsing W1 on how to appear when telling the police about Flores raping her. In addition, they testified about the reappearance of Billy through Moore.

W6, V's grandmother, testified about how she gave Moore money, which supposedly was for V's expenses and schooling. She also testified about how Moore asked about V and claimed not to know V's whereabouts.

Moore was charged with own-conduct capital murder, as well as with 32 other crimes resulting from her conduct between September, 1981 and December, 1983. A notice of factors was served, alleging 4(c), the extreme suffering; 4(f), escape detection or apprehension; and 4(g), contemporaneous felony factors. At trial, D claimed insanity, that she suffered from a multiple personality disorder. D also claimed that she suffered from brain damage, namely frontal lobe atrophy. In the capital trial, held from October 9 to November 15, 1984, the jury returned a verdict of guilty to capital murder and 30 other counts. At the penalty trial, which was held on November 19, 1984, the jury found all of

present. The jury was charged on five mitigating factors: 5(a), extreme mental or emotional disturbance; 5(c), D's age; 5(d), mental disease or defect; 5(f), no significant prior criminal activity; and 5(h), any other relevant factor. The jury found all but 5(f) present, and also that the mitigating factors did not outweigh any of the aggravating factors. Moore received the death penalty for V's murder, and the court sentenced her to a term of 224½ years, 87½ without parole, for the remaining counts.

Moore appealed her conviction directly to the New Jersey Supreme Court. Her death sentence was overturned because the court found that although Moore directed the events that led to V's death, she did not "actively or directly" participate in those events. State v. Moore, 113 N.J. 239 (1988). In other words, the court found that Moore was not guilty of "own-conduct" murder and therefore, she was not eligible for the death penalty.

Revised 8/7/91

#1720, 2810

STATE V. MOORE (SAMUEL)

D and V1, his wife, were considering divorce. D and V1 fought, and D attacked pregnant V1 and V2 (D's son) with a hammer. Jury verdict: murder 6/25/87. Penalty trial. Two aggravating factors found for V1 and V2: 4c, 4g. Three mitigating factors found for V1 and V2: 5a, 5f, 5h. Death for each victim.

The following factual summary contains excerpts in quotation from State v. Samuel Moore, 122 N.J. 420 (1991).

"The case involved a particularly shocking hammer killing of a young wife and her eighteen-month-old child as the denouement of a marital breakup. For purposes of this appeal we shall accept without necessarily endorsing in specific terms the general recital of the events set forth in the State's brief.

"The murder took place on Sunday evening, June 29, 1986, at the couple's apartment at 207 South Harrison Street, East Orange, New Jersey, following a family outing that ended in an argument and the death of the wife and child at the hands of the husband and father.

"At first a seemingly happy union, the marriage began to deteriorate in early 1986. The wife, victim 1 (V1) [redacted], complained of defendant's hours outside the home at work (he held a managerial position in an airline catering service at Newark Airport), while the husband complained of the wife's housekeeping." 122 N.J. at ___.

"The situation worsened when [redacted] learned that defendant was having an affair with a co-worker, to whom we shall refer by her first name, Lizzette. Defendant and Lizzette planned to set up housekeeping together. It appears that defendant wanted [redacted] out of the family apartment so that he and Lizzette could occupy it. The plan was that Lizzette could occupy it. The plan was that Lizzette would move into defendant's apartment on Sunday, June 29, 1986.

"That was the last day that any member of his family would occupy that apartment. That Sunday, [redacted] and [redacted], her eighteen-month-old son, had not moved out. Defendant spent the day with [redacted] and [redacted] at a park. When they arrived home at about 9:00 p.m., defendant and [redacted] started arguing. The argument became a fight, an exchange of recriminations and hate-filled words. Defendant picked up a hammer and struck [redacted] repeatedly with it. According to the forensic pathologist, defendant struck more than twenty blows to her skull, spattering blood and brain throughout the apartment. In the course of killing [redacted], defendant killed [redacted]. He claims that it was an accident. [redacted] body was found on the hallway floor about three feet to the right of his mother, whose body was lying in the bathroom doorway. Blood from the mother was found on the child's overalls. By approximately 9:30 p.m. both were dead." 122 N.J. at ___.

Defendant subsequently confessed.

Samuel Moore has had some college education and worked as a supervisor of 20 people at an airport catering service. [redacted]

[redacted] No prior record is indicated.

Moore was charged with two counts of purposeful, knowing murder, possession of a weapon under circumstances not manifestly appropriate for lawful use and possession of a weapon for an unlawful purpose. A notice of factors was served for the 4(c), extreme suffering and the 4(g), contemporaneous felony statutory aggravating factors as to both murders. Additionally, the prosecutor alleged that the murder of V2 was committed so that Moore could escape apprehension (4(f)). On June 25, 1987, Moore was found guilty by a jury of all charges. At the penalty phase, the defense alleged the following mitigating factors: 5(a) emotional disturbance; 5(c) age of Moore; 5(d) diminished capacity; 5(f) no significant prior record; and 5(h) any other relevant factor. The jury found the 4(c) and 4(g) aggravating factors and the 5(f) and 5(h) mitigating factors. One juror also found the 5(a), emotional disturbance, factor. The jury concluded that the aggravating factors outweighed the mitigating factors. Moore was sentenced to two death sentences. The two other convictions were merged with the murder convictions for sentencing purposes.

Moore appealed his sentence to the New Jersey Supreme Court. The conviction and sentence were reversed because of error in the diminished capacity charge. The case was remanded for a new trial on capital murder charges. State v. Samuel Moore, 122 N.J. 420 (1991).

#1823

Revised 7/30/91

STATE V. OGLESBY

D with serious mental problems, had an 8 year paramour relationship with V. D and V spend the night in a hotel. V is found stabbed 50x over her entire body. Jury verdict: murder 3/13/86. Penalty trial. One Aggravating factor found: 4c. Two mitigating factors found: 5a, 5f. Death.

The following factual summary contains quotations from State v. Oglesby, ___ N.J. ___ (1991).

"Defendant's mental and emotional deterioration throughout the early 1980s was reflected in his stormy relationship with the victim, [redacted]. During that relationship, which lasted for approximately eight years, [redacted] gave birth to their son. In 1982, Oglesby moved to Georgia, and in 1983 convinced [redacted] to join him. In 1984, she left him three times to return to New Jersey. The first two times Oglesby convinced her to return to Georgia. [redacted] left the third and final time in August 1984. A few days later, Oglesby followed [redacted] to New Jersey, where he joined her.

"On September 27, 1984, they checked into the Hillside Motor Lodge in Cherry Hill, to which they returned on the night of September 28. The following morning a housekeeper discovered [redacted] corpse. [redacted] had been hacked and stabbed to death. Oglesby was gone. Police investigation revealed that Oglesby

registered at a motel in College Park, Maryland at 12:30 a.m. on September 30." ___ N.J. at ___.

V had been stabbed approximately 50 times. The assault caused injury to V's entire body including a face wound which severed V's cheekbone and the almost complete severing of her thumb. The evidence indicates that Oglesby chased V in his endeavor to assault her, and he continued the attack when V was lying still.

On the morning of October 1, 1984, Oglesby checked into a Maryland motel. Oglesby returned to New Jersey the same day and was arrested at 4:15 p.m. Police found two types of knives in Oglesby's auto. One knife had a small amount of blood on it; too small for a comparison with V's blood type.

"Oglesby sustained brain injuries in an automobile accident when he was sixteen. As a result of that accident, he was unconscious for three days and hospitalized for over a month. From that time, according to his family, he was violent, self-destructive, and suffered from hallucinations.

"At trial, his sister recalled an incident in 1979, after the auto accident, when Oglesby took his son for a walk, disappeared for seven or eight hours, and returned in a confused state, claiming that he had talked to Jesus and Mary. His brother and sisters testified that he had been hospitalized several times for mental illness in the 1970s and 80s.

"Their testimony tended to establish the following additional facts concerning Oglesby's mental state. In 1981, he was struck by a truck, necessitating the amputation of one of his legs. With

part of the settlement proceeds, he purchased a new Lincoln. Soon, however, he said he could not ride in the car because it was inhabited by a phantom named "Boyaz." Fearful of Boyaz, Oglesby gave the car to his brother and purchased another new Lincoln for himself. Over the years, down to the time of the homicide, Boyaz frequently appeared to defendant and instructed him on the mysteries of death.

"Oglesby also engaged in other forms of bizarre conduct. In 1983, in a possible suicide attempt, he drove his car over a cliff, and told investigating police that he had been "going home to God." On other occasions, while visiting his sister, who owned no farm animals, he would sit, stare, and describe non-existent cows in her backyard. He insisted that she owned "the biggest cows" and, when she asked him to describe them, stated that they had "lots of legs."

"In 1983, Oglesby's family committed him to the Georgia Mental Health Institution for five days. Although Oglesby did not stay at the hospital long enough for a final diagnosis, the tentative diagnosis was schizophreniform disorder, a short-term form of schizophrenia." ___ N.J. at ___.

Oglesby is a native of Georgia. He is thirty-three years old.

Oglesby was charged with purposeful and knowing murder, unlawful possession of weapons, possession of weapons for an unlawful purpose, and two counts of hindering apprehension. A notice of factors was served for the 4(c), intent to cause suffering, aggravating factor. In a jury trial lasting from

February 18, to March 13, 1986, Oglesby raised the defense of insanity, but was found guilty of all counts. At the penalty phase, held on March 17 - 18, 1986, the jury considered the following mitigating factors: 5(a), mental disturbance; 5(d), diminished capacity; 5(f), no significant prior record; and 5(h), any other relevant factor. The jury found that the 4(c) aggravating factor and two mitigating factors 5(a) and 5(f) existed. The jury found that the aggravating factor outweighed the mitigating factors. Oglesby was sentenced to death. On the two hindering apprehension counts, Oglesby was sentenced to consecutive 4 year terms to run concurrently with the death sentence. The weapons counts were merged with the murder count for sentencing purposes.

Oglesby appealed his conviction to the New Jersey Supreme Court. The conviction and sentence were reversed because of error in the trial court's instruction on diminished capacity. A re-trial is pending. State v. Oglesby, ___ N.J. ___ (1991)

Revised 7/30/91

#1914

STATE V. PENNINGTON

D and look-out Co-D (D's wife) robbed a tavern. When V, the owner of the tavern threw a beer glass at D, D shot V in the chest. D then aimed the gun at V's daughter and demanded money. V's daughter complied with D's demand. Jury verdict: murder 6/9/87. Penalty trial. Two aggravating factors found: 4a, 4g. One mitigating factor found: 5d. Death.

The following factual summary includes quotes from State v. Pennington, 119 N.J. 547 (1990).

"The tragic events underlying this appeal occurred shortly after 1:00 a.m. on September 2, 1986, in "Sarge's," a neighborhood bar in East Rutherford. Defendant arrived about 11:30 p.m. A half hour later, the victim, V [redacted], came to help her daughter, Pam, close the bar. At about 1:00 a.m., V [redacted] announced that she was closing for the night. Defendant, who had drunk three beers at Sarge's, asked for a fourth, which V [redacted] poured while he went to the men's room. The other customers left, and defendant returned to his seat at the bar. While Pam started to sweep the floor, V [redacted] washed glasses in the sink opposite defendant.

"The ensuing events, critical to this appeal, are subject to various interpretations. The parties agree on few material facts, except that defendant fired a single shot, which struck the victim in the heart, killing her. In a statement given to the police the night of the shooting, Pam stated that while facing away from the bar, she heard her mother curse at defendant. When she turned

around, she saw her mother throw a glass at defendant. She then noticed a smoking gun in defendant's hand and heard her mother yell, "He shot me."

"At trial, however, Pam denied that she saw her mother throw a glass at defendant. There, she testified that while she was turned away from the bar, she heard her mother say to defendant, "I hate to tell you this, but it's the bewitching hour." Defendant responded, "Bewitch this." Almost simultaneously, Pam heard "a lot of commotion," including the sound of breaking glass. Her mother said, "You son of a bitch." Turning around, Pam saw her mother leaning on the bar with the bottom of a broken glass in her right hand. Pam's trial testimony was corroborated to some extent by broken glass at the scene, which was located almost exclusively on the bartender's side, but not on the customer's side, of the bar.

"In a sworn statement given to the police, defendant described a sequence of events similar to those included in Pam's statement, but different from her trial testimony. Defendant related that after the other customers had left, he pulled from his waistband a gun, which had three safeties. He told the victim, "I don't want to hurt nobody, I just want the money at the register." He then turned to Pam and told her to join her mother behind the bar. When he turned back to face [redacted], she cursed and threw a glass, which hit him in the chest. Defendant ducked to avoid the glass, and as he straightened up, he pulled the trigger of his gun...." 119 N.J. at ___.

[redacted]

[redacted] Then he went to high school and, at age 19, enlisted in the marines and served in Vietnam [redacted] Pennington was honorably discharged in 1970. [redacted] In 1974, as a result of a plea, Pennington was found guilty of first degree murder. [redacted]

Pennington was charged with own conduct purposeful, knowing murder, felony murder and a weapons count. A notice of factors was served for the prior murder, 4(a), and the contemporaneous felony, 4(g), aggravating circumstances. In a capital trial held from May 26 to June 9, 1987, Pennington was found guilty by a jury on all counts. At the penalty trial which lasted from June 10 to June 15, 1987, the jury was charged on and found both factors. The jury was charged on mitigating factors 5(a), (Pennington under influence of extreme mental or emotional disturbance), 5(d), (Pennington's capacity to appreciate wrongfulness or conform conduct to law significantly impaired by mental defect) and 5(h) (any other relevant factor of D's character). Jury found 5(d) present. The jury found that all of the aggravating factors outweigh beyond a reasonable doubt all of the mitigating factors.

Pennington was sentenced to death. Counts 2 and 3 were merged with the sentence for count 1.

Pennington appealed to the New Jersey Supreme Court. The Court reversed the conviction because of the failure of the trial court to instruct the jury that they must find that the Pennington purposely or knowingly caused death as opposed to serious bodily injury. State v. Pennington, 119 N.J. 547 (1990).

Revised 4/3/91

#1917

STATE V. PERRY

D and V [redacted] fought over money that D owed V. D held V in a death grip and killed him. D then shaved the eyebrows off V's face and applied makeup to disguise the corpse. Jury verdict: murder 5/20/87. Penalty trial. One aggravating factor found: 4c. No mitigating factors found. Death.

According to D, on or about February 27, 1986, defendant (D), Arthur Perry, arrived at his home. A half hour later victim, (V), came to D's house. D was in the second floor bedroom [redacted]

D and V argued over [redacted] monies D owed to V. [redacted] D declined this offer. V persisted in his demand that D owed him money. D claimed that his debt to V had been paid by a friend of his.

V again made his [redacted] offer to D. D refused. V became enraged and lunged at D. D feared V was carrying a .22 caliber revolver [redacted]. D moved out of V's way. When D realized he could not retreat, D grabbed V and they fell to the floor fighting. D held V tight until D thought V had relaxed. When D began to release his hold, V came to and began again with even more fury. D stated "I knew if I let him go, it was either me or him." At that moment, D grabbed V in a "death grip" which D learned while in the Marine Corps. D stated he held V in this grip for 30 seconds to a minute. When D released V, he became alarmed

at V's lifeless appearance. D stated "I did not mean to kill this man."

D expressed regret that he might have been able to save V's life if, after V lost consciousness, D had contacted the police for an ambulance.

D then panicked and searched the body for weapons, money [redacted] D removed V's jacket, shoes and pants. D plucked V's eyebrows and applied make-up around V's eyes to disguise V so that if someone found the body, they would not recognize it as being V. D took a cord and tied it around V's neck and dragged V to the basement. D hid the body behind an air conditioning unit. D's friend, who was waiting in the car for D, helped D shut the basement door so no one could get in without forcible entry.

Evidence found at the scene was V's body covered by a blanket, V's pants and sneakers.

D was born April 2, 1957, in Philadelphia, Pennsylvania. D dropped out of high school. At the time of the offense, D was a resident of Camden. D was employed at a homosexual club as security. D enlisted in the Marines but was honorably discharged

[redacted]

D was charged with purposeful murder by his own conduct (count 1); felony murder (count 2); robbery (count 3); hindering apprehension (count 4, 5, 6, and 7); and possession of a controlled dangerous substance (count 8).

At trial, which lasted from May 4 to May 20, 1987, D was found guilty of murder, felony murder, and hindering apprehension and

prosecution. [redacted] The jury acquitted D of robbery and the judge then found D not guilty of felony murder.

The 4(g) aggravating factor was dismissed prior to penalty phase. The (4c), extreme suffering (mutilating after death) statutory aggravating factor was served. The mitigating factors served were: D was under the influence of extreme mental or emotional disturbance, (5a); the victim solicited, participated in or consented to conduct which resulted in his death, (5b); diminished capacity, (5d); duress, (5e); and any other factor which is relevant to D's character, (5h). At the penalty trial, held on May 22, 1987, the jury found no mitigating factors but found the aggravating factor. As a result, D was sentenced to death. On the other charges, D was sentenced as follows: 5 years consecutive to any other sentence on counts 4, 5, and 6. Five years on count 8 to be served consecutive to any other sentence. An appeal is pending in the New Jersey Supreme Court.

Revised 8/7/91

#1957, 2809

STATE V. PITTS

D stabbed V2 (D's former lover) and cut her throat. D also stabbed V1 (V2's lover) eight times. Jury verdict: murder 2/19/85. Penalty trial. One aggravating factor found: 4c, for the death of V1. One aggravating factor found: 4c, for the murder of V2. Four mitigating factors found: 5a, 5b, 5f, 5h, for the murder of V1. Three mitigating factors found: 5a, 5f, 5h, for the murder of V2. Death for V2's murder; Life for V1's murder.

The following facts in quotations are taken for State v. Pitts, 116 N.J. 580 (1989).

"On March 20, 1984, defendant, an unemployed Vietnam War veteran, was in victim 2's (V2's) [redacted], townhouse. At her request, defendant was watching one of V2's [redacted] two children while she and Victim 1 (V1) [redacted] took her other child to the hospital. According to defendant, he and V2 [redacted] and dated many times. They had been sexually intimate. Defendant acknowledged his deep affection for V2 [redacted].

"In the course of the evening two other male friends of V2 [redacted] visited her townhouse.... The three men discussed their feelings toward V2 [redacted] while awaiting her return. Defendant stated that he loved her very much and questioned the other two about the depth of their affection for her....

"As time passed defendant became increasingly angry at V2's [redacted] failure to return home. Pitts blamed V1 [redacted] for keeping her out late and said that he would "get" V1 [redacted]. When V2 [redacted] and V1 [redacted] returned about 11:00 p.m., Pitts called her

a "tramp" and demanded to know where she had been. V1 [redacted] intervened and invited defendant into the living room to discuss his concerns, but defendant, glaring at V1 [redacted], did not leave the kitchen. 116 N.J. at 586, 7.

"Suddenly, defendant grabbed a kitchen knife and held it against Della Polla's neck. He threatened to slit his throat, accusing Della Polla's of having infected V2 [redacted] with a venereal disease that she had subsequently transmitted to defendant.... Pencock drove Pitts home and returned to V2's [redacted] apartment.... Shortly thereafter, defendant returned to the apartment.... Pitts was carrying a rifle with a pistol-type handle which he pointed at Della Polla saying, "We are going to talk."... When Pencock attempted to take the rifle from defendant, it fell to the ground and discharged.... Defendant left V2's [redacted] apartment the next morning. 116 N.J. at 587, 8.

On Thursday morning, March 22, Pitts and a neighbor drove "to a liquor store where Pitts purchased a six-pack of beer. Pitts drank half of a bottle of beer as they drove to V1's [redacted] apartment. Gibbs parked the car and waited while Pitts proceeded to V1's [redacted] apartment. Outside the apartment door Pitts encountered Michael Sarich who was visiting V1 [redacted] to repay a debt. According to Sarich, a woman's shoes and coat were in plain view in V1's [redacted] living room. Sarich departed, leaving V1 [redacted] and Pitts together in the apartment. The two quickly became engaged in a heated argument. Pitts, the only survivor of the ensuing encounter, has offered several different accounts of the

events that followed.

"In his first statement to police officers following his arrest, defendant attributed the murders of [V1] and [V2] to an unidentified male who was waiting at [V1's] apartment door when Pitts arrived for the purpose of buying some marijuana. According to Pitts, the assailant "freaked," pulled out a knife, and stabbed [V1]. He then stabbed [V2] as she attempted to run from the apartment. Pitts said that his hands were smeared with blood when he attempted to render first aid. He denied responsibility for either homicide.

"Defendant gave a second statement to the police at 2:10 a.m. on March 23, approximately an hour after he completed his first statement. In the second statement, Pitts acknowledged responsibility for both homicides. Pitts said that he and [V1] argued about seven hundred dollars that [V1] owed him.

"They owed me. At that time they owed me seven hundred dollars and [V1's] been holding and holding and holding and he's been bullshitting me....

"... I tried to get [the money] from [V1]. When he started getting shitty with me, that's when I got shitty back. That's when -- what the fuck are you doing? I says, mother, I told you don't fuck with me, and he did.

"According to defendant, he then pulled out a black Army "survival" knife and cut [V1's] throat:

"He was cut but it wasn't severe enough but you can cut a human being and usually they'll stay alive three minutes. That's

a known fact. According to you gentlemen, he was stabbed. All this is going on fast. This couldn't have taken no more than ten, 15 seconds. When [redacted] (V2) came out of the room, what the fuck you doing, jerkoff, and on and on and on. I said because my fucking money is not in my hand and it went on. That's when I, you know, attached her....

"[After [redacted] (V1) had fallen against the wall, [redacted] (V2) went into hysterics. And when the hysterics went down, that's when I fucked up.... I guess originally it started as a struggle because I grabbed her and I tried to cut her throat. I told you before, you can use [the combat knife for] cutting someone's throat.

"Defendant indicated that he twice attempted to cut [redacted] (V2's) throat, but did not recall stabbing any other part of her body. He stated that he "took the pulse" of both victims, and determined that both were dead. 116 N.J. at 588, 589, 590.

However at trial, Pitts testified that "an argument erupted, the two shoved each other, and [redacted] (V1) demanded that Pitts leave. When he refused, [redacted] (V1) turned toward the bedroom and said that he was going to get a gun. Pitts then pulled out his knife and stabbed [redacted] (V1). He described the assault as an "instantaneous like reflex." While occupied with [redacted] (V1), and in a frenzied-type state of mind," Pitts perceived an "image" behind him. According to Pitts' trial testimony:

"[W]hereas, that now which I know [redacted] (V2) was behind me, it was just an image at that time that I wheeled around and I sliced [redacted] (V2) with the knife at the time....

"... [W]hen I came back to my senses I had realized what I had done and [redacted] V2 was laying outside the apartment and [redacted] V1 was laying inside the apartment and [redacted] V2 was in a puddle of blood and I lifted her up and I put her back into the apartment and then I went back downstairs and I ran downstairs and I got into James Gibbs' car. 116 N.J. at 590.

"Dr Gerald Cooke, a clinical and forensic psychiatrist who tested and evaluated the defendant, gave trial testimony that was corroborative of Pitts' trial version of the homicides. He testified that although Pitts was not psychotic or out of touch with reality, "he has some tendency towards loss of control or increased emotional stimulation.... [He] has more of a tendency to lose control than the average person when he is stressed, particularly if those stresses fit into these particular dynamics I have mentioned, such as rejection by women, things of that nature.

"Dr. Cooke also testified that Pitts "showed a continuing preoccupation with Vietnam." Dr. Cooke reviewed his discussions with Pitts concerning his Vietnam service:

"He was in combat in Vietnam and was wounded in combat. We talked about Vietnam.... He says that he felt that he accomplished more in one afternoon in Vietnam in a combat situation than he has done in his entire life since then, and I got a real sense that he feels like much of his life has been useless and without purpose since that time.

"Dr. Cooke diagnosed defendant as having a cyclothymic

personality disorder. What that means is that he is an individual whose moods vary significantly over a time to a point where it disrupts his day-to-day functioning and at times he is maybe depressed significantly, and to(o) he may be hyperactive, manic. 116 N.J. at 591.

"Dr. Robert Segal, the Camden County Medical Examiner, testified that the deaths of both victims resulted from multiple stab wounds inflicted by a heavy-bladed knife with a single sharp edge and a square or blunted opposite edge. V1 had 8 stab wounds. 116 N.J. at 593.

"From his examination of V2's body, Dr. Segal observed "multiple stab wounds and multiple scrap[e]s o[r] abrasions over practically all portions of the body." 116 N.J. at 593, 4. He discovered 24 stab or slashing wounds.

"Internal examination revealed a fractured third left rib and right humerus, a cut aorta, a cut esophagus, cut lungs, and blood in her lungs. 116 N.J. at 594.

"Defendant's neighbor James Gibbs, who had driven Pitts to V1's apartment, gave testimony concerning the events that occurred after the homicides.... When Pitts returned to the car, he had blood on his hands and a knife concealed in his coat. He told Gibbs that V1 had "pulled a shotgun on him" and that he had killed V1 and V2. According to Gibbs, Pitts said, "I cut her throat, you don't have to worry about her." When Gibbs questioned Pitts further about why the killings occurred, Pitts told Gibbs that "they owed me money." Gibbs testified that Pitts

grinned and said, "[s]ee what I mean about paybacks is a bitch."" 116 N.J. at 594.

At approximately 9:30 p.m., police authorities were notified that D was inside his apartment. D was apprehended and taken to police headquarters. Police authorities confiscated a sawed-off shotgun from under a sofa cushion in the D's apartment.

[redacted]

On May 15, 1984, Pitts was indicted for the following offenses: count 1, knowing murder of V1; count 2, knowing murder of V2; count 3, hindering apprehension; count 4, possession of a knife for an unlawful purpose; count 5, false swearing; count 6, possession of a handgun for an unlawful purpose; count 7, tampering with a witness; count 8, terroristic threats; count 9, assault by pointing a firearm; count 10, unlawful possession of a handgun; count 11, possession of a knife for an unlawful purpose; count 12, unlawful possession of a knife. A notice was served for the following aggravating factors: 4(b), grave risk as to V1; 4(c), extreme suffering as to both Vs; and 4(f) escape apprehension as to V2.

In a capital trial, which was held from February 6 to February 19, 1985, Pitts was found guilty by a jury on all counts. At the

penalty trial, which was held from February 20 to February 22, 1985, the jury was charged on the aggravating factors noted above, but found only 4(c) applicable to both murders. With regard to the murder of V2, the jury did not find 4(f). The jury did not find 4(b) as to V1.

The jury was presented with the following mitigating factors regarding the murder of V1: 5(a), emotional disturbance; 5(b), victim participation; 5(d), diminished capacity; 5(f), no significant prior record; and 5(h), any other relevant factor. The jury found factors 5(a); 5(b); 5(f); and 5(h) regarding the murder of V1.

Regarding the murder of V2, mitigating factors 5(a), 5(b), 5(d), 5(f), and 5(h) were served. All but 5(b) and 5(d) were found. For the murder of V2, the jury found that the aggravating factor was not outweighed by the mitigating factors and sentenced Pitts to death for V2's murder. Pitts was sentenced to life imprisonment with a 30-year parole minimum eligibility for the murder of V1. Pitts was sentenced to four years on counts (3), (7), (8), and (11), to be served concurrently with count one. Pitts was sentenced to eighteen months imprisonment on counts (5) and (9), to be served concurrently with the sentence in count (1). Additionally, Pitts was sentenced to seven years on count (6). Count (4) merged into counts (1) and (2); count (12) merged into count (11); and count (10) merged into count (6).

Pitts appealed his conviction to the New Jersey Supreme Court. Pitts' convictions for murder were affirmed, however, the court set

aside the death sentence and remanded for a new penalty phase because the charge in the 4(c) factor included the language "outrageously wanton, vile, horrible or inhumane" declared too indefinite in State v. Ramseur and because the trial court did not instruct the jury that the aggravating factors must outweigh the mitigating factors beyond a reasonable doubt. State v. Pitts, 116 N.J. 580 (1989).

Revised 3/19/91

#2026

STATE V. PURNELL

D attempts to buy drugs from V. D and V fight. D stabs V 15x, steals V's drugs. D has prior murder. Jury verdict: murder 2/20/90. Penalty trial. Two aggravating factors found: 4a, 4g. Two mitigating factors found: 5b, 5h. Death.

On August 26, 1988, at about 6:00 p.m., defendant Braynard Purnell (D), age 36, went to an acquaintance's (W1's) home. D told W1 that he wanted to buy cocaine and W1 said V had some. W1 went to a nearby park, found V, and told him that D was looking for him. V, however, remained at the park.

At about 8:00 p.m., D went to the park and found V, who was with his girlfriend and a friend Jeff (W3). D and V spoke for about 15 minutes before the three left the park. Others in the park (W4 and W5) saw D and V speaking together, and W5 saw D, V, and W3 leave and walk toward D's house.

D and V argued on the way to the house; there was no testimony about the content of the argument; and there was no testimony about the argument in the rear of house. As D, V and W3 approached D's house, D told V that W3 could not come along and V told W3 to leave. W3 saw D and V walk on D's property and heard the "deal" was for D to by "a sixteenth" of cocaine. D and W3 then walked to a friend's house.

D's paramour's children (W6, W7, W8) saw D fighting with V in their backyard. D's daughter (W6) called for D and heard "Help me,

Jeff. Help me. Don't leave me." W7 and W8 also heard someone call for Jeff, and also heard someone say "He's going to kill me."

W6 and W7 ran up the street to D's landlord's (W9) home and told W9 that D was involved in a fight. While W6 and W7 called the police and told them that "two guys are jumping my Dad". Their mother, W9 ran to D's home. W9 walked to the rear of the yard and called for D. D replied, "Everything's all right" and crawled out of the bushes. W9 then went home, also D told W6 not to say anything about him fighting. In addition, when asked about V's whereabouts, D told W3, W4, and W6 that 2 men chased V from his (D's) house.

Later that evening, between 10:00 and 11:00 p.m., D returned to W1's home. D, who had cuts and scratches on his arm, told W1 that if anyone asked for him, she (W1) had not seen him. D also produced some drugs that he did not have earlier in the evening.

On August 28, 1988, at about 6:30 p.m., V's girlfriend W2, who lived in Delaware returned to New Jersey in search of V. W3 and V's sister (W10), who had both assumed that V had spent the weekend with his girlfriend, joined in the search. W3 remembered that he had last seen V with D, so they all went to D's home. D claimed that V had been chased away by 2 men and that he had gone down to W9's home to call the police. W9 told the group that it wasn't D who had come to call the police, but W6. W9 also told them that when he had gone to check on D, he had seen D crawling out of the bushes near the back of the yard. W3 and W10 then ran back to V's house, where W3 found V's body in the bushes in D's backyard. D's

determined that V had been stabbed 15 times in the abdomen, chest and neck.

After finding V's body, W10 began screaming. A passing police officer noticed W10, and she led him to V's body. During the ensuing investigation, D's and his paramour's children told police that they saw D fighting a man, while another man ran away through the bushes, and that D had chased them all away. Eventually, however, they admitted that it was D that had been fighting. D was arrested on September 1, 1988.

After arrest, D was observed to have "a puncture wound" on his arm and a bruise under his eye, suggesting a fight.

At the time of the offense, [redacted] D was divorced and had a child of his own. D dropped out of high school, after completing 10th grade and served U.S. Army for one year. Defendant was employed and had held unskilled jobs in the past. [redacted]

second degree murder.

D was charged with own-conduct purposeful or knowing murder, 2 counts of hindering apprehension or prosecution, possession of a weapon for an unlawful purpose, and perjury. Prosecutor argued during trial that Victim had been killed in a fight over the price of drugs and that he had killed V to steal his drugs. In a jury trial lasting from January 16, to February 14, 1990, D was found guilty of all but 1 count of hindering apprehension. At the penalty trial, which was held on February 20 and 21, 1990, the

State alleged that the 4(a), prior murder; and 4(g), the murder was committed during a robbery, statutory aggravating factors were present. D alleged that the following mitigating factors were present: (5)(b), V solicited the conduct which caused his death; and (5)(h), any other relevant factor. The jury found both aggravating and both mitigating factors present, and also found beyond a reasonable doubt that the aggravating factors outweighed the mitigating factors. As a result, D was sentenced to death. In addition, D was sentenced to 5 years, 2 without parole, on the hindering apprehension charge, to be served consecutive to the death sentence. For perjury, D was sentenced to 5 years, consecutive to the death sentence, but concurrent to the sentence imposed for hindering apprehension. The sentence for the weapons offense merged with the death sentence. D appealed his conviction and sentence directly to the New Jersey Supreme Court.

Revised 8/5/91

#2015

STATE V. RAMSEUR

D (male) and V (female) were paramours. V had told D not to come around anymore. The next day, D stabbed V several times on the street in front of V's grandchildren. D has a prior murder. Jury verdict: murder 5/12/83. Penalty trial. Two aggravating factors found: 4a, 4c. Two mitigating factors found: 5a, 5d. Death.

The following factual survey is taken from State v. Ramseur 106 N.J. 123 (1987).

"V"

[redacted], (54 years of age), the victim in this case, lived with her grandchild across the street from the defendant's aunt's house. She and defendant "used to go together", the relationship having apparently existed for several years. On occasion Ramseur (43 years of age) would threaten her, as he did during the argument about a year or year and a half before the killing. On the day following those threats, after learning a man had been in her house, Ramseur told her according to one of [redacted] V's granddaughters, that "what he said yesterday was about to come true," namely, "that she was going to regret it." That granddaughter also over heard a loud noise during an argument between them that day and upon entering the room, after Ramseur left, she saw her grandmother, [redacted] V, lying on the floor with blood coming out of her mouth, blood on the wall, and "like a hole all the way through her cheek." The police were called, and [redacted] V was taken to the hospital.

On another occasion, three to four months before the murder,

someone rang the doorbell at the V's [redacted]' residence, and as one of her granddaughters tells it "my grandmother went on the porch and asked who was it and {Ramseur} was-he backed back down onto the sidewalk so my grandmother could see him and told my grandmother that he would kill her and the kids or just her by herself. . ." V's [redacted]' granddaughter was standing right behind her when that occurred.

The night before the killing, again during an argument, [redacted] V [redacted] told Ramseur that "she's tired of his drinking and tired of him coming up there with her grandkids because if she can't raise them who else was going to raise them?," as recounted by a neighbor who lived next door and heard the exchange. He told her "You'll be sorry." That same evening he stole a knife from her kitchen, secretly, he thought, but in fact one of V's [redacted]' grandchildren saw him. It was the knife he used the next day to kill V [redacted].

On August 25, the day of the killing, V [redacted], one of her grandchildren, some friends of her grandchildren, and a neighbor were on the porch of the neighboring home; another grandchild was on V's [redacted] sunporch. Her neighbor was braiding the hair of a young child, and several of the children were teasing each other and generally having fun. At one point, V [redacted] left the porch to talk to a mechanic who was standing by the front of a truck near the house. As they spoke, her neighbor noticed Ramseur "peeping" through the window from his aunt's house across the street. He "has the curtains back, and he {was} looking"; he was "just peeping out, just like this, staring across the street." He did this for

a couple of minutes, maybe more.

Ramseur then emerged from the house, walked down the porch steps, and crossed the street to the place near the truck where [redacted] and the mechanic were talking. He patted [redacted] on the shoulder. As one witness recounted: "He walked up to her and just like this, stabbed her. . . When he stabbed her, she went down and she throwed her hands up and he got on her like this and was stabbing her like this and fell down by the truck and she was laying there and her tongue was coming out and she stretched her leg out like this so he walked {he walked away from her}. . . Then he came back, then leaned over and stabbed her. . . He was stabbing her I don't know how many times. . . I know at least four times, all over, and then that's when she went to throw up her arms. it was so many. It were fast. I don't know how many. Other witnesses also testified that the defendant, after having stabbed [redacted], began to walk away, but then returned to inflict additional wounds. He told his victim as she lay there, in a voice loud enough to be heard by others, "If I see your kids again I'm going to kill them too."

A Newark police officer who was driving through the area arrived at the scene. He left his patrol car, ran after Ramseur, and ordered him to stop three times before the defendant complied.

When the ambulance arrived [redacted] was lying in the mud bleeding from the chest and face. The two ambulance team members, the emergency room nurse at University Hospital, and the assistant medical examiner of Essex County gave testimony concerning the

number of stab wounds received by [redacted]. She had major stab wounds in the face and chest, including two chest wounds about eight and one-half inches deep that pierced the lung. She also received a number of stab wounds on both arms-called "defense" wounds because they were inflicted when [redacted] "trie{d} to defend herself by either grabbing the knife or protecting herself from the knife."

The wounds were such that [redacted] did not die immediately. As witnesses testified, she kept saying "I'm going to die, I'm going to die, and asked that "somebody hold my hand." She told a grandchild that "she couldn't breathe." When the ambulance arrived she was screaming and saying "I am going to die." As one of the ambulance personnel said "{a}s I was picking her up to put her on the stretcher, she reached up. She grabbed me by the collar and she told me she was going to die." Her exact words were: "Please help me. I am going to die." "She was moving all over. . . While we were trying to check her out and lay her on the stretcher, you know, she was kicking, moving, you know, trying to fight with us, you know."

They put her in the ambulance and started fixing her wounds with bandages. When they drove away, according to the ambulance attendant who accompanied her, "she kept on fighting me and saying "I am going to die. I am going to die." She repeated this all the way to the hospital, a ride of four to five minutes. Only upon arrival at the hospital did she become unconscious. She died at the hospital after an unsuccessful attempt to revive her through

direct cardiac massage. 106 N.J. 160-163

[redacted] the victim in this case, lived with her grandchild across the street from defendant's aunt's house. She and defendant "used to go together," the relationship having apparently existed for several years. On occasion, Ramseur would threaten her, as he did during an argument about a year or year and a half before the killing. On the day following those threats, after learning a man had been in her house, Ramseur told her, according to one of V's [redacted]' granddaughters, that "what he said yesterday was about to come true," namely, "that she was going to regret it." That granddaughter also overheard a loud noise during an argument between them that day and upon entering the room, after Ramseur left, she saw her grandmother, V [redacted], lying on the floor with blood coming out of her mouth, blood on the wall, and "like a hole all the way through her cheek." The police were called, and V [redacted] was taken to the hospital.

"On another occasion, three to four months before the murder, someone rang the doorbell at the V's [redacted]' residence, and as one of her granddaughters tells it, "my grandmother went on the porch and asked who was it and [Ramseur] was -- he backed back down onto the sidewalk so my grandmother could see him and he told my grandmother that he would kill her and the kids or just her by herself...." V's [redacted]' granddaughter was standing right behind her when that occurred.

"The night before the killing, again during an argument, [redacted]

[redacted] told Ramseur that "she's tired of his drinking and tired of him coming up there with her grandkids because if she can't raise them who else was going to raise them?," as recounted by a neighbor who lived next door and heard the exchange. He told her "You'll be sorry." That same evening he took a knife from her kitchen, secretly, he thought, but in fact one of [redacted] grandchildren saw him. If was the knife he used the next day to kill [redacted].

"On August 25, the day of the killing, [redacted], one of her grandchildren, some friends of her grandchildren, and a neighbor were on the porch of the neighboring home; another grandchild was on [redacted] sunporch. Her neighbor was braiding the hair of a young child, and several of the children wee teasing each other and generally having fun. At one point, [redacted] left the porch to talk to a mechanic who was standing by the front of a truck near the house. As they spoke, her neighbor noticed Ramseur "peeping" through the window from his aunt's house across the street. He "had the curtains back, and he [was] looking"; he was "just peeping out, just like this, staring across the street." He did this for a couple of minutes, maybe more.

"Ramseur then emerged from the house, walked down the porch steps, and crossed the street to the place near the truck where Ms. Stokes and the mechanic were talking. He patted [redacted] on the shoulder. As one witness recounted:

> "He walked up to her and just like this, stabbed her.... When he stabbed her, she went down and she throwed her hands up and he got on her like this and was stabbing her like this and fell down by the truck and she was laying there and her tongue was coming out and she stretched her leg out like this so he walked [he walked away from her].... Then he came back, then

> leaned over and stabbed her.... He was stabbing her but I don't know how many times ... I know at least four times, all over, and then that's when she went to throw up her arms. It was so many. It were fast. I don't know how many.

Other witnesses also testified that the defendant, after having stabbed [redacted], began to walk away, but then returned to inflict additional wounds. He told his victim as she lay there, in a voice loud enough to be heard by others, "If I see your kids again I'm going to kill them too."

"A Newark police officer who was driving through the area arrived at the scene. He left his patrol car, ran after Ramseur, and ordered him to stop three times before the defendant complied.

"When the ambulance arrived [redacted] was lying in the mud bleeding from the chest and face. The two ambulance team members, the emergency room nurse at University Hospital, and the assistant medical examiner of Essex County gave testimony concerning the number of stab wounds received by [redacted]. She had major stab wounds in the face and chest, including two chest wounds about eight and one-half inches deep that pierced the lung. She also received a number of stab wounds on both arms -- called "defense" wounds because they were inflicted when [redacted] "trie[d] to defend herself by either grabbing the knife or protecting herself from the knife."

"The wounds were such that [redacted] did not die immediately. As witnesses testified, she kept saying "I'm going to die, I'm going to die," and asked that "somebody hold my hand." She told a grandchild that "she couldn't breathe." When the ambulance arrived she was screaming and saying "I am going to die." As one of the

ambulance personnel said, "[a]s I was picking her up to put her on the stretcher, she reached up. She grabbed me by the collar and she told me she was going to die." Her exact words were: "Please help me. I am going to die." "She was moving all over.... While we were trying to check her out and lay her on the stretcher, you know, she was kicking, moving, you know, trying to fight with us, you know."

"They put her in the ambulance and started fixing her wounds with bandages. When they drove away, according to the ambulance attendant who accompanied her, "she kept on fighting me and saying 'I am going to die. I am going to die.'" She repeated this all the way to the hospital, a ride of four to five minutes. Only upon her arrival at the hospital did she become unconscious. She died at the hospital after an unsuccessful attempt to revive her through direct cardiac massage." 106 N.J. at 160-163.

"Dr. Mark Mishkin, a neuroradiologist, testified that Ramseur had atrophy (a shrinkage or wasting) of the brain in the frontal and temporal lobes. He labelled the atrophy progressive based in CAT scans performed on Ramseur. Dr. Mishkin, on cross-examination, stated that such a pathology would not preclude normal conduct.

"Dorothy Lewis, a psychiatrist who had examined Ramseur, testified that he suffered from psychomotor seizures, a type of epilepsy. During a seizure an individual may lose control over his or her behavior. Violence is possible if the person is also paranoid and provoking circumstances exist. Dr. Lewis further

testified that Ramseur was paranoid. Dr. Lewis stated that the stabbing occurred during such a psychomotor seizure." 106 N.J. at 164.

D had suffered four head injuries in the past. He was hit with a wooden beam, thrown from the cab of a moving truck, hit his head on the windshield during a traffic accident, and was mugged and severely beaten several months prior to the murder. The doctors also reported episodes of memory loss and migraine headaches. A spinal tap showed evidence of bleeding in the brain. One of the doctors felt that D had become psychotic after being mugged.

Two neurologists testified on behalf of the state. Both agreed that D understood the nature and consequences of his act. They felt that D was extremely paranoid and suspicious. They did not find any neurological evidence of brain damage.

The medical examiner testified that there were 13 stab wounds, which were mostly superficial. However, three wounds exceeded eight inches in depth. The medical examiner testified that V was conscious for 10 - 15 minutes after the stabbing.

During the guilt phase of the trial, which was held from April 4 to May 12, 1983, the jury found D guilty of all three charges. Aggravating factors served were 4 (a), D previously convicted of murder and 4(c), "outrageously and wantoningly vile". At the penalty trial, held on May 16 - 17, 1983, both aggravating factors were found by the jury. Four mitigating factors were served: 5(a), D was under the influence of extreme mental or emotional

disturbance; 5(d), D's capacity to appreciate wrongfulness of his conduct was significantly impaired as the result of mental disease; 5(c), the age of the defendant at the time of murder; and 5(h) any other factor relevant to defendant's character (work history, unstable childhood). The jury found 5(a) and 5(d) but did not find 5(c) or 5(h). At first the jury was unable to reach a verdict but when re-charged, found that the aggravating factors outweighed the mitigating. Defendant was sentenced to death. D appealed to the New Jersey Supreme Court. The court reversed D's sentence of death and remanded the case to the trial court for the imposition of a non-death sentence because, when the jury deadlocked, the trial court's instructions on the necessity of reaching a verdict were prejudicially coercive. State v. Ramseur, 106 N.J. 123 (1987).

Revised 8/5/91

#2172, 3003

STATE V. ROSE (TEDDY)

D was walking with his friends carrying a shotgun in a canvas bag. Police officer (V) stops to ask D what is in the bag. D panics and shoots V one time in stomach. Jury verdict: murder 6/4/85. Penalty trial. Two aggravating factors found: 4f, 4h. Two mitigating factors found: 5a, 5h. Death. Re-trial. Two aggravating factors found: 4f, 4h. Three mitigating factors found: 5a, 5d, 5h. Life.

The following quotation is excerpted from State v. Rose, 112 N.J. 454 (1988).

"This case involves the shocking and senseless killing of an Irvington police officer. The uncontested evidence adduced during the guilt phase of the trial demonstrated that on August 8, 1984, at approximately 11:45 p.m., defendant, Rose, shot and killed Irvington police officer [redacted] (the victim (V)) with a sawed-off shotgun.

"Earlier that evening defendant had been out with a friend, returning to his home in Irvington shortly after 11:00 p.m. He was approached by two acquaintances, Gerry Cuccolo and Paul Palermo. They told Rose they planned to burglarize a pizza restaurant and asked to borrow some of Rose's tools. Rose loaned them the tools, but the testimony at trial was contradictory about Rose also agreeing to act as a lookout. Cuccolo and Palermo proceeded to the pizzeria; however, the burglary plan was aborted when Cuccolo was observed in the hallway leading to the pizza parlor. The two returned a pry bar to Rose and Palermo, with Rose's consent,

retained possession of the other tools.

"Rose returned from his car to the corner of Springfield Avenue and 40th Street with Palermo, carrying a white canvas bag over his shoulder. In the bag was a sawed-off shotgun he had purchased a few weeks earlier in Pennsylvania. They joined Cuccolo and two other young men, Michael O'Keefe and a person known as "Mark." It was then about 11:30 p.m.

"Palermo and Mark departed, and Cuccolo, O'Keefe, and Rose started walking down 40th Street. Rose took the lead and Cuccolo followed about five to seven feet behind, with O'Keefe to his right. An Irvington police car passed by. Rose waved to the driver and told Cuccolo that he thought it was someone he knew. The patrol car passed Cuccolo, O'Keefe, and Rose and pulled up to the corner. The driver then backed up the patrol car, stopping abreast of Cuccolo, O'Keefe, and Rose who stood by the curb.

"Irvington Police Officer [redacted] was driving the patrol car. After stopping the car beside Cuccolo, O'Keefe, and Rose, he got out and approached them. [redacted] held a flashlight in his hand. He shined the flashlight on the white canvas bag still over Teddy Rose's shoulder and inquired about its contents. According to the testimony of Cuccolo and O'Keefe, Rose responded that the bag contained a "rocket." As he was responding to [redacted] question, he removed the bag from his shoulder and placed it on the ground. [redacted] asked to see what was in the bag. At that point, Rose put his hand in the bag, raised it up, said "and this," held the bag to [redacted] stomach and

fired the shotgun. V [redacted] was knocked five or six feet into the street, flat on his back.

Rose dropped the gun and fled. 112 N.J. at 470-471.

Rose is 21 years of age, a high school drop-out (finished 10th grade), and has held unskilled jobs (i.e., service station worker, etc.) in the past. [redacted].

Rose has no prior criminal convictions. Rose was charged with own-conduct purposeful, knowing murder, possession of a sawed-off shotgun, possession of a sawed-off shotgun with purpose to use it against the person or property of another, hindering apprehension and conspiracy to commit burglary. The burglary count was severed from the other counts, and remained pending when this case was appealed. A notice of factors was served for the intent to cause suffering, 4(c); escaping detection or apprehension, 4(f); and murdering a public servant, 4(h), statutory aggravating factors. In a capital trial, held from May 29, to June 4, 1985, Rose was found guilty on all counts. At the penalty trial, which was held from June 6 to June 12, 1985, the jury was charged on all three aggravating factors, but found only 4(f) and 4(h). The New Jersey Supreme Court subsequently ruled that it was in error to present 4(c) to the jury. D served mitigating factors 5(a), 5(c), 5(d), 5(f) and 5(h). D withdrew factor 5(f), no significant criminal history, after the trial court ruled that the State could present prior bad acts in rebuttal. The jury was charged only on mitigating factors 5(a), emotional disturbance, 5(c) age, (21), 5(d) diminished capacity, and 5(h) any other relevant factor. A

psychiatrist and a psychologist testified about D's horrible upbringing, his abandonment by his mother, his belief that his alcoholic grandmother was his mother and some aunts were his sisters. Rose had found his real mother about three months before the shooting but she rejected him. The jury found only 5(a) and 5(h) to be present. The jury found that the aggravating factors outweighed the mitigating factors. D was sentenced to death. D also received four years on the possession count, nine months on the hindering apprehension count, and the possession with purpose to use count was vacated and merged with the death sentence in count one.

On appeal, the New Jersey Supreme Court affirmed Rose's conviction, but overturned the death sentence because the trial court failed to instruct the jury regarding its consideration of evidence of Rose's past conduct, because of several instances of prosecutorial misconduct, and because of failure of the trial court to provide instructions clarifying the jury's function in weighing 2 aggravating factors based on identical evidence. The case was remanded for a new sentencing proceeding. State v. Rose, 112 N.J. 454 (1988).

In the re-trial of the penalty phase, aggravating factors 4(f) escape detection and 4(h) public servant, were served and found. Mitigating factors 5(a) emotional disturbance, 5(c) age, 5(d) mental disease and 5(h) any other factor were served, but only 5(a), 5(d) and 5(h) were found. The jury was unable to agree as to the weighing of the factors and a life sentence was imposed.

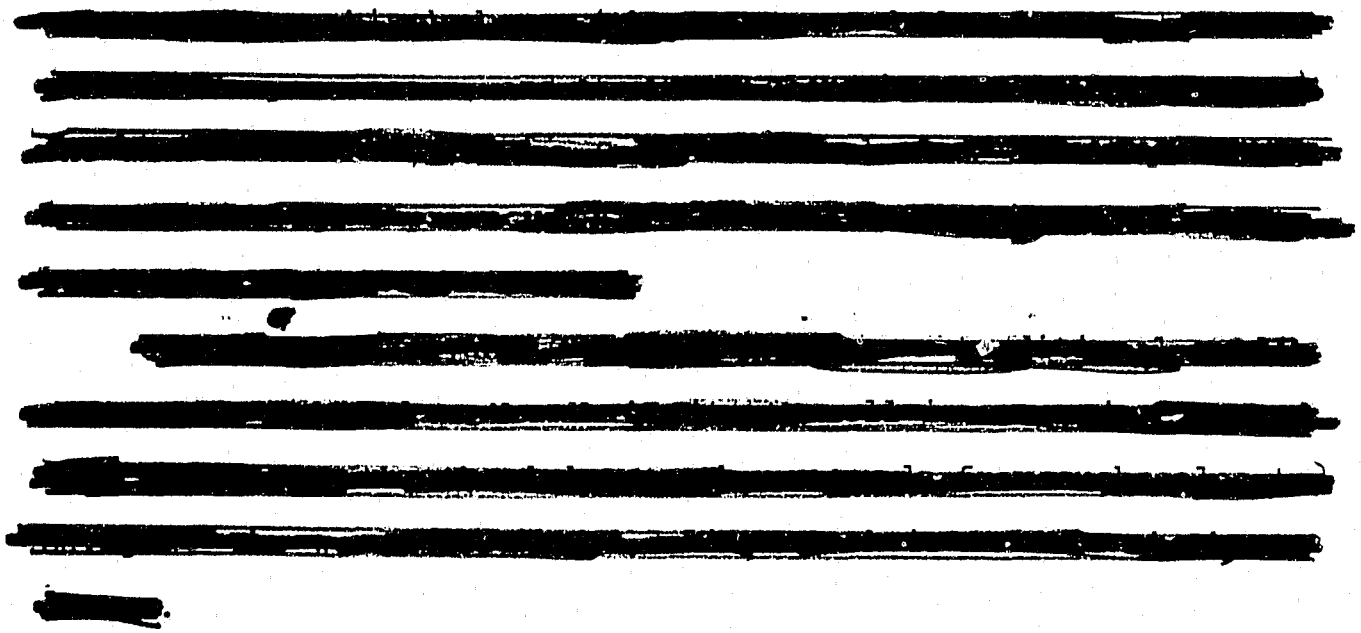
Revised 8/5/91

#2228

STATE V. SAVAGE

[redacted] V was the sister of one of the women, W1. W1 and V were D's paramours. D killed V and dismembered her body. When W1 asked what happened, D said "They were gonna kill you and they were gonna kill me." Jury verdict: murder 1/24/85. Penalty trial. One aggravating factor found: 4c. One mitigating factor found: 5d. Death.

During the summer of 1983, defendant (D), Roy Savage, age 32, [redacted], approximately 6 ft., 190 lbs., was married [redacted]. Two (2) of the women, [redacted] the victim (V) and Cheryl Hubbard W1 were sisters. Another, J.C., was in the apartment at the time of the crime. She had an apartment at 138 Street in New York City [redacted] The fourth was Tammy Cherry. Cheryl Hubbard's two minor children lived in the apartment also. [redacted]



The following recount of the murder is taken from State v. Savage, 120 N.J. 594, (1990).

"In his September 17, 1983, statement defendant contended that while waiting for a bus on Thursday, September 8, he was hit from behind and knocked unconscious, and that he awoke the next day in Harlem Hospital. A black girl with long braids came to his bedside, told him to go to the apartment on 138th Street and move the suitcase to New Jersey. She threatened to kill him if he did not comply. He related that she placed a pistol at his head, pulled the trigger on a blank, and told him: "They could have killed you a long time ago, don't think that we are joking now." Savage then described how he immediately ran out of the hospital, dressed only in his hospital gown, chased by security guards until he reached the 138th Street address. After dressing, he went to the 131st Street address, and then returned to 138th Street with Fay Vonder and Carl Gamble to pick up the blue suitcase. Driving

in Gamble's grey Toyota, the three took the suitcase to the Projects, and left it on the twelfth floor. Savage related that he did not know the contents of the suitcase at that time, and took it to Newark because he had been instructed to do so by the girl with the gun. He made the statement "because I am trying to protect my people who are in danger (because) the girl with the gun stated that she could have killed me already."

"Cheryl Hubbard gave a statement to the police on September 20, 1983. In her statement -- the first of four, including her trial testimony, that Ms. Hubbard was to give -- Ms. Hubbard identified Roy Savage as the father of her two youngest children and as her "mate." According to Cheryl Hubbard, Savage had four other "mates": [redacted] Cheryl's sister; Jackie Cobb; Tammy Cherry; and Fay Vonder Savage. Cheryl Hubbard stated that she had last seen her sister [redacted] on the morning of September 4, 1983, sweeping the floor in the 351 Broad Street apartment. Cheryl had left to go to the store, and when she returned, Roy sent her to the Lincoln Motel with her two children. According to her statement, Cheryl stayed at the Lincoln Motel until Monday, September 5, when she returned to 351 Broad Street. She admitted that when she returned, there was a foul odor in the apartment. She also recalled seeing Roy and Fay Vonder Savage in the apartment that week, but denied seeing a suitcase.

"On September 26, 1983, Cheryl Hubbard gave a second statement. In that statement, she admitted seeing a brown suitcase leaking a dark brown liquid, in the 351 Broad Street apartment

during the week following her return from the Lincoln Motel. That week, she also observed Roy painting over a brown stained spot on the wall of their apartment.

"Nearly a year later, on August 23, 1984, after Cheryl Hubbard had been indicted for hindering apprehension and had entered Pre-Trial Intervention Program, she made her third and most revealing statement. Cheryl stated that when she returned to her apartment at approximately 10:00 p.m. on September 3, 1983, Roy called her into his "private room",: which the women were normally restricted from entering. Roy told her to keep the children in that room, and Roy, Cheryl, [redacted] and Jackie entered the living room. Cheryl stated that Roy, [redacted], and Jackie began freebasing cocaine until the early morning. According to Cheryl, Savage smoked marijuana frequently and freebased cocaine almost every night. Cheryl left the group and went to sleep with the children.

"At approximately 8:00 o'clock the next morning, before leaving for the grocery store, Cheryl noticed her sister, [redacted], sweeping the floor and Jackie Cobb sitting in the living room. She noticed that Jackie Cobb's face was swollen and that she had two black eyes, caused by a severe beating admitted by Savage the previous week. On returning twenty minutes later, Cheryl heard a female, either [redacted] or Jackie, scream "Hashim, no!" Roy Savage then appeared at the door covered with blood, and when she asked him what had happened, he replied: "They were gonna kill you and they were gonna kill me." Cheryl observed puddles of blood and a knife on the apartment floor and blood smeared on the walls.

"Savage sent Cheryl and the children to the Lincoln Motel so that he could clean the apartment. He visited her periodically at the motel over that weekend. At one point, he stated that Jackie and [redacted] "were still nursing on themselves and that they were doing ok." She said that when she returned to the apartment, she said defendant told her: "I don't think Aisha [Jackie] is going to make it, she had head injuries.... [redacted] might make it, but she might tell on what happened." When Savage asked what he should do with the body, Cheryl suggested he "put it in a box and take it somewhere."

"On Wednesday, before Cheryl left for work, she observed Savage carrying a black cloth bag. He did not divulge the contents of the bag but only asked Cheryl if it smelled, and she responded that it did. Savage then discarded the bag in a dumpster in front of an abandoned building on Broad Street.

"That following Thursday, Cheryl entered Savage's private room at their 351 Broad Street apartment. She noticed that there were newspapers on the floor, covering a dried-up brownish fluid. The room smelled. Cheryl also noticed that [redacted] and Jackie's shoes were in the closet.

"On Friday afternoon, Roy Savage returned to the apartment with visible head injuries. He asked Cheryl to retrieve a blue suitcase from the twelfth floor of the Projects and to throw it in a dumpster. She refused. The next morning, Cheryl and Savage went to the twelfth floor, but Savage did not remove the suitcase. Instead, he returned to the Broad Street apartment where he had

left a second suitcase of black vinyl with plaid side panels. He removed a yellowish plastic bag from the suitcase and discarded it in a dumpster. Savage then cut up the suitcase, placed it in a garbage bag, and threw it in the incinerator." 120 N.J. at 602-605.

Savage is 32 years of age, honorably discharged from the U.S. Navy. He is a high school graduate who had completed some courses at John Jay School of Criminal Justice of City University of New York and has no ascertainable employment. [redacted]

Savage was charged with own-conduct purposeful, knowing murder (Ct. 1) and hindering his own apprehension (ct. 2) by indictment on 1-19-84. A superseding indictment was filed on 2-2-84. Savage was convicted on 1-24-85. A notice of aggravating factor 4(c), that the murder involved torture, aggravated battery and depravity of mind, was served by the State. In support of this factor, the State relied on the evidence presented at the guilt phase. Savage served as mitigating factors emotional disturbance, 5(a); Savage's age 5(c); mental disease 5(d); no significant prior criminal history 5(f); and any other factor 5(h). Savage's wife testified that Savage had worked hard and provided for his children. Savage's mother-in-law testified that he must be sick if he did something like that. Savage testified that he had received ineffective assistance of counsel. Savage read a letter from Cheryl Hubbard that she testified as she did because she was afraid

of being killed. Savage told the jury that there were drug dealers and pimps who wanted to kill him and his women. The penalty trial concluded on 1-18-85. The jury found all three elements of aggravating factor 4(c) were proven beyond a reasonable doubt, as was mitigating factor 5(d), mental disease. The jury also found that the aggravating factor outweighed the mitigating factor. Savage was sentenced to death.

On 1-25-85, Savage's motion for judgment of acquittal was denied. Savage filed notice of appeal on 3-12-85. Motion denied on 6-24-87. On 11/6/89, Savage appealed to the New Jersey Supreme Court. On 7/19/90 the Supreme Court reversed Savage's conviction and sentence, holding Savage was denied effective assistance of counsel. State v. Savage, 120 N.J. 594 (1990). The case was remanded for a new trial.

Revised 8/6/91

#2241

STATE V. SCHIAVO

D, a drug manufacturer, fired a shotgun at a group of police officers who were executing a search warrant in D's home. V, a police officer, was shot and killed. Jury verdict: murder 5/26/87. Penalty trial. Three aggravating factors found: 4b, 4f, 4h. Three mitigating factors found: 5c, 5f, 5h. Death.

Defendant (D), Dominic Schiavo, age 57, was engaged in the manufacture of large quantities of methamphetamine and Phenol-2-Propanol (P2P). Law enforcement authorities were aware of D's activities, and as a result of their ensuing investigation and their surveillance of D's home, several search warrants were authorized.

On August 28, 1985, at 7:02 p.m., D and Thomas Baldino, (arrested but not indicted) were inside D's residence when a search warrant was executed on the premises. As a group of plainclothed police officers entered the two-apartment building and went up a flight of stairs, D opened fire with a shotgun. The victim (V), a police officer, was shot and killed. Two other officers, W1 and W2, narrowly escaped injury. The police returned fire on D, who received bullet wounds to his chest, thigh, and both hands. Baldino, a computer repairman, surrendered without incident before the shooting began.

In conjunction with their investigation, police also executed several other search warrants at another home owned by D, at the

home of D's estranged wife, and at various self-storage units rented by or leased to D. As a result, Co-D2, Robert Walsh, was arrested at the other home owned by D and charged with a variety of drug-related offenses. In addition, police seized methamphetamine, P2P, quaaludes, and chemicals, glassware, and equipment used to manufacture methamphetamine. Police also seized, at D's estranged wife's home, a handgun, and paperwork belonging to D.

At the time of the offense, D was 5'8" tall and weighed 165 pounds. D was a high school graduate and had worked in the auto maintenance and wrecking industry in the past. D was married but had been separated from his wife for 20 years. [redacted] D served in the U.S. Army for 8 months in 1952 [redacted]

D was charged with own-conduct, purposeful or knowing murder; unlawful possession of a weapon, possession of a weapon for an unlawful purpose, conspiracy to distribute methamphetamine, conspiracy to distribute P2P, possession of CDS, possession of CDS with intent to distribute, possession of P2P, possession of P2P with intent to distribute, and possession of methamphetamine. In

a jury trial lasting from April 27 to May 26, 1987, D was found guilty of all charges except possession of P2P with intent to distribute.

The penalty phase of the trial was held on May 27 to 28, 1987. The State alleged that the following statutory aggravating factors were present: 4(b), grave risk of death to another; 4(f), escape detection; and 4(h), V was a public servant. Defense alleged that the following statutory mitigating factors were present: 5(c), D's age, 5(f), D had no significant prior criminal history and 5h, any other factor. (6 children). The jury found that all of the aggravating factors existed and the State stipulated that mitigating factors 5(c) and 5(f) existed. In addition, although it was not listed on the jurors' verdict sheets, the court instructed the jury that it could consider factor 5(h), any other relevant factor, because that factor had also been stipulated to by both parties. Specifically, the court instructed the jury to consider that D had raised 6 children, including 2 children that were not his own. The jury then found that the aggravating factors outweighed the mitigating factors beyond a reasonable doubt and sentenced D to death.

On the non-capital counts, D was sentenced to 18 months for unlawful possession of a weapon for an unlawful purpose; and 5 years for each of the remaining counts. All sentences, except for the one imposed for possession of CDS with intent to distribute, were made consecutive to the previous sentence and consecutive to the death sentence.

D appealed his conviction directly to the New Jersey Supreme Court, but died in prison before the case was decided.

Revised 8/1/91

#2687, 3005

STATE V. WILLIAMS (JAMES)

D was drinking beer with friends and he decided to go out and make some money. D and his brother, W1, went in to a nursing home. D sexually assaulted the receptionist then stabbed her 36 times. Jury verdict: murder 1/31/84. Penalty trial. Two aggravating factors found: 4c, 4g. One mitigating factor found: 5h. Death.

The following factual summary in quotations is excerpted from State v. Williams, 113 N.J. 393, (1988).

"At approximately 4:00 p.m. on Thursday, December 30, 1982, twenty-three year old [redacted] (the victim (V)) arrived for work at the Bellevue Care Center, a Trenton nursing home. [redacted] (V), a full-time teacher at Trenton High School, held a part-time position as a receptionist at the Center, where on weekdays she worked the 4:30 to 7:30 p.m. shift. She occupied a desk in the reception area, and controlled access to the normally-locked front door. As late as 6:05 p.m. on that day, she was seen sitting at her typewriter alone in the reception area. A nurse at the Center noticed sometime shortly before 6:45 p.m. that [redacted] (V) was not at her desk. At about 6:45, the nurse entered an office adjoining the reception area, turned on the light, and found [redacted] (V's) dead body lying on the floor.

"The scene was gruesome. The victim lay face down and naked, her clothing strewn about the room. There was blood on the floor, the walls, and the furniture. Under the body, investigators found an undergarment, some pieces of jewelry, and a steak knife covered

with blood.

"The autopsy determined that [redacted] had been stabbed thirty-six times: there were twenty-one wounds on the back, seven on the front, and eight defense wounds on the body. Additionally, there were bruises, contusions, and abrasions in numerous areas of the body, and the victim's throat was slashed. The medical examiner found that the throat slashing and the defense wounds were superficial and would not have killed or immobilized the victim. The wounds to the front of the body would not, in her estimation, have immediately killed or immobilized the victim either; it was the wounds to the back that were fatal. The medical examiner concluded that the steak knife discovered at the scene could have been the murder weapon, but that another knife could also have been used. It was also her opinion that the victim had been sexually assaulted, although she found no trauma to the genital area.

"Two days after the murder, defendant's mother, Sharon Ildefonso, and younger brother, Dennis Floyd, came forward. Floyd said that he had accompanied defendant to the Bellevue Care Center on the evening of December 30 and had witnessed the killing. His testimony would become the foundation of the State's case against James Williams.

"Although brothers, Floyd and Williams had known each other only a few months at the time of the murder, having been raised in separate foster homes. They nonetheless had become companions, with Floyd, who was seventeen or eighteen, tending to follow his twenty-one year-old brother's lead. So it was the evening of the killing.

"According to Floyd's testimony, the two brothers spent the late afternoon of December 30 drinking beer with four friends at Williams' apartment. Williams had "seemed to be okay," but at some point during the gathering began speaking and acting aggressively. He spoke more than once of "going to make some money tonight" and going to "beat up some white boys," at one point placing a knife in his belt and repeating the statement about making money. Floyd testified that he did not take this statement seriously, since defendant was employed as a construction worker and was not, to Floyd's knowledge, in need of money. Though not knowing his brother's destination, Floyd accompanied Williams as he left the apartment and walked to Bellevue Avenue. As the two young men approached the Bellevue Care Center, Floyd pointed out the Center as the place where his foster grandmother had died.

"Williams proceeded to the main entrance of the Center, his brother following. Defendant opened the door-whether it had been locked Floyd did not know- and stated to the young [redacted] woman in the reception area that he wanted to see a Mr. Hoffman. The woman indicated that Mr. Hoffman was on the second floor, and Floyd walked toward the elevator. Defendant, however, approached the woman and began pushing her into a back room. Floyd followed. Once in that room, defendant closed the door and turned out the lights and then ordered the victim to take off her clothes. She started to comply, but then stopped, at which point defendant "got mad" and began hitting her. The victim, in a scared voice, cried, "Jesus help me."

"What followed, according to Floyd's testimony, was a

horrendous sequence of events in which defendant raped and stabbed the victim while Floyd passively stood by, gripped by fear. The 6'6" Williams forced the 5'2" victim to the floor, where she lay on her back. Floyd testified that defendant appeared to penetrate the victim. She screamed; he put his hand over her mouth and then "started cutting her." The victim eventually managed to stand up, at which point defendant stabbed her in the back. After the victim fell to the floor on her face, defendant got down on one knee and "started stabbing her in the back." Williams then attempted to give his brother the knife and have him "stab her a couple of times." Floyd refused. Defendant then began looking around to see if he had dropped anything, saying that he did not want to leave any evidence. "He asked me if I touched anything," Floyd recounted at trial, "and I said no." On the way out, Williams took the victim's pocketbook." 113 N.J. at 399-402.

"... Floyd testified, (however), that he had not seen Williams using drugs earlier in the day, and that he had noticed nothing impaired in defendant's motor skills." 113 N.J at 402.

"The defense sought to establish, inter alia, that Williams was acting under the influence of extreme mental or emotional disturbance and that his capacity to conform his conduct to the requirements of law was significantly impaired by intoxication and/or mental disease. It drew largely on records from the Division of Youth and Family Services (DYFS), which had dealt with defendant from the time he was fifteen months old. The evidence suggested that Williams' life had been filed with instability and emotional trauma from the first; the highlight of his life history

was the incident in which, at age nine, defendant had accidently shot his younger brother to death. His childhood had been marked by numerous foster care placements and inadequate psychiatric intervention. The defense also introduced evidence that in November 1982, Williams, a construction worker, had been hit in the head by a load of falling cinder block, after which his behavior began to change in an alarming fashion. It was apparently at this point that defendant became fixated on the threat from "poison bubbles in the water." 113 N.J at 406-407.

Williams was charged with: (1) knowing and purposeful murder, (2) murder during the course of a robbery, (3) robbery while armed with a knife, (4) murder during the course of an aggravated sexual assault, (5) aggravated sexual assault while armed, (6) murder during the course of a burglary, (7) burglary while armed with a knife.

In January of 1984, the jury convicted Williams on all counts. The State served the following aggravating factors: intent to cause suffering, (4c); and the murder was committed during a robbery, aggravated sexual assault, or a burglary (4g). The State introduced photographs of V's body and testimony from the medical examiner that the V remained conscious after the frontal wounds were inflicted and that V lived several minutes after sustaining the fatal back wounds.

The defense served mitigating factors 5(a), emotional disturbance; 5(c), Williams's age; 5(d) intoxication, mental disease; and 5(h), any other factor.

The jury found present mitigating factor 5(h), any other

factors. The jury did not find emotional disturbance, 5(a), age, 5(c), or mental disease, 5(d).

The jury found that all of the aggravating factors outweighed beyond a reasonable doubt the mitigating factor.

Williams was sentenced to death on the purposeful and knowing murder. The three counts of felony murder merged with the murder charge. On the robbery, Williams received 20 years, minimum 10. On the aggravated sexual assault, Williams received 20 years, minimum 10. On the burglary Williams received 10 years, minimum 5.

Williams appealed his conviction to the New Jersey Supreme Court. The conviction and sentence were overturned by the court because of the inadequacy of the voir dire of the prospective jurors combined with the erroneous refusal to dismiss a prospective juror for cause. State v. James Williams, 113 N.J. 393 (1988).

Revised 8/5/91

#2795, 3006

STATE V. ZOLA

D had worked as a maintenance man in V's apartment building. V filed a complaint against D and, partly for this reason, D was fired. D broke into V's apartment, beat, scalded and then strangled her. Jury verdict: murder 5/31/84. Penalty trial. Two aggravating factors found: 4c, 4g. Two mitigating factors found: 5a, 5h. Death.

The following factual summary in quotations is excerpted from State v. Zola, 112 N.J. 384 (1988).

"This case arises from the particularly abhorrent killing of a frail 75-year-old widow who lived in a garden apartment complex where the defendant had been a caretaker. A neighbor saw the victim, (V) [redacted], return to her apartment from a hairdresser appointment on the morning of Thursday, January 13, 1983. V's [redacted] last known telephone conversation took place with her sister at 6:30 that evening; her sister later noted that V [redacted] had not sounded like herself and that her telephone had been hung up abruptly. V [redacted] did not attend her regular social meetings that Thursday afternoon and that Friday. The newspapers from January 14 to 17 piled up outside the apartment door; V [redacted] did not answer the door to pay the carrier.

"On the morning of Monday, January 17, 1983, a worried neighbor had the superintendent of the complex enter the apartment. V's [redacted] body was found spread-eagled on her bed, clothed

only in a girdle and wrapped in a sheet. Leather thongs had been tied to the victim's left wrist and right ankle; her right arm and left leg were found close to thongs attached to the corresponding corners of the bed. She had been wounded in the throat, in the left temple, and in the nose; her face had bled profusely; her throat and neck had been bruised.

"Sixty percent of the victim's body was missing skin and showed signs of scalding; several pieces of the victim's skin were found in the room. No sign of trauma to the victim's sexual organs was detected, nor was semen found in the victim's body. The County Medical Examiner ascribed her death to asphyxiation, which was later identified as the result of manual strangulation; the time of death was estimated to be late on Thursday, January 13. The victim's purse was missing and was never recovered.

"An anonymous tip and a check of fingerprints and palm prints recovered at the crime scene led police to James Zola, a former maintenance man in the apartment complex. While employed by the complex, Zola's poor attempt to install V's [redacted] kitchen sink had led her to complain to his superior; Zola had later been fired, perhaps in part because of this complaint, along with other deficiencies in work habits." 112 N.J. at 391-92.

"Defendant did not testify at trial, but through the testimony of a psychiatrist and a psychologist, introduced his account of the killing: according to defendant, he had paranoically imagined, while under the influence of alcohol and drugs, that he was being pursued by police and police dogs. After taking refuge in the

basement of the apartment complex, defendant had broken into [redacted] empty apartment. His version was that when she returned he had grabbed her and asked her where the police were. To present [redacted] from signaling the police, defendant tied her up and hit her head. Fearing that he had inflicted a fatal wound, defendant said that he had unsuccessfully attempted to revive [redacted], first by trying to give her food and drink, then by taking her clothes off and putting her in the shower. He said he went to check the door, leaving his victim in the bathtub with scalding water running; panicked by [redacted] condition when he lifted her out of the bathtub, he had put her on the bed to cover her up, and then had walked home in a daze and gone to sleep." 112 N.J. at 392-93.

"Defendant relied on the guilt phase testimony of defense experts who had described his broken home and troubled past: as a youth defendant had been emotionally disturbed and addicted to drugs, and had been sexually abused several times. Defendant's son had died in 1981, possibly because of the drug addiction of defendant's then-wife. A psychiatric social worker whose testimony had been excluded as inexpert during the guilt phase corroborated this account from her own interviews with defendant and from her review of his state records. Defendant's father testified on his behalf, but defendant's mother became upset and left the courtroom. In addition, two clergymen who had visited defendant regularly since his arrest agreed that his turning to religion while incarcerated indicated his good potential for rehabilitation." 112

N.J., at 393-94.

[redacted]

James E. Zola was charged with own-conduct purposeful, knowing murder, burglary, aggravated sexual assault, kidnapping and robbery. A notice of factors was served for the intent to cause suffering, 4(c) and contemporaneous felony, 4(g) statutory aggravating circumstances. In a capital trial, which lasted from May 8, to May 31, 1984, Zola was found guilty of all charges. At the penalty trial, held from June 4, to June 6, 1984, the jury was charged on both factors, and found both to exist. The jury was charged on mitigating factors extreme emotional disturbance 5(a); Zola's age, 5(c); mental disease or defect 5(d); and any other factor 5(h). The jury found that the 5(a) and 5(h) factors existed, and that they did not outweigh the aggravating factors. Zola was sentenced to death. As to the non-capital counts, counts four and three (the aggravated sexual assault counts) were merged, and Zola received an aggregate 80 years, with a minimum parole ineligibility period of 40 years. This sentence was made consecutive to the death sentence. Zola appealed his death sentence to the Supreme Court. The Supreme Court affirmed Zola's murder conviction and the convictions on the related offenses. The Court reversed the death sentence, and remanded the case for a new sentencing proceeding because the trial court failed to instruct the jury that the aggravating factors must outweigh the mitigating factors beyond a reasonable doubt. The trial court granted Zola's

motion for new trial based on newly discovered evidence. Thereafter, Zola pled guilty to murder and received a life sentence. There was no penalty trial. State v. Zola, 112 N.J. 384 (1988).

Table of Cases

Table of Cases

Revised 8/7/91

#0093

STATE V. ANDERSON

D (20 yr., M) on porch with several others. Argument erupts with V, NDV1 and NDV2. The victims walk up street, porch group follows and shots were fired at Vs. V1 fatally wounded and NDV1 seriously injured in 2nd barrage of shots. [redacted]r. Jury verdict: murder 10/3/83. Penalty trial. One aggravating factor found: 4b. Three mitigating factors found: 5b, 5c, 5h. Life.

On September 11, 1982 D's sisters were sitting on the front porch of their mother's house with a friend. The V and NDV1/W1 approached the porch and asked about NDV1/W1's brother-in-law. D's sister told them that NDV1/W1's brother-in-law did not live there. The girls asked V and NDV1/W1 to leave but they refused. The girls threatened to call the police.

As D, Bruce Anderson, a 20 year old male, approached his home, he saw the V and NDV1/W1, whom he did not know. D heard V and NDV1/W1 cursing at the girls who asked D to ask V and NDV1/W1 to leave. D did ask them to leave, but they did not, instead they began cursing at him and were very nasty. D asked V and NDV1/W1 to leave again and, when they did not leave, D went into the house and came out with a BB gun. D asked V and NDV1/W1 to leave, instead of leaving, they stood in front of the house hollering and cursing at D ". . . go ahead, shoot me."

D alleged that since V and NDV1/W1 did not leave when he

approached them with the BB gun, that he went to Co-D's house and asked for a gun. Present at the house were Co-D and two of his brothers. D claims one of the three men gave him a silver gun. D, Co-D and brother (W2) left the house and walked to the middle of the street and saw V and NDV1/W1 about a block away. D held the gun in his hand, shot four times over the heads of V and NDV1/W1 into the trees. During which time D contends Co-D was hollering at D and telling him to give Co-D the gun. When D did not give Co-D the gun, Co-D ran back to his house and returned with a gun. At this point D claims the incident between himself and the two men was over because the men were leaving the street. The Co-D ran towards the V and NDV1/W1 down the street. Co-D shot V and NDV1/W1. Then D claims he, Co-D and W2 ran away from the scene. As they were running through the alley, Co-D told D to go to Co-D's mother's house. When Co-D arrived home, D gave him the silver gun and Co-D took the gun into the house.

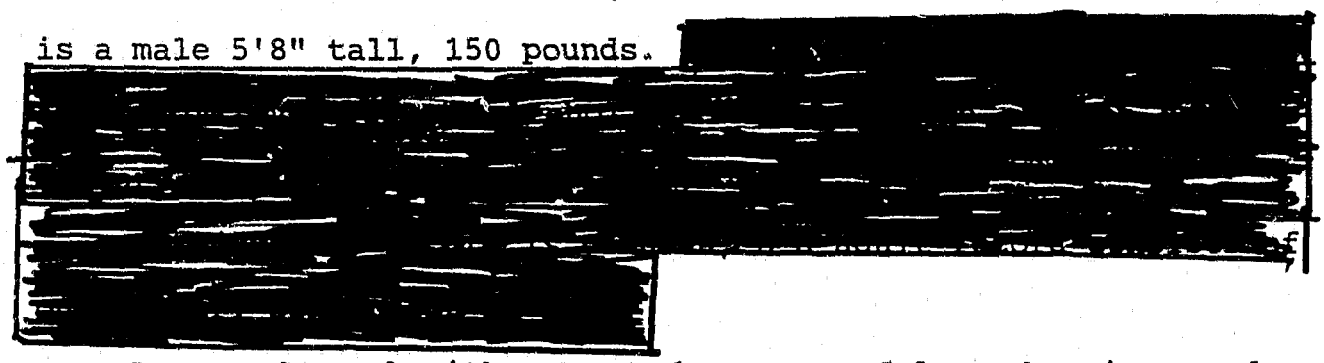
At the trial, Co-D, Vincent Ray, age 23, testified that D came to his home carrying a silver gun. Co-D claims he told D he was not getting involved and D left Co-D's house. Co-D then alleges he got dressed and ran outside and caught up with D and D began shooting. Co-D claims he heard two sets of shots. Co-D testified that he saw the V and NDV1/W1 hit by the second series of shots, then he ran away because he was scared, although he had done nothing wrong. Co-D denied that D asked him for a gun, that he supplied D with the silver gun, or that he encouraged D to shoot the gun. Co-D denied ever speaking to D's sister or having a gun.

D's older sister (W3) testified at the trial that she was out of town when the incident occurred. When she returned home and heard what happened, she went to Co-D's house and asked him what happened. W3 claims Co-D appeared to be upset and looked like he was under the influence of drugs. Co-D admitted he was the one who fired the fatal shot.

Three witnesses corroborated D's version of the shooting. The testimony of NDV1/W1 indicated he only saw the D with a gun, but he did not see the D shoot V and NDV1/W1.

V was killed by one shot in the throat. The autopsy revealed that the gun fired from approximately one foot away from V's skin. NDV1/W1 was injured by one shot in the back.

D was born May 29, 1962, in Camden, NJ. D left school after attempting to repeat the 7th grade. D's only employment was as a casual truck unloader with Campbell Soup. No military service. D is a male 5'8" tall, 150 pounds.



D was charged with: Count 1, purposeful or knowing murder N.J.S.A. 2C:11-3(a)(1) or N.J.S.A. 2C:11-3(a)(2); count 4, accomplice to murder, N.J.S.A. 2C:2-6; count 5, aggravated 2nd degree assault N.J.S.A. 2C:12-1(b)(1); count 6, possession of a weapon with purpose to use it unlawfully, N.J.S.A. 2C:39-4; count 7, possession of a handgun, N.J.S.A. 2C:39-5(b).

Conviction obtained on murder, possession of weapon for unlawful purpose, aggravated second degree assault, and possession of a handgun on October 3, 1983.

The State served aggravating factor 4(b), grave risk. In the penalty phase, the grave risk factor was found. Three mitigating factors were found: V participated in death 5(b), D's age 5(c), and any other factor 5(h). Substantial assistance 5(g) was not found. The jury found that the mitigating factors outweighed the aggravating factors. Defendant was sentenced on 11/18/83, on count 1 for a term of life with a period of parole ineligibility of 30 years: count 5 a term of five years to run concurrent to count 1; count 7 a term of five years concurrent to counts 1 and 5.

Revised 8/5/91

#0124

STATE V. BALISNOMO

V called D to come pick him up. D picked up V who was carrying a bag of cocaine. D drove to a service area. D shot V 4x in the head and stole the drugs. No priors. Jury verdict: murder 8/10/84. Penalty trial. One aggravating found: 4c. One mitigating factor found: 5f. Life.

The following quotation is taken from the unpublished Appellate Division opinion. 5/7/87. A-86-84T4.

"The facts developed during this 23-day trial are extensive and involved. On December 16, 1982 at about 3:55 p.m., a truck driver, Lelan Haas, entered the Vince Lombardi Service Area on the New Jersey Turnpike, Ridgefield, Bergen County. While leaving the turnpike Haas noticed a grayish or silver car backing up at a high rate of speed. Haas looked where the car had been and noticed a body lying on the exit ramp. He called for help on a citizen's band radio, and waited for the State Police who arrived about 10 minutes later.

"State Troopers Suarez and Cobb were the first State Police Officers to arrive on the scene. Trooper Cobb saw a white male, who was still alive but bleeding, lying on a small access road. Trooper Cobb observed blood on the surrounding grass and some broken auto glass. He then interviewed Haas, called for an ambulance, and secured the scene.

"Detective Sergeant Robert Paganelli of the New Jersey State

Police arrived and took charge of the investigation. After viewing the scene, Detective Paganelli went to Holy Name Hospital in Teaneck, where the victim had been taken. He observed that the victim, (V) who was identified as [redacted] had several bullet holes on the left side of his face. He also found several narcotic substances in V[redacted]'s clothing. Detective Paganelli learned from V[redacted]'s family at the hospital that V[redacted] had been with defendant. Detective Paganelli contacted the Teaneck Police Department to help locate defendant, who was from Teaneck...."

"Investigators Siorsky and Mager of the Teaneck Police Department were then dispatched to locate defendant. After a forty-five minute wait, they stopped a vehicle with two occupants which was circling the block around the apartment complex. Investigator Sikorsky recognized the passenger as defendant.

"While conducting a protective patdown search of defendant, Investigator Sikorsky felt a lump in defendant's right jacket pocket which defendant admitted was cocaine. A small glass vial containing a white powder which appeared to be cocaine was taken from defendant who was then arrested for possession of controlled dangerous substance. Defendant was then transported to Teaneck police headquarters.

"At the police station, Investigator Sikorsky read defendant his Miranda rights from a sheet which defendant initialed and signed. While Sikorsky was preparing the arrest documents, defendant told him that he was scared. Defendant admitted that he was present when [redacted] V[redacted] wa shot and that he and V[redacted] were best

friends...."

"...Defendant then stated that he was with V[redacted] when he was shot and that V[redacted] had offered defendant $1,000 to take him to the Vince Lombardi service area. Defendant stated that he had borrowed a car from John Botteri to take V[redacted] to the service area. At the service area a black van pulled up behind them. Someone then shot V[redacted] from the passenger's side, and defendant backed up his car and left the parking lot. As defendant left the lot he pushed V[redacted]'s body out of the car and went home to clean up and repair the car...."

This opinion then proceeds (p. 5-13) to recount the various different stories given by D to authorities over the course of investigations, including that the killer was a Columbian immigrant hairdresser who lived below D in his apartment building.

The opinion continues on p. 13, "Dr. Louis Napolitano, the assistant medical examiner for Bergen County, testified as an expert medical examiner. Dr. Napolitano on December 22, 1982, performed a post mortem examination of V[redacted], and concluded that he died due to gunshot wounds to the head. He testified that the forensic evidence was consistent with a conclusion that V[redacted] was shot by someone who was to his left; that V[redacted] did not realize that he was to be fired upon, as all four bullet entrance wounds were to the left side of his face, and none to the front of his face; that if shots were fired from outside the car on the driver's side they would have hit the driver first; and, that no shots could have been fired at the victim from the passenger's side of the car. Dr.

Napolitano further stated that there were burn marks well-depicted in photographs of the deceased, and that the skin was clearly retracted where it had been singed. He further opined that the shooter would have been left-handed.

"In his defense at trial, defendant presented the testimony of himself, his spouse, Sonia Balisnomo, his mother, Margaret Balisnomo, and George Fassnacht, a forensic firearms examiner. Defendant testified that Edguardo Pertuz shot [redacted] V[redacted], and that Pertuz ordered defendant at gunpoint to hand over the bag of cocaine. Defendant admitted to being in possession of the vial of cocaine which Investigator Sikorsky retrieved, but claimed that V[redacted] had given it to him.... George Fassnacht, defendant's expert, testified that, in his opinion, the forensic evidence was consistent with a conclusion that [redacted] V[redacted] was shot by someone outside the car on the driver's side. Fassnacht also testified that the trajectory of the bullets indicated that the gun was held level or slightly above the level of the decedent's head. On cross-examination, Mr. Fassnacht conceded that if the wounds did have burn marks, then the gun would have been eight inches away when fired. Defendant also presented the testimony of several character witnesses." End of Excerpt.

Defendant is 26 years old. His educational background is unknown, but D was employed at the time of the offense.

D has no prior criminal record.

D was charged with own-conduct capital murder (count 1), robbery and felony murder (count 2), possession of a weapon for an

unlawful purpose (count 3), possession of a weapon without a permit (count 4), possession of cocaine with intent to distribute (count 5), possession of an ounce or more (count 6), possession of cocaine at time of arrest (count 7), and hindering apprehension and giving false information (counts 8-11). A notice of factors was served for 4(c), extreme suffering. At the guilt phase of trial, On August 10, 1984, D was found guilty on all counts. At the penalty phase, factor 4(c) was found, and the jury was charged on the sole mitigating factor 5(f), no criminal history, and it was found. On September 24, 1984, D was sentenced to a life term with a minimum of 30 years before parole consideration. D also was fined $5,000 to be paid to the Violent Crimes Compensation Board.

Revised 8/6/91

#0140

STATE V. BARONE

D kidnaps V from a shopping mall. D beats V, fracturing her skull, then takes money, car and credit cards. Jury verdict: murder 2/22/88. Penalty trial. Two aggravating factors found: 4f, 4g. Two mitigating factors found: 5c, 5h. Life.

On the afternoon of August 21, 1987, the victim (V) left her place of employment and drove to a nearby shopping center to meet a friend. V's co-workers became alarmed when she failed to return to work. The co-workers contacted V's family who notified the police. Fifty-two days after V was reported missing, her body was discovered several miles from the mall in a wooded area. V's skull was separated from her body. Cause of death was a fractured skull due to bludgeoning.

Several days later, V's car was discovered in another state and in the possession of defendant (D), Jamie Barone, a 26 year old male. D had used several of V's credit cards in various states. Police investigation revealed that D had been at the shopping center which V visited at the time of her disappearance. An eyewitness claimed to have seen V and D together at the mall. D claimed that another individual was driving V's auto and agreed to give him (D) a ride. D further claimed that the same individual drove with him to the state where D was apprehended, and ultimately gave him V's credit cards and auto. To the date of conviction, D denied any participation in the offense.

D is a 26 year old man. D earned college credits while enlisted in the military. [redacted]

D was charged with purposeful and/or knowing murder, kidnapping, robbery, unlawful possession of a weapon and felony murder. D was convicted of all charges on February 22, 1988. A notice of factors was served for the 4(f), escaping apprehension and 4(g) contemporaneous felony statutory aggravating factors. Both factors were subsequently found by a jury at trial. The defense alleged three mitigating factors: 5(a), extreme mental or emotional disturbance; 5(c), age of defendant; and 5(h), any other relevant factor. The jury found two factors present, 5(c), 5(h), they did not find the 5(a) factor. The jury was unable to reach a decision during the weighing process. D was sentenced to life imprisonment with a 30 year period of parole ineligibility. The felony murder charge was merged with the murder charge for sentencing purposes. D received 30 years with a 15 year period of parole ineligibility on the kidnapping charge, and 20 years with a 10 year period of parole ineligibility on the robbery charge. The kidnapping sentence was made consecutive to the murder sentence and the robbery sentence was made consecutive to the kidnapping sentence.

Revised 8/5/91

#0177

STATE V. BENGA

D (61 yr., M) fired 8 shots in presence of 200 people. Killed V, his former paramour with 4 shots. Hit bystander with bullet. D said V rejected and embarrassed him. No priors. Jury verdict: murder 6/3/86. Penalty trial. Two aggravating factors found: 4b, 4c. Four mitigating factors found: 5a, 5c, 5d, and 5f. Life.

Defendant, John Benga (D), a 61 year old male, and victim (V), a female, age 40, had recently ended a several year relationship. While V wished only to remain friends, D hoped to get back together with, and eventually marry, V.

Just after midnight on October 21, 1984, D fired eight shots from a .380 automatic gun during a celebration at a dinner dance. V was present at the celebration. Approximately 200 people were present. V was hit by four bullets and died within 15 minutes. NDV1/W1 was shot one time in the hip. D fired two bullets into his own chest, missing all vital organs.

D testified that he did not know that V was planning to attend the affair. He further stated that V had embarrassed and rejected D in front of D's friend. D claimed that he had the weapon in his possession because of his job which requires him to carry large amounts of cash.

The following quote is taken from the unpublished Appellate Division opinion. 4/18/89. A-372-86T4.

"The defense offered two expert witnesses at trial. Dr. Harry Brunt testified that defendant suffered from recurrent "major depression ... of major proportions" and "organic brain syndrome." Dr. Brunt was of the view that defendant "wasn't even aware of the nature and quality of the act and certainly was not aware what he did was wrong because of his psychiatric organic brain syndrome." He explained that people with organic brain syndrome are "more susceptible to alcohol" and "are easily irritated," and that defendant's major depression was "of such severity that he would not realize what he did was wrong." Dr. Brunt concluded that "alcohol ingestion ... on top of all the basic things" may have contributed to defendant's conduct after [redacted] had rejected him. In addition, Dr. Donald McDonald, a licensed psychologist, testified that his testing of defendant disclosed that, particularly as a result of his wife's death and his own poor health, defendant suffered from "significant mental deterioration" which may have been caused by "some sort of organic deterioration" which predated the shooting.

"In response to the expert testimony offered by the defense, the State called two witnesses in rebuttal. Dr. Irwin Perr testified that after interviewing and testing defendant he made a "diagnosis of adjustment reaction, adjustment disorder with mixed disturbance of emotions and conduct." Dr. Perr concluded, however, that defendant did not have "an organic brain syndrome" or "organic brain damage". He found no "cognitive defect", and concluded that defendant suffered an "adjustment reaction which would fluctuate in

accordance with what's going on in his environment ...." The doctor further stated that

> [t]he big thing was the continuing stormy relationship with this woman which had been going on and involving threats and behavior patterns well before this which were somewhat similar with threats, pounding on doors, threatening with guns and so forth.
>
> ...
>
> He does not have any severe mental disorder which would be characterized as a mental disease which would interfere with his capacity to know right from wrong and to know the nature [of] what he's doing in terms of the way psychiatry operates at this point.

In essence, Dr. Perr opined that "I do not believe that he had a defective reason from disease of the mind which would have interfered with that capacity" "to know the nature and quality of the act he was doing or if he did know the nature and quality of his act that he did not know that what he was doing was wrong," and further concluded that "there was no mental disorder that would preclude defendant from acting knowingly or purposely." Dr. R. K. Bansil, a resident in psychiatry at the University of Medicine and Dentistry where defendant was admitted after the shootings,[4]

---

[4]In addition to shooting [redacted], defendant also shot Eva DiGioia, the victim of the aggravated assault, and then shot himself twice in the chest. Defendant asserts in Point III of his brief that Dr. Perr should not have been able to refer to hearsay statements embodied in a hospital report. The brief addresses the statements of defendant's sister, and not any report by Dr. Bansil. There is no attack on Dr. Bansil's testimony and no claim that the physician-patient privilege was violated.

indicated that defendant advised him that the shooting of [redacted] resulted from an "impulse because he felt so much humiliated and insulted" by her." End of Excerpt.

The D is a 61 year old male who was educated in Hungary and earned a college degree in Business Administration. D was last employed as a district sales manager for a newspaper, [redacted]

D has no history of criminal activity.

D was charged with own conduct, purposeful, knowing murder, aggravated assault and possession of a weapon for an unlawful purpose. He was found guilty of all counts on June 3, 1986. At the penalty phase, the State had served aggravating factors: 4(b), grave risk; and 4(c), extreme suffering. Defense had served mitigating factors: 5(a), emotional disturbance; 5(c) age; 5(d), mental disease and defect; and 5(f), criminal history. All aggravating and mitigating factors were found.

D was sentenced to thirty years without parole.

Revised 8/7/91

#0190, 2801

STATE V. BERTINO

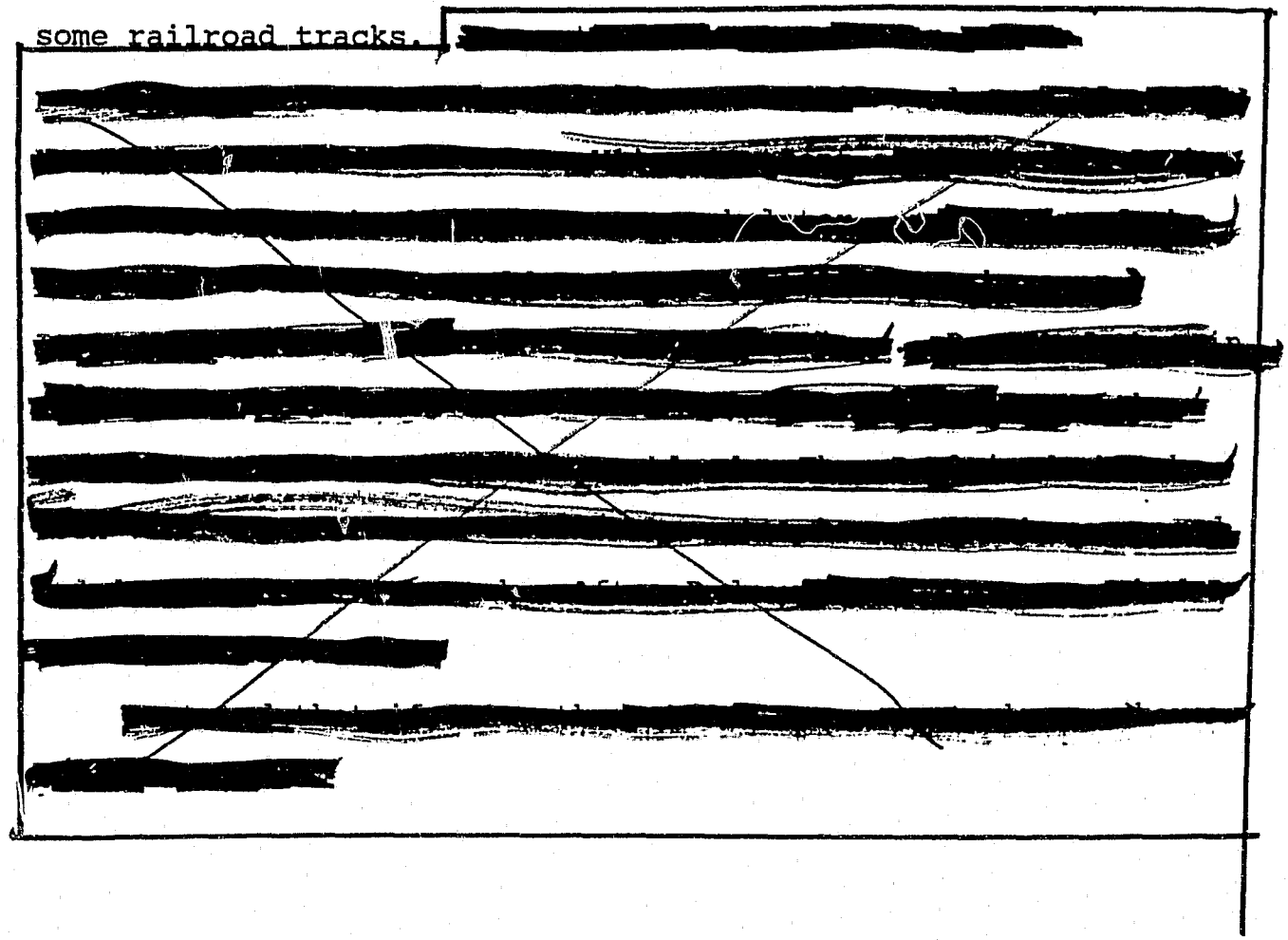
D hit V1 (girlfriend) in head with toy truck and drowned her after she told him to leave apartment. D then drowned V2 (girlfriend's 2 year old son). No priors. Jury verdict: murder 7/14/87. Penalty trial. One aggravating factor found for V1: 4c. Life. One aggravating factor found for V2: 4g. Three mitigating factors found for V1 and V2: 5a, 5f, 5h. Life.

On December 29, 1985, defendant Fabrizio Salvatore Bertino (D), a 22 year old male, went to V1's stepfather's (W1's) home. D (V1's boyfriend) asked W1 if he had seen V1, explaining that nobody had answered D's knocks at V1's apartment. W1 suggested that D ask V1's sister about V1's whereabouts. V1's sister had not seen V1. W1 suggested that D drive W1 and V1's mother (W2) to V1's apartment. They knocked at V1's door, but there was no answer. W1 opened a window with a pocket knife and entered the apartment. After finding blood on various items, W1 called the police. When the police arrived, D disappeared. W1 and the officers found V1's body in a garbage bag, covered with garbage, in an alley.

W1 told the police that D was with V1 earlier in the day. He also reported that V1's two year old son (V2) by a former paramour was missing.

One of V1's neighbors stated that he had seen D carry V2 out of the building and put him into a 1977 white Grand Prix.

An informant told one of the officers where D could be found. Four officers proceeded to that address and discovered D hiding under a bed. D was arrested and read his rights. At headquarters on December 30, 1985, D admitted killing V1 after she told him to leave their apartment. (D sometimes referred to the apartment as V1's and sometimes as both of theirs.) D stated that he struck V1 with a toy truck and then drowned her. (The autopsy report does not list drowning as the cause of death. Only blunt force trauma to the head is mentioned.) He also admitted placing V's body in garbage bags outside of the apartment. D further confessed to killing V2, by drowning him in the bathtub. D stated that he hid V2's body in garbage bags near some railroad tracks.



D is single and childless. After graduating from high school, D attended a technical school where he studied automotive and diesel repair. He has maintained regular employment since the age of 13.

D has no prior criminal record. D was charged with two counts of purposeful and knowing murder and on July 14, 1987, was found guilty on both counts. State had served aggravating factor: 4(c) extreme suffering for the murder of V1 and 4(g) contemporaneous felony for the murder of V2. The 4(c) factor was found for V1 and the 4(g) factor was found for V2. Mitigating factors: 5(a), emotional disturbance; 5(f), no significant criminal history; and 5(h), any other factor were served and found for both victims. The jury could not reach agreement on the weighing of the factors. D was sentenced on September 11, 1987, to a life term with a 30 year parole disqualifier for the murder of V1, and a consecutive life term with a 30 year parole disqualifier for the murder of V2.

Revised 8/1/91

#2800

STATE V. BIEGENWALD (II)

V (42 yr. old male) wanted to hire Co-D to kill someone for $25,000. D went with Co-D to meet V. V and Co-D argued over terms. V threatened Co-D with a gun and they struggled. The gun went off, wounding V. Co-D tried to shoot V, but could not. D shot V 5 times in the head. Jury verdict: murder 2/15/84. Penalty trial. One aggravating factor found: 4a. Two mitigating factors found: 5d, 5h. Life.

This following quotation is taken from an unpublished Appellate Division opinion. 3/5/87. A-3494-83T4.

"This is the factual scenario presented by the State. On September 21, 1982 the defendant Biegenwald and the State's principal witness, alleged "hit-man" Dherren Fitzgerald, drove to the "Avon/Belmar area" to meet with [redacted] to arrange the terms of a "hit" which [redacted] wanted Fitzgerald to perform for $25,000. At the meeting place Fitzgerald joined [redacted] in [redacted]'s car and they drove to Fitzgerald's apartment with Biegenwald following in Fitzgerald's car. At Fitzgerald's apartment, before Biegenwald arrived, a discussion ensued between Fitzgerald and [redacted] over the terms of the "hit." Fitzgerald refused to follow [redacted]'s wishes that [redacted] be present for the crime because he wanted no witnesses at all. [redacted] apparently did not appreciate Fitzgerald's complaints and his refusal to do the job so he took off his jacket and "displayed" a revolver. The men wrestled over the gun and Fitzgerald claims it went off, wounding [redacted] in either the shoulder

or the neck, causing him to bleed. Fitzgerald then reached for a Luger .22 caliber pistol which had a silencer on it. He tried to cock the gun with one hand since his other hand was occupied with fighting Ward but was unable to do this, so he hit [redacted] in the head with the barrel of the Ruger. This bent the barrel so badly that Fitzgerald claims the gun was rendered inoperable.

"The struggle then spilled out onto the porch and a lot of kicking and punching occurred over the next two minutes ending with [redacted] on his back and Fitzgerald on top of him. Fitzgerald claims Ward still had a gun in his hand at this point. Fitzgerald stated that defendant then came out of nowhere and shot [redacted] five times in the head with a .22 Beretta causing Fitzgerald to jump off of [redacted]. [redacted] was not making a sound at the time according to Fitzgerald and he and Fitzgerald slipped down off the porch onto a concrete landing below. A neighbor, not one of the witnesses at trial, asked what was going on and apparently was satisfied when Fitzgerald told her that [redacted] was drunk. When the neighbor went away Biegenwald and Fitzgerald loaded [redacted] into [redacted]'s Lincoln and Fitzgerald drove the car to the Ocean Mall.

"According to Fitzgerald, Biegenwald showed up at the mall a while later and told Fitzgerald that it was safe to come home since no police had shown up since the shooting. Fitzgerald then drove the body back to his house and left it in his garage until that night when he buried it at Mount Calvary Cemetery in Sea View Square. Both men eventually drove the Lincoln to Brooklyn where they abandoned it.

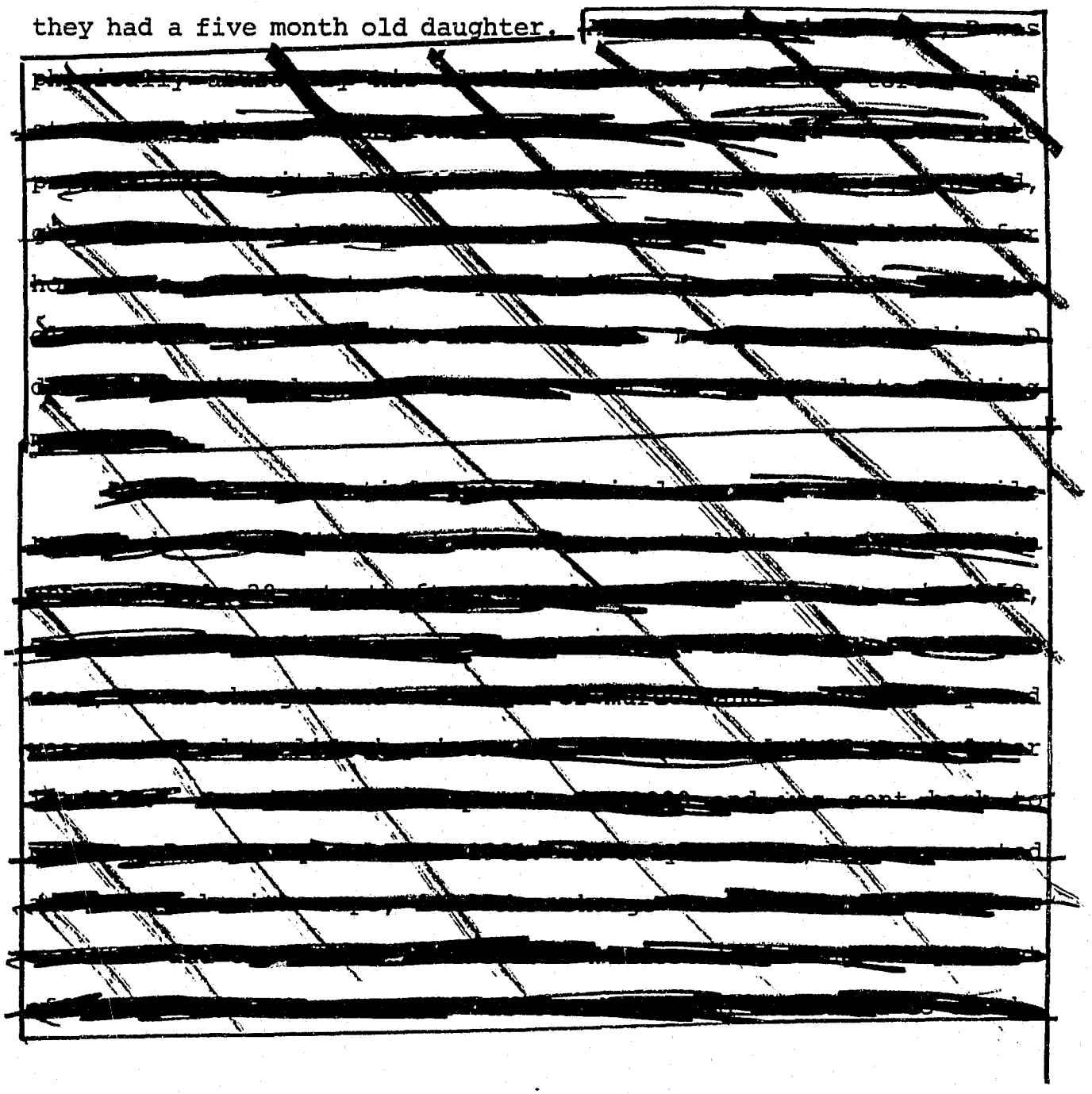
"A neighbor of Fitzgerald, Nannette Jefferson, testified that on the day of the incident she heard an argument going on and eventually looked outside and saw a man [redacted] lying on the ground bleeding and screaming with Fitzgerald either beside him or sitting on his chest and a man that appeared to be Biegenwald at [redacted]'s feet holding a small gun with an "attachment" (probably a silencer) on it. This could be either the gun which was rendered inoperable when Fitzgerald hit [redacted] or the Beretta which was later found without a silencer but grooved to fit one. Jefferson never saw or heard a shot fired.

"Another State's witness, Theresa Smith (Susco), who lived with defendant and his wife testified that Biegenwald confessed the shooting to her and told her he was paid $1,200 for the "hit." Her credibility was seriously attacked on cross-examination when she admitted that she used to "do drugs" with Fitzgerald and that she hallucinates sometimes from the drugs.

"The weapons involved in the incident were found in Fitzgerald's apartment in a search conducted on January 22, 1983. This search produced an arsenal of weapons including the murder weapon -- the Beretta. Fitzgerald explained this by stating that although the gun belonged to Biegenwald (a gift from a trip which Fitzgerald took to Florida), Fitzgerald was always entrusted with cleaning the weapon, and, at the time of the search, the gun was in his apartment to be cleaned. Fitzgerald eventually cooperated with the police and showed them the location of the body but he did so only after signing a plea agreement dropping most of the serious

charges." END OF EXCERPT.

At the time of the offense, D, 42 years of age, lived in an apartment with his wife and W2. Prior to his arrest, D was employed as a construction worker for a contracting company. D dropped out of high school in 1956. [redacted] D married his wife in 1980, and they had a five month old daughter. [redacted]



In the present case, D was charged with capital murder (count 1); felony murder (count 2); robbery (count 3); possession of a weapon for an unlawful purpose (count 4); unlicensed possession of a handgun (count 5); possession of a handgun by a convicted felon (count 6); possession of a firearm silencer (count 7); and theft of a motor vehicle (count 8). On July 5, 1983, the Prosecution served a notice of aggravating factors for 4(a), previous murder conviction. On July 25, 1983, the Defense served a notice of mitigating factors for 5(d), defendant's capacity; and 5(h), any other factor. On January 10, 1984, the judge granted D's motion for a change of venue.

A jury trial began on February 6, 1984. The judge severed count 6 for the purposes of trial, and granted D's motion for judgments of acquittal on counts 2, 3 and 8. On February 15, 1984, the jury convicted D of counts 1, 4, 5 and the lesser included offense of theft on count 3. D was acquitted on count 7.

The penalty phase of the trial was held on February 16 and 17, 1984. The jury found aggravating factor 4(a), and mitigating factors 5(d) and 5(h) present, but were unable to reach a verdict on sentencing, so for the murder (count 1), D was sentenced to life imprisonment with a 30 year parole ineligibility. On the remaining charges, D was sentenced as follows: for count 3, 6 months consecutive; for count 5, 5 years consecutive; and for count 4, 10 years concurrent. On March 1, 1984, D waived his right to a jury trial on count 6. The judge tried D on the proofs from the trial,

found D guilty, and sentenced D to an additional 18 months. On December 17, 1986, D appealed his conviction, but on March 5, 1987, the Appellate Division affirmed the trial court's judgment.

Docket Number: A-3494-83T4

Revised 8/6/91

#0209

STATE V. BLACKMON

V's cousin returned home. V dead in pool of blood, no apparent motive. Repeated stabbing, beating, mutilation and sexual assault. [redacted] No violent priors. Jury verdict: murder 2/18/88. Penalty trial. Two aggravating factors found: 4c, 4g. Five mitigating factors found: 5a, 5c, 5d, 5f, 5h. Life.

At approximately 9:30 p.m. on May 18, 1985, V's cousins, (W1 and W2) returned to their home. Expecting their cousin, V, age 23, to be home with her two year old son, they were surprised to find the house completely dark and the front door unlocked. Making their way through the darkened house, the girls reached the kitchen and turned on a light. They noticed a human body lying in a vast amount of blood on the kitchen floor. Terrified, the girls ran screaming from the house, not realizing that the body was their cousin's. As they fled, the girls heard a male voice coming from the second floor, saying "Hush, hush. Be quiet. Come back." Hysterical, the girls ran to a neighbor's house and the police were called. The police arrived at 9:40 p.m., and upon entering the premises, they found V lying on her back in a large pool of blood. V's dress had been pulled up above her waist and she was nude from the waist down. In addition, the entire kitchen was splattered with blood. Police searched the house and found V's son sleeping upstairs. He was not injured, but was covered with V's blood.

About one hour after the police arrived at V's home, a

neighbor who lived a block away, noticed D, Craig Blackmon, a 22 year old male (who was naked), trying to enter a parked car. Failing to gain access to the car, the D ran into the neighbor's yard. The neighbor grabbed D, and after a brief struggle, he brought D to the police stationed outside of V's home. One of the police officers then noticed that D had blood on his feet.

Meanwhile, detectives inside V's house found men's clothing, sneakers, and personal identification cards by V's body. The clothes and sneakers were heavily stained with blood, and the identification cards bore D's name.

On May 19, 1985, at about 4:30 p.m., D gave a written confession to a detective. D detailed the various things he did to V -- how he stabbed her, beat her, kicked her, tied her up, and urinated on her. [redacted]

An autopsy showed that V died from a variety of causes. V had been badly beaten, resulting in a fractured jaw, subdural and subarachnoid hematomas in the brain, and various bruises and abrasions. V also suffered numerous stab wounds, including deep wounds to the back of her neck, a large gaping wound on the side of her throat, and many defense wounds on both hands and arms. In addition, V had 3 penetrating stab wounds in her genital area, including one that penetrated ten inches into her vagina. Also, every bone in V's neck had been broken. Lab tests confirmed the presence of urine on her dress and bra.

D, at the time of the offense, lived with his mother. While in high school, D participated in sports and other activities and was admitted to the "Academic All American." After graduating, D attended college for a short while, then worked at a restaurant. At trial, it was alleged that D had used drugs since age 12, and had experimented with practically every illegal drug since that time. [redacted] D had one prior arrest in 1984 but he was not convicted.

D was charged with two counts of purposeful and knowing murder, felony murder, two counts of aggravated sexual assault, and a weapons offense. At trial, D did not deny killing V, but claimed that he was so intoxicated with PCP that he was unable to act purposefully and knowingly. The jury, however, rejected D's contentions and he was convicted on all six counts on February 18, 1988. The 4(c), wanton, vile; and 4(g), contemporaneous felony aggravating factors were served and found by the jury. The 5(a), emotional disturbance; 5(c), age; 5(d) mental disease or defect; 5(f), prior record; and 5(h), any other relevant factor mitigating factors were served and found. The jury found that the aggravating factors did not outweigh the mitigating. On the first murder charge, D was sentenced to life imprisonment, with a minimum parole ineligibility of 30 years. The second murder charge and the felony murder charge merged with the first murder charge. On the first aggravated sexual assault charge, D was sentenced to 20 years with a minimum parole ineligibility of 10 years. That sentence is to

run consecutive to the sentence for murder. The remaining two counts, aggravated sexual assault and the weapons offense, were merged with the first aggravated sexual assault conviction.

Revised 8/6/91

#0231, 2825

STATE V. BOOKER

D goes on three day crime spree. First, D rapes his female neighbor and steals her car. Then D runs down a male pedestrian in the stolen car and steals his wallet. D then enters the home of two lesbian lovers, rapes, sodomizes, gags, strangles and beats one of the lovers; then, when the other comes home, stabs the other lover to death. The following day, D enters the home of an elderly woman and rapes her. Jury verdict: murder 7/1/87. Penalty trial. Three aggravating factors found for V1: 4a, 4c, 4g. Three aggravating factors found for V2: 4a, 4c, 4f. Two mitigating factors found for V1: 5a, 5h. Two mitigating factors found for V2: 5a, 5h. Life.

On September 11, 1985 defendant (D), George Booker, a thirty six year old male, was asked to leave the home of the friends he had been staying with. D had been having an affair with the wife (W1) of the couple, and she was tired of him and wanted him to leave.

D packed his things and went to the home of a friend of his, a thirty-one year old female. They were talking when she turned and saw that D was carrying a knife. D sexually assaulted NDV1 then stole her car.

D was driving in the car when he ran down NDV2, a male pedestrian, and stole NDV2's wallet.

On September 13, 1985 D knocked on the door of W2 and asked to use the phone because his car had broken down. W2 denied D's request and called the police to report the presence of D in the neighborhood. An officer arrived and canvassed the neighborhood looking for D. W2 told the officer that it was strange that a red

handkerchief was hanging from the window of NDV3's house. NDV3 was an elderly female neighbor of W2's who put the handkerchief in the window when she went out. W2 had not seen her leave. The police noticed that the door to NDV3's home was ajar. They called for NDV3, then entered the house and called again. As they started up the stairs from where they had heard a weak yell, they saw D leave the bedroom and head down the stairs towards them with a knife in his hand. The officer pulled his gun and told D to drop the knife and put his hands up. D disregarded this and continued down the stairs with a smile on his face. In the meantime, back-up police officers arrived and also ordered D to surrender. D reached the bottom of the stairs and jumped for the gun of one of the officers. The officers then wrestled D to the ground and handcuffed and arrested him.

When questioned about the above incidences D stated that he had borrowed NDV1's car and had not sexually assaulted her. He then told the officers that he had killed two women in another city but that it might have been a dream. Authorities in that city were contacted but had not heard of a reported double homicide.

However, on September 14, 1985 the bodies of V1, a 35 year old female and V2, a 22 year old female, were discovered in their home by a friend. V1 and V2 were a lesbian couple. V1's mouth and forehead were bashed in, her mouth was gagged with a tie from her robe and the cord from an electric hairdryer was wrapped around her neck. The cause of death was either suffocation on the gag, strangulation by the cord or the head injuries. V2's neck and face

were bound with a piece of clothing, there was a wound on her chest, a gash over her left eye and a wound on her abdomen. The cause of death was multiple stabbing.

The state's version of the case was that D entered Vs' home and V1 was home alone. D raped and sodomized V1 then killed her. V2 returned home and D forced her to undress and lay next to V1 on the bed. D then stabbed V2 to death.

D claimed that he could not remember anything that happened regarding the killings. D claims to have taken six senaquan tablets and to have drank a quart of beer. His defense at trial was diminished capacity as a result of his intoxication and mental problems.

D was born in Georgia of sharecropper parents. He was one of eleven children. D has never married. D is a highschool dropout but claims to have obtained his GED while in prison. [redacted] D claims to have held various unskilled labor positions in the past. [redacted] threats and two disorderly persons offenses.

D was charged with two counts of purposeful, knowing murder, aggravated sexual assault, three counts of possession of a weapon for an unlawful purpose and terroristic threats. Two of the weapons offenses and the terroristic threats were severed. D was found guilty of the knowing murder of V1 and the purposeful murder of V2 and all other charges.

The state had served aggravating factors: 4(a), prior murder;

4(c), extreme suffering; and 4(g), contemporaneous felony for the murder of V1. Defense served mitigating factors: 5(a), emotional disturbance; 5(c), age; 5(d), mental disease; and 5(h), any other factor for the murder of V1. The jury found both of the aggravating factors present and the 5(a) and 5(h) mitigating factors. For the murder of V2, the State served aggravating factors: 4(a), prior murder; 4(c), extreme suffering; and 4(f), escape detection. Defense served factors: 5(a), emotional disturbance; 5(c), age; 5(d), mental disease; and 5(h), any other factor. All aggravating factors were found and mitigating factors 5a and 5h were found. The jury did not find that the aggravating factors outweighed the mitigating factors. The jury could not reach a unanimous decision regarding the weighing of the factors.

For the murders, D was sentenced to two life terms with a mandatory minimum of 30 years, consecutive to each other. The aggravated sexual assault merged with the murders. On the weapons offense, D was sentenced to ten years, concurrent.

Revised 8/6/91

#0305

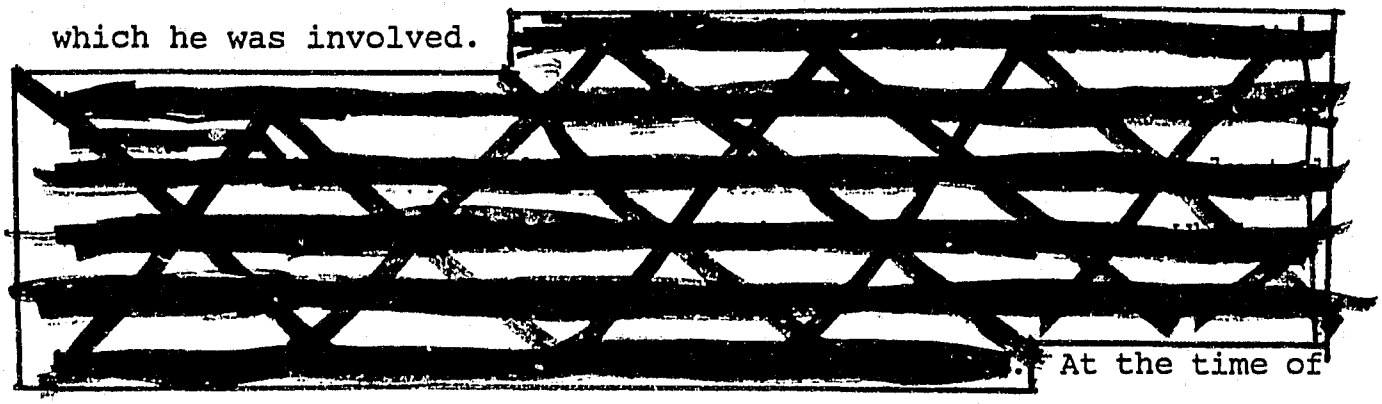
STATE V. BRUNSON

D broke into V's house and was surprised by V. D severely beat V. Jury verdict: murder 5/23/90. Penalty trial. Two aggravating factors found: 4f, 4g. Four mitigating factors found: 5a, 5c, 5d, 5h. Life.

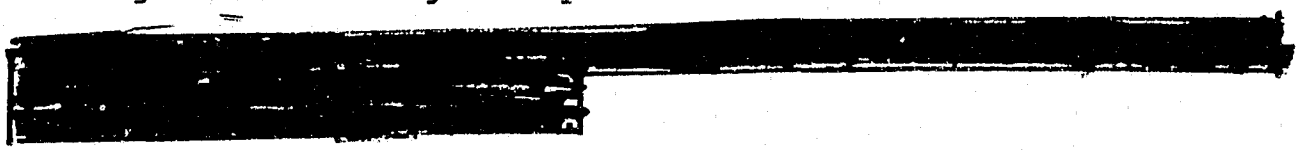
Between 11/28/87 and 12/3/87 defendant (D) Alphonso Brunson, a 21 year old male twice entered the residence of victim (V), an 82 year old female and burglarized V's home. On 12/5/87, the police discovered V's body at her residence. V had died as a result of several severe blows to the head. When questioned, D admitted burglarizing V's home on three occasions. D claimed that the third time he and a companion, Co-D, entered V's home and, when V surprised them, Co-D became afraid and hit V about the head with a table leg, then turned the bed over on to V. Co-D, when questioned, denied ever accompanying D on a burglary and also denied killing V. Co-D was questioned because he was found to be in possession of two stolen items, a handgun and a radio. Co-D claims he purchased the items from D. D claims Co-D stole the items during the aforementioned burglary. D's two companions corroborated Co-D's account of the receipt of the gun. The police then retrieved D's fingerprints and matched them to prints found at the scene of another burglary which predated V's killing.

D never admitted killing V, only to burglarizing her home.

D completed 11th grade and lists as his only employment Burger King, where he worked as a cook and a cleaner. D has held numerous jobs in conjunction with the various programs or placements in which he was involved.



At the time of D's arrest, he was homeless and indigent, living in abandoned housing units at the job corp center.



In the instant offense, D was indicted on count 1, purposeful murder, count 2, felony murder, count 3, robbery, count 4, robbery, count 5, burglary, count 6, burglary, count 7, unrelated burglary, count 8, unrelated theft, count 9, unrelated theft, count 11, unrelated burglary, count 12, unrelated burglary, count 13, unrelated burglary, count 14, unrelated theft, count 15, unrelated burglary, count 16 unrelated theft, and count 17, unrelated attempted burglary. D was found guilty on all counts except count 10 on May 23, 1990.

Aggravating factors 4(c), outrageously wanton or vile; 4(f), escape detection; and 4(g), course of burglary, were served by the prosecution. 4(c) was withdrawn. The prosecutor relied on the evidence presented at trial and both aggravating factors were

found. The defense served mitigating factors 5(a), emotional disturbance; 5(c), age of D (18); 5(d), mental disease; and 5(h), any other factor. A psychiatrist testified regarding D's mental disorders and lay witnesses testified to D's bizarre behavior. D's family history was presented regarding abuse and institutionalization. The jury found all of the mitigating factors and decided that the aggravating factors did not outweigh the mitigating.

D was sentenced as follows: Count 1, life imprisonment with 30 years minimum mandatory, count 2, merges into count 1, count 3, 20 years with a mandatory minimum of 10 years consecutive to count 1, count 4, 10 years with a mandatory minimum of 5 years concurrent to count 3, count 5, 5 years with a mandatory minimum of 2 years consecutive to count 3, count 6, 5 years with a mandatory minimum of 2 years concurrent to count 5, and 6 months for theft to run concurrent to count 6, count 7, 5 years with a mandatory minimum of 3 years consecutive to count 5, count 8, merges into count 9, count 9, 5 years concurrent to count 5, count 10, not guilty, count 11, 5 years with a 2 year mandatory minimum consecutive to count 7, and 6 months concurrent to count 11 for theft, count 12, 5 years with 2 years mandatory minimum concurrent to count 11, count 13, 5 years with a mandatory minimum of 2 years consecutive to count 11, count 14, 4 years concurrent to count 13, count 15, 5 years with a 2 year mandatory minimum concurrent to count 13, count 16, 9 months concurrent to count 15, count 17, 5 years consecutive to count 15.

The aggregate sentence is life imprisonment plus 50 years and the D must serve a minimum of 51 years before eligible for parole.

Revised 8/6/91

#0338

STATE V. BUSBY

D strangled V (74 yr., F) during course of burglary. [redacted]. Jury verdict: murder 3/30/89. Penalty trial. Two aggravating factors found: 4f, 4g. Three mitigating factors found: 5a, 5d, 5h. Life.

On April 9, 1985, defendant, Wayne Busby (D), a 31 year old male had been on a 24 hour binge of drinking at night clubs and making trips to crack dens to purchase crack. Needing more money to buy drugs, D decided to burglarize the home of victim (V), a 74 year old female who lived directly behind D's residence. D allegedly had "cased" the neighbor previously in order to discern the neighbor's schedule for going to and coming from work.

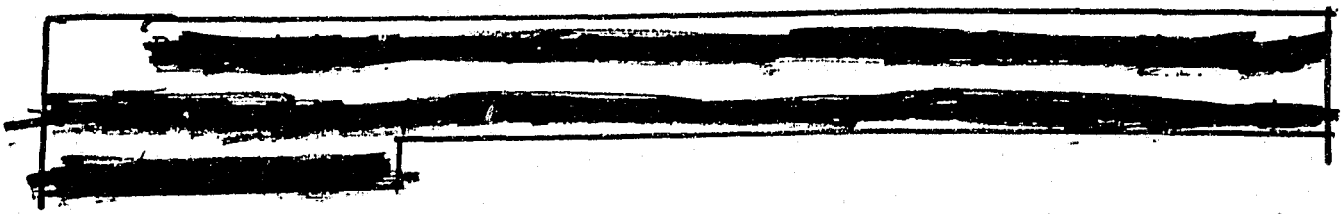
D broke into V's home and V, half dressed, came downstairs to see who was there. D hit V in the face, broke her ribs, took a broom handle and strangled V to death. The force applied by D caused the broom handle to break. Apparently during the strangulation, V managed to scratch D about the neck (hours after V's murder, D had scratch marks on his neck that were photographed by police).

After D had strangled V, he stepped over V's body, went upstairs to V's bedroom and to V's son's bedroom, and robbed the home of money and other items. D also took a roll of film and a camera from V's home. (Consequently, D took pictures using the

roll of film, and these pictures were traced to the roll of film V's son had purchased in Washington, D.C.). Police investigators also extracted evidence from the scene of the crime in the form of a button matching those on a shirt owned by D, a salt shaker and Tylenol bottle, and saliva extracted from an orange juice carton in V's refrigerator that matched D's blood type.

In October of 1987, D was arrested and indicted for V's murder.

D is a 31 year old male, has a high school education, and worked as a part-time disc jockey at the time of the offense.



D was charged with purposeful and knowing murder, and felony murder. A notice of factors was served for contemporaneous felony-burglary/robbery, 4(g) and escape detection, 4(f). D was found guilty on counts on March 30, 1989. At the penalty trial, the jury found both aggravating factors but found that the aggravating factors did not outweigh the following mitigating factors served and found: emotional disturbance 5(a), mental disease or defect 5(d), and any other factor 5(h). D was sentenced to life imprisonment. D must serve 30 years before parole consideration.

Revised 8/2/91

#0365

STATE V. CANCIO

D, angry at building resident who stole $200 and drugs (Crack) from him, sets building on fire, killing V (another resident). No priors. Jury verdict: murder 4/21/88. Penalty trial. Two aggravating factors found: 4b, 4g. Two mitigating factors found: 5f, 5h. Life.

The following quotation was excerpted from the unpublished Appellate Division opinion 11/21/90. A-4696-87T4.

"This is the factual picture shown by the State's evidence. Defendant Gustavo Cancio and his common-law wife came to the United States from Cuba with the Mariel Freedom Flotilla in 1980. In 1981, he found employment in New Jersey. In September 1986, he became reacquainted with Pablo Garcia, whom he had known in Cuba. At this time, Garcia was living in a first-floor apartment at 516-518 26th Street in Union City.

"One day in late September, defendant made a delivery of twenty vials of "crack" and about $200 to a mailbox in the hallway of Garcia's apartment building. Garcia took the drugs and the money. He was the only person other than the defendant with a key to the box.

On October 3, 1986 defendant returned to the apartment building and demanded that Garcia return the drugs and the money. Their angry exchange was overheard by Alberto Dominguez Nocedo, the superintendent of the building. Nocedo said that "everyone" knew

Garcia was a drug dealer. Defendant apparently was working with Garcia. Nocedo testified that he heard defendant demand that the drugs and money be returned or paid for by Garcia. When Garcia refused, defendant promised to "charge you for this."

"On October 4, 1986 Angel Cejas, a mutual acquaintance of defendant and Garcia, told Garcia that defendant wanted him to pay what he owed or "get ready, get armed." That night Garcia and Cejas were in Garcia's apartment along with Carmen, a.k.a. Millie, Guzman, who was staying there temporarily. Shortly after midnight, in the early morning hours of October 5, Guzman agreed to go out to get sandwiches. When she opened the apartment door and walked into the hallway she noticed that there was gasoline on the floor. She also saw a man standing in the doorway of the building. He flicked a cigarette on the floor and ignited it. She later identified the man as the defendant whom she previously had seen "a couple of times."

"Guzman's shoes caught on fire instantly and she ran back into Garcia's apartment. Garcia pulled off her shoes, threw her on the bed, and wrapped her in a sheet. Garcia and Cejas then poured some water in the hallway in an unsuccessful attempt to douse the fire. The three of them escaped the apartment climbing through a rear window.

"Evelyn Lopez was living in the downstairs front apartment of the neighboring building. She testified that she was looking out her window shortly after midnight on October 5, She saw a man enter the building located at 516-518 26th Street. He was carrying a container. She said she had seen him "three or four times"

before. He was in the building for only a few minutes, and Lopez saw flames only seconds after he left. She subsequently described these events for the police and identified the man as the defendant.

"Meanwhile, Camillo Suarez Rodriguez was standing out on the street in front of Garcia's apartment building, talking with Angel Rosario, Evelyn Lopez's boyfriend. Shortly after midnight, he saw a man carrying something enter Garcia's apartment building. Rodriguez recognized the man as the defendant, whom he knew to have dealings with Garcia. He also knew that the defendant and Garcia were having a "problem" involving money and drugs. Defendant left the building after a few minutes. As he left, Rodriguez asked him if he had any drugs. Defendant said that he did not. As defendant continued on his way, the building erupted in flames.

"Shortly thereafter, at approximately 12:15 a.m., the Union City Fire Department responded. The firemen arrived to find 516-518 26th Street engulfed in flames, as were the cars parked in front of the building. They assisted those tenants unable to escape on their own and proceeded to battle the blaze with the help of units from four neighboring communities. The fire was declared under control at 1:52 a.m. and was extinguished by 4:45 a.m.

"Captain Neal Hunt of the Hudson County Prosecutor's Office was called to the scene at about 11 a.m., shortly after fire department investigators discovered the remains of [redacted] on the third floor. In Captain Hunt's expert opinion, she had been overcome by smoke while attempting to flee the fire. Drawing upon his experience in fire investigations, he further concluded that,

based upon the burn pattern and samples taken from the first floor hallway, a flammable liquid was poured outside the Garcia apartment and down the hall toward the doorway and was then ignited. He testified that "a flammable liquid pour right outside a doorway is generally a revenge or spite type fire ... directed at the person or persons that was living in this apartment."

"That day an autopsy was performed on the body of [redacted] by Dr. Natarajan of the Office of the State Medical Examiner. The body was burnt beyond recognition. The chemicals in the blood, the condition of the brain, and the soot throughout the respiratory system led the doctor to conclude that [redacted] died as a result of the fire. She was positively identified by her dentures and her jewelry. Dr. Natarajan testified that the autopsy report on [redacted] listed "asphyxia due to smoke inhalation" as the cause of death and the manner of death as "arson homicide."

"On October 8, 1986 an investigator from the Hudson County Prosecutor's Office and various police detectives looked for defendant at his West New York address. They also searched for him in other places he frequented but to no avail. On October 12, 1986 investigators and police detectives set up surveillance outside defendant's West New York residence and continued to search for him at places he was known to habitat, again without results. Finally, in April 1987, police learned that defendant was in custody at the Dade County Correctional Facility in Florida. He was extradited on a Governor's warrant and returned to New Jersey to stand trial." End of excerpt.

D was diagnosed when incarcerated as having inoperable, terminal cancer of the lungs. D has no known criminal record.

D is a 41 year old male, a high school graduate, and he was employed at the time of the offense. (D held odd jobs as a painter, plasterer, roofer, and construction worker previous to the offense.)

D was charged with knowing murder and aggravated arson. A notice of factors was served for grave risk 4(b) and the felony factor 4(g). The indictment was amended to include felony murder. On April 21, 1988, D was found guilty of knowing murder in a capital trial. At the penalty phase both aggravating factors were found. The defense served mitigating factors 5(f) no significant criminal history, and 5(h) any other factors (D's employment history, D's death would be a hardship, doubt about D's guilt, nature of the offense, D's ill health, sympathy for defendant). Two mitigating factors were found: 5(f) and 5(h). The jury did not find that the aggravating factor factors outweighed the mitigating factors. D was sentenced to life imprisonment to serve 30 years before parole eligibility.

Revised 8/1/91

#0394

STATE V. CARROLL

D (stepfather) beat V (stepdaughter). Multiple stab wounds, blows with scale, strangulation. Blood throughout house. Started upstairs, ended in basement. [redacted]. Jury verdict: murder 11/11/87. Penalty trial. One aggravating factor found: 4c. Three mitigating factors found: 5a, 5c, 5d. Life.

The following facts are excerpted from State v. Carroll 242 N.J. Super 549 (App. Div. 1990).

"Defendant met the victim's mother, Clova Corretjier, in 1975 and married her in 1979. Clove had two daughters at that time, the victim, [redacted] and Savasti. The parties also had a son who was born in 1980. The relationship between defendant and Clova was stormy, involving constant arguments and several separations. In May 1983 the couple moved to Trenton and rented a house. However, Clova filed a domestic violence complaint against the defendant and obtained a restraining order on July 12, 1983, forbidding him from returning to the house or having any contact with her or the children. Over the next five months, the defendant often called Clova and asked her to take him back but she consistently refused. He became very upset when she did not visit him, having given her a car for that purpose. Thereafter, he threatened her, stating that he felt like going over to her residence and "blowing everybody's heads off, kill everybody."

"On the day of the murder, December 2, 1983, Clove left for

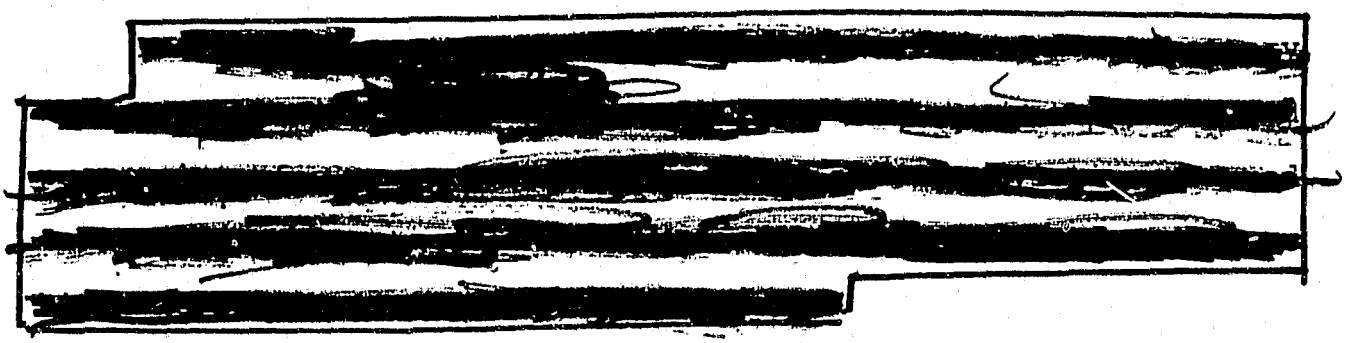
work at around 6:30 a.m. while her three children were still asleep. According to the State's evidence, provided partly through the testimony of Savasti, who was then seven, and partly through scientific analysis of the crime scene and autopsy of the victim's body, defendant came into the bedroom where his two stepchildren and son were sleeping, forced [redacted], who was then thirteen, to leave the room with him, and then viciously assaulted her by hitting her over the head with a scale and stabbing her numerous times with a knife. The blows on the head crushed her skull and one of the stab wounds penetrated at least four inches into her throat. After committing the crime, defendant returned to the bedroom and told Savasti that he would come back and kill her if she said anything about what had happened. 242 N.J. Super at 553.

"Defendant was apprehended by the F.B.I. in South Carolina four months after the murder, at which time he gave an inculpatory statement" that is quoted extensively in section II of this opinion as follows:

> "He stated that in the past when he . . has become angry, he becomes so enraged that he says and does things that he does not even realize he is saying or doing. He stated that he is totally convinced that he is not sane when he become angry or enraged, and that after his wife left him he felt like an insane person. He explained further that it was as if another person was occupying my body. Carroll stated he did not really know whether or not he killed his step-daughter [redacted] or not, due to the fact that he became so enraged over his wife leaving him and marrying another man. He stated that he did not know

> whether he hurt his step-daughter or killed her. He stated that other person occupying my body could have killed my stepdaughter." 242 N.J. Super. 554, 563.

D is 5'10" and weighs 225 pounds. He has had three formal years of education. At the time of this incident, D was employed in the construction industry. D is a native of the Bahamas and was living in the United States without proper alien credentials.



D was charged with purposeful and knowing murder and possession of a weapon for an unlawful purpose. D was found guilty on both counts on November 11, 1987.

At the penalty trial, the State alleged the existence of the 4(c), extreme suffering aggravating factor. The defense offered the existence of 4 mitigating factors: 5(a), extreme emotional disturbance; 5(c), D's age; 5(d), diminished capacity; and 5(h), any other relevant factor. The jury found the existence of the 4(c) factor and mitigating factors 5(a), 5(c), and 5(d). The jury did not find that the aggravating factors outweighed the mitigating factors. D was sentenced to life imprisonment with a 50 year period of parole ineligibility.

Revised 8/2/91

#407

STATE V. CASTELLANO

D killed friend after 3 day Meth. binge. D went to V's home to borrow money. V hesitated to give D money. D struck V over head with hammer 15 - 20X. D said he snapped and killed V for no reason, angry that V had no money to lend him. [redacted]. Jury verdict: murder 10/10/84. Penalty trial. No aggravating factors found. Life.

The following quotation is excerpted from an unpublished Appellate Division opinion, 3/23/87. A-2081-84T4.

"The following circumstances giving rise to defendant's arrest and indictment for the homicide and related offense were disclosed by the evidence. On the evening of December 23, 1983 defendant arranged by telephone to borrow $150 from his friend, the victim [redacted]. Accordingly, defendant went to [redacted] apartment the following day and, after defendant's unanswered initial ringing of the bell, he was subsequently admitted. While they engaged in casual conversation, two individuals came to the door and purchased marijuana from [redacted]. Despite receiving money from these sales, [redacted] told defendant that he did not have enough money for the promised loan. According to defendant's statement to the police, this reneging caused him to "snap" inside although he retained an outward composure. The two then left the apartment without argument to drive to a nearby shopping center. However, upon exiting the apartment, defendant began striking [redacted] about the head with a hammer which he had previously

picked up in the apartment and secreted in his pocket. [redacted] tried to escape the attack, but defendant chased him, knocked him to the ground, and continued to strike [redacted] about his head and body with the hammer.

"This beating of the victim was witnessed by two young boys, age 14 and 12, who were playing in a nearby drained swimming pool. When defendant noticed the boys, he hid the hammer underneath his arm and continued beating [redacted] with his fists. One of the boys reported that he heard the defendant say "come back inside I'm going to finish this." Thereupon, the two men walked back to the apartment where, according to defendant's statement, during an argument about obtaining medical assistance for [redacted], defendant again "just snapped" and then hit [redacted] several more times with the hammer.

"The police were summoned by the older boy and, after hearing the boys' account of the incident, knocked on the victim's door. As no one responded the officers pried open the door when the manager's keys failed to unlock it. Upon entering the apartment they found [redacted] lying on the dining room floor and discovered defendant hiding in a bedroom closet. The hammer he used against the victim was found in a toilet tank. [redacted] was hospitalized and subsequently died from the brain lacerations and skull fractures inflicted by defendant.

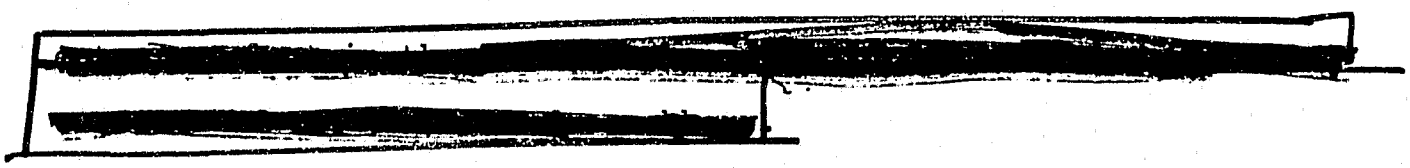
"The investigating officer observed that defendant did not appear to be under the influence of drugs nor did he have any difficulty walking or talking. Defendant was taken to police

headquarters where, after being advised of his Miranda rights, confessed to the assault upon [redacted]." (End of excerpt.)

When questioned by police, D, age 30, admitted that he had injured V. However, he at first said that he hid the hammer outside by the pool, not revealing its true location until a short while later.

V was immediately transported to the hospital for emergency surgery. The surgeon estimated that V had been hit at least 15 times with the hammer, and part of V's skull had been damaged so badly that it had to be removed. V died the next day, December 25, 1983, from his injuries. D was then charged with murder.

At the time of the incident, D lived with his wife and two children. He dropped out of high school, but later returned and got his GED. D also attended a machine shop training program. D was employed by an auto dealer as a car preparations manager. When D was arrested, his car was impounded and it was discovered that the car had been reported stolen from his employer's lot months earlier. In a separate indictment D was charged with theft and receiving stolen property. He pled guilty to both charges. [redacted]



In the present case, D was charged with own-conduct capital murder and a weapons offense. On October 10, 1984, D was found guilty of both counts of the indictment. The State had served aggravating factors, 4(c); extreme suffering; and 4(f), escape detection. In support of mitigating factors, D testified that he did not want to die and a Professor of Criminal Justice testified that it was unlikely that D would commit another offense after spending 30 years in jail. In the penalty phase, the jury did not find any aggravating factors present. On November 30, 1984, D was sentenced to life imprisonment with a 30 year minimum. On the weapons charge, D was sentenced to five years, consecutive to the murder sentence.

Revised 8/6/91

#0463

STATE V. COHEN

D and 2 Co-Ds accosted V (52 yrs., M) as V left fast food restaurant. D knocked V down. As V tried to get up, D shot V 1x in chest. V again tried to get up. D shot V again. D took V's wallet and fled with Co-D. Jury verdict: murder 3/16/84. Penalty trial. One aggravating factor found: 4g. Four mitigating factors found: 5c, 5d, 5f, 5h. Life.

On January 26, 1983, the defendant, Humphrey Cohen (D), a 21 year old male, two co-defendants Co-D1 and Co-D2, and two witnesses W1 and W2, were walking along a street. The youths proceeded to a street where victim (V), a 52 year old male was leaving after having eaten at a fast food restaurant. D pulled out a gun and showed it to the other youths. D remarked that Co-D1 might rob one of the witnesses. D put the gun back under his coat and in his pants and proceeded with the Co-Ds to the fast food restaurant while the two witnesses went to a Chinese food restaurant.

D said the two co-Ds accosted V as he (V) left the fast food restaurant. D knocked V down and as V tried to get up, D pulled out a .22 caliber revolver and shot V once in the chest. V tried once again to recover but D shot V again, hitting him in the left side. D took V's wallet, containing $40 - $50 ($10 each) and fled along with the Co-Ds.

Moments later, the witnesses looked down the street after having heard the gun shots. They saw V standing by a bar yelling for help. D and the Co-Ds ran past the witnesses and stated that

they had robbed V and V had blood all over his chest. One of the witnesses saw V stagger across the street and walk to the fast food restaurant and collapse in the doorway. Some persons inside picked up V and placed him on the street until police were alerted and arrived.

The same day, police questioned one of the witnesses and learned V was shot as he was attempting to catch a cab. Both Co-Ds were arrested on February 16, 1983. Co-D1 told the police during an interview that D kicked V and V dropped a bag he carried and fell to the street. Co-D1 said V got up with a knife and came at D, at which time D shot V twice and pushed V against a stone gate and V gave D money. Co-D1 implicated W1 by alleging he ran over to V and took V's wallet from V's back pocket and subsequently shared in the division of the wallet's cash contents.

Co-D1 told the police the gun used in the shooting could be found in his mother's basement. Co-D1's mother consented to a search and the .22 caliber revolver was recovered along with several types of ammunition. On January 26, 1983, D was arrested on an unrelated burglary warrant. D stated he intended to turn himself in after having been notified by his mother and sisters that the police had been by his house looking for him.

D was advised of his Miranda rights and thereafter stated he had shot V while robbing him. D implicated the two Co-Ds and W1. D stated the gun belonged to W1 and Co-D1 and that he gave the gun to Co-D1 after the shooting. The gun found in Co-D1's home was determined to have fired the bullets found in V's body. D further

stated he could not remember the shooting and had consumed wine, beer, liquor, in addition to smoking marijuana from the evening of January 25, 1983 onward into the early morning. D stated he would not have known about the shooting if Co-D1 and Co-D2 had not told him about it.

D has an irregular work history, but he was employed at the time of the offense. D resided with his family.

D's prior record consists of a malicious damage conviction in 1982.

D was charged with purposeful or knowing murder (count 1), felony murder (count 2), armed robbery (count 3), and illegal possession of a weapon (count 4). A notice of factors was served for 4(c), extreme suffering; and 4(g), felony factors (offense committed while attempting robbery). In a capital trial, the D was found guilty on March 16, 1984. At the penalty trial, the jury found only the 4(g) aggravating factor. Mitigating factors served and found were: 5(c), age of defendant; 5(f), no significant prior record; 5(d), mental defect, disease, or intoxication at time of murder; and 5(h), other factor relevant to background and character. The jury found that the aggravating factors did not outweigh the mitigating, thus the death penalty was not imposed.

D was sentenced to life imprisonment with a 30 year parole ineligibility term for count 1. Count 2 merged with count 1. D also received a 15 year sentence with a 7½ year parole ineligibility term to run consecutive to count 1, and count 4 merged with count 3.

Revised 8/2/91

#0468

STATE V. COLLIER

D, a 45 year old male, punished V (boy, 4 yrs.) for misplacing a ruler. D punched V approximately 5x in stomach with closed fist and pushed V to floor 5-6x (V striking head). [redacted]. Jury verdict: murder 6/21/85. Penalty trial. No aggravating factor found. Life.

The following quotation is excerpted from the unpublished Appellate Division opinion. 5/23/89. A-85-85T4.

"We need not detail the circumstances of the crime at great length. Suffice it to say that Collier, who had been drinking, got upset with the four year old son of his girlfriend and beat the child for taking and losing his carpenter's tape measure. The child died of the injuries inflicted.

"An investigating officer testified at trial about the statement given by Collier on September 13, 1984, after he had been advised of his rights, about his spanking the boy and punching him in the stomach, throwing him on the floor, and punching him in the stomach, throwing him on the floor, and pushing him on the floor so that the boy's head bounced off the floor until he became unconscious. Collier had told the detective that the last time he pushed the boy on the floor his chin split open really bad, causing Collier to get real scared. Collier proceeded to bandage the boy's chin, and about 4:30 a.m. drove to his girlfriend's apartment and told her what had happened. The three of them then went in the

girlfriend's car to the hospital. On route, according to what Collier told the police, his girlfriend instructed him to tell the hospital employees that the boy had fallen down the stairs. Following unsuccessful attempts to revive him, the boy was declared brain dead on September 11, 1984. He was removed from the ventilator which was keeping him alive and died shortly thereafter.

At trial, Collier testified as to what happened as follows:

> "The next thing I recall, I was looking in the dining room. I recall looking in there and seeing what I would have to do and so forth. Then all of a sudden [redacted] is in front of me, right between my legs.
>
> I looked at him. He was very close to me. I was sitting with the chair turned sideways, away from the table. I don't know what I said to him.
>
> I know I smacked him in the stomach with the open hand. I touched him and I pushed him, I guess fairly hard, because he went and he hit the floor.
>
> When he hit the floor, I saw the blood. I jumped up and I was excited, I guess, or whatever I picked him up and I went over and got some yellow paper towels from the kitchen sink. I wiped his face off and took him in the bathroom."
> End of Excerpt.

During the treatment and examination of V, physicians noted other injuries that were in various stages of healing that were not connected with injuries sustained when one falls down a flight of stairs. These observations impelled the hospital personnel to notify the Department of Youth and Family Services (hereafter

called DYFS). DYFS conducted an initial investigation and notified the city prosecutor.

D was arrested on September 13, 1984, and charged with V's murder.

D is a high school dropout, but he earned his G.E.D. while incarcerated. D was self-employed as a carpenter/painter at the time of the offense. [redacted]

D has no prior criminal record.

D was charged with knowing murder. A notice of factors were served for 4(c), extreme suffering, aggravating factor. At trial, D was found guilty by a jury of knowing murder. The jury was never charged on mitigating factor 5(d) and 5(f) because no aggravating factors were found. On July 19, 1985, D was sentenced to 30 years, to serve 30 before parole consideration. D was also fined $10,000 by the Violent Crime Compensation Board.

Revised 8/6/91

#0469

STATE V. COLLINS

D stabbed his wife, V2, multiple x and beat and suffocated his child, V1. D's apparent motive was to collect insurance benefits on the lives of his wife and son. Jury verdict: murder 3/2/90. Penalty trial. No aggravating factors found. Life.

On July 6, 1988, the police responded to a call of a possible homicide. When they arrived, defendant, Darrell Collins (D),a 26 year old male, stated that he had been home with his wife all night. He stated that he went out at 2 a.m. and returned at 6:30 a.m. to discover his wife and son dead. Victim 2 (V2), D's wife, a 31 year old woman, was in the master bedroom with the lower half of her body on the floor and the upper half of her body across the bed. V2 was naked from the waist down. Her face was covered with blood and her throat had been cut from ear to ear. There were also cuts on her hands, her right arm and her chest. Off the master bedroom was the baby's room. There were blood stains on the baby's, V1, a 1 year old boy, sheets and in the crib. D's hand was cut and D's blood was found on V1. D claimed he had cut his hand then touched V1 when he found him. Found inside a closet were knives, swords and other martial arts paraphernalia.

The autopsy revealed V1 had two small bruises on the right side of the skull. There was a hemorrhage of the colon and a small bruise of the lower back area. There were also three small marks

on the forehead of V1. Possible suffocation, cause of death, violence of an undetermined nature.

V2's autopsy revealed multiple cut wounds on her hands and right forearm. There was a cut along the right side of the lower lip which went through and cut the bottom of the tongue. There was a cut under the left ear. There were 5 or 6 cuts across the throat from ear to ear. The voice box had been severed as well as the esophagus. Cause of death was multiple stab wounds.

D denied having anything to do with the murders.

D has no prior record. D was employed as a chef and completed 1 year of college. [redacted]

D was charged with 2 counts Purposeful and Knowing Murder. A jury found D guilty on both counts on March 2, 1990. With regard to V2, the jury found only intent to cause serious bodily injury resulting in death so that murder charge did not proceed to a penalty phase. With regard to V1, the State served a notice of aggravating factor 4(d), pecuniary motive; and 4(f), escape detection. There was evidence that D had recently purchased life insurance. The evidence showed that the victim worked for an insurance agency and asked D to sit through a "training" presentation, acting as a potential client, and that D purchased the insurance as a result. The jury did not find either factor present. The sentencing judge's statement of reasons mentioned the following two motives and no others: a) the D murdered his wife to receive the benefits of a $100,000 life insurance policy" and b) he

murdered his son "for a $5,000 life insurance policy." Mitigating factors 5(d) and 5(f) were served but, because the jury did not find any aggravating factors, they were not considered by the jury. D was sentenced to life with a 30 year period of parole ineligibility on the first count and to 30 years with a 30 year period of parole ineligibility on the second count, consecutive to count one.

Revised 8/6/91

#0506

STATE V. CORREA

D & Co-D drinking and doing drugs, meet V in bar. D & Co-D leave with V after bar closes. En route V and Co-D argue, and D and Co-D beat V senseless, stop and dump body in open field. D and Co-D amputate penis and scrotum, stuff in V's mouth. [redacted]. Murder plea 7/15/85. Penalty trial. Life. One aggravating factor found: 4c. Three mitigating factors found: 5d, 5f, 5h.

On March 27, 1984, the naked body of victim (V), a male, was found in a wooded area. [redacted].

On March 25, 1984, defendant (D), Nicholas Correa, a 32 year old male, co-defendant (Co-D), Henry Micheliche, a 26 year old male and V met at a pub and were drinking alcohol heavily all evening. Around 12:00 a.m. they left the bar. The three of them got into D's car and headed towards another lounge. D stated that suddenly Co-D started yelling at V and subsequently began to hit V. Co-D and V continued to fight, which caused D to lose control of his car and skid off the road. V and Co-D got out of the car and continued fighting.

D stated that by the time he got out of the car, V was lying on the ground and Co-D suggested that the two of them remove V's clothing. As D and Co-D were removing V's clothing, V sat up and

grabbed D. D slapped V, and V fell to the ground. Co-D went to D's car, got a pair of pliers, and returned to the scene where he proceeded to remove V's penis and stuff it in V's mouth. D and Co-D then burned V's clothing. They then dragged V's body up a hill and left the scene of the crime. It should be noted that Co-D claims that D was the one who beat, mutilated, and killed V.

The immediate cause of death was asphyxia due to strangulation caused by internal bleeding associated with lacerations of the lung, liver and spleen as a result of a beating.

D dropped out of school in 8th grade. D discontinued his education due to the fact that he was retained 3 times and felt that he was wasting his time going to school. D was attending the Union Technical School in pursuance of a certificate in computer repair at the time of the offense. [redacted]

[redacted]

D's prior record between 1970 - 1984 consisted of being arrested 9 times. D was convicted five times; once for Petty Larceny in Florida, where he was sentenced to a fine of $301.00 or 36 days in jail. D was also convicted of Auto Theft in Florida, and was sentenced to 71 days in jail. In New Jersey, D was arrested for Petty Larceny and fined $50.00. D was arrested for Possession of a Controlled Dangerous Substance, convicted, and fined $200.00. Also, D was arrested for Being Under the Influence, convicted and fined $25.00.

D was charged with Murder and pled guilty on 7/15/85, to the charge. A notice of aggravating factor 4(c) was served and the

factor was found. Mitigating factors: 5(c), age; 5(d), mental disease or defect; 5(f), prior record; 5(g), assistance to state; and 5(h), any other factor were served. Factors 5(d), 5(f), 5(h) were found by the Court. The Court did not find that the aggravating factor outweighed the mitigating factors. D was sentenced on 9/9/85, to life with a 30 year parole ineligibility.

D appealed his sentence, but it was affirmed by the Appellate Division.

Revised 8/6/91

#0558

STATE V. CUNNINGHAM

D attempted to rape his ex-wife, but was stopped by his eldest son. D left the house. D met V on the bus. D & V drank Rum. D & V walked for a while, then D forced V to a deserted area. D beat, stabbed and sexually assaulted V. D buried V's body & fled. [redacted] Jury verdict: murder 1/5/84. Penalty trial. One aggravating factor found: 4g. Four mitigating factors found: 5a, 5c, 5d, 5h. Life.

On February 3, 1983, D, Bruce Cunningham, a 34 year old male, had allegedly been drinking alcohol since 9:15 A.M. At 1:00 P.M., D arrived at the home of his ex-wife (W1). D wanted to visit with his two children to take his oldest son (W2) out for the day. The child did not wish to accompany D outside, and W1 assented to the child's request. D, then, entered W1's bedroom where he discovered another man (W3). W1 asked W3 to leave and he did. After W3 left, D pushed W1 into the bedroom and attempted to rape her. D discontinued the attempted assault after W2 entered the bedroom. W1 left the house with W2. D followed behind them. D said something about having a knife in the knapsack he carried. W1 saw D pull a half bottle of rum from the knapsack before she and W2 headed toward the police station to file a complaint against D.

Before boarding the bus home, D bought more rum and beer. D met V, a female, on the bus. Although V resided in the same building as D's mother, D denied ever having seen her before. D and V conversed on the bus. When they arrived at their destinations, V agreed to talk with D after leaving the bus.

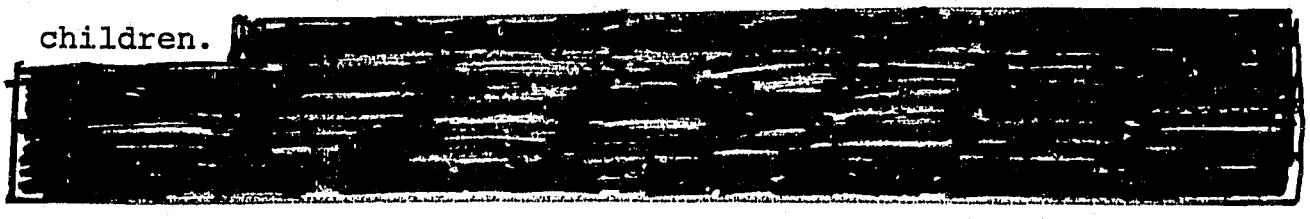
Several witnesses observed the two walking together, and spoke to one or the other.

D continued to drink the rum and V joined him in a drink. D alleged that as the evening wore on, he and V decided to seek a secluded place to have sex. The State alleged that at some point during their walk, D kidnapped V and forced her to go to a deserted area near a foot bridge. D alleged that an argument erupted during consensual intercourse. However, the State argued that D beat V about the head, stabbed her in the abdomen and sexually assaulted V as a result of W1's earlier sexual refusal.

After realizing that V was dead, D buried her body. D fled the area, and went to a nearby tavern where he talked with an individual who noticed that his hands were covered with blood. D told this individual that he had been fishing.

On February 4, 1983, at approximately 11:00 P.M., V's mother reported her missing. Several of V's friends combed the area looking for V. V's shoe was found near the murder scene and the police were alerted. The police found V's body in a grave covered with leaves. D was questioned regarding the murder after a witness advised police that she observed V and D walking together earlier in the day. During their interrogation of D, the police noticed that he had no upper teeth, and D did not admit to owning or wearing a bridge. On February 9th, the police learned that V's autopsy results indicated that she had teeth marks on her breast which had been made with lower molars only. Detectives went to D's home with a court order giving them power to obtain a cast of D's

lower teeth. On February 15th, the dentist who compared D's molar impressions reported to police that the comparisons were positive. D was arrested that day.

D is 34 years old. He dropped out of high school at age 16, and claims an abusive childhood. D entered the Navy where he obtained his GED. D's last employment was approximately 2 years before the present offense. D resided with his wife and four children. 

Defendant was charged with purposeful, knowing murder, felony murder, kidnapping, aggravated sexual assault and aggravated assault. A notice of factors was served for the 4(c), extreme suffering; 4(f), escaping apprehension; and the 4(g), contemporaneous felony statutory aggravating circumstances. At a capital trial, D was found guilty by a jury on all counts on January 5, 1984. At the penalty trial, the jury was charged on all three aggravating factors, but found only 4(g). The jury was charged on mitigating factors: 5(a), extreme mental or emotional disturbance; 5(c), age of defendant; 5(d), diminished capacity; and 5(h), any other factor relevant to the case. The jury found all 4 mitigating factors present. The jury did not find that the aggravating factors were not outweighed by the mitigating factors. D was sentenced on 3/29/84, to imprisonment for 80 years, with a 30-year period of parole ineligibility. Count 2, the felony murder count, was merged with count one for sentencing purposes. On the

remaining counts, D was sentenced to 30 years with a 15-year period of parole ineligibility on the kidnapping count; 10 years with a 5-year period of parole ineligibility on the aggravated sexual assault count; and 10 years with a 5-year period of parole ineligibility on the aggravated assault count.

Revised 8/6/91

#0576

STATE V. DARRIAN

D walked girlfriend (V) home. D sexually assaulted, beat and strangled V with coat hanger. No priors. Jury verdict: murder 11/15/88. Penalty trial. Hung jury. 1 aggravating factor found: 4g. 4 mitigating factors found: 5a, 5c, 5f, 5h. Life.

On October 26, 1986, at approximately 9:00 p.m., defendant (D), Charles Darrian, a 22 year old male, was seen walking his girlfriend, 18 year old victim (V), home. D and V had been having an ongoing disagreement which centered on V's desire to date other men. Although D consistently denied his involvement in the actions which resulted in V's fatal injury, the evidence presented at trial established that D and V began arguing when they entered V's apartment. The evidence indicated that this argument began when D attempted to have sexual relations with V, but V refused. At some point, D began beating and sexually assaulted V. Finally, D wrapped a coat hanger around V's neck and strangled her, twisting the hanger 6 times to ensure that it remained shut at the base of V's neck. D fled V's apartment.

V's body was found by her sister with whom V shared the apartment. The police were called. During their investigation, D drove up to the apartment and was questioned by the police. D was released after he told the officers that he had not seen V for

several days and had not been sexually intimate with her at any time near the date of her murder. Later that evening, D told his sister that he had "raped" and "thought he had killed" the V. The police arrested D on January 30, 1987, after two of V's neighbors told the police that they observed D's auto outside V's apartment on several occasions near the date of the murder.

While awaiting trial in jail, D told an acquaintance from his neighborhood, also in jail, that he killed V. V's sister and D's sister indicated that D was physically abusive to V on at least two occasions and that D had threatened to kill V at least two times prior to the offense. D admitted that on two occasions he had struck V during arguments.

The D is 20 years of age. He stands 6'2" and weighs 214 pounds. At the time of this incident, D was employed as a hospital service worker and he had held other unskilled jobs in the past.

[redacted] D had no prior criminal record.

D was charged with purposeful and knowing murder, felony murder, sexual assault and possession of a weapon for an unlawful purpose. A notice of factors was served for the 4(g), contemporaneous felony, statutory aggravating factor. In a capital trial, D was found guilty on November 15, 1988, on all counts. At the penalty trial, the jury was charged on the 4(g) factor, and found it present. The jury was charged on mitigating factors: 5(a), extreme mental disturbance; 5(c), age of D; 5(f), no significant prior criminal record; and 5(h), any other relevant

factor. The jury found all of the offered mitigating factors to be present. The jury could not agree on the weighing of aggravating and mitigating factors. D was sentenced to life imprisonment, with a 30 year period of parole ineligibility on the merged murder, felony murder and weapons counts. Additionally, D was sentenced to 10 years with a 5 year period of parole ineligibility on the sexual assault count.

Revised 8/2/91

#0603

STATE V. DEEVES

Intoxicated D kills V (friend) after V invited D to her home. D became angered and stabbed V repeatedly, hit V with small appliances, pushed V down basement stairs. [redacted]. Jury verdict: murder 11/16/84. Penalty trial. One aggravating factor found: 4c. Two mitigating factors found: 5a, 5h. Life.

The following quotation is excerpted from an unpublished Appellate Division opinion. 12/19/86. A-2866-84T.

"The jury convicted defendant of the brutal murder of [redacted] who was 46 years old at the time of her death on May 1, 1984. Her death was caused by multiple injuries inflicted in the victim's home. Investigators William Lucia, Phil George and Charles Finnerty of the Monmouth County Prosecutor's Office were assigned to investigate the murder. Upon speaking with Clarence Murphy, husband of the victim, the investigators learned that defendant was an acquaintance of the victim. On May 5, 1984 they went to defendant's home at about 11:40 a.m. and asked him to come down to the South Belmar Police Headquarters to tell them anything that might be helpful in the murder investigation. Defendant voluntarily went with them. Two of the investigators interviewed defendant starting at about 12:13 p.m. During the interview defendant indicated that he had been in the vicinity of the victim's home on the night of the murder. When Investigator Lucia

suggested that he take a polygraph, defendant said he wanted to speak with an attorney first. Defendant was informed that he had the right to first speak to an attorney before taking a polygraph. That ended the conversation concerning a polygraph.

"Defendant was given Miranda warnings and asked if he wanted to give a written statement. Defendant consented and gave the following statement: He met the victim in December 1982 at an Alcoholics Anonymous (AA) function in Belmar. He was a friend of hers. They would go to AA meetings together. The last time he saw her was on a Saturday, in February 1984. The victim's daughter Carol had requested that he stop seeing her because he was still drinking and smoking "reefers." At some point before February, he had helped her move her clothes from the home of DeWitt Griffith into her house, and had tried to talk her into discontinuing her relationship with Griffith. He met her husband at the time. In the beginning, defendant had special feelings for the victim, wanted to have a sexual relationship, and dropped hints to that effect. After finding out that she had a jealous husband, however, defendant decided to keep it as just a friendship. He never had sexual relations with her. He loved her and trusted her as a friend. He did not have a fight with her.

"Defendant further recounted that on April 30, 1984 he left his house at about 10:00 a.m., went to the Neptune Medi Mart and bought batteries for his radio. Afterwards he walked to the beach in Belmar, arriving at about 11:30 a.m. After leaving the beach he stopped at Dennis Testa's house where he met Testa outside when he

pulled up with a woman. They all went inside, had a few beers, and then went to Phil Gartner's house. The three then went to Captain Kern's at about 4:00 p.m. At some point Gartner went home. Phil and defendant went back to Phil's at about 7:00 p.m., but then went back to Captain Kern's. While there, the police came. Defendant spoke with Patrolman Byrne, and then went back into Kern's. Afterwards, defendant and Gartner went back to Gartner's and cooked dinner. Defendant left between 10:00 p.m. and 12:00 midnight, went to the boardwalk and then into Belmar where he stopped at Kelly's Bar on his way home. Near the border of Neptune City, he was stopped by a patrolman at about 3:00 a.m. or 4:00 a.m. on May 1, 1984 who asked him for identification. Defendant then noticed that he had lost his wallet. After the policeman let him go, he started retracing his steps looking for his wallet until about 6:00 or 7:00 in the morning of May 1, when he decided to go home. He saw his mother when he got home, told her he lost his wallet, did some laundry, and went to sleep. During the afternoon of May 1, 1984 he had his brother drive him to work at about 3:30 p.m. He remained there until 12:30 a.m. on May 2, 1984. He was wearing blue jeans and a green tee shirt, a grey jacket, work boots and white socks. He did not meet with the victim during April 30 and May 1. He did not know of anyone who wanted to do her harm. He found out about her death by reading the Wednesday press.

"Defendant read over the entire statement and initialed each page to demonstrate that they were correct. He signed it at the bottom of the last page. The interview which began at about 11:40

a.m. ended at about 5:05 p.m. Lucia asked defendant if he would wait until the other investigators returned for the day so that all of them could discuss the status of the investigation. Defendant agreed. When the investigators returned, Lucia spoke with them. He learned that the policeman who made an on the street inquiry of defendant between 3:00 and 4:00 in the morning of May 1, 1984 had stated that defendant had been wearing sneakers at the time. Lucia then asked defendant if he owned sneakers and for his permission to go to his residence and check his sneakers and the clothes he was wearing on the day of the murder. Defendant gave them his consent. After defendant read the consent form, but before he signed it, Lucia reminded defendant that he had a right to refuse to sign the consent form. Defendant then signed it.

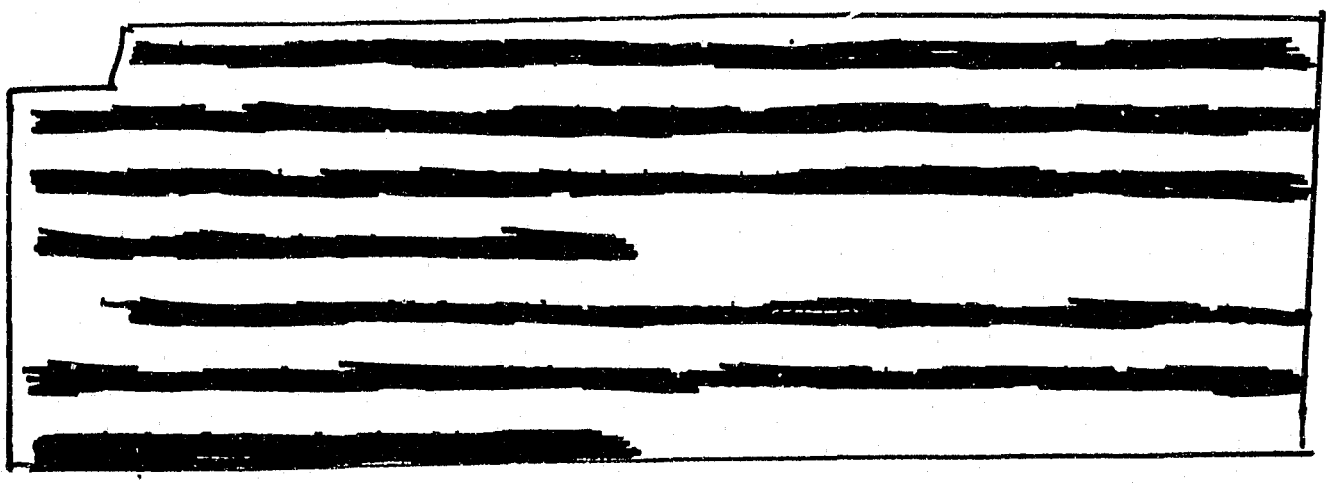
"At about 7:35 p.m. the officers returned from defendant's residence. Lucia and Finnerty went outside to discuss the results. Based on this discussion, they believed that defendant was not telling the truth, and at this point, Lucia began to consider defendant as a suspect. At about 7:42 p.m. Lucia told defendant that "based on what they had found out at his residence [he] didn't feel [defendant] was being truthful with [the police]. [He] thought [defendant] was lying to [them], and basically [he] said to [defendant] ....it's time [he] stopped lying ... and start[ed] telling ... the truth."

"In response to this, Lucia testified that defendant put his head down, thought, and then stated that he wanted to tell the truth, but that he wanted the police to promise him that his name

would be kept out of the papers and that he wanted to go straight to the County Jail from the police department. Lucia indicated that they had no control over the press, and that not only his name, but probably his picture also would appear in the paper. He also indicated that it was the usual routine to be taken to the County Jail.

"At that point, defendant put his head down on the desk, and Lucia said to him "Bill ... did you kill her?" and defendant looked up at him and said "Yes I did." Defendant then proceeded to give a written confession after he was given fresh Miranda warnings. In his confession, defendant indicated that he was a jealous lover. On April 30, 1984, he went to the victim's home and thought he heard DeWitt Griffith, a former lover, inside. Defendant left in anger thinking the former lover was inside the house. Early the next morning defendant returned to the victim's home and entered by forcing the back door lock with the use of a knife. The victim eventually invited defendant inside. They argued over Griffith. Defendant proceeded to brutalize the victim by stabbing her repeatedly, pounding her on the head with a hammer and a large apple juice jar. Defendant's written confession was admitted as evidence in the trial. The victim died from cerebral hemorrhage, necrosis due to multiple skull fractures, multiple lacerations and stab wounds." (End of excerpt.)

D dropped out of high school, but later obtained his GED while incarcerated. D previously worked as a machine operator. He resided in his parents' home.



D was charged with purposeful, knowing murder, possession of a weapon for an unlawful purpose, unlawful possession of a weapon, attempted burglary, and certain persons not to have weapons (felons). A notice of factors was served for the extreme suffering, 4(c), statutory aggravating circumstance. In a capital trial, the last charge was severed from the remaining charges. D was convicted on all remaining counts on November 16, 1984. At the penalty trial, the jury found that the 4(c) factor existed. The jury was charged on mitigating factors: 5(a), extreme emotional disturbance, 5(d), and other factor(s) relevant to this case 5(h). The jury found 5(a) and 5(h) present. The jury, further, decided that the lone aggravating factor was outweighed by the mitigating factors, and on January 18, 1985, D was sentenced to life imprisonment with a 30-year period of parole ineligibility. Additionally, D was sentenced to a 5 year term with a 2½ year period of parole ineligibility on the attempted burglary count. Concurrently to count one, the 2 weapons counts were merged with the murder count for sentencing purposes. Count 5 was dismissed. On the other murder charge, D pled guilty and received a life term

with a 20 year period of parole ineligibility consecutive to count 1.

check factors

Revised 8/6/91

#0673

STATE V. DIAZ

D and Co-D need money for drugs. They go to the home of V3 (D's ex-lover) to steal money. V3 lives with V2 and V1. V2 and V1 sleeping when D and Co-D enter. They wake, and D and Co-D beat, shoot and stab them, and Co-D then wait for V3 to get home, then shoot him too. Jury verdict: murder 6/27/89. Penalty trial. Two aggravating factors found: 4f, 4g. Four mitigating factors found: 5c, 5f, 5g, 5h. Life.

Defendant Felix Diaz (D), a 27 year old male, rented a room from Victim 3 (V3), a 63 year old male. A romantic relationship developed between the men and V3 took D to live in his home. V3's family consisted of Victim 1 (V1), a 47 year old male, and Victim 2 (V2), a female niece, age 8. When the relationship between D and V1 disintegrated in January, 1985, D went to live in a nearby state.

D met Co-D Pedro Concepcion, a 26 year old male, at his new residence. On November 6, 1985, Co-D, who owed money for drugs, suggested that he and D go to V3's home and steal some money. Co-D and D drove to V3's house. Both knew prior to arriving that V3 owned a rifle and where it was kept. D claimed that Co-D also brought a gun. During the drive, they discussed killing V3.

D and Co-D entered the house through the garage. D turned on the kitchen lights and told Co-D to wait. D went upstairs where he found V1 and V2 asleep. D went back downstairs and both D and Co-D returned upstairs to search for money. D found a rifle and bullets in V2's closet. Co-D found a box in another closet that he could

not open. D got a knife from the kitchen to open the box. No money was found inside. Co-D yelled at D for this, waking V2.

Co-D and D beat V1 and V2, shooting and stabbing them as well. V1's throat was cut. V2 was bludgeoned. After their deaths, they were set on fire.

After killing V1 and V2, D and Co-D waited for several hours for V3 to arrive. A light switch was rigged so that V3 would be in a specific position for the murder. When V3, who had been drinking, arrived home at 3:00 a.m. on November 7, D shot him repeatedly. His body was burned. Co-D and D killed a Chihuahua dog as well.

After the murders, Co-D and D took two radios, a television, jewelry, the rifle and mink coats from the house. Co-D and D then returned to a nearby state. The rifle was hidden at Co-D's residence there. D and Co-D were arrested on November 10, 1985. Upon arrest, Co-D claimed that he had driven D to New Jersey and witnessed D kill V1, V2, and V3. D confessed to driving to V3's house with Co-D, but denied being present during the murders. D later admitted being in the house while the murders were committed, but did not comment on whether or not he had participated in the slayings.

D left school at the age of 15 and has not had any further formal education since then. D has never married, nor had he fathered any children. D was unemployed at the time of the offense.

In 1983, D was convicted of theft of a motor vehicle. D was charged with 3 counts of Purposeful and Knowing Murder, Arson, Robbery, Burglary, Theft, and 2 counts of Possession of a Weapon for an Unlawful Purpose. A notice of aggravating factors was served for 4(f), escape detection and 4(g), contemporaneous felony. D was convicted of everything but arson and 1 count of Possession of a Weapon for an Unlawful Purpose. (On the Murder counts, own conduct was found as to V1, and accomplice liability was found as to V2 and V3). At the penalty phase, aggravating factors 4(f) and 4(g) were found. Mitigating factors: 5(c), age; 5(d), diminished capacity; 5(g), assistance to state; and 5(h) were served and 5(c), 5(f), 5(g) and 5(h) were found.

On the Murder counts, D received a sentence of life with 30 years parole ineligibility for each charge to run consecutively. For Armed Robbery, D was sentenced to a consecutive term of 20 years with 10 years parole ineligibility. Theft merged with Burglary, for which he would serve a concurrent sentence of 4 to 8 years. The Weapons charge resulted in a term of 5 to 10 years, to be served concurrently. D's total sentence came to life with 100 years before he would be eligible for parole.

Revised 8/6/91

#0649

STATE V. DICKERSON

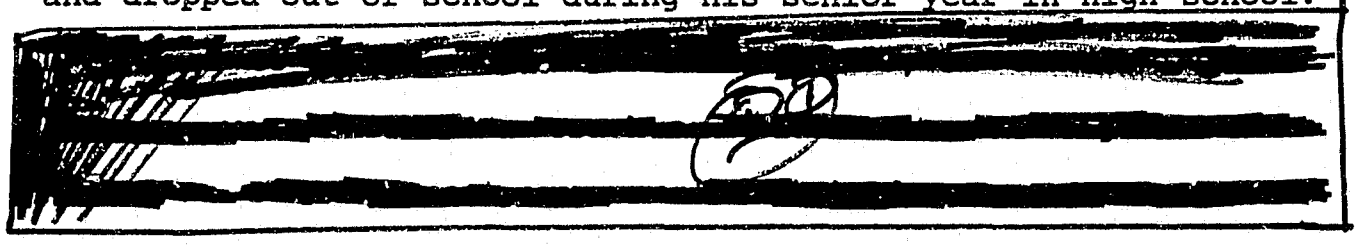
D broke into V's (D's neighbor's) apartment and beat and sexually assaulted V. D then stabbed V and slit her throat and strangled her. Jury verdict: murder 12/16/88. Penalty trial. 1 aggravating factor found: 4g. 4 mitigating factors found: 5a, 5c, 5d, 5h. Life.

On the evening of June 3, 1987, Keith Dickerson (D), a male, age 20, 6'4" tall and weighing about 225 pounds, went to New York with some friends to buy cocaine. After buying the cocaine, D, age 20, went to a friend's apartment, where he and the others free-based the drug. At about 10:30 p.m., D's friends dropped him off at his house. D, however, did not go inside his home, but walked across the street to the home of his neighbor, victim (V), a female, age 56. D entered V's home through the unlocked front door and began wandering about. D encountered V in her bedroom. V, who was preparing to go to bed, was partially undressed and sitting on her bed. V began yelling and cursing at D and asked if he lived across the street. V stood up, and D punched her in the face. D then beat V until she was unconscious and sexually assaulted her. D stabbed V repeatedly in the stomach and slit her throat with a pair of poultry shears. D also strangled V with some type of article of clothing. An autopsy determined that V's death was caused by "strangulation associated with multiple external and internal injuries including stabbing and blunt trauma." It was also found that V's cervical area had sustained injuries consistent with a sexual assault. In addition, sperm was found inside V's vagina.

After killing V, D searched through V's pocketbook and took $30 from her wallet. He then took a bus back to New York and spent the night there. When V failed to report to work the next day, her co-workers called the police. Police discovered V's body, partially undressed, in her bedroom. A pair of bloody scissors was found near her body, and another pair of bloody scissors and a bloody knife was found under the bed. D's fingerprints were found on one of the scissors.

After V's death, police interviewed a number of her neighbors, including D. Inconsistencies in D's statement led to an investigative detention order being signed so that samples could be obtained from D's person. D also signed a consent to search form, and dried blood was found on the clothing he wore on the night of V's death. When confronted with this evidence, D confessed, in a taped statement that he had in fact killed V. D denied, however, that he sexually assaulted V. Later, pubic hair found in V's body bag was found to match D's pubic hair. Also, D's cellmate later told police that D told him that he intended to rob V for drug money and that D knew he'd kill V because V could identify him.

At the time of the offense, D worked as a landscaper and lived with his parents. D, while in high school, was a heavyweight wrestler and played football. D was classified as a slow learner and dropped out of school during his senior year in high school.



In an indictment, D was charged with own-conduct purposeful, knowing murder, felony murder, robbery, aggravated sexual assault, and burglary. A notice of aggravating factors was served charging 4(f); that the murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense committed by D, and 4(g); that the offense was committed while D was engaged in the commission of or flight after committing robbery, sexual assault or burglary. The defense alleged that the following mitigating factors were present: 5(a); emotional disturbance; 5(c), age; 5(d), mental disease; and 5(h), any other relevant factor. In a trial by a death-qualified jury, D was found guilty of all charges. In the penalty phase, the jury found all the mitigating factors present, but only aggravating factor 4(g). The jury also found that the mitigating factors outweighed the aggravating factor. As a result, D was sentenced on December 16, 1988, to life imprisonment, 30 years without parole, on the murder charge. For robbery, D was given 20 years, 10 without parole, to be served consecutively. For aggravated sexual assault, D was given 20 years, 10 without parole, to be served consecutively. For burglary, D was sentenced to 5 years, 2½

without parole, to be served consecutively. The sentence for felony murder merged with the murder sentence. In sum, D was given a sentence of life imprisonment with 52½ years of parole ineligibility.

Revised 8/6/91

#0679

STATE V. DOWNIE

Early Christmas morning, D, drunk and troubled robbed a gas station & shot V 1x in the chest. D shot at cop who chased him. Jury verdict: murder 3/1/89. Penalty trial. One aggravating factor found: 4g. Five mitigating factors found: 5a, 5c, 5d, 5f, 5h. Life.

On December 25, 1985, at approximately 3:35 a.m., defendant (D), John Downie, a 24 year old male, robbed, and then fired two shots at victim 1 (V1), an 18 year old male, an on-duty gas station attendant. The first bullet missed V1, but the second one hit him in the chest. A police officer (W1) observed D running from the station. When D saw W1, D fired four shots at him and then fled into nearby woods. W1 was not injured.

At the trial, D's lawyer claimed that D's brother, who died of a drug overdose three months after V's murder, was guilty of the crimes. [redacted]

An abandoned vehicle found near the crime scene was registered to D, and money was found scattered in D's backyard.

[redacted] D is unmarried and has never had a steady girl friend. He graduated from a technical high school, has held a number of odd jobs and was living with his uncle

and two brothers at the time of the offense. He indicated that he had intended to kill himself that night to get even with his family, but changed his mind and instead went on a hunt for stores to rob, finding several closed at first.

D has no prior criminal record.

D was charged with Purposeful and Knowing Murder, Felony Murder, Attempted Murder, Robbery and Possession of a Weapon for an Unlawful Purpose. A notice of factors was served for the 4(g), contemporaneous felony; and the 4(f) avoid detection aggravating factors. D was convicted of all counts on 3/1/89. At the penalty trial, the contemporaneous felony, 4(g) aggravating factor was found. Five mitigating factors were served and found: 5(a), mental disturbance; 5(c), D's age; 5(d), mental disease; 5(f), no criminal history; and 5(h), any other factor. The mitigating factors were determined to outweigh the aggravating factor, so the death penalty was precluded.

D was sentenced to a life term with a 30 year parole disqualifier for the murder; a consecutive 18 year term with a 6 year parole disqualifier, for the attempted murder; a concurrent 15 year term with a 5 year parole disqualifier for the robbery; and an unknown concurrent term for the weapons offense. The felony murder conviction was merged with the murder conviction.

Revised 8/6/91

#0694

STATE V. DURDEN

D (30 yr., M) broke into V's (72 yr., F) apartment along with another. D stabbed V 1x in abdomen and took television, radio and canned goods. [redacted] Jury verdict: murder 5/16/85. Penalty Trial. One aggravating factor found: 4g. One mitigating factor found: 5h. Life.

Defendant (D), Larry Durden, a 31 year old male, worked as a part time security guard in victim's apartment building. D changed the locks on victim's (V) doors a couple of days before V invited D to dinner. D went to dinner at V's home and sometime during the evening, D stabbed V, and took V's groceries, TV and radio. V was a 72 year old female, and died of stab wounds to the forehead and the abdomen.

On May 28, 1984, the police responded to V's apartment and discovered, in the bedroom, the body of the V. There was no sign of forced entry. The entire apartment had been ransacked. The V's great niece told police that the V had told her on May 25, 1984, that she (V) was going to prepare a fish meal for "D" who had done some things in the apartment for her. The police observed a small table with one place containing cooked meat. A hammer with a small ax type object was found under the table. This was suspected to be the murder weapon. The police questioned a man who lived in the building who stated that D had come to his apartment and had asked the family if they wanted to buy some groceries. D told the family

that he obtained the groceries from a Spanish food store for free. On May 28, 1984, D asked the same man if he wanted to buy a television or radio. Later that day, D warned the man not to "cause waves".

When questioned at the police station, D said he knew the V. He gave a false last name, address and work place.

D also denied trying to sell the television or radio. Upon further questioning, D admitted that he had been in V's apartment in order to fix the locks on her door. Later D admitted that he did enter V's apartment and take the radio and TV set. He stated that the door to the apartment was not locked. He went in and saw the body which looked dead. D denied taking or selling the groceries.

Two women stated that D told them that the V had been stabbed just below the chest in the midline. However, this conversation took place prior to the body being moved and D being able to see the stab wound. A cigarette butt was found in an ashtray in the V's apartment. It was tested for saliva and concluded that the smoker was of AB blood type. A chemist noted that only 4% of the population is AB blood group and only 80% of the population are secretors. D was determined to be an AB secretor.

D received a GED. D served in the United States Navy for two years and was honorably discharged. D was employed until date of arrest.

[redacted]

In the instant case, D was charged with purposefully or knowingly causing the death of the victim, murder, felony murder, and burglary.

A notice of factors was served for extreme suffering, 4(c) and felony factor, 4(g).

A jury found D guilty on May 16, 1985 on all 3 counts. At the penalty phase, the felony factor 4(g) was submitted to the jury and found to be present. The 4(c) factor was never submitted to the jury. One mitigating factor was served and found: any other factor, 5(h). The jury determined that the mitigating factor was not outweighed by the aggravating factor. D was sentenced June 14, 1985, as follows: Count 1: Life with parole ineligibility of not less that 30 years. Count 2 merged with count 1. Count 2: 7 years concurrent with sentence imposed on count 1. Count 3 merged with count 1.

Revised 8/5/91

#0703

STATE V. EATON

D (BF) and V (GF) in a bar drinking. Argument ensues and D pulls out a gun and shoots V 1x in the head, then D points gun at V's friend saying "this one's for you". Jury verdict: murder 2/1/84. Penalty trial. One aggravating factor found: 4b. Three mitigating factors found: 5c, 5d, 5h. Life.

The following facts in quotations are excerpted from an unpublished Appellate Division opinion. 1/30/89. A-3166-86T4.

"In sum, the State's evidence indicates that on August 7, 1983, defendant and [redacted] were drinking at the Tenth Avenue Bar in Paterson, New Jersey. At approximately 10:30 p.m., both decided to go to "The Bottom Line," a nearby bar. [redacted] left the Tenth Avenue Bar first. Defendant left approximately 20 minutes later, retrieved a handgun from the trunk of his car and then entered "The Bottom Line."

"When [redacted] arrived, she sat at the bar and was joined a few minutes later by Andrew Brown (defendant's next-door neighbor). The two danced and conversed together. When defendant arrived, he sat near [redacted]. An argument developed n defendant and [redacted] during which defendant stated, "I'm no young punk" and threatened to "hurt" [redacted] and "blow [her] brains out." Defendant pulled out a handgun, fatally shot [redacted] in the head, then pointed the gun at Brown and said "this one is for you."

Brown grabbed defendant's arm and after a struggle managed to obtain control of the weapon. Brown testified that the struggle lasted from 20 minutes to an hour during which time he asked someone in the bar to call the police.

"Defendant's version differs. He testified that while speaking to [redacted] and Brown he was hit on the side of the head from behind. As he turned around, someone grabbed him from behind and he responded by pulling the gun from his pocket. During the struggle, the gun discharged and killed [redacted]. Defendant claims that he was not aware that [redacted] had been shot until after the scuffle was over. He denies ever threatening [redacted] or Brown.

"The police arrived and arrested defendant. The officers observed him sitting at a table, Brown standing with the gun in his hand and [redacted] lying on the floor in a pool of blood." End of Excerpt.

V died of a bullet which entered her mouth, broke several front teeth and then proceeded into her brain. Death occurred very shortly after wounding. The medical examiner alleged that the gun was fired from 6 to 18 inches from the face, probably closer to 6 inches.

D was 49 years old at the time of the offense.

D's prior record includes 2 convictions for atrocious assault and battery and one conviction for illegal possession of a weapon. [redacted]

[redacted] A notice of aggravating factors was served for the grave risk (4b) factor. On January 26, 1984, the aggravated assault charge was severed from the indictment.

On February 1, 1984, D was convicted of murder and unlawful possession of a weapon. On February 2, 1984, a penalty phase hearing was held. The jury found aggravating factor 4(b) to be present. Defense served mitigating factors: 5(a), emotional disturbance; 5(b), victim solicited; 5(c), D's age; 5(d), intoxication, and 5(h) any other factor. Only factors 5(c), 5(d) and 5(h) went to the jury and were found. The jury found that the aggravating factor was outweighed by the mitigating factors.

On March 6, 1984, D was sentenced to a 40 year term with a 30 year parole disqualifier, for the murder, and a concurrent 5 year term for the weapons offense.

On October 16, 1984, the appellate division reversed the conviction and remanded the case for a new trial on the ground that the trial court had given an insufficient supplemental jury instruction.

Retrial commenced on December 16, 1986, and ended on December 18, 1986, with a verdict of guilty of murder and unlawful possession of a weapon.

On January 20, 1987, D was again sentenced to a term of 40 years with a 30 year parole disqualifier, and a concurrent term of 5 years.

Revised 8/5/91

#0716

STATE V. EDWARDS

D observed V by railroad tracks. He attempted to sexually assault her, and when she ran, he pursued her and strangled her. Jury verdict: murder 7/2/86. Penalty phase. Two aggravating factors found: 4f, 4g. Four mitigating factors found: 5c, 5d, 5f, 5h. Life.

On February 11, 1984, defendant, Ralph Edwards (D), a 21 year old male, left his home at approximately 4:30 P.M. to take a walk along local railroad tracks. D noticed the victim (V), a 9 year old female on the platform near the tracks. D followed V and observed her pull down her clothing to defecate inside the abandoned station. D waited for V to exit the station, but when she did not, D entered the station and continued to watch V defecate. D asked V to sit with him on a mattress which was discarded in the station. D exposed himself to V and attempted to sexually assault her. As D attempted to turn V onto her stomach so that he could assault her anally, V kneed D in his privates and ran from the station. D chased V and used a plastic strap he found along the tracks to restrain her. The strap was wound around V's neck more than once. D yanked it, causing V to fall to the ground and hit her head. As V lay motionless on the ground, D picked her up and carried her to an area between two track railings. D re-entered the station and retrieved a sheet from the mattress which he used to cover V's body. D returned home after the assault.

V's body was discovered at approximately 9:30 P.M. The cause of death was determined to be strangulation.

[redacted] D was arrested on May 8, 1984, when police officers observed him sexually assaulting a young boy on railroad tracks 1.5 miles from the site of V's assault and murder occurred. D confessed to V's murder during questioning regarding this latter offense.

D is a 21 year old high school student who was in the 12th grade at the time of the present offense. [redacted]

D was charged with attempted aggravated sexual assault, purposeful and knowing murder and felony murder. A notice of factors was served for the 4(c) extreme suffering; 4(f) avoiding detection; and 4(g) contemporaneous felony aggravating factors. In a jury trial, D was acquitted of purposeful murder, but found guilty of knowing murder and all other charges on July 2, 1986. At the penalty phase, the jury found factors 4(f) and 4(g) present. The jury found mitigating factors: 5(c), age; 5(d), mental disease; 5(f), criminal history; and 5(h), any other factor present. On October 24, 1986, D was sentenced to life imprisonment with a 30-year period of parole ineligibility on the murder count. The felony murder count was merged with the murder count for sentencing purposes. On the attempted aggravated sexual assault charge, D was sentenced to 10 years, with a 5 year period of parole

ineligibility to be served consecutive to the sentence imposed on the murder count.

Revised 8/8/91

#0726

STATE V. ENGEL (HERBERT)

Co-D2 ordered his younger brother (D) to hire Co-D1 to kill V, Co-D2's wife. Obsessive, passionate relationship between Co-D2 and V, and Co-D2 wanted V dead. Jury verdict: murder 6/17/86. Penalty trial. One aggravating factor found: 4e. Four mitigating factors found: 5a, 5e, 5f, 5h. Life.

The following factual account is taken from _____ N.J. Super ____ (App. Div. 1991), slip op.

"The marriage between [Co-D2], William Engel, and [V] [redacted] was a "stormy relationship". "Substantial evidence was presented that William's jealousy often manifested itself in fits of rage during which he confronted [redacted] with unfounded suspicions, and verbally and physically abused her." Slip Op. at 4.

"The marriage of William and [redacted] ended in an annulment. However, William's obsession with the victim continued unabated and resulted in the constant harassment of [redacted] and her family. Both [redacted]'s mother and her aunt testified that William would call at all hours of the day and night, often leaving insulting messages containing implications of the victim's alleged promiscuity. William sought to prevent [redacted] from obtaining employment because he was concerned she would meet other men.

"After the anullment, [redacted] developed a relationship with Andres Diaz, an attorney for whom she had briefly worked as a

secretary. Diaz testified that he suddenly began receiving telephone calls from an individual who identified himself as Raul Valdievia, inquiring whether he "fooled around" with his secretaries. The individual later left a telephone number corresponding to William's residence. Toll records from Decor, a glass etching factory owned by William located in Englewood, disclosed several telephone calls to Diaz's office." Slip. Op. at 5.

"Despite the continued harassment and strife, [redacted] agreed to meet William at his office at Decor in the evening hours of December 13, 1984, in order to purchase birthday and Christmas gifts for their daughter." Slip Op. at 5. She never returned.

In December of 1984, Herbert Engel (Co-D2), William's younger brother, hired James McFadden (Co-D1) "as a salesman for Cooper Nationwide, a trucking enterprise. Herbert was the owner of the company. The terms of McFadden's employment were somewhat problematical in that he and Herbert never agreed upon a particular salary or formula for remuneration." Slip Op. at 8.

"In any event, shortly after he was hired, McFadden was invited to attend a meeting with Herbert at Bennigan's Restaurant in Englewood. Herbert met McFadden at Kassa, a warehouse owned by William, and the two drove to the restaurant. While in the parking lot before entering the restaurant, Herbert asked McFadden, "are you bad?" McFadden asked Herbert what he meant, and Herbert simply repeated the question. Still confused, McFadden responded "if somebody hurts me, make [sic] me mad, I would hurt

somebody,...[t]hat's normal." The two men then proceeded into the restaurant and sat at the bar.

While seated at the bar, another man who was identified to McFadden as Herbert's cousin, joined them. After a brief conversation, the man who McFadden later learned was Herbert's brother William , walked to a nearby booth. While McFadden remained at the bar, Herbert followed William to the table where they engaged in an animated conversation. After William left the restaurant, Herbert returned to the bar and told McFadden that "his cousin had a girlfriend [who] was hassling [him], giving him a hard time, [and] that he wanted his girlfriend taken care of, [taken] off the map." Herbert said that his "cousin" would pay $25,000 for the proposed killing. Taken aback by Herbert's offer, McFadden did not immediately respond.

At Herbert's request, a second meeting occurred several days later, again at Bennigan's. Herbert repeated William's offer to pay him $25,000 to kill his "girlfriend." At this point, McFadden agreed to the proposal. Herbert insisted that the killing take place on the following Friday evening. However, Herbert later telephoned McFadden at Cooper Nationwide and stated that "the situation had changed" and that he was to meet him at Kassa at 5:00 p.m. on Thursday instead.

In accordance with their agreement, on the designated date, McFadden took a cab from his home in Passaic Park to Kassa, arriving at approximately 5:15 p.m. McFadden brought with him an attache case containing a wire cord he had taken from the back of

a refrigerator. The cab driver dropped McFadden off directly in front of the entrance to Kassa. The parking lot was empty, with the exception of Herbert's automobile. McFadden walked up to the door and Herbert "buzzed him in." The two immediately proceeded to Herbert's office where McFadden showed Herbert the cord he intended to use in killing the victim. Herbert then asked whether McFadden had a gun. When McFadden replied that he did not, Herbert opened his briefcase which contained a revolver.

At that point, Herbert described in detail his plan to kill the victim. Herbert explained that his cousin and the intended victim would enter a hallway located on the left side of the building. McFadden was to remain hidden in a nearby bathroom. Herbert told McFadden to "strangle" the victim when his "cousin...pretended to turn on the light." Pursuant to Herbert's suggestion, the two went to a storage area and obtained a "film plastic" to cover the body. McFadden was to transport the body to Olanta, South Carolina, the home of his grandparents. For this purpose, McFadden gave Herbert his grandparents' telephone number. Herbert then showed McFadden which garage door would be unlocked, noting that the burglar alarm had been disengaged. When the two returned to Herbert's office, McFadden was given $1,300 in cash. Herbert suggested that McFadden have the victim's automobile "crushed" He also proposed that the body be placed in a hole and covered with acid. Although McFadden's response was somewhat equivocal, Herbert gave him a pair of "acid gloves" made of thick rubber with sleeves "going up to the elbow." After receiving a

telephone call, Herbert told McFadden that the victim had arrived and "would be coming to Kassa from Decor." Herbert then departed, leaving McFadden hidden in the bathroom with the door slightly ajar.

Approximately ten minutes later, William arrived with [redacted]. The lights in the bay area had been extinguished. As planned, William walked into the bay area, turned left and fumbled around with the light switch. Exclaiming that the light was defective, William obtained a flashlight. [redacted] followed William to the "far corner of the bay." When [redacted] passed the bathroom, McFadden jumped out, slipped the "cord around her neck and started pulling it tight" in cross-wrist fashion. [redacted] fell to the floor and McFadden straddled her, pulling tightly on the cord. McFadden strangled [redacted] for approximately four minutes while William stood over the victim, smoking a cigarette. At one point while McFadden was still strangling [redacted], William exclaimed, "you bitch."" Slip Op. at 11.

After killing the victim, McFadden went through the unlocked garage door and retrieved her car. "Using the key that Herbert had given him previously, McFadden backed [redacted] station wagon into the garage. With William's assistance, McFadden threw [redacted] lifeless body into the station wagon." Slip Op. at 11. McFadden also placed the "film plastic" over the victim's body.

"McFadden then drove to Cooper Nationwide where he met Pee Wee Wright, one of the Engel's employees. Wright had previously agreed with McFadden to accompany him on the ride to South Carolina." Slip

Op. at 11. Once in South Carolina, Wright discovered the victim's body in the back of the station wagon. After the license plates had been removed, Wright drove to a nearby wooded area, poured gasoline throughout the car, and set it on fire.

On December 14, 1984, South Carolina law enforcement officers discovered the victim's body in the tire well of the burned-out station wagon. "The heat from the fire had been so intense as to cause the windows to explode. Glass fragments were discovered some 20 feet from the automobile. The license plates had been removed and the automobile was totally destroyed by fire. [redacted] body was burned beyond recognition." Slip Op. at 3.

"McFadden met Herbert on Monday afternoon, December 17, at Cooper Nationwide. From there, the two men drove to a local bar where McFadden was given a plain white envelope containing $5,000 in cash." Slip Op. at 13.

"McFadden's last meeting with Herbert before his arrest took place on January 12, 1985. Herbert had contacted McFadden and had demanded that they meet because "there was a problem." When McFadden arrived, Herbert told him he wanted him to "take care of" Wright because he "was bad news." McFadden did not agree to kill Wright, but he assured Herbert he would "take [] care" of things. He also accepted $1,000 in cash from Herbert." Slip Op. at 14.

On January 18, 1985, William Engel, James McFadden and Herbert Engel were arrested and charged with conspiracy and murder. Upon his arrest, McFadden gave a full confession.

At trial, James Mcfadden testified against William and

Herbert.

"Under his agreement with the prosecutor, James McFadden's testimony was given in exchange for the State's waiver of the death penalty and its promise to recommend that any sentences imposed run concurrently." Slip Op. at 7.

At the time of the offense, Herbert Engel was the father of two sons and a daughter. He had no prior criminal record and attended church regularly. At the time of the penalty trial, Herbert was 38 years old.

William Engel was charged with conspiracy to murder the victim (ct. 1), first degree murder by procuring the commission of the murder by payment or promise of payment of money (ct. 2), and (ct. 4), acting as an accomplice of Herbert. Notice of factors were served on 3-19-86 depravity (4c) and procured by payment (4e). Factor 4(c) was dismissed pursuant to defendant's motion. On June 17, 1986, a jury found William guilty of conspiracy and murder. The jury found aggravating factor 4(e) and mitigating factors 5(a), 5(e), 5(f) and 5(h). The sole aggravating factor did not outweigh the mitigating factors, so the death penalty was not imposed.On June 23, 1986, William was sentenced to life imprisonment with 30 years parole ineligibility.

James McFadden was found guilty of murder and sentenced to life imprisonment with a minimum parole ineligibility of 30 years.

Herbert was charged with first degree murder and conspiracy. On June 17, 1986, Herbert was convicted of murder and conspiracy. The State served aggravating factor 4(e), procured by payment. The

defense served mitigating factors 5(a), emotional disturbance; 5(c), age; 5(d), mental disease; 5(e), duress; 5(f), no significant priors and 5(h), any other factor. In a penalty trial, the jury found aggravating factor 4(e), procured murder by payment, and mitigating factors 5(a), emotional or mental disturbance; 5(e) duress; 5(f), no significant prior criminal history; and 5(h) any other factor. The jury found that the aggravating factor did not outweigh the mitigating factors. As a result, on June 23, 1986, Herbert was sentenced to life imprisonment with a 30 year parole disqualifier.

On July 27, 1987, James McFadden sent a notarized statement along with motions for post-conviction relief, recanting his testimony that Herbert and William had conspired with him to kill the victim, and that they paid him to do it. McFadden also sought a vacatur of his guilty plea on the grounds that it was not voluntarily entered. McFadden claimed that he accidentally killed the victim by hitting her in the head with a rock during a burglary attempt at the warehouse. Herbert and William moved for a new trial based on this, but on August 7, 1987, McFadden repudiated his recantation in a sworn statement to the prosecutor. In December of 1987, Herbert's and William's motion for a new trial was denied. On December 18, 1987, on remand, McFadden was resentenced to life imprisonment with a 30 year parole ineligibility.

Revised 8/8/91

#0727

STATE V. ENGEL (WILLIAM)

D ordered his younger brother (Co-D2) to hire Co-D1 to kill V, D's wife. Obsessive, passionate relationship between D and V, and D wanted V dead. Jury verdict: murder 6/17/86. Penalty trial. One aggravating factor found: 4e. Four mitigating factors found: 5a, 5e, 5f, 5h. Life.

The following factual account is taken from _____ N.J. Super _____ (App. Div. 1991), slip op.

"The marriage between [D], William Engel and [V], [redacted] Engel, had been a "stormy relationship". "Substantial evidence was presented that William's jealousy often manifested itself in fits of rage during which he confronted [redacted] with unfounded suspicions, and verbally and physically abused her. Slip Op. at 4.

"The marriage of William and [redacted] ended in an annulment. However, William's obsession with the victim continued unabated and resulted in the constant harassment of [redacted] and her family. Both [redacted]'s mother and her aunt testified that William would call at all hours of the day and night, often leaving insulting messages containing implications of the victim's alleged promiscuity. William sought to prevent Xiomara from obtaining employment because he was concerned she would meet other men.

"After the anullment, [redacted] developed a relationship with ANDRES DIAZ [redacted], an attorney for whom she had briefly worked as a secretary. [redacted] testified that he suddenly began receiving

telephone calls from an individual who identified himself as Raul Valdievia, inquiring whether he "fooled around" with his secretaries. The individual later left a telephone number corresponding to William's residence. Toll records from Decor, a glass etching factory owned by William located in Englewood, disclosed several telephone calls to Diaz's office." Slip. Op. at 5.

"Despite the continued harassment and strife, X[redacted] agreed to meet William at his office at Decor in the evening hours of December 13, 1984, in order to purchase birthday and Christmas gifts for their daughter." Slip Op. at 5. She never returned.

In December of 1984, Herbert Engel (Co-D2), William's younger brother, hired James McFadden (Co-D1) "as a salesman for Cooper Nationwide, a trucking enterprise. Herbert was the owner of the company. The terms of McFadden's employment were somewhat problematical in that he and Herbert never agreed upon a particular salary or formula for remuneration." Slip Op. at 8.

"In any event, shortly after he was hired, McFadden was invited to attend a meeting with Herbert at Bennigan's Restaurant in Englewood. Herbert met McFadden at Kassa, a warehouse owned by William, and the two drove to the restaurant. While in the parking lot before entering the restaurant, Herbert asked McFadden, "are you bad?" McFadden asked Herbert what he meant, and Herbert simply repeated the question. Still confused, McFadden responded "if somebody hurts me, make [sic] me mad, I would hurt somebody,...[t]hat's normal." The two men then proceeded into the

restaurant and sat at the bar.

While seated at the bar, another man who was identified to McFadden as Herbert's cousin, joined them. After a brief conversation, the man who McFadden later learned was Herbert's brother William, walked to a nearby booth. While McFadden remained at the bar, Herbert followed William to the table where they engaged in an animated conversation. After William left the restaurant, Herbert returned to the bar and told McFadden that "his cousin had a girlfriend [who] was hassling [him], giving him a hard time, [and] that he wanted his girlfriend taken care of, [taken] off the map." Herbert said that his "cousin" would pay $25,000 for the proposed killing. Taken aback by Herbert's offer, McFadden did not immediately respond.

At Herbert's request, a second meeting occurred several days later, again at Bennigan's. Herbert repeated William's offer to pay him $25,000 to kill his "girlfriend." At this point, McFadden agreed to the proposal. Herbert insisted that the killing take place on the following Friday evening. However, Herbert later telephoned McFadden at Cooper Nationwide and stated that "the situation had changed" and that he was to meet him at Kassa at 5:00 p.m. on Thursday instead.

In accordance with their agreement, on the designated date, McFadden took a cab from his home in Passaic Park to Kassa, arriving at approximately 5:15 p.m. McFadden brought with him an attache case containing a wire cord he had taken from the back of a refrigerator The cab driver dropped McFadden off directly in

front of the entrance to Kassa. The parking lot was empty, with the exception of Herbert's automobile. McFadden walked up to the door and Herbert "buzzed him in." The two immediately proceeded to Herbert's office where McFadden showed Herbert the cord he intended to use in killing the victim. Herbert then asked whether McFadden had a gun. When McFadden replied that he did not, Herbert opened his briefcase which contained a revolver.

At that point, Herbert described in detail his plan to kill the victim. Herbert explained that his cousin and the intended victim would enter a hallway located on the left side of the building. McFadden was to remain hidden in a nearby bathroom. Herbert told McFadden to "strangle" the victim when his "cousin...pretended to turn on the light." Pursuant to Herbert's suggestion, the two went to a storage area and obtained a "film plastic" to cover the body. McFadden was to transport the body to Olanta, South Carolina, the home of his grandparents. For this purpose, McFadden gave Herbert his grandparents' telephone number. Herbert then showed McFadden which garage door would be unlocked, noting that the burglar alarm had been disengaged. When the two returned to Herbert's office, McFadden was given $1,300 in cash. Herbert suggested that McFadden have the victim's automobile "crushed" He also proposed that the body be placed in a hole and covered with acid. Although McFadden's response was somewhat equivocal, Herbert gave him a pair of "acid gloves" made of thick rubber with sleeves "going up to the elbow." After receiving a telephone call, Herbert told McFadden that the victim had arrived

and "would be coming to Kassa from Decor." Herbert then departed, leaving McFadden hidden in the bathroom with the door slightly ajar.

Approximately ten minutes later, William arrived with [redacted]. The lights in the bay area had been extinguished. As planned, William walked into the bay area, turned left and fumbled around with the light switch. Exclaiming that the light was defective, William obtained a flashlight. [redacted] followed William to the "far corner of the bay." When [redacted] passed the bathroom, McFadden jumped out, slipped the "cord around her neck and started pulling it tight" in cross-wrist fashion. [redacted] fell to the floor and McFadden straddled her, pulling tightly on the cord. McFadden strangled Xiomara for approximately four minutes while William stood over the victim, smoking a cigarette. At one point while McFadden was still strangling [redacted], William exclaimed, "you bitch." Slip Op. at 11.

After killing the victim, McFadden went through the unlocked garage door and retrieved her car. "Using the key that Herbert had given him previously, McFadden backed [redacted] station wagon into the garage. With William's assistance, McFadden threw [redacted]'s lifeless body into the station wagon." Slip Op. at 11. McFadden also placed the "film plastic" over the victim's body.

"McFadden then drove to Cooper Nationwide where he met Pee Wee Wright, one of the Engel's employees. Wright had previously agreed with McFadden to accompany him on the ride to South Carolina." Slip Op. at 11. Once in South Carolina, Wright discovered the

victim's body in the back of the station wagon. After the license plates had been removed, Wright drove to a nearby wooded area, poured gasoline throughout the car, and set it on fire.

On December 14, 1984, South Carolina law enforcement officers discovered the victim's body in the tire well of the burned-out station wagon. "The heat from the fire had been so intense as to cause the windows to explode. Glass fragments were discovered some 20 feet from the automobile. The license plates had been removed and the automobile was totally destroyed by fire. [redacted]'s body was burned beyond recognition." Slip Op. at 3.

"McFadden met Herbert on Monday afternoon, December 17 at Cooper Nationwide. From there, the two men drove to a local bar where McFadden was given a plain white envelope containing $5,000 in cash." Slip Op. at 13.

"McFadden's last meeting with Herbert before his arrest took place on January 12, 1985. Herbert had contacted McFadden and had demanded that they meet because "there was a problem." When McFadden arrived, Herbert told him he wanted him to "take care of" Wright because he "was bad news." McFadden did not agree to kill Wright, but he assured Herbert he would "take [] care" of things. He also accepted $1,000 in cash from Herbert." Slip Op. at 14.

On January 18, 1985, William Engel, James McFadden and Herbert Engel were arrested and charged with conspiracy and murder. Upon his arrest, McFadden gave a full confession.

At trial, McFadden testified against William and Herbert. "Under his agreement with the prosecutor, McFadden's testimony was

given in exchange for the State's waiver of the death penalty and its promise to recommend that any sentences imposed run concurrently." Slip Op. at 7.

At the time of the offense, William Engel was 40 years old and had no prior criminal record. He was a high school graduate and had attended college for two years. He was a very successful businessman. He owned two large homes. William was involved in many charitable organizations. He had been named Humanitarian of the Year by the Spanish International Society of New York and by the area Lions Club. William was also twice named Industrialist of the Year by a human values organization. William was the father of two sons from his first marriage, as well as a daughter resulting from his marriage to the victim. He also attended church regularly.

William was charged with conspiracy to murder the victim (ct. 1), first degree murder by procuring the commission of the murder by payment or promise of payment of money (ct. 2), and (ct. 4), acting as an accomplice of Herbert. Herbert was charged on (Ct. 3), with first degree murder. Notice of factors were served on 3-19-86 for depravity (4c) and procured by payment (4e). Factor 4(c) was dismissed pursuant to defendant's motion. William filed a notice of mitigating factors for 5(a), emotional disturbance; 5(c) age; 5(d), capacity; 5(e) duress; 5(f) no significant prior criminal history; and 5(h), any other factor. A jury found William and Herbert guilty of conspiracy and murder. The jury found aggravating factor 4(e) and mitigating factors 5(a), 5(e), 5(f) and

5(h). The sole aggravating factor did not outweigh the mitigating factors, so the death penalty was not imposed. Herbert and William were sentenced to life imprisonment with 30 years parole ineligibility. James McFadden was found guilty of murder and sentenced to life imprisonment with a minimum parole ineligibility of 30 years.

On July 27, 1987, McFadden sent a notarized statement along with motions for post-conviction relief, recanting his testimony that William and Herbert had conspired with him to kill the victim, and that they paid him to do it. McFadden also sought a vacatur of his guilty plea on the grounds that it was not voluntarily entered. McFadden claimed that he accidentally killed the victim by hitting her in the head with a rock during a burglary attempt at the warehouse. William and Herbert moved for a new trial based on this, but on August 7, 1987, McFadden repudiated his recantation in a sworn statement to the prosecutor. In December of 1987, William's and Herbert's motion for a new trial was denied. On December 18, 1987, on remand, McFadden was resentenced to life imprisonment with a 30 year parole ineligibility.

Revised 8/6/91

#0618

STATE V. FRANKS

D (M) lived with V (F), a friend of D's mother, because D's mother could not handle D. V threw D out and D returned, broke into V's apartment, stabbed, strangled and beat V with a billy club. Jury verdict: murder 9/24/90. Penalty trial. Life. One Aggravating factor found: 4g. Four Mitigating factors found: 5a, 5c, 5d, 5h.

Victim (V), a female in her mid thirties, was a friend of the mother of defendant (D), Donald Franks, a 20 year old male. D's mother was having difficulty handling D, who was drinking, doing drugs and getting in a lot of trouble. V agreed to let D come and stay with her for awhile. She found him a job and let him stay with her until she received two $1,500 phone bills that D had run up calling 900 number party sex lines. V threw D out and was pursuing him for the money to pay the bills.

D knew that V was away for a few days so he and his girlfriend, Co-D, Kimberly Berdan, a 14 year old female, broke into her condominium and stayed for a few days. On May 24, 1988, V returned home, so D and Co-D left through the back door, unnoticed by V. D then re-entered the house, got a knife from the kitchen, and went into V's bedroom. V was sleeping. D stabbed V 3 or 4 times in the back. V woke up and fought D off. D attempted to strangle V, then beat her with a billy club. D and Co-D put V's body into the trunk of V's car, then stole some jewelry and drove to the seashore where they dumped V's body. D and Co-D were

arrested on May 28, 1988 and both gave detailed statements.

[redacted] D was a special education student who left school in the 10th grade. D has held various, short term, unskilled jobs.

D was charged with purposeful, knowing murder, felony murder, burglary, theft and possession of a weapon for an unlawful purpose. A notice of aggravating factor 4(g), contemporaneous burglary, was served. Mitigating factors 5(h), emotional disturbance; 5(c), age; 5(d), mental disease; and 5(h), any other factor were served. D was convicted of all charges on November 27, 1990. The penalty phase verdict was returned on December 14, 1990. The aggravating factor and all mitigating factors were found. The jury found that the aggravating factor did not outweigh the mitigating factor. D was sentenced to life with a 30 year period of parole ineligibility on the murder, to 5 years with a 2½ year period of parole ineligibility on the burglary and theft offense consecutive to each other and to the murder. The felony murder and the weapons offense were merged.

Revised 8/2/91

#0964

STATE V. GUAGENTI

D went to bar where ex-girlfriend (V) , who had rejected him, was dancing. As V was leaving stage, D grabbed V and began shooting her. D shot V 10x with hollow nosed bullets, which caused excruciating pain. One prior simple assault. Jury verdict: murder 4/10/87. Penalty trial. One aggravating factor found: 4c. Two mitigating factors found: 5a, 5f. Life.

The following quotation is excerpted from an unpublished Appellate Division opinion. 8/3/89. A-5207-86T4.

"At approximately 11:30 a.m. on August 8, 1985, defendant entered the Admiral Wilson Bar in Camden. He had a "scruffy" beard and was wearing camouflage or army fatigue pants and a hooded sweatshirt. Defendant ordered a couple of glasses of ginger ale and asked one of the bartenders, Cheryle DuBois, whether a man in a brown suit who was seated at the bar was a police officer. DuBois replied that she did not know. Defendant was quiet, but smiled almost constantly while seated at the bar.

"Defendant left the bar and returned anywhere from approximately 15-20 minutes to one hour later. The man in the brown suit was no longer in the bar upon defendant's return. Defendant consumed one beer and drank approximately three sips from a second beer. Based on her observations, DuBois felt that defendant was sober....

"Cynthia Mancini, who was employed as a dancer at the bar, thought that defendant was "weird" because he did not converse with her or with the other customers in the bar. Although Mancini made

an attempt to talk with defendant, he "just stared" at her. Defendant looked through an address book and at some pictures while he drank his beer.

"Michael Hartley was seated at the bar with [redacted], who was his girlfriend and a dancer at the bar, when defendant reentered. [redacted], who had dated defendant in the past, was employed as a dancer at the bar. [redacted] told Hartley that defendant was "crazy" and that he ought to be "committed." She was afraid of defendant and had told Hartley that defendant gave her the "creeps." [redacted] had also informed Hartley that defendant had followed her the previous day to a bar in Burlington where she was also employed as a dancer.

"Hartley purposefully and conspicuously kissed [redacted] in defendant's presence before she went up on stage to dance. Defendant stared straight ahead at [redacted], who was wearing a bikini top and a "G-string," while she danced. When [redacted] finished dancing at approximately 2 or 2:30 p.m., she put on an oversized man's sport shirt and tied it around her waist. Thereafter, defendant approached [redacted], grabbed her by the shoulder, pushed her against the bar, and started shaking her. [redacted] screamed for help.

"Georgia Persia grabbed defendant by the arm and told him to leave [redacted] alone. Defendant shoved Persia with his arm. Persia began hitting defendant and ordered him to "get off" of [redacted]. The other bartender, Cheryl DuBois, called for assistance from some of the male customers. As a few of the customers approached, defendant pulled out a gun with his right hand from underneath his sweatshirt and began shooting [redacted]. Hartley couldn't help as he

was knocked out of the door by patrons who left the bar in a panic when the shooting began.

"Defendant "stared" at DuBois while he was shooting [redacted]. According to DuBois, defendant had a "smirky smile" on his face and held [redacted] as he shot her. After shooting his victim, defendant walked out of the bar. As he did so, he pointed his gun at John Wakeford, a customer in the bar, and told Wakeford "to get the fuck out of his way." Defendant's walk and manner of speaking appeared normal at the time.

"Ms. [redacted] died of multiple gunshot wounds within 17-18 minutes after arrival at a local hospital.

"Defendant and [redacted] had dated briefly a couple of years before her death. Although [redacted] ended the relationship in the spring of 1983, the couple reconciled for a short period the following spring and vacationed together in the Bahamas. After the couple stopped dating, defendant continued to drop by [redacted]'s house, as well as the homes of [redacted]'s relatives, looking for her. Approximately 13 months prior to the shooting, [redacted] telephoned the police because defendant was sitting in his car outside her house. A police officer who responded to the scene instructed defendant to leave the area. The police were also called at other times regarding later threats made by defendant against [redacted]. On one occasion, defendant was arrested when he ripped a necklace from [redacted]'s neck after seeing her in a compromising position with his friend.

"In July 1984, [redacted] telephoned defendant's mother and told her that she was going to have defendant "committed." Upon being

informed of this conversation, defendant became very "dejected" and "depressed" and remained in this emotional state until the time of the shooting. Defendant constantly talked about [redacted] after their breakup and appeared to have an obsession about her....

"Upon arriving at approximately 3:00 p.m., defendant's father saw his son sitting at a kitchen table with a gun pointed at his stomach. Defendant told his father he was "going to kill myself" and directed him not to approach. After talking with defendant for about thirty minutes, his father was able to obtain the gun. He also arranged for defendant's surrender to a police officer....

"Several hours later, at 2:55 a.m. on the morning of August 9, 1985, defendant attempted to commit suicide in his cell by ripping strips from his blanket and tying them to a door hinge. After his suicide attempt was thwarted by a corrections officer, defendant asked the officer to kill him with a gun because he had done "something very bad" and did not "deserve to live."...

"Defendant was admitted to the Trenton Forensic Psychiatric Hospital later that day. The provisional diagnosis upon admission was "major depressive disorder, recurring type." However, he did not present any signs of being psychotic and did not claim to have had any hallucinations. On September 11, 1985, approximately one month after his admission, defendant was diagnosed as having an "adjustment disorder with depressed mood and [a] substance abuse disorder." Defendant remained hospitalized for about fifteen months, because he was depressed and posed a "high risk" of committing suicide....

"Defendant did not testify at trial, but he called numerous witnesses on his behalf to establish his defenses of insanity and diminished capacity. Defendant's father testified that defendant had suffered from depression all his life. However, the only psychiatric treatment that defendant received prior to the shooting consisted of a few counseling sessions at the Philadelphia Child Guidance Clinic when he was nine or ten years old. Defendant had academic problems in school, had lied and stolen from his mother, and had "toilet training problems." Defendant's parents also had problems disciplining him, and defendant frequently threw temper tantrums. He was diagnosed then as having a "passive-aggressive personality trait disturbance."

"Defendant was employed by Thomas Davidge as a painter for several years prior to the shooting....

"Defendant exhibited a "slow decline" and ultimately "gave up totally" prior to the shooting. Gellura [Davidge's fiancee] and Davidge felt that this decline was related to depression. Defendant stopped washing himself, shaving and changing his clothes during the months prior to the shooting. He complained about an inability to sleep and became "mad at life." Also, during the summer of 1985, defendant began arriving late for work. Although he had been an excellent painter, his work performance began to decline. Defendant attributed his poor performance to the fact that he was taking drugs, and to "problems in life" including [redacted]. Davidge was forced to terminate defendant in July 1985 because of his poor work....

"Dr. Robert Sadoff, a board certified psychiatrist, testified as an expert witness on defendant's behalf. His first interview with defendant occurred twelve days after the shooting, on August 20, 1985. Defendant informed Sadoff that he had started using marijuana at age fifteen, and that he smoked it every day for thirteen years. He also used cocaine, opium, hashish, amphetamines, valium, quaaludes and LSD, sometimes simultaneously. In addition, defendant often became drunk from drinking beer, wine and vodka. Defendant claimed to have experienced hallucinations observing flashing lights and flying saucers....

"Dr. Sadoff interviewed defendant again on January 15, 1986. On this date, defendant informed Dr. Sadoff that he began to feel that [redacted] was evil while he watched her dance on the day of the shooting. He formulated a plan to take her to the police and have her arrested. Defendant went home and obtained his gun in order to bring [redacted] to the police. During the drive back to the bar, defendant began to believe that the devil was in [redacted] and he visualized doing a "positive thing by killing the devil."" (End of excerpt.)

The opinion goes on to recount extensive expert psychiatric testimony.

D stands 5'8" tall and weighs 125 pounds. At the time of the murder, D resided with his mother and father. D graduated from high school. D worked as a self-employed painter. In 1983, D was convicted of simple assault.

D was originally charged with purposeful and knowing murder,

possession of a handgun, possession of a weapon for an unlawful purpose, and possession of hollow-nosed bullets. These same charges were made on the final indictment against D.

In a jury trial, D was found guilty on all counts on April 10, 1987. Aggravating factor 4(c), intended to cause suffering was served and found. Mitigating factors 5(a), emotional disturbance; and 5(f), criminal history, were served and found. D was sentenced to life imprisonment with a 30 year period of parole ineligibility on the murder count. On count 2, D was sentenced on May 22, 1987, to a 5 year term to run concurrent to counts 1, 3, and 4. On count 3, D was sentenced to a 10 year term with a 5 year period of parole ineligibility. This sentence is to run consecutive to the sentences imposed in counts 1 and 4. On count 4, D received a 5 year sentence with a 2½ year period of parole ineligibility. This sentence is to run consecutive to those imposed in counts 1 and 3.

Revised 8/5/91

#1027

STATE V. HART

D shot V (cab driver) 2x in head as driver was lying face-down in the front seat of cab. D fled with cash, watch and other items. No priors. Murder plea 9/13/85. Penalty trial. One aggravating factor found: 4g. Five mitigating factors found: 5a, 5c, 5d, 5f, 5h. Life.

On April 26, 1984, at approximately 5:30 A.M., defendant (D), Craig Hart, a 25 year old man, entered a taxi cab driven by the victim (V), a 21 year old male. D pulled a weapon and announced his intention to rob V. D ordered V to lie face down on the front seat of the taxi cab. D fired two shots into the back of V's head, and fled the taxi with cash, V's watch and a wallet containing V's credit card.

On May 24, 1984, D was arrested in another city and charged with an unrelated robbery. D subsequently confessed to the robbery and murder of V.

D has a high school education. D was unemployed at the time of his arrest, but previously worked as a cabinet maker and mailroom clerk. [redacted] D has no prior criminal record.

D was charged with purposeful and knowing murder, armed robbery, credit card theft, possession of a weapon for an unlawful purpose, and unlawful possession of a weapon. D plead guilty to

the murder charge on September 13, 1985. A notice of factors was served for the 4(g), contemporaneous felony statutory aggravating factor. The defense alleged five mitigating factors: 5(a), mental disturbance; 5(c), D's age; 5(d), diminished capacity due to D's alleged drug and alcohol intoxication; 5(f), D's lack of a prior record; and 5(h), any other relevant factor. The jury found the aggravating factor and all mitigating factors present.

At sentencing, the presiding judge found all of the mitigating factors and the aggravating factor, but decided that the sole aggravating factor was clearly out-weighed by the mitigating factors. D was sentenced to life imprisonment with a 30 year period of parole ineligibility on the murder count. D received 20 years with a 10 year period of parole ineligibility on the armed robbery count to run consecutive to the life sentence. The remaining counts were administratively dismissed.

Revised 8/6/91

#1060, 3022

STATE V. HERNANDEZ

D entered NDV1's (ex-gf) apartment unannounced. D pulled her hair, slapped her face and swung a knife at her, puncturing her breast. When NDV2 entered, D pushed and grabbed her. NDV2 ran upstairs to the apartment of V1 (uncle) and V2 (grandfather). D stabbed V1 1x in the chest and V2 1x in the abdomen. D also stabbed NDV3. [redacted] Jury verdict: murder 3/27/85. Penalty trial. One aggravating factor found for both victims: 4b. Three mitigating factors found for both victims: 5a, 5d, 5h. Life for both victims.

On Thursday, September 29, 1985, defendant (D), Jose Hernandez, a 37 year old male, went to his ex-girlfriend's, (NDV1/W1) apartment. D entered the apartment and began arguing with NDV1/W1, shouting that he was going to kill her with the knife that he carried. D slapped NDV1/W1, poured beer on her and pulled her hair. D did not leave the premises until the next morning.

The following day, Friday, September 30, 1985, D and several others were at NDV1/W1's cousin's apartment. It was D's birthday and NDV1/W1's daughter had planned a party for him at her apartment. D stated that he would not attend the party unless NDV1/W1's cousin accompanied him. NDV1/W1's cousin replied that she was not going. D threw an umbrella on the floor and said he was going to NDV1/W1's apartment because "he had to see some blood tonight." Several people heard D say this. D had consumed a couple of glasses of wine, but he was not intoxicated.

D arrived at NDV1/W1's apartment at approximately 9:00 p.m. He pushed open the door and entered unannounced. NDV1/W1 and her

daughter, NDV2/W2 and son were in the apartment. D told NDV1/W1 that he wanted to speak with her and ordered her to stay in the living room while the two children remained in another room. D reminded NDV1/W1 that he had told her not to leave the apartment for any reason. When NDV1/W1 responded that she had to buy food for her children, D slapped her face, pulled her hair and swung a knife at her, cutting her sweater, blouse and bra, and puncturing her left breast. NDV2/W2 then came into the living room, indicating that she wanted a glass of water from the kitchen. D followed NDV2/W2 to the kitchen, warning her not to go in, and with the knife blade open, pushed and grabbed her. NDV2/W2 thought that D was going to kill her.

NDV2/W2 broke free from D and ran upstairs to the third floor, screaming for someone to call the police. NDV2/W2 went to the apartment where her grandfather (V2), grandmother, uncle (V1), cousin (NDV3/W3) and brother lived. All were present. D followed NDV2/W2 upstairs. As V2 moved toward the apartment door to close it behind NDV2/W2, D stabbed V1 one time in the upper chest. V1 collapsed on the sofa and died a few minutes later. V1's mother began screaming, alerting V2 who came out of his bedroom and walked into the hallway. V2 shouted, "You killed my son!" D then stabbed V2 one time in the abdomen. At this point, NDV3/W3 called the police and then walked to the door area, where he was stabbed by D one time in the naval area. D told NDV3/W3 that he would kill him the next time.

After wounding NDV3/W3, D threatened one of his friends who

was standing in the stairwell. Then D left the building.

At 9:39 P.M., a detective passed the building in question and, observing a crowd, stopped to investigate. NDV3/W3 led the detective to the third floor where he obtained a description of D. Several minutes later, two policemen saw someone who fit D's description running down the street. They frisked D, discovering a knife covered with blood, flesh and hair fibers in his rear pocket. D was taken back to the apartment building where he was identified by two women.

D claimed that he was visiting a friend before going to a birthday party. He wanted his girl friend (NDV1/W1) to go with him so he went to her apartment. He found her with another man. They argued because NDV1/W1 wanted to stay with the other man instead of accompanying D to the party, and then NDV1/W1 ran out of the apartment, screaming for help. When D went to leave the apartment, V1, NDV1/W1's brothers and the other man came toward D armed with bats, sticks and knives. D then pulled out his knife and stabbed everyone who came near him.

[redacted]

D has no prior record.

D was charged with two counts of purposeful and knowing murder, four counts of aggravated assault and one count of possession of a knife for unlawful purposes. On March 27, 1985, D was convicted of all charges except one count of aggravated assault. A notice of factors was served for grave risk 4(b).

At the penalty trial on March 29, 1985, factor 4(b) was served

and found for V1 and V2. The following mitigating factors were served for V1 and V2: 5(a), mental disturbance; 5(b), V's participation or solicitation; 5(d), mental disease or defect or intoxication; and 5(h), any other factor. All of the mitigating factors but 5(b) were found for V1 and V2. The jury determined that the mitigating factors outweighed the aggravating factors. D was sentenced to concurrent life imprisonment terms with 30 year parole disqualifiers for the murders, a consecutive 10 year term with a 5 year parole disqualifier for the aggravated assault upon NDV3/W3, a consecutive 18 month term with a 9 month parole disqualifier for the aggravated assault upon NDV1/W1, and a consecutive 5 year term with a 2½ year parole disqualified for the aggravated assault upon NDV2/W2. The conviction for possession of a knife for unlawful purposes was merged into the conviction on all other counts.

Revised 8/5/91

#1076

STATE V. HICKS

V and friends requested marijuana from D and Co-Ds. D, Co-D1 and Co-D2 decided to rob V and friends. When D and Co-Ds returned with marijuana, D stuck a rifle into the car and shot V. No priors. Jury verdict: murder 4/16/83. Penalty trial. One aggravating factor found: 4g. Three mitigating factors found: 5c, 5f, 5h. Life.

The following quotation is taken from the unpublished Appellate Division opinion. 5/26/87. A-5334-83T4.

"These are the facts produced at trial for the jury's consideration. According to Gail Snyder, on October 22, 1982 [redacted], Martines Moe and she drove to Long Branch in Moe's rented car to purchase some marijuana. They arrived in Long Branch at approximately 2:30 a.m. and stopped in the parking lot of a bar when a black male, wearing a black or dark-colored jacket, approached the car. [redacted] was driving at the time; Snyder was sitting in the middle of the front seat, and Moe was on the other side of the front seat. In response to the man's instructions to meet him at the corner, they drove up the street where the man was joined by another black male wearing a beige jacket. When Snyder, [redacted] and Moe asked where they could purchase one-half ounce of marijuana, the man suggested that they go to a friend's house. They told the men to get in the car, gave them some beer and drove to "some project." Upon being asked the price, one of the men said

the marijuana would cost $20. [redacted] had earlier borrowed the money from Moe and was carrying the $20 in his pocket.

"When they arrived at their destination, the black men left the car for two or three minutes. The man wearing the black jacket said that no one was answering and suggested that they go to his sister's house to by the marijuana. The men got back into the car and they drove two or three blocks to the sister's house. The two men got out, while the others waited in the car and kept the engine running. The window on the driver's side was halfway down. The men returned with a third black man who was wearing a red shirt, no coat, and was taller than the other two.

"Snyder described what happened when the three men returned to the car.

> Well, all of a sudden the hands just came through the window. One tried to put it in. I don't know. He picked it up or something -- that's right, [redacted] did have it in drive. He threw it up in park. Once tried to grab the keys. They all started swinging in the window.

A struggle ensued, and at one point [redacted] pushed Snyder back after which she saw sparks and smoke as if a gun had gone off. She claimed that no one was saying anything during this struggle. She had not seen any gun. After the gun was fired the car rolled backwards and crashed into another car. She could tell that [redacted] was dead, and she herself was bleeding. She believed that the person who shot the gun was also injured.

"Martines Moe claimed that he was very intoxicated that night. He could not recall what the black men [redacted] was talking to were

wearing. After the two men left the car he became suspicious and told [redacted] to leave then, but they stayed. When the three men returned, one put his hand in the window to turn off the ignition, whereupon Snyder removed the man's hand. [redacted] was shot when he put the car in gear. Moe saw the shotgun but did not see who was holding it. He recalled, however, that the one who pulled the trigger was taller than the others. He estimated that there was about three feet between the end of the gun and the car. Moe was not able to identify any of the men...."

"Dr. Jay Peacock, a medical examiner, performed an autopsy on [redacted]. He noted a gunshot wound "in the left posterior aspect of the head." He observed no evidence of "fouling," which referred to "soot from the firing of a gun." He also saw no evidence of "powder stippling or tattooing," which is found when a gun is fired at close range. He recovered two shotgun wads from the right upper area of the mouth and found shotgun pellets in the mouth and brain. The doctor concluded that the cause of [redacted]'s death was a gunshot wound to the head and that the death was almost instantaneous.

"Asked about the distance of the muzzle of the gun from the target when the shot was fired, Dr. Peacock explained that the "absence of soot or fouling on the skull, plus the absence of gun powder tattooing," indicated that "the muzzle target distance would not be any closer than two to three feet." Based on the fact that there was only one hole and no "satellite wounds," he estimated that the distance was no greater than six to eight feet. The

doctor cautioned, however, that there were other variables and that "[i]t isn't an exact science."

"Officer James Wambolde, an expert on firearms, testified that he tested the shotgun to see if it could go off accidentally and concluded that the only way to fire the gun was to apply seven pounds of pressure to the trigger. He also performed tests to try to determine the distance the gun was held from [redacted]'s head when it was fired. Testing the gun at various distances and comparing the hole made to a picture of [redacted]'s wound, Wambolde concluded that the gun was fired from a distance of less than 36 inches.

"Investigator Finnerty interviewed Snyder after the murder, and he and Detective King took Snyder in a car and tried to retrace the route the [redacted] car had taken that evening. While they were driving, Snyder pointed to defendant and said: "That's one of the guys." The officers arrested defendant, and Finnerty noticed that he had blood on his pants and that "[h]is hands were scraped up...."

"Detective King interviewed defendant after he signed a waiver of his Miranda rights. Initially, defendant denied andy involvement saying that he had been in Red Bank,... Defendant then claimed: "So when I reached in to get the money, the dude pulled out a gun, stuck it in the window and said this is a holdup, give me all the money. So the dude said no and tried to pull off and then I heard a shot...."

"Defendant was then booked for murder and his picture was taken. He listed his height and weight on the back of the picture as 5'8" and 150 pounds.

"Defendant appeared very nervous and upset during the booking process. Detective Aflitto started talking to him and at 2 p.m. took a second statement in which defendant admitted that he was the one who actually shot [redacted]. Defendant said that he directed the people in the car to drive down Long Branch Avenue to his sister's house at which point he told them to pull over. He described what happened next as follows:

> ... Then I went into the weeds and got the rifle. I brought the rifle back out, went over to the car and went to the driver's window and as soon as he sen the rifle he took off and the rifle went off and he kept going down the street. He turned and smashed into a car and that's when I knew something had happened. I got scared, so I ran to my aunt's house and that's it.

He said that "[a]s soon as the barrel hit the window it went off." He estimated that he was six feet away from the window when the gun was fired...."

"On rebuttal, the State presented the testimony of Thomas Colbert, who was in jail at the same time defendant was there. Around March 19 or 20, Colbert overheard defendant discussing his case with other inmates. Defendant indicated" that he had come around the car with a shotgun and the guy tried to get away on him and that he shot the guy in the head, and something about an accident." Colbert clarified that "accident" was a reference to a car accident.

"Codefendants also testified on rebuttal. Yarborough maintained that defendant, after leaving Lambert's house, asked Him: "Are you down on taking the people off?" Defendant was holding a shotgun and Lambert was with him. The three of them approached the car, but Lambert ad Yarborough backed up when defendant pointed the gun at the car window. Yarborough turned his back, and several seconds later heard the engine accelerate and then heard the gun go off. Yarborough did not recall telling the police that defendant said, "[g]ive me all your money" when he pointed the gun in the window.

"Lambert testified that he gave defendant his gun and that defendant ran up to the car with it. Defendant stuck the gun in the window, but Lambert could not recall what defendant said at the time. Lambert had started to walk away when he heard the car's engine and after that the gunshot. Defendant dropped the gun on the sidewalk on the way to Lambert's house, and Lambert picked it up and brought it into his house. Lambert had previously told the police that defendant had asked for the gun "to scare someone for some money." End of Excerpt.

In 1982, D, 21 years old, was terminated from the Army Reserves under "other than honorable conditions." D has never been married, but has fathered two children. He was living with his mother and brothers at the time of the offense. D has no prior criminal convictions.

The indictment against D, Co-D1 and Co-D2 was filed on

January 6, 1983, listing six counts against all defendants: (1) purposeful and knowing murder [N.J.S.A. 2C:11-3 (a)(1) and (2)], (2) felony murder [N.J.S.A. 2C:11-3 (a)(3)], (3) conspiracy to commit armed robbery [N.J.S.A. 2C:5-2 and 2C:15-1], (4) attempted armed robbery [N.J.S.A. 2C:15-1(a)], (5) unlawful possession of a weapon [N.J.S.A. 2C:39-5(c)], and (6) possession of a weapon for an unlawful purpose [N.J.S.A. 2C:39-4]. A notice of aggravating factors was served for 4(b), grave risk, and 4(g),contemporaneous felony-robbery. D, Co-D1 and Co-D2 pled not guilty. D's trial by jury began on April 8, 1983. A death qualified jury returned a verdict of guilty on all counts on April 16, 1983. At the penalty trial, conducted on April 18 and 19, the jury found factor 4(g) present. Three mitigating factors were found: 5(c), D's age; 5(f), no criminal history; and 5(h), any other factor. The jury determined that the mitigating factors outweighed the aggravating factors.

On June 3, the judge sentenced D to life with a thirty year minimum before parole eligibility for count 1; count 2 merged with count 1. On count 4, D received twenty years with a ten year parole minimum to run consecutively with count 1; count 3 merged with count 4. On count 6, a sentence of ten years with a five year parole minimum to run concurrently with counts 1 and 4; count 5 merged with count 6. D's total sentence was life with forty years to be served before parole eligibility.

Revised 8/6/91

#1079

STATE V. HIGHLANDER

V (ex-gf) had filed criminal complaint against D. D encounters V in restaurant parking lot walking with a man. D shoots V 1x. Jury verdict: murder 6/28/89. Penalty trial. Two aggravating factors found: 4b, 4f. Three mitigating factors found: 5a, 5d, 5h. Life.

On April 25, 1988, at approximately 9:00 p.m., the defendant (D), Richard Highlander, a 31 year old male, and an unidentified friend rode around looking for the victim (V), D's ex-girl friend. D and V had resided together for two years. After their relationship ended, V had signed a restraining order against D. After the restraining order was issued, V had signed an aggravated assault charge against D. D had told several individuals of his plan to kill V.

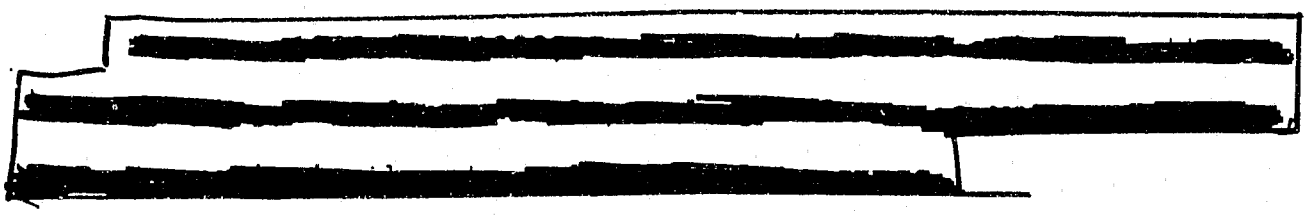
After riding around for some time, D observed V's auto parked outside a restaurant. V left the restaurant with a male companion. Seeing this, D took a gun from under his car seat and approached V. As V saw D she stated, "Oh, no." D shot V once. As V fell to the ground, she stated, "I don't believe this is happening to me."

After shooting V, D fled to the waiting car. D went to a nearby city and from there took a bus to a southern state. D was apprehended in this state approximately three weeks later. At that time, D gave a written statement that he shot and killed V.

D later denied intending to shoot V. He stated that he wished

to persuade V to drop the aggravated assault charges which she filed against him.

D had no permanent address at the time of the offense, and was residing with friends. D is a high school graduate. D previously was employed in the contracting industry where he owned and operated his own business.



D was charged with purposeful and knowing murder, possession of a firearm for an unlawful purpose, contempt, attempted murder, aggravated assault, aggravated assault with intent to do bodily injury and unlawful possession of a weapon (a hand gun). A notice of factors was served for grave risk 4(b) and escaping detection 4(f).

D was convicted by a jury on June 28, 1989, of all charges except attempted murder and aggravated assault. At the penalty trial, both aggravating factors were found. Three mitigating factors were found: 5(a), mental disturbance; 5(d), mental disease; and 5(h), any other factor. D was sentenced to life imprisonment with a 30 year period of parole ineligibility on the murder charge. The jury was unable to reach a decision regarding the weighing of the aggravating and mitigating factors. D was sentenced to 10 years with a 5 year parole disqualifier on the possession of a

weapon for an unlawful purpose charge which is to run concurrent with the imposed life sentence. D was sentenced to 18 months on the contempt charge which will run concurrent to the sentences imposed for the above charges. D received 5 years with a parole ineligibility of 3 years on the aggravated assault charge. This sentence was made concurrent to all other imposed sentences. Lastly, D was sentenced to 5 years with a 2½ year period of parole ineligibility on the unlawful possession of a weapon charge. This sentence shall run concurrent to the imposed life sentence.

Revised 8/6/91

#1133

STATE V. HUFF

D saw V (73 yr., M) coming from liquor store and decided to rob him. D broke into V's back door. V attempted to charge D. D knocked V to floor & V hit his head. D mad at V for charging him, beat V until V stopped moving. D fled with cash and radio. Jury verdict: murder 3/7/86. Penalty trial. Two aggravating factors found: 4c, 4g. Two mitigating factors found: 5d, 5h. Life.

In February, 1984, V, a male, age 73 lived in an efficiency apartment. V would withdraw cash from his bank account to pay his rent in cash on the first of each month. V lived alone and owned a small color television set and a distinctive clock-radio that was purchased by mail order.

On February 4, 1984, the landlady's daughter (W1) was awakened by a loud noise that came from the direction of V's apartment. The noise sounded like a "big bang." W1 awoke the landlady (W2) and they both looked outside the window but saw nothing suspicious, so they went back to bed. About 20 minutes later, W1 heard another loud noise and again awoke W2. They made another investigation and went back to bed.

For three consecutive days W2 noticed the back door of V's apartment was open. She decided to peak inside V's apartment and upon doing so saw the apartment in a state of disarray. W2 telephoned V's sister. V's sister arrived shortly and entered the apartment and found V lying face up on his bed.

V's sister immediately left the apartment without touching anything. She went to her own house and called the police. The police responded and found V bloodied and beaten to death. V had bruises and lacerations on his hands, neck, nose, ears, chest, and the top of his head. V also had a fractured sternum and ribs. Blood was smeared on a radiator cover near the bed. Broken glass was found on the floor.

The police learned from an interview with V's sister that a color television and clock-radio had been stolen from the apartment. She explained the radio was distinctive because it was one of a limited number manufactured, and V had in the past loaned it to her but she kept the instruction brochure that described the radio, gave its model number, and explained how it operated.

The police investigation produced further information that lead them to a residence where D, Aaron Huff, an unemployed male, age 23, lived with several members of his family. Police detectives questioned the woman who owned the house and discovered that D sold her a radio the morning following V's murder. The woman produced the radio, V's sister later identified it, and a laboratory analysis confirmed that D's fingerprints were on the radio.

On February 10, 1984, W3, a neighboring store owner, contacted the police detectives conducting the murder investigation, and informed them he had found a small television set on the sidewalk in front of V's apartment several days ago. According to W3, he took the television set to his store, plugged it in an electrical

outlet, but the set did not come on. He said there was a crack in the set. W3 said he threw the television set into the trash and the trash man picked it up. W3 stated he contacted the police because he had read about V's murder in the newspaper and he had found the television set close by the murder scene. The police never recovered the set, however, the detectives showed W3 a manual for the set obtained from V's apartment and W3 identified the set as the one he found on the sidewalk.

On February 11, 1984, a police officer arrested D as D walked near a highway intersection. D wore a blood-stained jacket and was arrested on an outstanding warrant for failure to pay fines. At police headquarters, D agreed to answer questions related to V's murder investigation. D denied knowing the V or anything about V's murder. D claimed he had been living with his brother for the pst month at the YMCA.

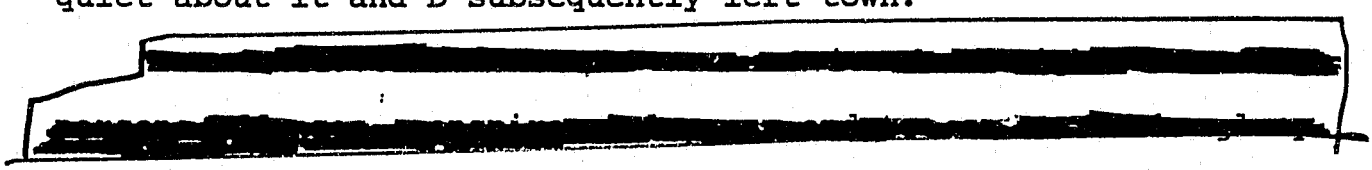
During the course of D's police interview and questioning, D divulged facts about V's murder that were known only to the police through its investigation. Defendant supplied details in his statement such as, "I didn't take no television or radio from no old man," and "I didn't hit no old man on the head with a bottle, or killed no old man."

In April, 1984, while D was incarcerated, a police detective received a letter from a jail house lawyer, W4 who had been assisting D with a defense to the homicide charge. W4 had asked D how the murder and crime were accomplished and D told W4 the entire story.

D told W4 he (defendant) knew the V and had seen V buy liquor at a liquor store down the street from V's apartment. D said he knew V had money and decided to rob V. D admitted waiting until midnight at a bar and, thereafter, going to V's apartment. D broke into the apartment's back door and found V sitting in a chair.

V made lewd or obscene remarks to D and started towards D but sat down again. V charged D as D was disconnecting the television set. D knocked V to the floor and V struck his head on a coffee table. D became enraged because V had attacked him, so D beat V until V stopped moving. D took $70 from V's pockets and $200 that was hidden in a pillow case. D took the radio but dropped the television set on the sidewalk outside V's apartment as D escaped.

D went home and got drunk. When D learned that V had died, he told his father about the incident. D's father persuaded D to keep quiet about it and D subsequently left town.



D was charged with purposeful and knowing murder, felony murder, and burglary. A notice of factors was served on April 29, 1985, for 4(c), extreme suffering and 4(g), contemporaneous burglary. In a capital trial, D was found guilty on all charges on March 7, 1986. At the penalty trial on March 12, 1986, the jury found both factors but returned a verdict that the aggravating factors did not outweigh the mitigating factors, 5(d), mental disease and 5(h), any other factor, so D was not given a death

sentence. D's age, 5(c), was served but not found by the jury.

D was sentenced to a life sentence to serve 30 years without parole, and was ordered to pay $10,000 to the Violent Crime Compensation Board. Counts 1 and 2 (murder and burglary) were merged into count 3 (felony murder) and thus penalty was imposed only on count 3. D has since filed an appeal.

8-5-91
#4037 (new)

STATE V. JACKSON (SHAWN)

D, Co-D1 and Co-D2 decide to rob V, drug dealer. They force him to alley at gunpoint. V only had $50. They put him in his car, wanted his address, V refused. They took V to woods. D shot V 7 or 8 times in head. Non-Jury Verdict: Murder. 5-20-91. Penalty Trial. No Aggravating Factors found. [redacted]. Life.

On December 22, 1988 Shawn Jackson, 19, (D), Darryl Welch (Co-D1), and Terry Bailey (Co-D2, juvenile) decided to rob V, a drug dealer, known to carry large sums of money. D and Co-D1 went home to get guns. D got a 9 millimeter and a .22 caliber which he gave to Co-D2, and Co-D1 got a .357 magnum. D, Co-D1 and Co-D2 then waited for V outside of his girlfriend's house. At about 7:00 p.m., V drove up, parked and exited his car. At this point D, Co-D1 and Co-D2 pulled up the hoods on their sweatshirts and approached V. Co-D1 pulled out his gun and told V to keep walking. They walked V behind some row houses to rob him, but V only had $50. When they discovered this, they forced V back to his car and Co-D2 drove them around with V in the front and Co-D1 and D in the back. V recognized Co-D1's voice and asked what was this all about? D believed that V had more money in his condominium, so he ordered V to take him there. V refused saying, "you'll have to do what you have to do because I am not taking you to my house."

They then drove V to the wooded area behind a mall and D and Co-D1 traded weapons, and D said he was going to kill V because he recognized them.

D then pushed V to his knees. V said, "no, don't do this, man," and Co-D1 and Co-D2 also told D not to shoot V. D insisted

so Co-D2 released his arm, then D shot V seven or eight times in the head. D, Co-D1 and Co-D2 then drove V's car away, bought gas cans and gasoline, drove to another wooded area and set the car on fire. They ran across the highway and called Co'D1's girlfriend for a ride. Later D and Co-D1 threw the gun into the water. D was arrested on July 11, 1989. D later gave a full confession.

At the time of his arrest, D lived in a house with his mother, two sisters, a niece and a nephew. D has a minimal employment history. In the past he worked as a busboy and a fast food cook. D dropped out of high school in ninth grade. [redacted]

D was charged with Unlawful Possession of a Weapon (Counts 1 and 3), Unlawful Purpose (Counts 2 and 4), Conspiracy (Counts 5 and 7), kidnapping (Count 6), Robbery (Count 8) Criminal Mischief (Count 9), Felony Murder (Count 10) and Murder (Count 11, changed to Count I, new Indictment).

On May 20, 1991 in a bench trial, D was convicted on all counts. In the penalty phase the judge found that Aggravating Factors 4f (escape detection) and 4g (engaged in a felony) were not proven. On June 20, 1991 D was sentenced as follows: Counts 10,

5 and 7 merged; for Counts 1, 2, 3 and 4, 4 years concurrent; for Count 6, 15 years consecutive; for Count 8, 15 years concurrent; and for Murder, D was sentenced to Life Imprisonment with a minimum parole ineligibility of 30 years.

Revised 8/6/91

#1243

STATE V. JONES, JIMMY LEE

D and Co-D rob hotel night clerk of more than $400 and D shoots clerk. [redacted] Jury verdict: murder 3/22/88. Penalty Trial. One aggravating factor found: 4g. Two mitigating factors found: 5c, 5h. Life.

At about 1:30 a.m. on May 1, 1986, defendant Jimmy Lee Jones (D), a 20 year old male, and codefendant "Art" (Co-D) entered a motel. Hearing a noise, the motel's security guard (W1), exited a second floor room and was immediately grabbed by Co-D. Co-D, about 6' tall with a large "Afro" and a scar under his right eye, first ordered the guard to lie on the floor, and then told him to get up and walk down the hall. The security guard was able to give a description of the Ds but was not present at the shooting. D, 6'2", 185 pounds, with short dark hair, ordered the clerk, (V), a male, age 39, to open the case register. Although D held a gun on him, V at first hesitated opening the register, asking D why he wanted to rob him. D then repeated his order to open the register drawer, grabbed V by the collar and brought him to the register. After V opened the register, D ordered him to have a seat and then emptied the register of more than $400. D then claims that he turned to leave when V came at him, grabbing for the gun. D claims that he scuffled briefly with V and that the gun fired accidentally. V was shot once in the heart. He lost consciousness immediately and was pronounced dead at 2:20 a.m. D and Co-D fled

in a Cadillac Seville they had stolen earlier that evening. The gun used in the murder/robbery belonged to the car's owner. D sold it the next day to a stranger for $100.

On May 14, 1986, police received word that a man (W2), who was in jail for violating parole, had information concerning V's murder and may have also been involved in the incident. W2's sister (W3) supposedly also had some information. When questioned by detectives, W2 denied having any information of, or any involvement in, V's murder. W3 was then questioned and she said that her brother told her that D and Co-D were involved in "the motel job." W2 was apparently with D and Co-D when the Seville was stolen, but left them before the murder/robbery took place, agreeing to meet them somewhere afterwards. W3 also stated that she heard D talking with Co-D about what he was going to do with the money they got from the robbery.

After W3 gave her statement, police put her and W2 together and let them talk. Afterwards, W2 gave a statement saying that, at about 3:00 a.m. on May 1, 1986, he met D and Co-D at D's girlfriend's house. Co-D said that D had shot the guy at the motel. The next day, W2 called a bar to speak to W3 and D got on the phone, saying "The guy I busted at the motel died."

Police also took a statement from W2's girl friend, W4, who stated that on May 3 or 4, 1986, D told her that he shot a guy at the motel but he did not mean to kill him.

Based on the above information, police arrested D later that day, May 14. At first, D apparently denied having any knowledge of

the murder/robbery. However, when confronted with the statements of W2, W3, and W4, D fully confessed to V's murder, the robbery, stealing the Seville, and selling the murder weapon. D also claimed that he and Co-D had gotten "a little high" before entering the motel. Co-D was never apprehended.

D attended school through the 11th grade and was employed as a security guard. Although it is not expressly stated in the file, D apparently lived with his parents. [redacted]

D was charged with purposeful or knowing murder, felony murder, robbery, conspiracy, theft by unlawful taking, two weapons offenses and hindering apprehension. D was found guilty by a jury on March 22, 1988, of all charges. Felony factor 4(g) was served and found. Prior murder factor 4(a) was served on D but never submitted to a jury. Two mitigating factors were served and found: 5(c), D's age; and 5(h) any other factor.

D was sentenced on April 15, 1988. For the murder conviction, D received a life sentence with a 30 year period of parole ineligibility. The felony murder charge merged with the murder charge. On the robbery, D was sentenced to 20 years, 10 without parole, consecutive. The conspiracy merged with the robbery. On the theft by unlawful taking, downgraded to unlawful taking, means of conveyance, D was sentenced to 30 days, concurrent. On the possession of a weapon for an unlawful purpose, 10 years, 5 without parole, concurrent. For possession of a handgun, 5 years; 2½

without parole, concurrent. For hindering apprehension, 5 years; 2½ without parole, consecutive.

Revised 8/1/91

#1246

STATE V. JONES, LARRY

D and Co-D enter store. D demands money. D shoots V (owner) 1x. 3rd person attempted to intervene. D puts 5 people in freezer. Co-worker says gun discharged when other co-worker grabbed it. [redacted]. Jury verdict: murder 10/10/86. Penalty trial. Two aggravating factors found: 4b, 4g. Two mitigating factors found: 5c, 5h. Life.

The following quotation was excerpted from the unpublished Appellate Division opinion 11/19/89. A-1776-86T4.

"Predicated on the proofs presented the jury could have found the following beyond a reasonable doubt. At about 5:00 p.m. on March 21, 1985 Eugene Jones[3] walked into the Ship & Shore in Paterson, New Jersey and approached the victim, one of the two partners who owned the wholesale seafood and produce distribution business located there. Eugene Jones was recognized by an employee in the warehouse as a person from the neighborhood.

"Shortly thereafter an individual, later identified as Larry Jones, and recognized as a person from the neighborhood, walked towards the booth where the victim and Eugene Jones were talking. As Larry Jones reached where the two men were talking, he grabbed

[3]Eugene Jones was indicted as a codefendant. He is not related to Larry Jones. Eugene was indicted with Larry Jones for the same offenses except for the purposeful and knowing murder charge. Additionally, he was charged with tampering with a witness. A different jury convicted Eugene Jones of all charges. This court affirmed the convictions on September 23, 1988 under Docket No. A-2420-86. Certification was denied. 11 N.J. 660 (December 19, 1988).

the victim out of the booth and pulled a gun out of his pants. The victim's partner, who was also in the building at the time, went towards the men thinking there was going to be a fight. He then heard a bang and the victim collapsed.

"At the trial an employee of the business testified that he observed the shooting and stated that Larry Jones had swung the victim around towards his approaching partner and the gun went off while the victim was in the line of fire. Larry Jones then stuck the gun in the other partner's neck and said "Boy, you better come back here or I'm going to blow this mother-f---er's head off" when the employee ran to hide behind a parked truck. The employee and the partner were ordered to lie on the ground. Both Joneses proceeded to take about $1,000 from the partner's wallet and about $2,000 to $3,000 from the pockets of the victim.

"Another employee of the business and a customer who were in the facility at the time were also told to lie down on the floor. The employee was asked if he had any company money. As the Joneses searched for money, they rejected a plea to get help for the victim. Larry Jones stated, "I know what I'm doing. I know where I shot him. He's not going to die. He'll be fine." The Joneses ordered the four men (other than the victim who was shot) to a back area where they were locked in a walk-in freezer. After the perpetrators left, one of the men ran into the freezer door a number of times causing it to come off a hinge. Another man was then able to squeeze his way out and open the door for the others.

"The police were called as the partner and an employee tried

to revive the victim who had been dragged out of sight and was found lying near a truck. The victim was taken to St. Joseph's Hospital where he was pronounced dead on arrival as a result of a .22 caliber bullet perforating an artery.

"At police headquarters one of the employees recognized the photograph of Rubin Jones, the brother of Larry Jones. Subsequently, Larry Jones' picture was identified from other photographs. At trial there was testimony identifying Larry Jones as somebody "from around town" and from the Paterson Boys Club. In addition, other testimony linked Larry Jones to the crime.

"Larry and Eugene Jones were subsequently arrested in Chicago, Illinois on July 22, 1985 when Eugene Jones was observed acting suspiciously and peering into a liquor store after he left a brown Cadillac parked on the street...

"...As a result, Larry Jones was again interrogated on the morning of July 23rd. Upon being given his Miranda rights, Jones acknowledged that he understood them and stated that he was willing to talk. He denied being Larry Jones and denied having committed any crimes in Chicago or anyplace else. At 4:30 that afternoon defendant was placed in a series of lineups regarding the Chicago armed robberies. Due to the fact that some 33 armed robberies were involved, it took over six hours to conduct the lineups, interview the victims and then obtain approval from the state's attorney for the charges to be lodged.

After the investigatory procedures were completed in the early morning of July 24, 1985, Larry Jones was interviewed by a

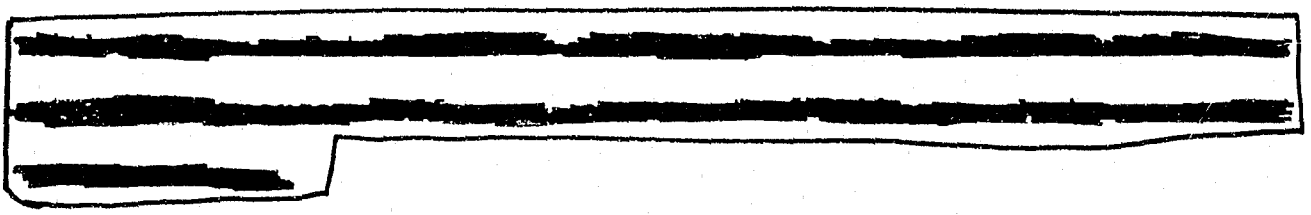
detective and a state's attorney. The attorney advised Jones of his Miranda rights and Jones indicated that he understood them and was willing to make a statement. Although he stated that he did not have any knowledge of the Chicago robberies, Jones admitted his involvement in the Paterson, New Jersey murder and robbery. The detective testified as to what Jones said had happened:

> And at that time, he told me that he and Eugene had gone to a store which was around the corner from Larry's sister. He said his sister had lived there for about twenty years and that they had entered the premises and that he had known the employees at that location for numerous years and that they knew him. And that Eugene Jones had two guns with him and he had handed one of the guns to Larry and at this time, a white man by the name of Freddy grabbed ahold [sic] of the barrel of the gun and pulled on the gun and the gun went off and that he then dropped the weapon and fled the scene.

The state's attorney recounted Larry Jones' statement as follows:

> He then told me about the murder in New Jersey, said it was at the store that was around the corner from his sister's house where she had lived for something like twenty years. He said that he knew the people in the store and they all knew him. He said he went in the store with Eugene. He said he didn't know that Eugene had planned to commit a robbery of the store. He said that Eugene had two guns, he gave him one of the guns while they were in the store and he said that somebody named Freddy grabbed the barrel of his gun and that he pulled on it and it went off, said he dropped the gun, a .22, he left the store, ran back to his sister's house, watched the police and ambulance arrive at the store.
>
> He said he later saw Eugene and at that time, Eugene told him that he had gotten $2,000 from the robbery. And then I believe that was most of the story.
>
> However, Jones refused to give a written statement." End of excerpt.

D ended his education in the eighth grade and has had, since that time, a sporadic, nearly non-existent employment record.



D was charged with and convicted on October 10, 1986 of purposeful and knowing murder, felony murder, four counts of robbery, four counts of kidnapping, and two counts of unlawful possession of a weapon. Aggravating factors grave risk (4b) and felony factor (4g) were served and found. Three mitigating factors were served: D's age (5c), intoxication (5d) and any other factor (5h). Only two were found, (5c) and (5h). The jury did not find that the aggravating factors outweighed the mitigating factors.

Revised 9/20/91

#1288, 3023

STATE V. KEENAN

D saw V1 and V2 at a park and accused them of staring at him. They argued. V1 and V2 left the area, but heard air escaping from a tire. They found a slashed flat tire. They confronted D. D got out of his car and shot V1 4x. Then D shot V2 2x. [redacted] Jury verdict: murder 10/16/89. Penalty trial. No aggravating factors found for either victim. Life.

On Sunday, October 26, 1987, defendant (D) Joseph Keenan, a 54 year old male, was parked in a park. Victims (V1), a 30 year old male and family and (V2), a 70 year old male and wife parked behind D. As V1 and V2 and family got out of their car, D confronted them and accused them of "staring at him." V1 or V2 uttered a few words in response to D, but essentially the family tried to ignore D and began down the hill to set up their birthday celebration for V2's seventieth birthday.

As V1 and V2 and family walked away, they heard a loud noise from the area of their car -- a noise consistent with air escaping from a tire. V1 and V2 raced up the hill towards their car to find their right rear tire flattened and D seated behind the wheel of his car.

As V1 and V2 approached D, they were quite upset at the damage that had been done to their tire. V1 ran to the driver's side of D's car and demanded to know from D why he had slashed their tire.

Within seconds, V1 backed away from D's car, his hands in the air, his voice pleading. In one movement, D opened his car door, raised his gun and a shot rang out. V1 was no further away than the end of the driver's door when D fired the first shot. D emerged from his car, gun in hand. V1, who had been hit, either fell or jumped on D and struggled in an attempt to get control of D's gun. V1's attempts were in vain. Several more shots were fired by D and V1 fell to the pavement fatally wounded. W1 stated that after V1 fell to the ground, D fired a "last shot" into V1. V1 was shot a total of four times, in the chest, the abdomen, the hand and a graze wound to the neck.

As V1 lay on the ground, D turned his attention to V2. V2 continued to back away, hands in the air, begging for his life. D turned to face the unarmed V2, and while V2 was pleading, D shot V2. V2 was mortally wounded and fell to the ground. D calmly watched and listened to V2 as he pleaded, and then picked up his gun and shot V2 again. V2 was shot in the chest and the abdomen. D then calmly turned, walked to his car and drove from the park.

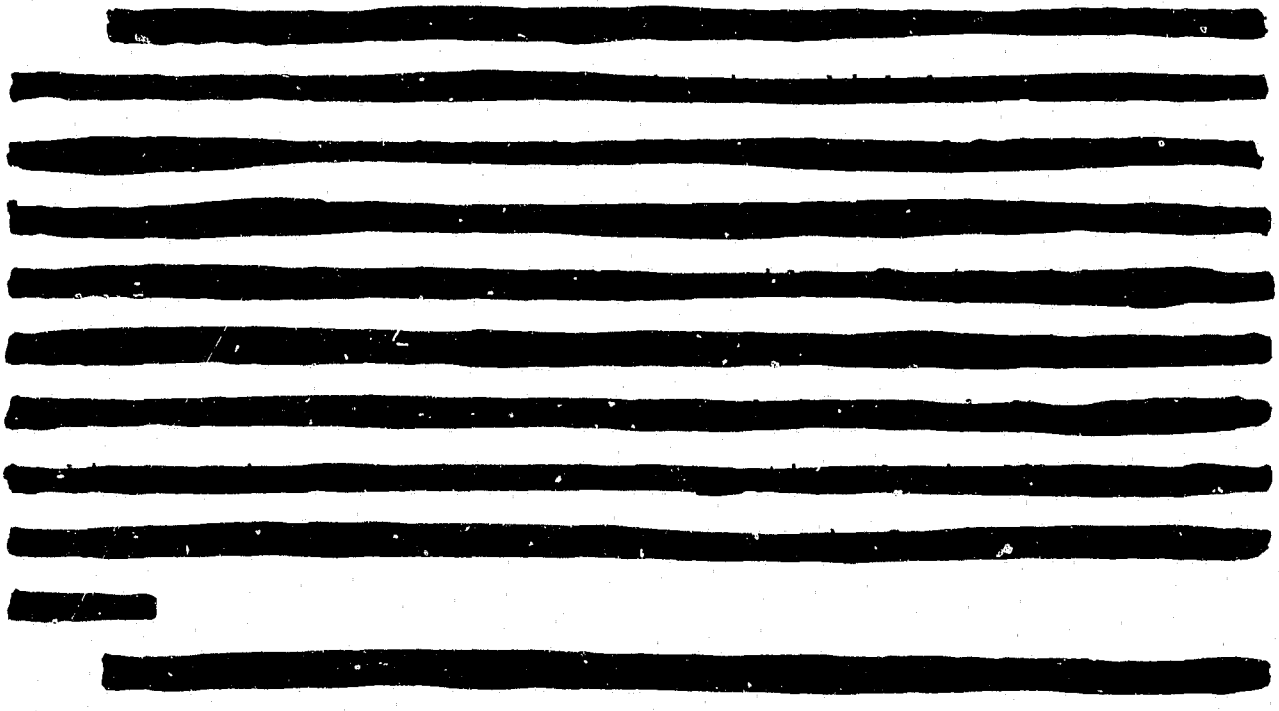
After the murders, D drove from the park directly to the Police Department, where he entered the police station and announced to the dispatcher that he had been involved in the incident in the park and that "they attacked me."

Acting under the authority of a search warrant, the police searched D's car which was located outside the police station. Therein they located a bag containing a .38 caliber 6 shot revolver with six spent shells in the cylinder, seven live rounds of

ammunition in the bag, a steak knife and a bowie-type hunting knife. The bowie knife was subsequently positively linked forensically to the slit in V's tire. The bullets retrieved from the victims were also positively matched to D's gun.

D testified on his own behalf and admitted possession of the gun, bullets, and knives. D conceded that he had slit V's tire. The bullets retrieved from the V's were also positively matched to D's gun. However, he claimed that the shootings were the product of self-defense and/or accident.

D was born August 2, 1935, in New Jersey. He married in 1960 and three children were born of that union. He divorced in 1976 and his family resides in Maine. He attended college for one year and enlisted in the marines for eight years. Prior to being incarcerated, D had been self-employed as a life insurance salesman since 1960.



[redacted]

D was charged with 2 counts of purposeful and knowing murder, count 1 and count 2; possession of a weapon for unlawful purpose, count 3, 4, and 6; and unlawful possession of a weapon, count 5.1 D was found guilty on all counts on October 16, 1989. Two separate notices of factors were served. Aggravating factors 4(b), grave risk; 4(c) depravity; and 4(f), escaping detection were served for V1's murder; 4(f) did not go to the jury. Factors 4(c) and 4(g) contemporaneous felony were served for V2's murder. In the penalty phase, the jury did not find any aggravating factors present. Mitigating factors 5(a), 5(c), 5(d), 5(e), 5(f) and 5(h) were served. 5(a), 5(d), 5(e), 5(h) went to the jury but were never considered.

Revised 8/1/91

#1315

STATE V. KING

D was in his girlfriend's apartment, they argued. D got a gun. He returned. D and V (visitor) argued. D fired a shot in the ceiling. As V walked away, D shot V in the head. V fell, D shot V in the head again. D fired three more shots. One hit NDV in the abdomen. [redacted] Jury verdict: murder 12/12/84. Penalty trial. No aggravating factor found. Life.

The following quotation was excerpted from an unpublished Appellate Division opinion. 2/3/88. A-2975-84T4.

"Defendant owned a two-family house in East Orange, where he lived on the first floor with his wife and their three children. His mistress of many years, Joyce Lampley, lived on the second floor. Defendant spent half of his time downstairs with his wife and half of his time with his mistress and her children, one of whom was fathered by defendant.

"On December 31, 1982, defendant spent the night in Joyce's apartment and around 9:30 the next morning, he went downstairs where he spent several hours drinking. Apparently he and his wife argued about Joyce and her older children, Jerome and [redacted], the murder victim. At approximately 1:30 p.m., defendant became hungry and went upstairs. Present in the Lampley apartment were Joyce, Kingston, Jerome, Jerome's infant daughter, [redacted] and his fiancee Susan. Joyce refused defendant's request to prepare food for him and an argument ensued between the two which [redacted] joined in.

"Defendant left the apartment and went downstairs to his bedroom to obtain his .32 caliber pistol which he always kept loaded. Defendant felt he needed the gun because he was afraid of [redacted] and Jerome. He placed the gun in his pocket and returned upstairs. His argument with [redacted] again flared up, and as [redacted] turned from defendant and began walking away, defendant took out the gun and fired at the ceiling. Defendant then stepped forward and shot [redacted] at close range in the back of the head. [redacted] fell and defendant stood over him and shot him in the back. Defendant then fired more shots; one struck Susan in the abdomen, seriously wounding her, and one went through the kitchen cabinet and lodged in the wall.

"Defendant, after being disarmed by Jerome, went downstairs, handed his wife his keys and wallet, put on his coat and went outside. Jerome, still possessing the gun, left in [redacted]'s car, but returned a short time later and turned the gun over to the police. Defendant was arrested at the scene...

"Three expert witnesses, Dr. Robert Sadoff, a psychologist; Dr. Gerald Cooke, a psychiatrist; and Diana Aviv, a psychiatric social worker, testified at trial on defendant's behalf. Dr. Sadoff interviewed defendant four times, seeking to determine defendant's state of mind at the time of the incident. Dr. Sadoff concluded that defendant's memory was impaired, that defendant was an alcoholic, and that he had a paranoid personality. It was his opinion that defendant was suffering from these "mental diseases" at the time of the shooting, and that therefore his judgment was

distorted and he did not act purposely or knowingly in shooting the victims.

"Dr. Cooke, a psychologist who saw defendant and conducted an interview and psychological tests, found the defendant had an I.Q. of 82 and suffered from "mild paranoid ideation," and "alcohol problems." He opined that these conditions would interfere with defendant's judgment, but was unable to say if they would prevent defendant from acting purposely or knowingly.

"Diana Aviv, a psychiatric social worker, testified that she interviewed defendant 27 times, totalling 37 hours, in order to assess his mental state. She concluded that defendant suffered from alcohol intoxication; a "mixed personality disorder with passive dependent features and underlying paranoid features," and "an atypical paranoid disorder of a premorbid nature." She concluded that defendant was intoxicated at the time of the incident, that he exhibited paranoid behavior, and that he did not necessarily know what he was doing at the time.

"In rebuttal the State called a forensic psychiatrist, who testified that defendant acted purposely and knowingly, even though suffering from alcohol dependency. He testified that even if defendant might have been suffering from a paranoid personality, this would not affect his conclusion that defendant acted purposely and knowingly." End of excerpt.

D is a 39 year old male [redacted]

D was charged with purposeful and knowing murder, aggravated assault, possession of a handgun without a permit and possession of a handgun for an unlawful purpose. In a jury trial, D was convicted on all counts. At the penalty phase, the jury charged on aggravating factor 4b, which they failed to find. Mitigating factors (5c) age, (5d) mental disease or defect or intoxication (5f) criminal history and (5h) any other factor were served but never considered by the jury. The jury also sent a note to the judge signed by nearly all jurors requesting mercy in sentencing, but the judge, of course, had no choice but to impose life.

D was sentenced to life on the murder count with a 30 year period of parole ineligibility. On count 2, D was sentenced to 10 years with a 5 year period of parole ineligibility concurrent to count 1. On count 3, D received 5 years, concurrent with the sentence on count 1. On count 4, D received 10 years with a 5 year period of parole ineligibility to run concurrent with the sentence in count 1.

Revised 8/5/91

#1336

STATE V. JAMES KOEDATICH (II)

D ran V off the road, sexually assaulted, then stabbed her 4 times in the chest. Jury verdict: murder 5/1/85. Penalty trial. Two aggravating factors found: 4f, 4g. One mitigating factor found: 5h. Life.

On December 4, 1982, at approximately 9:30 p.m., victim (V), a female college student drove with a girlfriend to meet the girlfriend's brother at a local bar and restaurant. At 12:30 a.m., the three drove in V's auto to a local diner. They stayed at the diner for an hour before returning to the bar so that the brother could pick up his car. All three returned to the friend's home where they exchanged farewells.

At approximately 1:45 a.m., V left to start her half hour drive home.

At 2:10 a.m., a park patrolman, (W-1), was conducting his usual rounds when he discovered a car with its headlights and taillights on, positioned on the side of the road. W-1 was later joined by W-2. W-1 noticed keys in the ignition and a purse on the seat. Additionally, both patrolmen noticed a tire track in front of the vehicle. W-1 opened the purse and found V's identification. W-1 drove to V's residence where V's father informed him that she had not returned home.

At 4:26 a.m., New Jersey State Troopers responded to a call from a truck driver at a nearby rest area. The driver reported that a woman had been stabbed and needed emergency medical assistance. There were two truck drivers on the scene when the troopers arrived. One, W-3, stated that a car pulled up behind his truck as he arrived at the rest area. According to W-3, when the over-head light came on in the car, he saw a black-haired person slumped over in the passenger's seat. W-3 described the driver and his clothing and gave a description of the car; a bluish-green Chevy, possibly 1967 or '68. V, still alive, was able to give the troopers a similar description. W-3 further stated that as he sat in his truck he heard a noise and scream outside the door. W-3 exited his truck and found V bleeding from her chest and pleading for help. Another truck driver, W-4 then arrived at the scene and stayed with V while W-3 sought medical assistance for V. V told W-4, as well as the troopers, that she was forced off the road and pulled from her car. V died shortly after arriving at the hospital. An autopsy revealed four stab wounds to her chest and sperm in her mouth and vagina.

On January 16, 1983, at approximately 11:30 a.m., police arrived at D's home in response to a stabbing report. D told the police that he was driving his car when he was approached by another car with a blue flashing light. According to D, when he exited his car, the other driver asked why he (D) was driving slowly. D responded he was driving slowly due to road conditions. As D turned to re-enter his car, the man allegedly stabbed him in

the back. An ambulance was called and D was taken to the hospital. D's vehicle, a 1970 Chevy, was taken to the police garage.

On January 17, 1983, a police lieutenant (W-5) was called to the garage where D's auto was being housed to be briefed on D's stabbing. W-5 looked down at D's auto and stated: ". . . this is the tire. . .," alluding to his belief that he had discovered the tire which made the track in the area where V's car was found.

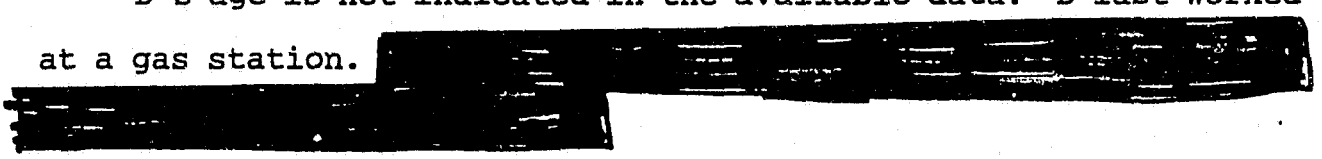
An expert witness testified that the location and nature of D's stab wounds were consistent with a self-inflicted injury.

A forensic chemist, testified that paint particles found in D's car matched particles found on V's clothing.

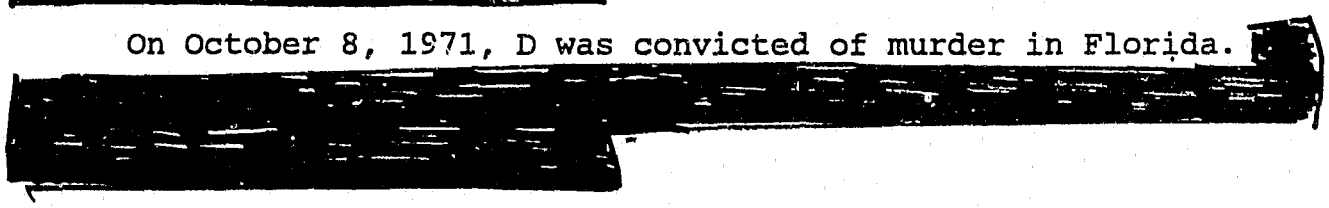
A manager of tire design and development for Firestone Tire and Rubber Company testified that the right snow tire removed from D's car was the only tire which could have made the imprint found at the scene.

An FBI Special Agent testified that there was a strong correlation between the fibers found on D's seat-cover and those found on V's clothing.

D's age is not indicated in the available data. D last worked at a gas station.



On October 8, 1971, D was convicted of murder in Florida.



For a separate offense, on October 29, 1984, D received the death penalty for the November 1982 kidnap, aggravated sexual

assault and murder of a young woman. This conviction was upheld by the Supreme Court, but the death sentence was remanded for a new sentencing proceeding.

For the present offense, D was charged with murder, felony murder and kidnapping. A notice of factors was served: 4(a), prior murder; 4(c), extreme suffering; 4(f), escaping detection, for the sexual assault and kidnapping; and 4(g), contemporaneous felony, for the sexual assault and kidnapping. At a trial held on April 12 - May 1, 1985, D was found guilty on all counts. At the penalty trial, held on May 2, 1985, factors 4(f), for the kidnapping and 4(g), for the kidnapping were found. One mitigating factor was served and found: 5(h), any other factor. D was sentenced to life, with a 30 year period of parole ineligibility on the murder counts. On the kidnapping count, D was sentenced to 30 years with a 15 year period of parole ineligibility. This sentence was made consecutive to the life sentence.

Revised 8/5/91

#1391

STATE V. LAZORISAK

D picks up homosexual (V) at club. D and V go to florist shop where V works. D shoots and robs V. Jury verdict: murder 3/20/87. Penalty trial. One aggravating factor found: 4g. Three mitigating factors found: 5a, 5d, 5h. Life.

During December, 1985, and the first weeks of January, 1986, two men, W1 and W2, among others, planned to break into an antique dealer's home and business in order to steal large amounts of cash which W2 said the dealer kept on the premises.

Defendant George Lazorisak (D), a 20 year old male, was brought into the planning in January. D had a gun which his father (W3) had given to him. On January 15, 1986, the group decided to commit the burglary. They needed a car, and D said that he would get one.

D allowed himself to be picked up by (V), a 47 year old male, at a homosexual trysting place. V drove D to the florist shop where V worked part-time making floral arrangements. At the store, D shot V one time in the head near the left ear.

D then took V's watch, ring, lighter, and wallet, and drove V's car to W1's and W2's apartment. D showed W1 and W2 the items he had taken from V. They told D to get rid of the car and the other items. D drove V's car to an apartment complex, parked it, and disposed of the stolen items. D then called W3, who was aware

of the burglary plans, and asked him to pick D up. After hearing about the shooting, W3 destroyed the gun at his work place.

D denies any involvement in the crime.

[redacted] He has held odd jobs in the past, and enlisted in the Army a little over a month after killing V. D had difficulty in elementary and middle school, but he eventually earned his high school diploma.

[redacted]

D was charged with purposeful, knowing murder, felony murder, robbery, possession of a weapon for an unlawful purpose and unlawful possession of a weapon. On March 20, 1987, D was found guilty on all counts. A notice of factors was served for the 4(f), escape detection; and 4(g), contemporaneous felony aggravating factors. The jury found the 4(g), factor to be present. The jury was charged on mitigating factors 5(a), emotional disturbance; 5(c), age; 5(d), mental disease or defect; 5(f), prior record; and 5(h) any other relevant factor. Factors 5(a), 5(d) and 5(h) were found by the jury. The jury found that the aggravating factors did not outweigh the mitigating factors.

Revised 8/5/91

#1476

STATE V. LUCIANA

D (19 yrs.) and V (15 yrs.) accompanied by 3 friends attended a party. D and V walked into the woods. D sexually assaulted V, then strangled V with her bra. D had been drinking. Juvenile: 4 non-violent priors. Adult: 4 non-violent priors. Jury verdict: murder 11/18/88. Penalty trial. Two aggravating factors found: 4f, 4g. Four mitigating factors found: 5c, 5d, 5f, 5h. Life.

On the evening of June 27, 1987, the defendant (D) Mark Luciana, a 20 year old male, attended a party with the victim (V), a 15 year old female, along with 2 other males (W1 and W2), and a 12 year old female, W3. At approximately 12:30 a.m., the group left the party and headed for a nearby wooded area where they intended to go swimming. Once at the wooded area, D and V walked into the woods. D sexually assaulted and strangled V to death with her brassiere. D then left V and joined the others. D told the group that V left to go to the bathroom, but did not return. D took W2's auto and pretended to look for V. Sometime later, D returned and picked up the others. D drove W1 home and dropped W3 off at V's home where she was staying. D informed V's mother that he did not know anything about V's whereabouts.

After leaving V's home, D (with W2 unconscious due to excessive drinking) returned to the crime scene. D put V's body in the trunk of W2's auto then drove to a hotel parking lot. When W2

awoke at 7:00 a.m., D showed him V's body in the trunk. W2's auto would not start, so he and D returned to their homes by walking and using public transportation. On this same morning, June 27th, D denied any knowledge of V's whereabouts when questioned by police. That evening, W2 informed police about his knowledge of the murder. On June 29th, D (who had been hiding in a wooded area near a friend's home) turned himself in at police headquarters. D's ex-girlfriend provided a statement indicating that D becomes violent after drinking and being refused sex. D's cellmate gave a statement indicating that D told him that he (D) enjoys inflicting pain upon his partners during sexual encounters.

D is a male who stands 5'10" and weighs 180 pounds. He left high school after completing the ninth grade, but later received his GED and attended classes at a community college. [redacted] At the time of the murder, D was employed in his step-father's paving business. In 1986, D was convicted of drug possession and receiving stolen property.

D was charged with purposeful murder, knowing murder, felony murder, aggravated sexual assault, hindering apprehension and endangering the welfare of a child. The State served aggravating factors 4(c), extreme suffering; 4(f), escape detection; and 4(g), contemporaneous felony. Defense served mitigating factors: 5(a), emotional disturbance; 5(c), age; 5(d), mental disease; 5(f), criminal history; and 5(h), any other factor. In a capital trial,

D was found guilty on November 18, 1988, on all counts. At the penalty phase, the jury found aggravating factors 4(f) and 4(g) and mitigating factors 5(c), 5(d), 5(f) and 5(h). They were unable to reach a decision regarding the weighing of the factors. For sentencing purposes, counts 2 and 3 were merged into count 1, and D was sentenced on March 22, 1989, to life imprisonment, with a 30-year period of parole ineligibility. D was sentenced to 15 years on the sexual assault count and 4 years on the hindering apprehension count. Both sentences were made consecutive to the life sentence.

Revised 8/5/91

#1489

STATE V. MACHADO

D and V (girlfriend) had violent relationship. D and V argued because V, who was pregnant, wanted to have an abortion, while D wanted her to have the baby. D threatened to kill V on one occasion, and on another V told her father that D wanted to kill her. D and V seen together, V never returns to her apartment. V found 3 weeks later, with her arms bound behind her. V was stabbed 28x. Forensic evidence linked D to the crime. Jury verdict: murder 12/13/84. Penalty trial. One aggravating factor found: 4c. Four mitigating factors found: 5a, 5c, 5f, 5h. Life. Reversed on appeal. On remand, manslaughter plea. 10 years. Plea retracted. Pending.

The following facts were excerpted from State v. Machado, 111 N.J. 480 (1988).

"In relating the facts in this case we primarily describe the tumultuous relationship between defendant and the decedent [redacted] as defendant was convicted of her murder essentially on the basis of circumstantial evidence relating to this relationship. [redacted] and defendant met in May 1982 on [redacted]'s first day of work at the Sheraton Heights in Hasbrouck Heights where defendant was working as undercover security and [redacted] was employed as a waitress. They quickly became friendly on more than a casual basis and as a consequence defendant seems to have believed that he had a right to control [redacted]'s actions. Thus in August, when [redacted] wanted to attend a convention of a religious group called the Way in Ohio, defendant was adamantly opposed to her going and told her so. Though this dispute precipitated a rather violent argument between them, [redacted] nevertheless went to the convention.

"When [redacted] returned from Ohio, she moved in with defendant. Subsequently they visited her mother and stepfather, Alain DeCombe, to discuss their new living arrangement and to tell them that they wanted to get married. Wedding plans, however, were postponed but [redacted] and defendant continued to live together. At first [redacted] and defendant were happy though they sometimes argued over her job and style of dress. The record shows that defendant did not like it when [redacted]'s friends called her or when she went to visit them. Indeed he admitted to people that he was jealous and possessive of [redacted]. In fact, he admitted that on a night that they were to have dinner with a Mr. and Mrs. DeRocher, friends of [redacted], he was so displeased with her clothing that an argument ensued and he slapped her to calm her down. Subsequently, in late November or early December at defendant's apartment there was another violent incident between [redacted] and defendant.

"Toward the end of 1982 [redacted] discovered she was pregnant. At first, [redacted] and defendant were happy but [redacted] soon decided it was not a good time to have a baby as they were not married and a baby would be too much responsibility. Thus [redacted] wanted an abortion but defendant was opposed to her having one.

"Shortly after [redacted] discovered she was pregnant, she called defendant's friends, Krissy and Ramon Liriano, for help so she could leave defendant. [redacted] told them that she wanted to leave him because they were not getting along and defendant had been hitting her. Krissy and Ramon made arrangements for [redacted] to stay with Krissy in her dormitory at Rutgers University. Following that

defendant, who was upset over [redacted]'s disappearance, looked for her. Eventually defendant and [redacted] met and reconciled on Long Island. When they returned from Long Island, [redacted] moved back in with defendant but they continued to argue over whether to have the baby. One night just before Christmas [redacted] and defendant argued over the baby in the presence of the Lirianos so violently that the police were called. [redacted] was then taken to her parents' home in Montclair where she told her stepfather that "he wants to kill me." Nevertheless the next day [redacted] called defendant and inquired about what he was doing and told him she missed him. [redacted] however, did not move back with defendant but instead moved to a separate apartment in Jersey City. However, [redacted] and defendant continued their relationship until the night of January 27, 1983 she disappeared.

"There is no question but that on the night of January 27 and the morning of January 28, 1983 [redacted] and defendant were together. [redacted] took defendant to work around 4:00 p.m. and later went to a Way meeting in Weehawken and to Heather's, a disco in the Meadowlands Hilton in Secaucus. Subsequently, she picked up defendant. Defendant testified he last saw her when he dropped her off near her apartment. According to defendant, he returned to [redacted]s apartment the next morning to take her to work. When she did not respond to his knocking on her door he began looking for her. He notified the police of her absence and a few days later filled out a missing person's report....

"[redacted]s body was found on February 26, 1983 when John Taft,

his wife and soon were riding down Barzooski Street in Kearny, New Jersey, a street on the edge of the meadowlands. Taft stopped the car to see a ringnecked pheasant when he saw the body. At that time a police car came down the street and Taft told the officers what he had found. Subsequently investigating officers saw that [redacted]'s hands were tied behind her back with makeshift handcuffs. An autopsy showed she died from stab wounds....

"During the investigation defendant's car, coveralls, pants, sweatshirt and work boots were all tested for blood but with negative results. However, the police developed proof that a blue fiber recovered from the rope binding [redacted]'s hands was the same as fiber taken from a pocket in defendant's coveralls. Further, lint removed from under the handle and sheath of a knife found near the body matched material found in the pocket of defendant's coveralls.

"A significant document recovered during the investigation was an undated, handwritten letter from [redacted] to defendant which her mother and stepfather found among her possessions when they cleaned out her apartment following her funeral. The letter read:

> Dear Jose,
>
> I know you don't understand. Maybe you never will. I don't know. You think there was nothing wrong with our relationship. Well, I can't make you see what I see or make you feel what I feel. I left because I felt my life was in danger. You, of course, would try to convince me it wasn't. You would go as far as to put me under lock and key and leave me no phone, and you would find a way to justify it if it suited your purpose. When I'm scared, I leave, and that's what I did.

> Please don't look for me. I'm not in any of the places you've been looking or anyplace you can imagine or be able to find a number to. I'm safe and far away.
>
> Jose, you have a lot of energy. Put it to good use. You know right from wrong. Please help yourself. You've got to learn to handle Jose before you can handle me.
>
> My prayers are with you.
>
> God bless, [redacted]

Below the signature, it continued,

> Remember, it was not money that made the times. It was us.
>
> I left the necklace and bracelet for you, for I wanted you to know that your money isn't what bought my love. It was your caring and loving actions that made me want to stay with you. Money's no good. It ruins people. I'm glad we didn't have money. We got to share a lot of good times.

"After the body was found the investigation continued for about 11 months before defendant was arrested." End of Excerpt.

D was a 23 year old male who attended one year of college before quitting so that he could work full time. D had an excellent work history and no prior criminal record. He lived in an apartment by himself.

A grand jury charged D with purposeful and knowing murder, felony murder, and kidnapping. A notice of factors was served for aggravating factors 4(c) extreme suffering and 4(g) contemporaneous felony. The 4(g) factor was never submitted to the jury.

In a jury trial, D was found guilty of murder, but was acquitted of the felony murder and kidnapping charges. At the penalty trial, the aggravating factor was found. Defense served

mitigating factors 5(a), emotional disturbance; 5(c), age; 5(f), criminal history; and 5(h), any other factor. All mitigating factors were found. The jury determined that the mitigating factors outweighed the aggravating factors. D was sentenced to a term of life imprisonment with a 30 year minimum. In 1987, the Appellate Division reversed and remanded the trial court's decision because hearsay statements of V were admitted. On August 17, 1988, the Supreme Court of New Jersey affirmed the Appellate Division's ruling, State v. Machado, 111 N.J. Super. 480 (1988).

On remand, D pled guilty to an accusation charging manslaughter on January 31, 1989. D was sentenced to a flat ten years on March 10, 1989.

Revised 3/12/91

#1510

STATE V. MANFREDONIA

D asked V to go out w/him. V began yelling at D and made insulting remarks that angered D. D got a knife, pushed V to the ground and attacked her. V was sexually assaulted and stabbed 26x in the chest and back area. Bench verdict: murder 6/11/86. Penalty trial. Three aggravating factors found: 4c, 4f, 4g. Three mitigating factors found: 5a, 5c, 5f. Life.

On Thursday, September 12, 1985, at approximately 3:30 p.m., 14 year old female (V) was walking the three mile distance between her high school and home after having missed the school bus. Unbeknownst to V, D, 19 year old male, Michael J. Manfredonia, was watching V from a nearby gas station. D had parked his car off of the road.

As V passed, D pushed her down on the ground and began attacking her. V was sexually assaulted and stabbed 26 times in the chest and back areas. D dragged V's body through the woods, and dropped her in a "perc" ditch that was about 8' by 4' D covered V's body with a pile of dirt, rocks and sticks.

After the attack, D went (at approximately 6 p.m.) to a nearby gas station where he was formerly employed. D requested that his former employer, W1, perform some repair work on his car, but W1 declined.

Meanwhile, V's parents became concerned when V did not return home on either the early or late school buses. After calling several of her friends, V's parents called the police at

approximately 9:00 p.m. The police and other residents combed the area between V's school and her home, but were unsuccessful in finding V. The police also spoke to several witnesses who had seen V walking in the area where her body would be found two days later. These witnesses, including V's father, also reported seeing a green automobile off the road which V usually took home. Several witnesses, such as a maintenance man D knew from school, indicated that the man he saw walking was in fact D.

Based upon their sightings, police informed authorities in the nearby township where D resided that D was being sought for questioning. As it happened, D was in the township headquarters on an unrelated matter. At approximately 12:00 p.m. on Friday, September 13th, D gave police a written statement indicating that on the previous day, he was in the area where D was last seen. D indicated that he had "car trouble" and stopped to attempt to repair his auto. The police noticed that D had several scratches on his arms. D told police that the scratches occurred while he was playing with some friends in a graveyard. D was taken to police headquarters at approximately 4:15 a.m., Saturday, September 14th.

On Saturday, September 14, 1985, at approximately 10:30 a.m., V's body was discovered by police. D returned home on Sunday and his parents informed him that V's body had been found. D's parents called police, but D left out a bathroom window before they arrived. D returned home again at 10:00 p.m. on Sunday and D's parents, again, called police. When the police arrived, they

discovered D in the bathroom with a razor blade trying to slit his own wrists. D released the blade, and was taken into custody. D told the police that he had taken some pills. D was taken to the hospital via ambulance, and was questioned by police both in the ambulance and hospital treating room where D's stomach was pumped. After initially stating that he only found V's body and hid it out of fear, the next day, after continued questioning, D admitted assaulting and stabbing V and burying her in the ditch.

On September 20th, police found the survival knife used in the assault and murder in the area where V was found.

The brown corduroy pants worn by D at the time of his arrest contained a pink and a white fiber from V's sweater.

W2, D's friend, testified that he was with D when D bought a survival knife similar to the one discovered by police.

A state police chemist testified that an analysis of the knife revealed traces of human blood although the quantity of the blood on the knife was insufficient for further analysis.

W1, D's former employer, testified that when D came to the service station at approximately 6 p.m. on Thursday, September 12th, D's clothing was covered with dirt. Additionally, W1 and a local resident, W3, presented testimony which implied that D had a motive to abduct, sexually assault and kill V. W1 testified that D, while in his employ, once watched V walk by on her way to school in the morning. W3 testified that while D was pumping gas into his car, he tripped over the gas hose because he was watching V.

Lastly, approximately (15) people observed V, D and/or D's car

in the area near the murder on Thursday, September 12th.

D is 19 years of age. He completed high school and resides with his parents. The file indicates that D was formerly employed as a gas station attendant, but was fired due to difficulties with his supervisor. D is mentally retarded with an I.Q. of 78.

D has no prior criminal record.

D was charged with murder, felony murder, aggravated sexual assault, kidnapping and possession of a weapon for an unlawful purpose. A notice of factors was served for extreme suffering, 4(c), escaping apprehension, 4(f) and contemporaneous felony, 4(g) statutory aggravating circumstances. All statements that D made while in custody on September 13th and 14th, and any state testimony regarding these detentions were suppressed, as well as all evidence seized and testimony regarding an alleged consensual search of D's automobile and home. Ruled admissible were D's statements on September 15th and 16th made during D's trip to the hospital and in the emergency and treatment rooms, as well as additional statements made at the prosecutor's office. D waived his right to jury trial at both the capital and penalty phases.

In a capital trial, D was found guilty on all five counts of the indictment on 6/11/86. At the penalty phase, the judge found all the above mentioned aggravating factors, but treated 4(f) and 4(g) as intertwined factors with over lapping motives. Thus, the judge treated 4(f) and 4(g) as a single factor. The defense alleged mitigating factors 5(a), emotional disturbance, 5(c), age of D; and 5(f) no significant prior criminal record. The judge

found all three mitigating factors and, further, found that the mitigating factors outweighed the aggravating factors. Thus, D was sentenced to life imprisonment, with a 30-year parole ineligibility period. On the remaining counts, D was sentenced to 30 years with a 15 year parole ineligibility period on the kidnapping count, and 20 years with a 10 year parole ineligibility period on the aggravated sexual assault count. Both sentences were made consecutive to the murder sentence. The felony murder count was merged with the murder count for sentencing purposes. D was not sentenced on the weapons count.

Revised 8/8/91

#1533

STATE V. MARTIN

D, 21 year old male, drinking at party, gets thrown out with friends, starts fire in apartment building, kills V. No adult priors. Jury verdict: murder 3/12/84. Penalty trial. Two aggravating factors found: 4b, 4g. Four mitigating factors found: 5a, 5d, 5f, 5h. Life.

The following quotation is taken from State v. Martin, 119 N.J. 2 (1990) at 6, 7.

"On June 29, 1983, defendant and four others from Keyport attended a party in the apartment of Lois Baker on the third floor of a three-story wood-framed building in Keansburg. Defendant, who claimed he was intoxicated, stated that he had smoked marijuana and consumed four beers before the party, and four more beers and four shots of Southern Comfort at the party. Paul Wade, one member of the Keyport group, became involved in two altercations with other guests, including Mike Kilpatrick. After the second altercation, Baker told everyone from Keyport to leave. On leaving, defendant and Wade vandalized a motorcycle that they thought belonged to Kilpatrick and removed the rear-view mirrors, which defendant placed outside Baker's apartment.

"Within fifteen minutes after defendant left Baker's apartment, another guest noticed that the building was on fire. Everyone escaped, except [redacted] who had fallen asleep after drinking alcoholic beverages at the party. She died of

asphyxiation due to smoke inhalation and carbon monoxide intoxication.

"According to defendant, he set the fire by lighting a paper bag containing trash that he found in the hallway by Lois Baker's door. Defendant testified:

> "I picked up the bag and walked down the steps with it. I was just, you know, throwing it around making a mess, you know, and I set it down and I lit up a cigarette. And the match -- I lit the paper bag on fire, you know, 'cause I thought maybe it would burn up the garbage, you know, not to spread or anything, just make, like make a mess of the bottom of the landing. And then, then I left.
>
> "I put the match on the bag and lit the bag, the top of the bag on fire. I thought it would make a mess of things. I didn't understand. I mean I didn't figure that it would, you know, cause a fire and spread or catch on anything. I thought it would just, you know, burn the garbage and go right out. I didn't mean to hurt nobody.

"The State's version of the setting of the fire differed materially from that of defendant. According to the State's experts, Frederick Dispensiere of the Monmouth County Prosecutor's Office, and Daniel Slowick, a fire insurance investigator, the fire was set by spreading kerosene between the ground floor and the second floor. Dispensiere concluded that the fire was deliberately set through the use of an "accelerant" at some point between those floors. He based his opinion on "[t]he degree of damage in the hallway, the absence of anything in that hallway combustible which

could have created that much of a volume of fire, the depth of char, the rate at which the fire spread and the direction that it spread also." Dispensiere found "pour patterns" on the stairway between the first- and second-floor landings, which led him to suspect that an accelerant had been used in the fire. Gas chromatography tests performed on wood samples taken from this area of the building revealed the presence of kerosene. Baker kept kerosene in a plastic milk container outside the apartment, and seven days after the fire Dispensiere found a melted plastic container in the third-floor hallway. Slowick also concluded that the fire had been deliberately set through the use of kerosene. He found "pour patterns" at the top of the first-floor stairway. A lab analysis of wood samples that he took from this area revealed the presence of kerosine." End of Excerpt.

Defendant is a 21 year old high school drop-out. He was employed for two (2) months prior to the present offense as an auto mechanic trainee. Prior to this offense, D resided with his grandmother.

Defendant has no prior adult criminal offense record.

Defendant was charged with knowing and purposeful murder, felony murder, aggravated arson, and arson. A notice of factors was served for the grave risk of death, 4(b), and the contemporaneous felony 4(g), statutory aggravating circumstances. In a capital trial, D was found guilty on all counts on March 12, 1984. At the penalty trial, the jury was charged on both aggravating factors, and found both present. The jury was charged

on mitigating factors: 5(a), extreme emotional disturbance; 5(c), age of D; 5(d), diminished capacity; 5(f), no significant prior criminal record; and 5(h), any other relevant factor. The jury found all factors present except 5(c). The jury found that the mitigating factors outweighed the aggravating factors. On May 11, 1984, D was sentenced to life imprisonment with a thirty-year period of parole ineligibility. D was also sentenced to a concurrent 10-year term, with a 5-year period of parole ineligibility on the aggravated arson conviction. The felony murder conviction was merged with the murder conviction and the arson conviction was merged with the aggravated arson conviction for sentencing purposes. D's conviction was affirmed by the Appellate division in an opinion dated November 10, 1986. In an opinion dated May 17, 1990, the New Jersey Supreme Court reversed D's conviction because of error in the jury charge in accusation. State v. Martin, 119 N.J. 2 (1990).

Revised 8/6/91

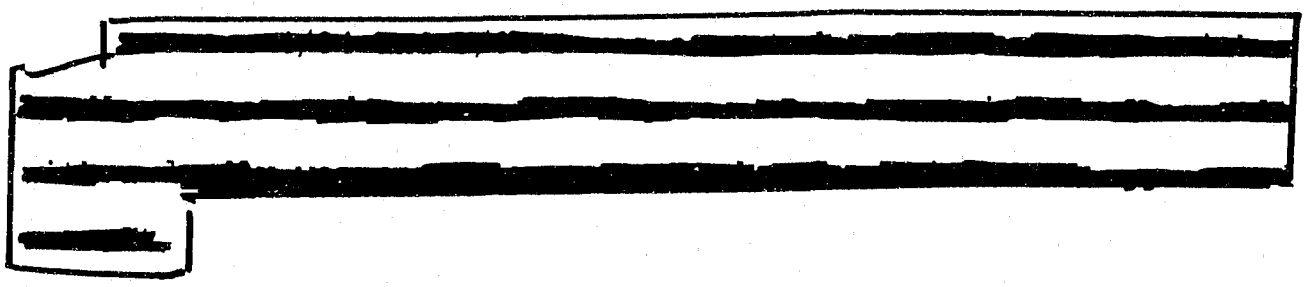
#1576

STATE V. MAYRON

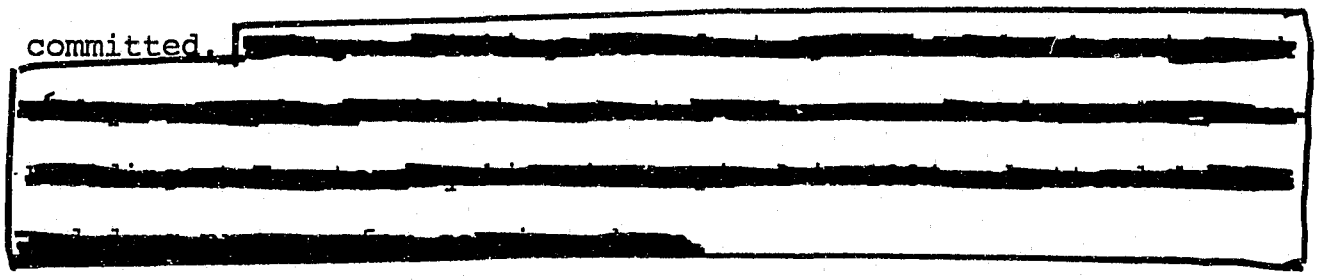
D met V in an arcade. They went to a hotel and had sexual relations. D then beat V, took her to the woods and beat her more, then left her with her head in a pool of water. Jury verdict: murder 10/26/89. Penalty trial. Two aggravating factors found: 4c, 4g. Three mitigating factors found: 5a, 5d, 5h. Life.

On March 26, 1986, defendant (D) Gary Mayron, a 22 year old male met victim (V), a female, age 17, at an arcade. D and V left the arcade in D's truck and purchased a six-pack of beer. D and V proceeded to a motel and D registered. D and V watched TV, drank beer and had sexual intercourse. After having intercourse, D became violent. D took his belt and wrapped it around V's neck. D attempted to strangle V with the belt, however, the belt broke. V was unconscious. D dressed V and put her in his truck and drove to a secluded area. V, now conscious, pleaded for her life. D said, "I'm not going to hurt you, I'm just going to teach you a lesson about promiscuity." D then pushed V down. V hit her head on a rock and was dazed. D dragged V to the bottom of the hill and began to punch and kick her. V tried to stab D with a stick, but D overpowered her and pushed V's face into the water. D left V and went to a bar to wash his hands and shoes. D told his girlfriend about the murder. D's girlfriend called the police. Upon arrest, D denied the murder, then he admitted to committing the murder and led the police to V's body. D claimed he did not intend to kill V

and thought that she was alive when he left.



D graduated from high school and enlisted in the Army. D was given a dishonorable discharge for an aggravated assault offense he committed.



D was charged with kidnapping and purposeful, knowing murder and was tried and found guilty as charged on October 26, 1989. Aggravating factors 4(c), extreme suffering and 4(g) course of a kidnapping were served and found by the jury. Mitigating factors 5(a), emotional disturbance; 5(c), age (26); 5(d), mental disease or intoxication; and 5(h), any other factor were served.

The defense presented two psychologists who testified that when D combined drink and sex he went into violent, psychotic episodes. D's biological mother and sister testified that D had spent much of his childhood in foster care. A criminal sociologist testified that criminal behavior decreases with age. The jury found 5(a), 5(d) and 5(h) and, because one juror could not agree on the imposition of the death sentence, could not agree on a verdict.

D was sentenced on December 22, 1989, to life with a parole ineligibility of 30 years on the murder and to thirty years parole ineligibility on the kidnapping, consecutive to the murder count.

Revised 8/7/91

#1612

STATE V. MCKENZIE

D (M) V (F) driving. Argument. D put his hand over V's nose and mouth. V rendered unconscious. D put V in trunk of car. V died of cold or oxygen deprivation. Body discovered 1 month later. [redacted]. 2 non-violent priors. Jury verdict: murder 5/16/88. Penalty trial. One aggravating factor found: 4g. Three mitigating factors found: 5d, 5f, 5h. Life.

On January 9, 1985, D met V at her place of employment. He went with her to her apartment where he held V against her will and repeatedly physically and sexually assaulted her. On January 12, 1985, V's family went to her apartment, and when V answered the door, D fled through a bathroom window. V was taken to the police department, reports were filed, and she was to return to sign the complaints a few days later. Shortly, thereafter, V disappeared and was not found until almost a month later.

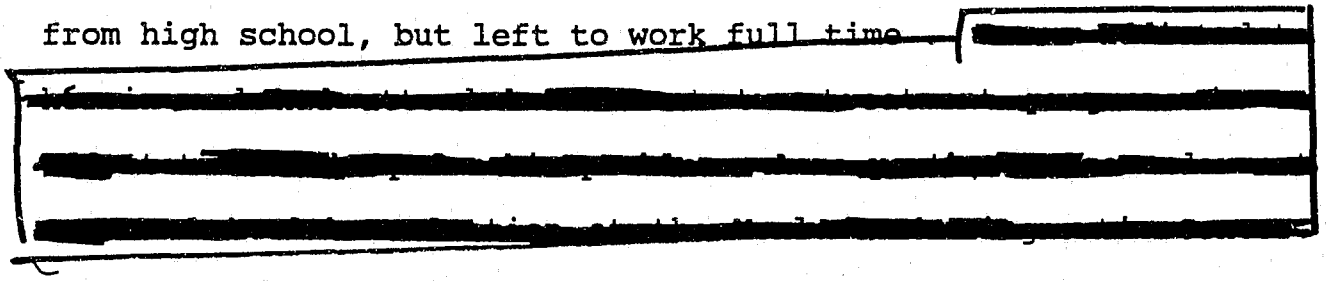
On February 9, 1985, the police were notified by the manager of a motel that they were unable to wake one of the motel's guests. The police arrived and summoned the first aid squad, who transported the guest, Clifton McKenzie (D), a 29 year old, 6'2", 185 pound male, to the hospital for treatment of drug overdose.

While D was at the hospital, the car that he left at the motel was taken to police headquarters. Police searched the car and discovered the body of [redacted] (V), D's 26 year old girl friend. V's body was frozen, and part of the trunk had to be cut away before it could be removed from the car. It was later

determined, through an autopsy, that V died from cardiorespiratory failure due to a deprivation of oxygen and/or exposure to the cold.

After finding V's body, the police returned to the hospital to interview D, who insisted that his mother be present. D then told police that he and V were riding in V's car on January 15, 1985, when they began arguing. D placed his hand over V's nose and mouth until she became unconscious and then placed her in the trunk of the car. He claimed to have been under the influence of heroin at the time and said that he believed that V was still alive when he placed her in the trunk. D said that he checked on V the next day, January 16, 1985, but that she was "cold." He also checked on her on January 17, 1985, and noticed that V was frozen and "shrinking in size."

At the time of his arrest, D was collecting unemployment benefits. He attended college for one semester after graduating from high school, but left to work full time [redacted]



Between 1975 and 1983, D had a number of prior convictions, including a burglary, four disorderly persons and three forgeries.

D was charged with purposeful or knowing murder by his own conduct, kidnapping, and felony murder. In a jury trial, D was convicted of all three charges. A notice of aggravating factors was served for 4(f), escaping detection and 4(g), contemporaneous felony. At the penalty trial, only factor 4(g) was found. Three

mitigating factors were found: 5(d), intoxication; 5(f), no prior criminal history; and 5(h), any other factor. Factor 5(c), D's age was not found. The jury did not find that the aggravating factors outweighed the mitigating factors.

He was sentenced to a term of life imprisonment on the murder charge, with a minimum of 30 years before parole eligibility. In addition, D was sentenced to a term of 15 years on the kidnapping charge, to run consecutive to the murder sentence. Felony murder was merged with murder conviction.

Revised 7/23/91

#1638

STATE V. MELENDEZ (MIGUEL)

Co-D, a middleman, paid D $5,000 to kill V on behalf of another person. D waited for V in V's apartment building. When V entered, D asked about the car V was selling to identify him. D shot V 2 times in the head. Jury verdict: Capital Murder 6/3/87. Penalty trial. Aggravating factor: 4d. Mitigating factors: 5g, 5h. Hung Jury. Life.

The following facts are taken from the Appellate Division opinion _____ N.J. Super. _____ (App. Div. 19).

"Melendez was hired by codefendant Lazaro Trimino to kill a certain individual for $5,000. The victim was killed around noon time on December 15, 1984 in the presence of his 10 year old daughter after they had returned home from shopping.[1] A man, identified later as Melendez, had approached the victim and his daughter and began questioning the victim in Spanish about a yellow Datsun he said the victim was selling. The man wanted to know if the victim was still selling the car and indicated that he might want to purchase it. The victim told the man that he had already sold the car. The man then asked for some money and the victim responded that he didn't have any and started to walk away from the man. His daughter was ahead of her father on the stairs heading toward their apartment when she heard the man call her father's name. She then turned back and heard two shots. She screamed and

---

[1]Note: The defendant had been waiting for them in the vestibule to their apartment.

saw her father fall to the floor. When she then looked to see if the man who shot her father was still there he had gone. The victim ws taken to the hopsital where he was later pronounced dead.[2]

When the police arrived on the scene they saw the victim lying on the floor. They questioned the young girl about what happened and she told the police about the conversation that took place between her father and the gunman who took a weapon from his coat pocket and shot her father. She described the man as a black, Hispanic male, about 20 years of age and about 5 feet 10 inches tall. She said he was thin, had short, black curly hair and was wearing a full length light colored coat and dark pants. At trial she identified Melendez as the man who shot her father. She said that the only difference in his appearance at the time of trial as compared to the day of the shooting was that at trial his hair appeared shorter. She also said that the last time she saw the defendant was at the time of the shooting. On cross-examination she acknowledged that she had been told she was going to testify against the man who shot her father.

As a result of police investigation, the Essex County Prosecutor's office called an investigator at the Hudson County Prosecutor's office homicide unit to advise that they had a lead on the person who committed the subject murder. As a result of information from a police informant a conversation in Spanish

---

[2]He had been shot twice in the head, once in the eye, and once in the right temple with a 38 caliber.

between the informant and a man calling himself Acelio Despaine (who turned out to be Melendez) was recorded and monitored by a Spanish speaking investigator. During that conversation Melendez admitted being paid for killing somebody in Jersey City.

Melendez was then arrested and taken to the Essex County Prosecutor's office where he was informed of his rights, acknowledged that he understood them and waived them. After the initial interview defendant finally admitted that his real name was Miguel Melendez, rather than the name he had given to the police in Essex County of Acelio Despaine. In his statement Melendez admitted that Trimino had hired him to kill the victim and had paid him for doing this. Trimino had not disclosed any reason for wanting Melendez to take the victim's life. According to the statement, after the murder both Melendez and Trimino fled to Puerto Rico where Trimino remained for a week and Melendez remainted for eight months. During the interview of Melendez he was shown and identified a photograph of Trimino. The tape recorded statement given by defendant and his tape recorded conversation with the informant were played at the trial. Defendant neither testified in his own behalf nor called any witnesses."

V is survived by a wife and two daughters. He died in his wife's arms. His wife told the police that her husband was a quiet man who neither drank or smoked and that he had been a political prisoner in Cuba, and was reported to have headed up a club of ex-political prisoners. The alledged principal, Gerome, fled the

country and he alledgedly threatened Trimino with death if he "talked." Accordingly, the underlying motive for the killing is not known.

D told police that he killed V to prove his friendship to Co-D. He stated, "My friend Trimino had a problem with [V]." "In Cuba you show your friendship by doing deeds without asking questions. I agreed to kill him....I shot him in cold blood." The police questioned Co-D who claimed that he was hired by Pedro Gerome to arrange V's murder. Co-D claims that Gerome helped him out of trouble with the police, so that Co-D felt indebted to Gerome. According to Co-D, Gerome told him that he needed a job done and asked Co-D to "get someone". Later, Gerome drove Co-D to a factory and showed him V's station wagon, and then to V's house. Gerome gave Co-D an elaborate description of V. Co-D claims Gerome offered him $5,000 and a vacation in Miami if Co-D would kill, or get someone to kill V. Co-D arranged with another person to do the killing, and gave this person a gun received from Gerome, but the person was arrested for possession of the gun. Gerome asked D to get another person. At a later meeting,Gerome gave Co-D the .38 caliber revolver. Co-D hired D who had lived with him. Co-D told D to wait for V in his apartment building. As part of the plan, D was to ask V about a car he was selling in order to confirm V's identity.

D arrived in the United States in 1980. [redacted]

D and Co-D were charged with Conspiracy to commit murder

(count 1), Purposeful or Knowing Murder (counts 2 and 3), Possession of a Handgun for an Unlawful Purpose (count 4) and Unlawful Possession of a Handgun (count 5). In D's case, a notice of aggravating factors was served for 4d (pecuniary motive). At trial, W identified D as the man who shot V. D was convicted of all counts on June 3, 1987. At the penalty trial, factor 4d was found present. Four mitigating factors were served and presented to the jury: 5a (mental disturbance), 5d (mental disease), 5g (assistance to state, D testified for the state in an unrelated case) and 5h (any other factor). Only two were found by the jury, 5g and 5h. Melendez admitted his crime to the jury and expressed remorse. The jury was unable to reach a decision on weighing the factors.

The conspiracy conviction was merged into the murder conviction. On June 8, 1987, D was sentenced to life imprisonment with a 30 year parole disqualifier for the murder, a consecutive 10 year sentence with a 3½ year parole disqualifier for possession of a weapon for an unlawful purpose and a concurrent 5 year term for unlawful possession of a weapon. This judgment was affirmed on appeal. (A-6088-86T4)

On January 21, 1987, Co-D pled guilty to Conspiracy to commit murder. The other four charges were dismissed under a plea agreement in which Co-D agreed to aid in D's prosecution. On June 15, 1987, Co-D was sentenced to 10 years imprisonment with no parole ineligibility.

Gerome apparently has fled the country, and has reported

contacts in Nicaragua. He has allegedly threatened Trimino's life if he "talks."

Revised 8/5/91

#1640

STATE V. MENDEZ (INCENZIO)

D (28 yr., M) at V's (95 yr., F) house to burglarize. D surprised by V's arrival, hit V 3x with piece of wood and put knees in V's chest. No priors. Jury verdict: 4/19/84. Penalty trial. Aggravating factors found: 4c, 4g. Mitigating factors found: 5f, 5h. Life.

The following quotation is excerpted from the unpublished Appellate Division opinion. 3/6/87. A-5679-83T4.

"According to the State's proofs Grace Sannelli lived adjacent to [redacted] on a farm at [redacted], New Jersey. As the two woman were close friends, Mrs. Sannelli checked on [redacted] each day "to make sure she was fine." On Sunday, September 25, 1983 at approximately 3:00 p.m., [redacted] came to Mrs. Sannelli's home for coffee and cake as she had done many times before. [redacted], who was 95 years old, used a cane to aid her in walking. Between 4:00 p.m. and 4:15 p.m. that day, [redacted] left Mrs. Sannelli and her friend Angie Heck to return to her own home.

"Shortly before 6:00 p.m., Mrs. Sannelli telephoned [redacted] to see if she was in for the evening. Receiving no answer, Mrs. Sannelli went with her friend to see [redacted]. She thought that [redacted] might be resting and therefore just peered into the parlor windows. Noticing that a kitchen and hallway door had uncharacteristically been left open, Mrs. Sannelli went to the porch area on the side of the house. There she found [redacted]

lying dead in a pool of blood. Deciding not to enter the [redacted] residence, Mrs. Sannelli headed back to her home and called for her husband. The police were summoned within minutes after the body was discovered.

"Mrs. Sannelli explained that in addition to their 12 acres of land, the Sannellis farmed about 17 acres which they rented from [redacted]. The Sannellis worked in the packing house and employed four migrant workers to do the actual farming. One of the farm hands was defendant, a Puerto Rican who has a subnormal I.Q. and does not speak any English. Defendant had been working for the Sannellis about eight weeks at the time that [redacted] was murdered. He and the other three workers lived in a building located on the Sannelli farm.

"On September 25, 1983, approximately 15 minutes before [redacted] departed the Sannelli residence for her home, Mr. Sannelli arrived from the fields carrying the four workers in his truck. Later that same day, after having discovered [redacted]'s body, Mrs. Sannelli saw defendant near her house looking for Mr. Sannelli. Mrs. Sannelli summoned her husband who came to speak with defendant; however, she was not privy to their conversation....

"At trial, Xanthos read to the jury the English translation of defendant's statement. The video tape in which Fernadez read the statement to defendant was also played in court, and an interpreter translated it into English. The statement indicated that defendant was again given his Miranda rights, and then he told the police the following story concerning the murder of [redacted]. According to defendant, the principal perpetrator was a

Puerto Rican named Yorkie. On September 25, 1983, he came to defendant's apartment in his yellow pickup truck and suggested that they rob [redacted]. The two went to the victim's house, rummaged through some of her trunks and Yorkie eventually found jewelry and about $2,000. As Yorkie fled down the stairs with the stolen property in a canvas bag, he was confronted by [redacted]. Yorkie hit her in the head several times with the rifle he was carrying. When she fell to the ground, he struck her in the rib area hoping to cause her death. After covering [redacted] with a rug and placing a stick next to her, Yorkie suggested that he and defendant change clothes and return to defendant's house. Yorkie then absconded. Defendant returned to his apartment, bathed, washed his clothes and fell asleep watching television. Defendant gave a description of Yorkie but did not know his address...."

"A second statement was eventually taken from defendant from about 7:30 p.m. to 9:00 p.m. that day, September 27, 1986....

"According to this statement, defendant returned from work at about 4:00 p.m. on September 23, 1985. He checked the Lum residence to see if [redacted] was home. Defendant saw [redacted] approaching her home, came up behind her and knocked her down with three blows to the head with a stick he found near the house. When [redacted] tried to get up, he kneed her in the side and struck her in the neck. In his statement, defendant stated he hit the victim "with the stick to kill her so she couldn't

finger [him] later on, because [he] wanted to go in the house and get money or jewelry." End of Excerpt.

Expert testimony revealed that D is mentally retarded, with learning disabilities and a mental age of six years.

D is a resident of Puerto Rico, but periodically comes to the United States to work as a farm laborer. D left the 6th grade at age 22 and does not read, write, or understand English.

D has no prior criminal record.

Defendant was charged on April 19, 1984 with purposeful and knowing murder, felony murder (2 counts), aggravated assault with a deadly weapon, armed robbery, burglary, possession of a weapon for an unlawful purpose and unlawful possession of a weapon. A notice of factors was served for the outrageously vile, 4(c) and contemporaneous felony 4(g) statutory aggravating circumstances. In a capital trial, D was found guilty on all counts. At the penalty trial, the jury was charged on both factors and found both to exist. The jury was charged on mitigating factors: 5(a), extreme emotional disturbance; 5(c), D's age; 5(d), diminished capacity; 5(f), no significant criminal record; and 5(h), any other relevant factor. The jury found factors 5(f) and 5(h) present. The jury found that the mitigating factors outweighed the aggravating factors. D was sentenced on September 22, 1984, to a term of life imprisonment. Additionally, D received consecutive terms of 20 years with a 10-year period of parole ineligibility on the armed robbery count and 10 years, with a 5-year period of parole ineligibility on the burglary count.

Revised 7/23/91

#1658

STATE V. MICHELICHE

D and Co-D and V drinking at bars, consuming drugs. When bar closed all left. D claims Co-D beat V senseless. Stopped in wooded area. Cut off V's penis and stuffed in V's mouth. No priors. Jury verdict: murder 6/5/85. Penalty trial. One aggravating factor found: 4c. Six mitigating factors found: 5a, 5c, 5d, 5e, 5f, 5h. Life. Reversed. Jury verdict: aggravated manslaughter 6/15/89. 20 years/10 minimum.

On March 27, 1984, the defendant, (D) Henry Micheliche, a 27 year old male, and the co-defendant (Co-D) Nicholas Correa visited several taverns where they drank and used drugs. At approximately 10:00 p.m., D and Co-D visited another tavern where D introduced Co-D to the victim (V), male. When this tavern closed, the three men continued to drink and use drugs in the parking lot for about an hour. Then, the men entered a vehicle and began driving south. Suddenly, D and Co-D began beating V with their fists. Co-D had been driving the car, but he, subsequently, ordered D to take over the wheel. D drove towards a wooded area where both D and Co-D dragged V's motionless body from the car. Although D later denied his earlier professed involvement in the events to follow, the facts presented at trial indicated that D was in fact a primary participant in the brutality inflicted upon V.

Once D and Co-D had V's body in the woods, they obtained pliers from the car's trunk which were used to cut off V's penis and scrotum. The facts do not clearly indicate V's level of

consciousness during this act of mutilation. D and Co-D, then shoved V's penis into his mouth. V's clothing was removed, set on fire, and later discarded out the car's window as D and Co-D fled the scene.

D stands 5'10" and weighs 150 pounds. At the time of this offense, D was employed as a mechanic welder. D is a high school graduate who also attended school at naval air engineering center for 3 1/2 years. [redacted] D resided in an apartment at the time of the murder. D has never been charged with, or convicted of, an indictable offense. D was charged with purposeful and knowing murder, to which he entered a plea of not guilty. A trial was held from May 28, 1985 through June 5, 1985, where D was found guilty of murder. A penalty phase hearing was held from June 6, 1985 through June 7, 1985. The 4(c), extreme suffering statutory aggravating factor was alleged by the prosecution. Mitigating factors 5(a), 5(c), age; emotional disturbance; 5(d), mental disease; 5(e), duress; 5(f), no significant prior criminal history and 5(h), any other factor were served and found. The jury found that the mitigating factors outweighed the aggravating factors. D was sentenced to life imprisonment, with a 30 year period of parole ineligibility.

On July 29, 1987, an Appellate Division Opinion Letter was issued which vacated the above judgment and remanded this matter

for a new trial. On March 15, 1989, a jury found D guilty of aggravated manslaughter. D was sentenced to 20 years imprisonment with a 10 year period of parole ineligibility.

Revised 8/6/91

#1709, 2826

STATE V. MONTURI

D & Co-Ds try to collect debt which V (D's cousin) owed D. Also dispute over drugs, prostitution. D & Co-Ds execute V1, V2, V3, shooting them in head. [redacted]). Jury verdict: Murder 6/22/84. Penalty trial. One aggravating factor found for V1: 4c. One mitigating factor found for V1: 5h. Two aggravating factors found for V2: 4c, 4f. One mitigating factor found for V2: 5h. Life.

The following facts are quoted from the unpublished Appellate Division opinion. 7/27/87. A-0061-84T4.

"At trial, the prosecution called Wayne DiBattista, who testified that he was a witness to the crimes. DiBattista testified that he, defendant and Mark Wyma planned to commit burglary and robbery at a senior citizens' complex in Newark on April 25, 1982. The plan was abandoned, however, after DiBattista and Wyma could not find the right apartment.

"DiBattista, defendant and Wyma then drove to a nearby Burger King restaurant. At the Burger King restaurant, a man named John, an acquaintance of defendant, told the three that [redacted], defendant's cousin and partner in drug selling and prostitution, had just returned from Florida with drugs, money and a new girl. After John left, defendant told the three, "let's go get Bobby, take him off. I'm tired of him beating me. I want the money."

"DiBattista, defendant and Wyma then drove to [redacted] apartment on South Orange Avenue. All three were armed. Defendant had a .22 with a silencer attached and Wyma had a .38. After

entering the apartment, the three spoke with [redacted] and [redacted]. DiBattista testified that [redacted] received a phone call from "Fat Lisa" at this time. Approximately ten minutes later, [redacted] arrived at the apartment. Defendant, [redacted] and [redacted] left the other three and went into another room. DiBattista, who was watching television, heard shouts and an argument from the other room. He then heard shots from the .22, defendant's gun. Wyma increased the volume on the stereo, pulled out his gun and went into the other room. Shortly thereafter, DiBattista heard shots from the .22 and one shot from the .38.

"Wyma returned to the other room and after wrapping a gun in a towel, he shot [redacted] in the face. Wyma handed the gun to defendant, who shot [redacted] in the cheek. DiBattista, defendant and Wyma then left the apartment. Thomas Walsh, who came to evict the tenants, found the bodies on the next evening and notified the police.

"The testimony of Anna Lisa Nuzzo placed defendant at the scene of the crime. Nuzzo testified that she received a phone call from [redacted] between 8:30 p.m. and 9:00 p.m. on April 25, 1983. Nuzzo testified that [redacted] told her that defendant was among the people she was with at the time of the phone call.

"Robert Vidal testified that he was at the Classic Auto Body Shop in Newark on April 26, 1982. At that time, he heard defendant admit that he committed the murders on the day before. Rafael Soto, Carlos Vidreiro and Richard Giordino also testified that they were at the Classic Auto Body Shop and that they heard defendant

admit that he committed the murders.

"Vidal also testified that on April 28, 1982 defendant drove to Vidal's house on Malvern Street. Defendant knocked on Vidal's door but Vidal, seeing that defendant was armed, ran up to the roof with his friends. Vidal testified that, after defendant fired at his group, his group fired back.

"Thomas Gilsenan, a detective in the Essex County Prosecutor's Office who was assigned responsibility for defendant's file and who was seated in the first row of the courtroom, testified that, just before summations were to begin, defendant swore at him, made comments concerning the detective's mother and told the detective that he was going to get him." End of Excerpt.

D did not complete high school, and has no ascertainable employment. [redacted]

D was charged with conspiracy to commit murders (counts 1 and 2), purposeful and knowing murder (counts 3 - 5), possession of a firearm without a permit to carry, and for an unlawful purpose (counts 6 and 7), aggravated assault (counts 8 - 11), possession of handgun without a permit to carry and with intent to use it unlawfully against person of another (counts 12 and 13), tampering with witnesses (counts 14 - 17), hindering apprehension (counts 18 - 21), and conspiracy to commit murder (count 22). In a capital trial, D was found guilty by a jury on count 1 (conspiracy to

murder V1) 3, 4, 5, 6, and 7 on June 22, 1984. D was found not guilty on count 2 (conspiracy to murder V2), counts 8 through 22 were severed from counts 1 through 7.

The jury was asked to consider the 4(c), intent to cause suffering, statutory aggravating factor with respect to V1 and V2, and the 4f (escape detection) factor with respect to V1. The 4f factor was also served with respect to V2, but was stricken by the court on D's motion. All aggravating factors were found. The defense alleged mitigating factors 5(c), age of D and 5(h) any other relevant factor. 5h was found by the jury and found to outweigh the aggravating factors with respect to V1 and V2. Count 1 was merged with count 3 and D was sentenced to life with a minimum of 30 years to be served before parole eligibility. D received the same sentence on counts 4 and 5 (murder) with the sentence on count 4 to run consecutive to that of count 3 and the sentence on count 5 to run consecutive to that on court 4. On count 6 D received a 5 year sentence with a period of parole eligibility of 2½ years, and a 20 year sentence on count 7 with a period of 10 years before parole eligibility. The sentences on counts 6 and 7 were to run concurrent to the sentence on count 5. Also, a total of $3,050 was assessed against D for the VCCB. On October 16, 1984, an order was signed, dismissing counts 8 - 22.

7-12-91
#4031 (new)

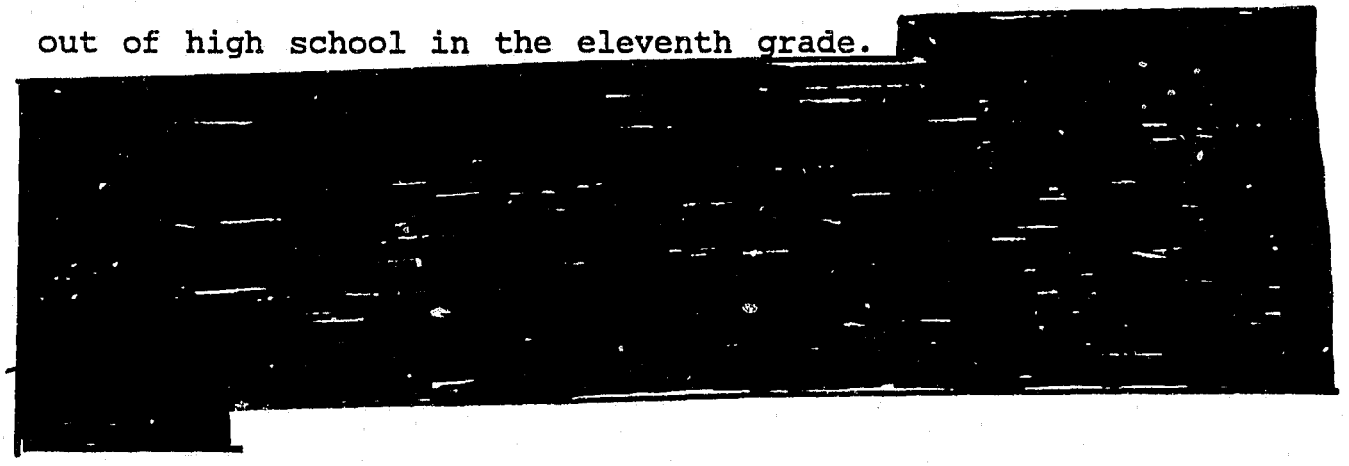
STATE V. MUSCIO

D breaks into V's home, to burglarize. D stabs V 11 times in the arm, chest and side with a knife from V's kitchen. V's daughter asleep, unharmed. Jury Verdict: Murder. 5-28-91. [redacted]. Penalty Trial. Aggravating factor found: 4g. Mitigating factors found: 5a, 5h. Life.

On January 1, 1988 V, a 40 year old female was entertaining her friend W1. V, W1 and V's daughter (W2) ate dinner together at V's apartment; then they watched television until approximately 9:00 or 9:30 a.m., when W2 went to bed. V and W1 continued to watch television until they both fell asleep. W1 awoke at approximately 11:30 p.m. and went home, leaving V asleep on the couch. At 11:38 p.m., W3, a friend of V telephoned her. V and W3 talked until 12:05 a.m. On January 2, 1988, at 2:16 a.m., a police officer stopped Nicholas P. Muscio (D), 27, for a motor vehicle violation. D was on a road heading in the direction of V's apartment complex, two and a half miles away. The officer recognized D as a store clerk, and he let him go with a warning. D did not thank the officer and he continued on his way towards V's apartment. D reached V's apartment, forced open the window and removed the screen. D went through the window into the kitchen and grabbed an 8 inch knife. D then attacked V between the bedroom and the kitchen. D stabbed V eleven times; four times in the left arm, two times in the left elbow, three times in the chest, and two times in the right side and breast. At about 3:00 a.m., V's daughter, W2 got up to use the bathroom when she saw her mother's quilt with blood on it on the floor. W2 then saw her mother lying

on the floor, covered with blood. She screamed and then ran to her neighbor's home and called the police. The police arrived and saw W2's friends go in and run out, yelling at them. On September 4, 1988 police stopped D on a suspicious persons report. While speaking with D, one officer saw articles in D's car that were reported stolen later that day. The next day, police searched D's car and his home. In D's home they found newspaper clippings about V's death. Based on this information, D's fingerprints were compared to a fingerprint left on V's window; it was identical to D's right thumb print. D was arrested on September 13, 1988.

At the time of the offense, D lived with his wife and two children in a two bedroom condominium. In the past D worked as a store clerk, a maintenance man and a commercial artist. D dropped out of high school in the eleventh grade.



D was charged with Murder, Burglary and Possession of a Weapon. The Prosecutor filed a Notice of Aggravating Factors for 4f, escape detection and 4g engaged in a felony. The Defense filed Mitigating Factors 5a, mental disturbance; 5c, age; and 5h any other factor. On May 28, 1991. D was convicted on all three charges. In a penalty trial on June 3, 1991 a jury found Aggravating Factor 4g and Mitigating Factors 5a and 5h. The jury

was unable to reach a verdict, so D will be sentenced to Life imprisonment.

Revised 8/7/91

#1780

STATE V. NAPLES

D worked with V2 on a horsefarm. D beats V2 to death, then strangles V1 (V2's wife). Jury verdict: murder 2/14/90. Penalty trial. One aggravating factor found: 4g. Three mitigating factors found: 5a, 5d, 5h. Life.

On the night of April 23, 1988, defendant Donald Naples (D), a 32 year old male, picked up a friend, W1 and they drove to the farm where D worked to get high on drugs with V2, a 21 year old male, and V1, the 19 year old wife of V2. After using drugs in a barn, D headed toward a trailer, talking about having sex with (V1). D then came back to the barn with a six pack of beer which he gave to W1. D told W1 that if they were going to have sex with V1, they were going to have to force her and they might have to "waste her". Then D went back to the trailer with a piece of baling twine (when V1 was found, her wrists and hands were tied together with baling twine). W1 stated that the next time D came back to the barn, he drew some liquid from a horse medicine cabinet into a syringe. Then D headed back to the trailer. Soon after, D appeared at the barn with V1's car keys. D told W1 to drive V1's car to a nearby town. It was later discovered that D beat V2 to death and strangled V1 with an electrical cord. D buried V2 and V1 under a pile of horse manure. D admitted burying V2 and V1, but denied any involvement in their murders.

D is a high school dropout (quit school after completing ninth grade), has worked as a concrete finisher, a general laborer and a farm worker and was living with his girlfriend at the time of the offense.

[redacted]

D was charged with two counts of Purposeful and Knowing Murder, Felony Murder and Burglary. On February 14, 1990, D was convicted of purposeful knowing murder with regard to V2, and of purposeful, knowing murder, felony murder and burglary with regard to V1. Regarding V1, the State served aggravating factor 4(g), contemporaneous felony, and it was found. Defense served mitigating factors 5(a), emotional disturbance; 5(d), mental disease; and 5(h), any other factor, and all were found. The jury was unable to agree as to the weighing of the factors. On March 23, 1990, D was sentenced to consecutive life terms for the murders. The Felony Murder and Burglary charges were merged with the Murder charges.

Revised 8/2/91

#1783

STATE V. NEAPOLITANO

D (19 yr., M) broke up with V (15 yr., G.F.) 2 months prior to incident. V dated another boy night before incident. Next morning, D, in a jealous rage, stabbed V 15x in chest and back, and burglarized home. No priors. Jury verdict: murder 8/10/84. Penalty trial. Two aggravating factors found: 4c, 4g. Three mitigating factors found: 5a, 5c, 5f. Life.

The following quotation is excerpted from the unpublished Appellate Division decision. 2/17/87, A-1188-84T4.

"At approximately 1:00 p.m. February 21, 1984 the lifeless body of 15 year old [redacted] was found by her father in the family home on Edgewood Avenue in Ocean Township. She had sustained 15 stab wounds to the back and chest and death resulted from hemorrhage caused by multiple stab wounds. After a trial by jury the 20 year old defendant was convicted of her murder and he now appeals.

"Defendant and decedent began dating on April 28, 1982 when they were respectively 17 and 13 years old. They were with one another constantly, regularly visiting at one another's home so that each practically became a member of the other's family, and an extremely intense relationship developed. On January 22, 1984, because of what he saw as misbehavior on defendant's part, decedent's father ordered that the couple stop seeing one another, told defendant that he was not to keep company with decedent any

longer and that he would no longer be permitted to visit decedent's home.

"Defendant became disconsolate. He refused to accede to Mr. [redacted]'s wishes and continued to reach out for decedent. He pleaded with their mutual friends to intercede on his behalf and wept uncontrollably. Attempts to reason with defendant were brushed aside. To one acquaintance he said that if decedent went out with another boy or kissed another boy "it would all be over." His consuming preoccupation was to induce [redacted] to see him again despite her father's instructions to the contrary. On January 26, 1984 he surreptitiously entered the [redacted] home by a rear door which he knew was usually left open and left a bouquet of roses for decedent together with an audio cassette. On the cassette he delivered a distraught message expressing his despair at being separated from her, describing in graphic terms his love for her, the pain caused him by the separation, and imploring decedent to resume their relationship.

"Unknown to Mr. [redacted], and in violation of his orders, defendant and decedent arranged clandestine meetings and on February 17, four days before her death, decedent spent the night with defendant at his home. During their tryst she told him that although she would see him on occasion, the commitment would not be exclusive and that she intended to go out with other young men.

"On the night before [redacted]'s death, while on an errand for his mother, defendant drove past the [redacted] home. Decedent had spent the evening in the company of Kevin Rich and, according to

Rich, defendant saw them kissing good night on decedent's front porch.

"The evidence supporting the conviction is entirely circumstantial." End of Excerpt.

D's finger prints were found at the scene. A kitchen knife with a broken tip and blood on it was found in the kitchen drawer. D's car was seen near V's home twice that morning. A sneaker print matching D's sneaker was found on the bedroom door. D had scratches on his face and scalp.

D is a high school dropout. At the time of the murder, D was employed as a cook and busboy at Roy Rogers. D had other unskilled jobs in the past. [redacted]

In 1982, D was convicted of simple assault, was placed on 6 months probation and performed 40 hours of community service.

On August 10, 1984, D was charged with knowing and purposeful murder, felony murder, burglary, and possession of weapon for unlawful purpose. A notice of factors was served for the 4(c), extreme suffering and 4(g) contemporaneous felony statutory aggravating factors. In a capital trial, D was found guilty by a jury on all counts. At the penalty trial, the jury found that both aggravating factors existed. Defense served mitigating factors 5(a), emotional disturbance; 5(c), age; and 5(f), criminal history. All mitigating factors were found. The jury found that the

mitigating factors outweighed the aggravating factors. D was sentenced on September 28, 1984, to 80 years, with a 40 year period of parole ineligibility on the murder and felony murder counts. On the remaining counts, D received 10 years, with a 5 year period of parole ineligibility on the burglary count, and 5 years with 2½ period of parole ineligibility on the weapons counts. Both these sentences are to run concurrent with the sentence on the homicide counts.

Revised 8/3/91

#1791

STATE V. NICELY

D and Co-D (paramour) beat 3½ year old son (V) for defecating in his clothes. V became unconscious. D and Co-D try unsuccessfully to revive V in bathtub. [redacted]. Jury verdict: murder 7/29/83. Penalty trial. One aggravating factor found: 4c. Three mitigating factors found: 5a, 5d, 5h. Life.

The following quotation is taken from the unpublished Appellate Division opinion. 9/22/87, A-799-83T4.

"Defendant is in her mid-twenties. She met the codefendant Allen Bass (Bass) when she was 14 years of age. Although unmarried, they had an ongoing relationship which produced five children. Their first child, Davell, was born in December 1977, and their second child, [redacted] was born on February 19, 1979. On September 26, 1982, [redacted] was brutally beaten to death....

"Testimony at the joint trial of defendant and Bass revealed a variety of acts of mistreatment of [redacted] by defendant. During a period when defendant and her two children were residing with Bass' mother, defendant conceived the idea, upon the suggestion of Bass' mother, that [redacted] was not her child. It was suggested that the wrong child had been delivered to defendant by the Division of Youth & Family Services (DYFS). There was substantial testimony adduced at trial from friends and neighbors revealing defendant's hatred of [redacted] and her conception that she could treat him in any manner she saw fit. For example, when Kerry White, a 14 year old

neighbor, asked defendant why she beat [redacted] so, defendant told him "I could do anything I want to the MF if I want to" and even went so far as to say "I could do anything I want, I could kill the little MF if I want to." Suffice it to say that the extensive testimony at trial from neighbors and friends revealed many acts of physical abuse committed by defendant on the person of [redacted]

"On the day of his death, [redacted] was beaten unmercifully. The extensive injuries which he sustained were testified to by the medical examiner and included subcutaneous hemorrhage on the back of the head, hemorrhage on both sides of the head, ecchymosis of the left eye, lacerations and cuts involving both ears and subcutaneous hemorrhage involving the chin. [redacted] brain was swollen as a result of concussion. There was hemorrhage on both sides of his buttocks, recent injuries of his left shoulder and left upper back, right middle back, lesions of the exterior chest, left shoulder, middle area of the chest, right upper chest, abrasions of the right side of the abdomen, bruise of anterior portion of the left thigh, contusion and abrasion of the left genital, three burn marks on the chest and a burn mark on the left shoulder. He had sustained a painful fracture of the distal end of the elbow, between six days and 24 hours before his death. There were many internal injuries, as well as a recent fracture of the eighth rib. Due to the substantial number of injuries that [redacted] sustained, it was impossible to accurately pinpoint one particular blow that caused his untimely, brutal death. The medical examiner described it as a homicide by assault." End of Excerpt.

At the time of the murder, D, 19 year old female, stated that Co-D, 19 year old male, became enraged that V had defecated and became enraged after some feces stuck to his sneaker. D stated that she entered the bathroom to find V lying on the floor with his clothes torn, and crying. Co-D admitted that he grabbed V by his neck, choked V and hit him in the face as he pushed V toward the bathroom. Although D denied hitting V, both a next door neighbor and D's five year old son presented a different version of her involvement in the assault on V. Subsequently, D and Co-D tried to make V get up from the floor. V had stopped crying, and his parents believed he was "playing dead," a game he allegedly frequently acted out. V did not move. D and Co-D attempted to revive him, but to no avail. Subsequently, D ran to the home of a neighbor who worked as a nurse. D returned to the apartment with the neighbor, W2. Finally, after further attempts to revive V failed, police and ambulance personnel were called.

Prior to police and emergency assistance arriving at the apartment, Co-D instructed the other children not to answer any police questions, and told them that if they should be asked about the incident, they should cry to avoid further inquiry.

At approximately 9:00 A.M. the police arrived at the apartment. They found V in the bathtub which was filled with about 4 inches of water. Blood was found on the bathroom floor and on a towel in the sink. V, not breathing, was immediately transported to the hospital. V was pronounced dead at the hospital.

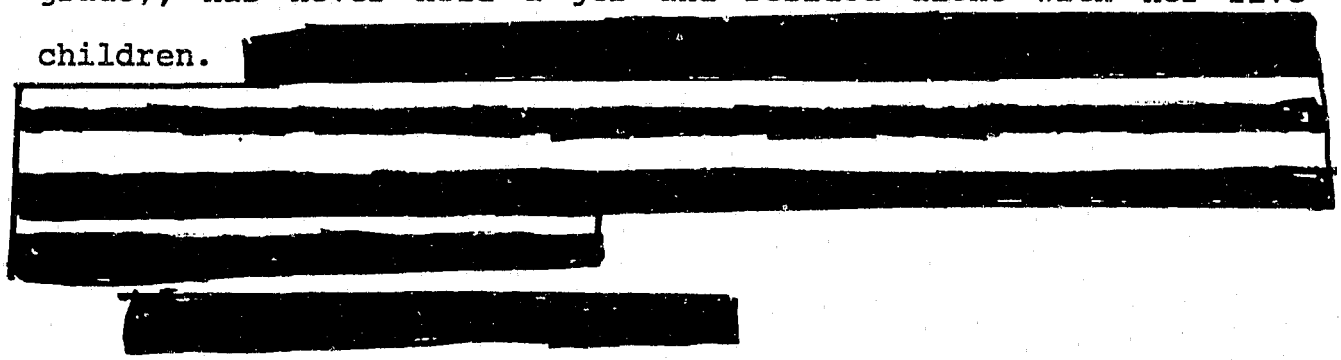
A witness indicated that he recognized D's voice at the time

of the murder telling V that "you better not do it again or else I'm going to kick your ass." This neighbor also recognized V's cry, because "he had grown accustomed to hearing V cry."

D's five year old son testified that D hit V with a broom and Co-D stepped on V at the time of the murder.

D admitted that she sometimes beat V.

D is 19 years of age, a high school dropout (finished 10th grade), has never held a job and resided alone with her five children.



D was charged on July 29, 1983, with purposeful and knowing murder, aggravated assault and endangering the welfare of a child. A notice of factors was served for the extreme suffering, 4(c) statutory aggravating factor. In a capital trial, D was found guilty on all counts. At the penalty trial, the jury was charged on mitigating factors 5(a), extreme mental or emotional disturbance; 5(c), age of defendant; 5(d), diminished capacity; 5(f), no significant prior criminal history; and 5(h), any other factor. The jury found 4c present. The jury found 5(a), 5(d), and 5(h) to be present. The jury concluded that the lone aggravating factor was outweighed by the mitigating factors, and D was sentenced on September 22, 1983, to life imprisonment with a 30-year period of parole ineligibility.

Co-D was convicted of aggravated manslaughter, and was sentenced to 20 years in prison, with a ten year parole ineligibility period. He also received a concurrent term of 5 years with a 2½ year period of parole ineligibility on an endangering the welfare of a child conviction.

Revised 8/5/91

#1793

STATE V. NIEVES

D (27 yr., M) was jealous of V (M) because V liked D's g.f. On prior occasion, D threatened V with a gun. D shot V at close range 1x in head, while V in car, next to V's son. Bullet went through head, missed son, lodged in seat between them. D had prior murder. Jury verdict: murder 5/25/88. Penalty trial. Two aggravating factors found: 4a, 4b. Two mitigating factors found: 5b, 5h. Life.

The following quotation is excerpted from the unpublished Appellate Division opinion. 6/19/91. A-1034-88T4.

"The following facts were developed at trial. On the evening of March 25, 1987, Angel Burgos was being driven home by the decedent, [redacted] As they approached 7th and York Streets in Camden, they saw defendant exiting a grocery store and Burgos noticed defendant's wife, codefendant Maria Ramirez, sitting in a car double-parked on the street. [redacted] stopped his car and spoke to defendant. Defendant then walked to his own car, opened it, reached for something under the seat and walked back to [redacted] car while holding something behind his back. Defendant then told [redacted] that if he "wanted the girl," he "should go out and take her." He then pointed a large revolver toward [redacted] As defendant held the gun to [redacted] head for about 30 seconds, he told [redacted] "that if he wanted the girl to come in and get the girl and keep her." Defendant then lowered the gun, returned to his car and took Burgos home.

"Three days later, on March 28, 1987, defendant was driving

his six-year-old son, Hector Rentas, Jr., to the food store. Rentas, Jr., testified that as they parked near the store, defendant approached the driver's side window and stated, "stop messing around with my girl," whereupon [redacted], replied, "I'm not messing with your girl." Defendant then raised a gun and shot [redacted], killing him. Defendant fled the scene in a blue car with a woman.

"On May 5, 1987, defendant was apprehended by Camden County Sheriff's Officers at his sister's house at 303 Stevens Street, Camden and taken to the Camden County Prosecutor's Office, where he gave a full confession to [redacted] murder which was held voluntary and admissible by the trial judge after a full Miranda[2] hearing. In the confession, defendant states that he "threw [the gun] at [sic] the [Delaware] river by Pyne Point," and that this occurred "[a]fter I left [Ramirez] cause I wouldn't want her to see where I was going to throw the gun." Defendant agreed to identify the area where he threw the gun. At trial, defendant took the stand and admitted shooting [redacted] However, while admitting that his statement was voluntary, he stated that it was partly false in that he wanted to help Ramirez and her family.

"At the penalty phase of the trial, the State attempted to prove two aggravating factors by introducing a certified copy of defendant's 1980 conviction for murder and attempting to establish that defendant purposely or knowingly created a grave risk of death

---

[2]Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966).

to another victim during the commission of the current murder." End of Excerpt.

D stated that V had given him fifteen hundred dollars worth of drugs to hold for him, and that D threw them away and, consequently, V threatened to kill him.

D is a 26 year old male who is separated from his wife. He has three children, each of whom has a different mother. (D's wife is not the mother of any of the children.) D completed 7th grade and has a limited command of the English language. D has worked as a packer.

In 1980, D was convicted of murder, aggravated assault and possession of a weapon for an unlawful purpose. He served six years of a twenty-five year sentence, and was on parole at the time of the offense.

D was charged with purposeful and knowing murder, possession of a handgun, possession of a weapon for an unlawful purpose and three counts of hindering apprehension or prosecution. On May 25, 1988, D was convicted on all charges except for two counts of hindering apprehension or prosecution. A notice of factors was served for the 4(a), prior murder; and 4(b), grave risk; aggravating factors. Both aggravating factors were found by the jury. Mitigating factors 5(a), emotional disturbance; 5(b), victim solicitation; 5(g), assistance to state; and 5(h), any other factor were served. The jury found 5(b), 5(h). The jury was unable to reach a decision regarding the weighing of the factors. On June 17, 1988, D was sentenced to a life term with a 30 year

disqualifier to run consecutive to his 10½ year sentence for simple assault and possession of a weapon for an unlawful purpose (assault on V three days before V's murder); for the murder, a concurrent five year term with a 2½ year parole disqualifier; for possession of a handgun, a concurrent ten year term with a five year parole disqualifier for possession of a weapon for an unlawful purpose; and a consecutive five year term with a 2½ year parole disqualifier, for hindering apprehension or prosecution.

Revised 8/7/91

#1880

STATE V. PARSONS

D gets pulled over by police officer, pulls out shotgun and shoots officer 1x in the head. Jury verdict: murder 7/31/85. Penalty trial. One aggravating factor found: 4f. Three mitigating factors found: 5a, 5d, 5h. Life.

On September 16, 1984, a man parked his car, leaving the motor running so that he could use a pay phone. While he was talking on the telephone, Douglas Parsons, (D), age 27, a thin man with short dark hair and a small goatee, hopped into the car and drove away. The man immediately reported the theft to police.

Later that same day, another man, preparing to pay for some gas he had just bought, was counting his money. As he was doing so, a car pulled into the gas station with its lights off. Someone then told the man "Don't move. Give me your money." As the man turned around, he saw D pointing a gun at him. The gas station attendant, witnessing the entire incident, ran across the street and called the police. D fired a shotgun into the air while his accomplice took the man's money from him. D and his accomplice then drove away.

The next day, September 17, 1984, D ran into an acquaintance of his, a female juvenile. He offered to drive her to a neighboring town to see her mother. While taking the juvenile to visit her mother, D stopped at a gas station. D asked the attendant for some gas. When the attendant finished pumping the

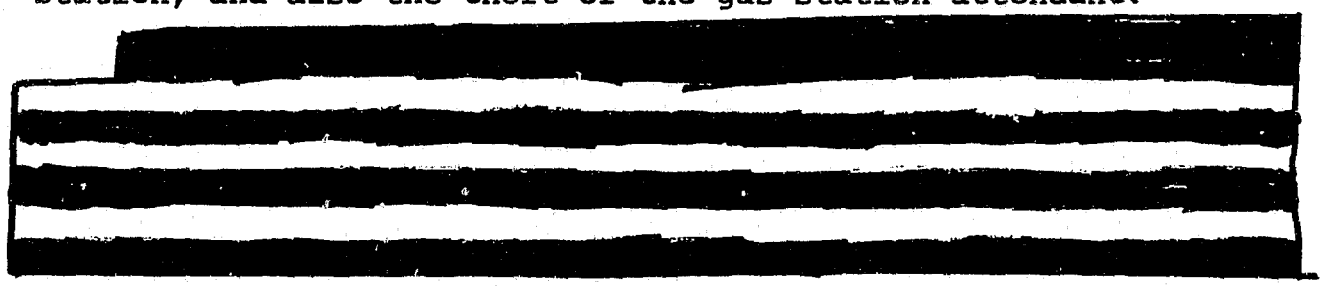
gas, D asked him to check the transmission fluid. As the attendant lifted the hood of the car, D pushed him aside and drove off without paying for the gas. D and the juvenile then drove to her mother's house, dropped off some clothes, and then drove back to a nearby highway.

V, a 28 year old police officer, was patrolling the highway. V saw D driving the car D had stolen the previous day, and before stopping the car, V relayed the license plate number to headquarters and requested an ownership check. V was told that the car was not registered, and V advised the dispatcher that he was going to stop the car. V turned on the patrol car siren and followed D as he pulled onto the shoulder of the road. As V approached the car, D placed his sawed-off shotgun under his jacket, telling the juvenile that it was not loaded and that he had no intention of using it. When V reached the car, D said "What is the problem, officer?" D then raised the shotgun and shot V one time in the head, killing him instantly. D threw the gun on the seat and drove away.

W1, an off-duty correction officer, was a passenger in a truck driven by a friend. He saw V walk up to D's car, saw D swing the shotgun out the window, heard a loud noise, and then saw V's head "explode." W1's friend pulled over as W1 drew his weapon, yelled "Police!" and fired at the car's tires as D tried to speed away. As W1 shot at the car, D ducked and the car spun out of control, hit a few other cars, and came to rest against the center divider. D exited the car, crossed the road, and ran into the weeds.

As D fled from the area, other witnesses arrived at the scene. W2, who had seen D's car spin out of control and come to a stop at the divider, pulled over and ran to help V. He used V's police radio to request assistance. W3, an emergency medical technician, saw D speed away. W3 also tried to help V. W3 noticed that the top of V's head was gone and that there was a tremendous amount of blood on the ground. W1 waved down another officer, gave a description of D, and reported the direction in which he had seen D run.

Two other policemen, hearing the direction in which D was running, proceeded to that area. They stopped D on the street, noticed he had a very rapid heartbeat, and asked D to show his hands. D tried to elude the inspection of his hands; and when asked his name, gave not his actual name, but a family name. The policemen decided to bring D to the police station for questioning, and as they handcuffed him, D said "I panicked, I just shot him." D was then read his Miranda rights and taken to the police station. On the way to the station, D again admitted killing V and he was again read his Miranda rights. At the station, D first gave an oral statement and then a full written statement in which he admitted killing V, stealing the car, robbing the man at the gas station, and also the theft of the gas station attendant.



[redacted]. At the time of the incident, D had no job, money, or place to live. D had an unstable family life while growing up, as his parents never married and had separate families. In addition, D was unmarried and had fathered three children of his own. [redacted]

In an indictment, D was charged with theft, receiving stolen property, two counts of robbery, own-conduct purposeful, knowing murder, hindering apprehension, two weapons offenses, and conspiracy. Two Co-D's, John Derrick Foster and Gil Williams, were also named in the indictment and charged with robbery and conspiracy, charges which refer to the robbery of the man at the gas station. A notice of factors was served, charging 4(f), escape detection; 4(g), contemporaneous robbery; and 4(h), D murdered a public servant.

D alleged that the following mitigating factors were present: 5(a), emotional disturbance; 5(c), age; 5(d), mental disease; and 5(h), any other relevant factor.

In a jury trial, D was found guilty of all charges. In the penalty phase, the jury found only aggravating factor 4(f) present, as well as mitigating factors 5(a), 5(d), and 5(h). The jury could not agree whether the aggravating factor outweighed the mitigating factors, so D was sentenced to a mandatory term of life imprisonment with a 30 year minimum. The remainder of D's sentence is as follows: theft, 5 years, 2½ minimum-consecutive; and

conspiracy, 10 years, 5 year minimum-consecutive. D appealed his convictions.

The Appellate Court upheld D's conviction, but remanded for resentencing. On March 15, 1988, D was resentenced, receiving an almost identical sentence, except that hindering apprehension was vacated and dismissed and merged with the murder charge.

Revised 8/7/91

#1918

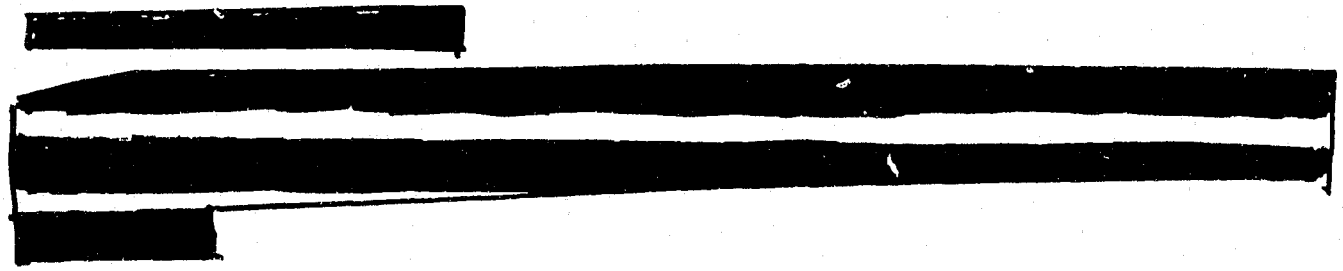
STATE V. PERRY (HAROLD)

D (apartment maintenance man) invited in apartment of V (90 yr., F). D struck several x with hammer, took items from V's apartment. [redacted] Jury verdict: murder 10/14/88. Penalty trial. One aggravating factor found: 4g. Two mitigating factors found: 5c, 5h. Life.

On the afternoon of April 20, 1987, Harold Perry (D), a 34 year old male maintenance man in the apartment building where V lived, killed 90 year old female V by striking her with a hammer. An autopsy concluded that the cause of V's death was fractures of the skull and contusions and lacerations of the brain, inflicted by a blunt force. V had 14 lacerations on her face and scalp and three on her hands and right wrist.

D, after initially denying that he had anything to do with the death of V, finally admitted that his prior statement was not truthful. D stated that he had gone to V's apartment to check on her and found the door unlocked. D knocked on the door and V told him to come in. However, D claimed that when he went in, V swung at him with a hammer. D claimed he grabbed the hammer and hit V "no more than twice." Then D picked up V's pocketbook and stuffed some items, which had fallen out, into it. D claimed he did not take anything out of V's apartment except the hammer and keys, which D used to lock the door when D left the apartment.

D is a high school graduate. D is separated from his wife and they have one child. [redacted]



D was charged with burglary, armed robbery, felony murder and purposeful and knowing murder. A notice of aggravating factors was served for: 4(c), extreme suffering; 4(f), escaping detection; and 4(g), felony factor. Only the felony factor 4(g) was submitted to the jury. Defense served a mitigating factor combining D's age, 5(c) with 5(h) any other factor. The combined factor was found by the Jury. D was convicted of armed robbery, felony murder and capital murder on October 14, 1988. At the penalty trial, aggravating factor 4(g) was found present. (Factor 4(c) was never submitted to the jury.) Mitigating factor 5h was found. D was sentenced on November 17, 1988 to a life term with 30 years of parole ineligibility for capital murder, and a consecutive 20 year sentence with 10 years of parole ineligibility for armed robbery. The felony murder conviction was merged with the capital murder conviction.

Revised 8/6/91

#1946

STATE V. PIERCE

D and Co-D, giving V a ride, robbed V. V struggles, Co-D drags V out of car. D slashes V's throat. Ds and V drinking. 2 priors. Jury verdict: murder 9/16/86. Penalty trial. One aggravating factor found: 4g. Three mitigating factors found: 5d, 5f, 5h. Life.

The following quotation is excerpted from an unpublished Appellate Division opinion. 6/22/90. A-1736-87T4.

"On the morning of March 2, 1986, the dead body of [redacted] was found in fields off North Hook Road in Bayonne. His throat had been slashed three times. Investigation by the Bayonne Police Department and the Hudson County Prosecutor's Office led to Michael Donovan and defendant, Ronald Pierce, and by the end of that same day an admission by defendant that he was the author of the homicide. In the subsequent trial, this act was never denied; indeed, in the opening, defense counsel advised the jury, "Ron Pierce did strike the blow that caused the death of [redacted]," adding "but Ron Pierce did not murder [redacted]." The issue was therefore one of intent.

"According to the evidence presented by the State (through the testimony of Donovan), on March 2nd, defendant and Donovan were at a bar in Bayonne and became aware that the victim was said to possess cocaine. At closing time, about 3:00 a.m., when the victim started asking for a ride home, the two agreed to offer the ride and "get the cocaine off of him." After thus luring the victim

into their car, the pair took the drunken victim to the isolated area of Bayonne where they dragged him from the car in a relatively unconscious condition and laid him on his back on the ground. Donovan described the killing thusly:

> ... we started to squat down to put him [the victim] down, and toss him like, and Pierce put him down like this [demonstrating], and he was still down like this when I stood up, and when I stood up I seen him [defendant] run his hand by his [victim's] neck."

Donovan said that after the defendant pulled his hand away, "I seen [redacted] neck cut." Then defendant went through the victim's jacket and threw it on the body.

"Defendant took the stand, admitted cutting the victim's throat but gave a different version. According to defendant, he was asleep in the car when he heard Donovan and the victim fighting outside the car. He went to help Donovan.

> I don't know [what happened], I lost control. I seen [redacted] [the victim], you know, and flash back of what was happening in the bar [where the victim was said to be trading cocaine with girls for sex] thinking about my sister, and --- I don't know, I just lost control. Next thing I know I'm standing over him with his neck cut wide open.
>
> ....
>
> I don't remember taking the knife out, I remember it just --- it happened fast, you know, it just all of a sudden it was like --- and he was down on the ground. Yes sir. I don't know if I cut him while he was up. I don't know if I cut him while he was down. It happened that fast.

He attributed his act to anger and denied doing more with the jacket than throwing it over the victim.

"By its verdict in which it found defendant guilty of felony

murder and armed robbery as well as knowing and purposeful murder, the jury rejected defendant's version and accepted Donovan's recital." END OF EXCERPT.

While at police headquarters, Co-D consented to a search of his apartment, and he returned there with two officers. As the officers looked through Co-D's apartment, they discovered Pierce asleep in one of the bedrooms. Police also discovered a knife on the bed where Pierce had been sleeping, and when they noticed that Pierce's boots were bloodstained, Pierce and Co-D were taken to headquarters for further questioning. At headquarters, D gave a statement in which he said, "I cut his fuckin' throat. I thought I cut his head off." Pierce also claimed that V's death had been an accident. Pierce later claimed that Co-D killed V.

An autopsy was performed on V's body on the day that it was discovered. The medical examiner found three parallel wounds on V's neck and concluded that V died from hemorrhage and aspiration of blood. The medical examiner also concluded that V died about one-half hour after he was attacked.

At the time of the offense, Pierce was employed full time as a carpenter. Pierce was a high school graduate and had been discharged honorably from the U.S. Marine Corp. Pierce claims that he had been the "sole supporter" of his family since his father had suffered a heart attack in 1984. [redacted] Pierce has one prior weapons offense conviction.

Pierce was charged with own-conduct capital murder, felony

murder, armed robbery, and two weapons offenses. A notice of aggravating factor 4(g), contemporaneous robbery, was served. Factor 4c was also served, but the court dismissed it. D alleged that the following mitigating factors were present: 5(d), intoxication; 5(f), no significant criminal history; and 5(h), any other relevant factor. In a trial by a death qualified jury, D was found guilty on September 16, 1986, of all charges. In the penalty phase, the jury found the aggravating and mitigating factors present, but found that the mitigating factors outweighed the aggravating factor. As a result, D was sentenced to life imprisonment with a minimum term of 30 years. On the remainder of the charges on October 19, 1987, D was sentenced as follows: The conviction for felony murder and one of the weapons offenses merged with the murder conviction for sentencing purposes. On the robbery conviction, D was sentenced to seven years, to be served consecutively. For unlawful possession of a weapon, D was sentenced to 18 months, to be served concurrently. D appealed his conviction to the Appellate Division.

Revised 8/7/91

#1958

STATE V. PLOPPERT

D and Co-D entered V's (legally blind, 41 yr., M) home to rob him. D beat V and set him (V) and the house on fire with lighter fluid. D and Co-D left the house with $1,600.00. Jury verdict: murder 6/13/89. Penalty trial. Three aggravating factors found: 4c, 4f, 4g. Three mitigating factors found: 5d, 5e, 5h. Life.

On November 19, 1987, defendant Matthew Ploppert (D), a 24 year old male, and co-defendant Robert Titlemore (Co-D) went to the residence of victim (V), a blind 41 year old man, with the intention of robbing V of his money. D and Co-D were experiencing financial difficulties and believed that V kept a large amount of money in his house. D and Co-D planned to hit V over the head with a baseball bat when he answered the door; however, the screen door was locked and D was forced to identify himself to V in order to gain entrance into V's home.

According to what the Co-D told an investigator upon arrest, after entering V's house, they sat at a kitchen table talking with V for a while. Then D approached V from behind and began striking him in the head with a closed fist. Co-D stated that after V fell to the floor, D continued to beat and kick him in the head, eventually rendering him unconscious. D and Co-D searched the house for money, finding approximately $1,500.00, which they later split between them. Co-D further stated that D then piled wood on V and poured lighter fluid both on V and around V's house. Co-D

stated that he then left the residence but was told by D that he set the wood afire with his lighter.

When D's live-in girlfriend (W1), was interviewed, she indicated that on November 19, 1987, D and Co-D told her that both were active participants in V's assault and that both were responsible for spreading lighter fluid and lighting the fire.

D is a high school graduate who spent his elementary education in a number of different schools due to a learning disability. [redacted] He was living with his girl friend and her five year old daughter at the time of the offense. [redacted]

D was charged with two counts of purposeful or knowing murder, one count of felony murder, two counts of robbery and two counts of aggravated arson on June 13, 1989. He pled guilty to two counts of purposeful or knowing murder, one count of robbery and one count of aggravated arson. He was sentenced to a life term with a 30 year parole disqualifier for murder (the two murder counts were merged), a concurrent 20 year term for robbery and a concurrent 10 year term for aggravated arson.

The State had served aggravating factors 4(c), extreme suffering; 4(f), escape detection; and 4(g), contemporaneous felony. At the penalty phase, all aggravating factors were found. Mitigating factors 5(d), mental disease or defect; 5(e), duress; and 5(h), any other factor were served and found.

Revised 8/7/91

#1974

STATE V. PRATER

D and Co-D lure V into house with the promise of drugs. D and Co-D take turns raping V. Finally, D stabs V and Co-D strangles her with a belt. Jury verdict: murder 12/15/89. Penalty trial. One aggravating factor found: 4g. One mitigating factor found: 5h. Life.

On July 10, 1987, Michael Anthony Prater, defendant (D), a 29 year old male, and co-defendant (Co-D), Eugene Edwards, a 29 year old male, were hanging out in front of Co-D's residence. They discussed offering a "Zoid" (street term for crack addicted prostitute) crack in exchange for sex. They agreed that if the "Zoid" got strange, they would "eliminate her."

D and Co-D talked for approximately two hours. D got a knife from the first floor of Co-D's home, and set it down in the hallway by the front door. D sat by the front door and saw victim (V), a 23 year old female, walk by. Co-D told D to ask V "if she wants to get high". D picked up the knife, put it in his pocket, and asked V if she wanted drugs. On this premise, V entered the house, and went to the second floor followed by D and Co-D. D brandished the knife, and ordered V to take her clothes off. D forced V to the floor and raped her. While D raped V, Co-D forced his penis into V's mouth three separate times. V pled with D and Co-D not to hurt her. After D finished raping V, Co-D raped V.

After Co-D raped V, D told the crying V to "shut up bitch". D then stabbed V one time in the upper chest, causing V to fall against and slide down the wall. Co-D then grabbed V, put his belt around her neck, and began to strangle her. Co-D then got on top of V and kneed her in the stomach. As V gasped for air, D stabbed V three times in the left rib. Co-D continued to strangle V. D went to another room to get a pillow. As Co-D pinched V's nostrils, D put the pillow on V's face and Co-D pushed it down. D and Co-D checked V for vital signs, finding none.

D and Co-D wrapped V's body in a quilt, and carried it down to the basement. D and Co-D went back to the 2nd floor, and as Co-D cleaned up the blood, D returned to the basement. When Co-D returned to the basement, he saw D hit V with tin shears two or three times on the head to "make sure she was dead".

The next morning, Co-D took V's purse, watch, and a board with blood on it from the house and threw them away. The knife used was thrown up on the roof of the church next to the house. That night, D and Co-D rewrapped V's body in a different bedspread.

In a statement to police, D confessed that he and Co-D killed V. D identified the knife, recovered from the roof as the knife used to stab V. D later professed that he only stabbed V twice, the first time was an accident, the second cut was out of fear because Co-D was acting crazy because of what was happening. D said that Co-D must have also stabbed V. D identified the shears recovered from the basement as those he used to hit V over the head. (D later professed that he did not remember hitting V with

the shears.) D identified a pair of pants with human blood on them as the pants he wore the night of the murder.

[redacted] D never completed high school.

D was charged with a total of 8 counts: Purposeful Murder, 2 Felony Murder counts, and 3 counts of Aggravated Sexual Assault, Robbery and Possession of a Weapon for an Unlawful Purpose. The state served aggravating factors 4(f), escape detection, and 4(g), contemporaneous sexual assault. Defense served mitigating factor 5(h), any other factor. On December 15, 1989, D was convicted of all but the Robbery count. He was found guilty of Theft. The jury found that the aggravating factor, contemporaneous sexual assault 4(g) factor existed beyond a reasonable doubt. Mitigating factor 5(h) was found.

The jury could not agree on the weighing of the factors.

On June 15, 1990, D was sentenced to life imprisonment with a minimum parole ineligibility of 30 years for the Murder count. The two felony murder counts merged with the Murder. For the Theft, D was sentenced to five years with parole ineligibility of 2 1/2 years concurrent. For one Aggravated Sexual Assault count D was sentenced to 20 years with a minimum parole ineligibility of 10 years to run consecutive to the sentence for the Murder conviction. For two aggravated Sexual Assault counts, 20 years on each count,

with 10 years parole ineligibility on each count, concurrent with count one. For the Weapons Offense, 5 years with parole ineligibility of 2 1/2 years concurrent.

Revised 8/7/91

#2030

STATE V. REDDEN

D (24 yr., M) and 2 Co-Ds kidnapped V (M) from street. Beat and robbed V. Took V to a house where D shot V in head and non-decedent victim in the eye. [redacted] Murder plea 9/4/86. Penalty trial. Two aggravating factors found: 4b, 4g. Four mitigating factors found: 5c, 5d, 5g, 5h. Life.

During the evening of February 27, 1986, defendant, Richard Redden (D), a 24 year old male, and co-defendants William Polini (Co-D1) and Arthur Vitola (Co-D2) kidnapped victim (V), a male, from a street. They demanded money or drugs. V was driven around, handcuffed, beaten and robbed. D, Co-D1 and Co-D2 eventually took V to V's uncle's (NDV/W1) house. While in the house, D shot V in the head and NDV/W1 in the eye.

Upon arrest, D claimed that W2, an acquaintance, wanted to rob V because he knew that V had money. D and W2 picked up V, drove him around and then brought him to NDV/W1's house. When they entered, NDV/W1 came at D with a sword. D shot NDV/W1. There was a struggle. V fell and D shot him.

D quit school in tenth grade, but earned a G.E.D. while in jail. D has been employed on the fishing docks, at a fast food restaurant and at his father's transmission shop. D claims that he suffers from asthma and tuberculosis.

[redacted]

D was charged with four counts of murder (cts. 1-4), attempted murder (ct. 5), two counts of kidnapping (cts. 6 and 7), seven counts of robbery (cts. 8-14), unlawful possession of a weapon (ct.15), possession of a weapon for an unlawful purpose (ct. 16), and three counts of receiving stolen property (cts. 19-21). A notice of factors was served for: 4(b), grave risk; 4(c), extreme suffering; 4(f), escaping detection; and 4(g), felony factor. On September 4, 1986, D entered a retraxit guilty plea to everything except one count of receiving stolen property. This count was dismissed. At the penalty trial, factors 4(b) and 4(g) were found present. The following mitigating factors were charged and found: 5(c), D's age; 5(d), intoxication; 5(g), assisted state; and 5(h), any other factor. The jury found that the mitigating factors outweighed the aggravating factors.

On May 14, 1987, D was sentenced to a life term with a 30 year parole disqualifier on count 1, a concurrent 8 year term with a four year parole disqualifier on count 5, a concurrent 26 year term with a 13 year parole disqualifier on count 6, a concurrent 16 year term with an 8 year parole disqualifier on both count 8 and count 12 and a concurrent four year term on count 15, count 19, and count 20. For sentencing purposes, counts 2, 3, 4, and 15 were merged with count 6; counts 9, 10 and 11 were merged with count 8; and counts 13 and 14 were merged with count 12.

Revised 8/6/91

#2038

STATE V. REED

V was acquaintance of D and D's g.f. D's g.f. goes away on retreat. V allegedly called D over. Fight erupts. D stabs V 40x. Sexually assaults V. [redacted] Jury verdict: murder 3/6/89. Penalty trial. No aggravating factors found. Life.

The following quotation is taken from State v. Reed, ___ N.J. Super ___ (Appellate Division 1991).

"From the evidence presented, the jury could have found that some time on Saturday, March 14, 1987, defendant sexually assaulted or attempted to assault his victim, and that he killed her by stabbing her numerous times and fracturing her skull with a flat object.

"Defendant's two most substantial grounds of appeal are that his statements to the police were obtained in violation of his constitutional rights and should have been suppressed and that the trial court's charge to the jury on the lesser included crime of passion-provocation manslaughter was erroneous. The defendant also alleges that he was prejudiced by other errors in the trial court's instructions to the jury, by the exclusion of material evidence from the jury, and by misconduct on the part of the prosecutor in his opening and summation.

"Defendant's victim was a friend of his. Defendant had met her at work and had introduced her to Francis Varga, the woman with whom he was living. The three of them had gone out to dinner

together.

"On Monday morning, March 16, 1987, Ms. Varga and defendant telephoned the police from their house and reported that earlier that morning defendant had found the victim slain in her town house. Defendant and Ms. Varga were told to meet the police outside the victim's town house. They were waiting there when a policeman arrived, and defendant related what he claimed had occurred.

"According to the defendant, the victim had called him at 11:45 on the previous Friday night and had told him that an intruder was looking through her window and pounding on it. Because of the call, he visited the victim Saturday morning and they arranged to have dinner together that evening. When he arrived at her home to take her to dinner, her television and a light in the hall were on, but no one answered the door bell. On his way to work Monday morning, defendant told the policeman, he went to the victim's house to see that she was all right. The front door was unlocked. He went in and found her lying on the floor dead.

"After giving this statement to the police, defendant and Ms. Varga returned home. Some other police officers arrived at their house some time later that morning. After about twenty minutes of questioning, defendant and Ms. Varga were asked to go to the prosecutor's office. Defendant alone was taken to a closed room. Four police officers were present. After the police officers gave defendant his Miranda warnings, he signed a Miranda card and gave

a statement.

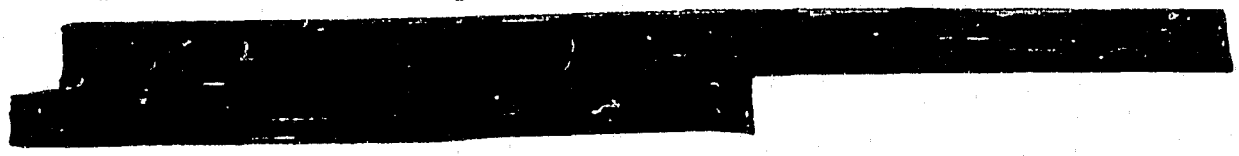
"About an hour later, one of the police officers again read defendant his Miranda rights and had him sign a card which asked questions about the Miranda warning. These questions were intended to elicit answers which would show that the defendant understood his Miranda rights. The officer then interviewed defendant. Defendant's statement was inconsistent with his previous statements and included elements that seemed unbelievable. After defendant had told his story, the officer began to question him about some of the details. Defendant began to change his version of what had occurred. He was accused of the murder and he admitted killing the victim, but he claimed that he had not really intended to kill her. Defendant then repeated his confession and it was tape recorded.

"As the basis for objecting to the introduction of his statements, defendant claimed that he was mentally retarded and that he had, therefore, been unable to understand his Miranda rights or to knowingly waive them. He also claimed that because of his mental disability, the police should not have interviewed him without Ms. Varga present.

"Defendant presented two psychologists and a psychiatrist who testified that he was retarded. The defendant had a severe stuttering problem, which might cause him to appear mentally retarded to a layman, but the State's psychiatrist testified that defendant was feigning retardation and that in fact he was not mentally retarded. The State also presented defendant's supervisor at work. He testified that defendant was a quality control

inspector, inspecting electrical parts, that he was a competent employee, and that his work required his reading complex manuals and engineering drawings. The State also introduced a letter that defendant had written to a friend. The letter was in his own handwriting and, in a sophisticated fashion, it described some aspects of the case against him. On the basis of this and other evidence, which was ample to support his conclusion, the trial judge found as a fact that defendant was not mentally retarded. We have no basis for disturbing that finding. See State v. Johnson, 42 N.J. 146, 162 (1964)." Slip opinion at 2-5.

Reed has a high school education, although Reed had been designated to be educable mentally retarded and was graduated at age 19. Reed worked as a quality control inspector for a chemical plant prior to committing the offense.



Reed was charged with one count of own conduct purposeful murder, one count of own conduct knowing murder, one count of felony murder, one count of aggravated sexual assault and one count of possession of a weapon for an unlawful purpose.

Reed was convicted of knowing murder and one count of aggravated criminal sexual contact.

A notice of factors was served for 4(c) (extreme suffering). At the penalty trial, the jury was charged on 4(c) but they did not find it present.

Reed was sentenced on April 14, 1989, to life imprisonment

with a 30 year parole disqualifier for the murder, and a concurrent five year term for the aggravated criminal sexual contact.

Revised 3/7/91

#2040

STATE V. REESE

D returned to his apartment after a night of drinking. D noticed V's apartment door was ajar. D went into V's apartment and found V asleep. D claimed V made advances toward him. D tied V's hands, covered her head with a shirt and had intercourse with her. D hit V on the head with a claw hammer 17x. Jury verdict: murder 8/11/89. Penalty trial. Two aggravating factors found: 4c, 4g. Two mitigating factors found: 5d, 5h. Life.

On August 8, 1987, defendant John Reese (D), a 33 year old male, returned to his apartment building after an evening of drinking. His live-in girlfriend was working until 7:00 a.m. He had a six-pack of beer with him, one of which he was drinking on the stoop of the apartment building. That night, victim (V), D's neighbor, a 42 year old female, was brutally raped and murdered.

D gave conflicting statements to the police during the course of the investigation. Originally, D denied being in V's apartment on the day of the murder. D amended the statement to claim that he had found V after she was killed.

Evidence supported a theory that D had been the perpetrator of the crime. Hairs found on the jeans which D admitted to wearing on that evening matched V's hair. The police lifted a fingerprint from the window that had been removed from V's apartment which matched D's. Blood spatterings were found in D's apartment and in the stairwell of the apartment building.

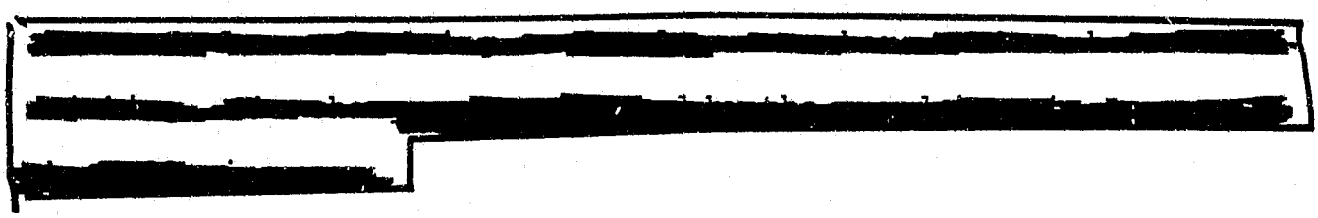
D stated that he noticed a window lying on the ground which he picked up and leaned against the building. On returning to his

apartment, D claimed that he noticed V's front door ajar. D walked into the apartment and found V asleep on her bed. D claimed that V made sexual advances toward him, and indicated that she was interested in bondage. D tied V's hands behind her back with the extension cord which had been connected to a vacuum cleaner in the hallway. D attempted to blindfold V, and failing that, covered her head with her tee shirt. He then had intercourse with V. D asserted that he began to feel guilty about his infidelity to his girlfriend. D withdrew from V. V became annoyed and kicked D in the groin. D saw a claw hammer lying on the floor. He picked it up and hit V in the head. Seventeen wounds from the hammer were inflicted upon V's head. D went up to his apartment, cleaned up and went to sleep. The next day, D threw the hammer away at a sod farm. It was later recovered by the police.

Doubt was thrown on D's version of the incident which painted V as the aggressor. D's ex-girlfriend testified that D had often wanted to tie her up during intercourse and had abused her sexually on several occasions when D was drunk. Other ex-girlfriends of D related similar experiences.

Finally, D confessed to the police the version of the incident which appears above. Evidence that D had passed a polygraph test was not given to the jury.

D, at the time of arrest, was a full time employee at a sod farm where he had worked for five years. [redacted]



D was charged with purposeful and knowing murder, felony murder, two counts of aggravated assault, kidnapping, criminal restraint, two counts of aggravated sexual assault, burglary, hindering apprehension, and possession of a weapon for an unlawful purpose. D was convicted on August 11, 1989. A notice of aggravating factors was served for: 4(c), extreme suffering; 4(f), escaping detection; and 4(g), contemporaneous felony. At the penalty trial, factors 4(c) and 4(g) were found. Mitigating factors 5(d), intoxication and 5(h), any other factor were also served and found. The jury was unable to reach agreement on the weighing process.

D was sentenced on October 6, 1989 to life imprisonment with a 30 year period of parole ineligibility.

Revised 8/7/91

#2044

STATE V. REIGLE

D breaks into his aunt's (NDV) and uncle's (V) apartment to steal money. D beats V and NDV. Jury verdict: murder 7/17/85. Penalty trial. One aggravating factor found: 4g. Three mitigating factors found: 5d, 5f, 5h. Life.

On September 1, 1984, the defendant (D), Thomas Reigle, a 24 year old male, and his girl friend (W1) (who was sleeping over at D's home) returned from purchasing drugs. D was high on speed and needed more money to purchase additional drugs. D resided in a house with his mother, aunt, (NDV/W2), a 73 year old female, and uncle, victim (V), a 62 year old male. The house was a two story home and NDV/W2 and V shared an upstairs apartment.

D asked NDV/W2 to allow him to enter NDV1's apartment because he wanted to borrow money from NDV. NDV/W2 refused. D attempted to enter NDV/W2's and V's apartment, first with a kitchen knife, and then successfully with a screwdriver which D used to pry open the door. D tried to conceal the break-in with the screwdriver by breaking a window with a towel over his hands. D then went upstairs to his room and retrieved a motorcycle baffle (pipe), which D took to NDV/W2's and V's apartment. D entered NDV/W2's room, and broke NDV/W2's glasses. D then took NDV'W1's purse into the bathroom, but before D was able to get any money, he heard NDV/W2 stirring. D returned to NDV/W2's room and hit her several times with the baffle. D then went to V's room and struck V

several times with the same metal object. V's cause of death was trauma of the head involving the brain.

After the assault was discovered by other family members, D told them that he was attacked by two men However, both D's mother (W3) and D's girlfriend (W1) saw D with a motorcycle pipe in his possession, after hearing a loud noise coming from downstairs. D subsequently fled to another state, but was apprehended by police on September 17, 1984. D eventually gave a full confession.

[redacted] D was unemployed at the time of the offense. D has two prior convictions for drug possession and damage to property, both occurring in March of 1981. D is a high school drop-out. [redacted]

D was charged with purposeful or knowing murder, 2 counts of felony murder, aggravated assault, robbery and burglary.

A notice of factors was served for: 4(b), grave risk; 4(c), extreme suffering; and 4(g), contemporaneous felony. In a jury trial on July 17, 1985, D was convicted of all charges.

In the penalty trial, only the 4(g) factor was found. Three mitigating factors were found: 5(d), mental disease; 5(f), no criminal history; and 5(h), any other factor. Mental disturbance, 5(a) and D's age, 5(c) were not found. The jury did not find that the aggravating factors outweighed the mitigating factors. D was sentenced on August 16, 1985, to a term of life imprisonment.

Revised 8/5/91

#2053

STATE V. REYES

D entered the apartment of V, NDV1 (D's ex-G.F.), NDV2 and NDV3. D intended to kill them for interfering in his relationship with NDV1. D stabbed V twice in the heart. D stabbed NDV3 until he played dead. D stabbed, choked and physically and verbally abused NDV1 and NDV2 for a sustained period of time. [redacted] Jury verdict: murder 6/25/86. Penalty trial. One aggravating factor found: 4g. Two mitigating factors found: 5a, 5d. Life.

The following quotation is taken from an unpublished Appellate Division opinion. 3/27/89. A-0246-86T4.

"The facts underlying the charges may be summarized as follows: Prior to October 1984, defendant Jose Luis Reyes was involved in a relationship with Norma Martinez (NDV1). Late in the afternoon of October 28, 1984, defendant visited Norma, who lived in a house owned by the homicide victim, [redacted] (V). Defendant and Norma had an argument, based on defendant's insistence that Norma had been involved in a relationship with another man. [redacted] (V) broke up the argument and told defendant to leave.

"After defendant left he visited various places consuming a variety of drugs and alcohol. In fact, he was arrested that evening for being under the influence of heroin. After he was released on bail on that charge, defendant went to a bar in Paterson, New Jersey, where he met a friend and smoked marijuana cigarettes laced with P.C.P. or "angel dust." Defendant then went to the apartment of another friend, Eduardo Rosa. After speaking to him briefly, defendant took a knife from Rosa's apartment and,

without permission, broke into Rosa's garage and took some tools.

"Meanwhile, [redacted] Norma, Terry Martinez (Norma's sister), and Roberto Perez (Terry's boyfriend) were asleep in the [redacted] house. Defendant went back there and cut a hole in the screen to gain entry. According to defendant, he did so because he wanted to talk with Norma. Norma heard defendant breaking into the apartment and also heard a female scream. She went into [redacted]'s bedroom, and saw defendant beating [redacted] but did not see a knife. When defendant saw Norma, he ran out of [redacted]'s room. He ran past Norma, and went into Terry's bedroom, arousing Terry and Perez. A struggle ensued between Perez and defendant. When Perez ducked to avoid defendant's blows, Terry was stabbed by defendant. The struggle between defendant and Perez continued for a few moments, but defendant eventually stabbed Perez. He then grabbed Terry, punched her, and forced both Norma and Terry to sit on the couch. He threatened to kill them if they did not answer his questions regarding Norma's involvement with other men. Defendant then began to sexually abuse Norma by touching her vagina and threatened to have intercourse with her and then stab her.

"Defendant left the apartment when Norma agreed to accompany him, and they went back to Rosa's apartment. Before they arrived there, defendant allowed Norma to call an ambulance to give assistance to Terry, Perez and [redacted]. At Rosa's apartment, defendant admitted that he had stabbed [redacted] and the others. Rosa took the knife from him and suggested that they take Norma to the hospital. Defendant agreed but threatened to kill Norma if she did

not use a false name when being admitted to the hospital. When they arrived at the hospital, Norma signed in using an assumed name, and was taken to the emergency room for treatment.

"After defendant and Norma had left [redacted]'s house, the police were summoned and observed [redacted]'s body in her bedroom. Terry and Perez, who were being treated by the ambulance crew, gave a description of defendant to the police. One of the police officers who accompanied Terry to the hospital noticed Norma arrive for treatment of her stab wounds. At that point, the policeman also observed defendant in the hospital waiting room and recognized him as the person described to him by Perez and Terry. Meanwhile, as Terry was being treated she realized that Norma was also in the emergency room, and she told the officer that the person who brought Norma to the hospital was the perpetrator. He placed defendant under arrest and noticed blood on the tips of his shoes.

"At trial defendant did not dispute the fact that he had stabbed the various people involved. His defense was primarily that he had no recollection of the events that had taken place and that he was unable to form the requisite intent because he was suffering from voluntary intoxication that night and from a diminished mental capacity due to his prolonged ingestion of drugs and alcohol which his expert called a drug-induced "altered state." Defendant related the fact of his arrest on the night before the incident for being under the influence of narcotics and alleged that he was still under the influence of narcotics when he was bailed out later that evening. Further, he testified that he had

continued to consume various drugs and alcohol that night until shortly before the incident.

"Defendant presented Dr. Robert L. Sadoff, a psychiatrist affiliated with the University of Pennsylvania. Based on his understanding of the incident, as well as defendant's use of marijuana and PCP (a psychedelic drug which causes hallucinations and distortions), Dr. Sadoff testified that

> based on those facts that I got from him, most of which was fairly well supported by the statements of other people that I have read, was that he was in an altered state of consciousness at the time of the stabbing in the sense that he was in a rage and he was under the influence of the intoxicants that he had taken, specifically the marijuana and the PCP. So that when he lashed out, he did so impulsively and in an emotional passion, rage, rather than in a controlled, deliberate fashion.

He further testified that defendant's acts "could not have been a purposeful, deliberate, planned attack, but that it happened in a rage, in a loss of control..." The essence of Dr. Sadoff's testimony was that, at the time of the stabbings, defendant was experiencing a drug induced "altered state," which prompted him to act in a manner which indicated "a loss of control," but not intentionally.

"Defendant produced several witnesses who testified as to his drug use on the evening of the incident. Several other witnesses, however, including the victims and the investigating officers, testified that defendant did not appear to be under the influence of any drug at the time of the incident or shortly thereafter." End of Excerpt.

V had been stabbed twice in the heart, and Perez twice in the

back and once in the arm, until he "played dead." D kicked him to see if he was really dead. He then removed NDV3's panties and she was naked during about an hour of abuse for both sisters. He stated he had intended to kill all three women.

D is 24 years old, a high school dropout who later obtained a GED. He briefly served in the National Guard, but was discharged when it was discovered that he had lied on his application. D had been working for only about one month at an engineering firm at the time of the offense. He lived with his mother and her common-law husband. [redacted]

D was charged with murder, felony murder, attempted aggravated sexual assault, two counts of burglary, three counts of aggravated assault, two counts of attempted murder, two counts of terroristic threats, and a weapons count. A notice of factors was served for contemporaneous felony (4g). In a jury trial on June 25, 1986, D was found guilty of all charges except for one burglary count and attempted aggravated sexual assault. In the penalty phase trial factor 4(g) was found. Two mitigating factors were found: 5(a), extreme mental disturbance, and 5(d), mental impairment. Four were not found: 5(c), D's age;, 5(e), duress; 5(f), no criminal history; and 5(h), any other factor. Two factors were never submitted to the jury; V consented to death 5(b) and assistance to state 5(g). The jury did not find that the aggravating factor outweighed the mitigating factors. On the murder count, D received

a sentence on August 1, 1986, of 50 years imprisonment, with a 30 year minimum. The remainder of D's sentence is as follows: burglary, 10 years concurrent. Felony murder merges with murder. Aggravated assault, 10 years, 5 mandatory minimum -- consecutive. Terroristic threats, merges with aggravated assault. Attempted murder, 10 years, 5 mandatory minimum -- consecutive. Aggravated assault merges with murder. Terroristic threats merges with attempted murder. Attempted murder, 10 years, 5 minimum -- consecutive. Aggravated assault merges with attempted murder. Weapons offense, 5 years, concurrent.

Revised 8/6/91

#2091

STATE V. RIVERA

V visiting D and D's wife in adjoining apartment. D left and went to rob V's apartment. V came in, struggle. D hit V repeatedly. D attempted to rape V. D put pillow over V's face. Suffocation. [redacted] Jury verdict: murder 5/30/86. Penalty trial. Two aggravating factors found: 4c, 4g. Two mitigating factors found: 5d, 5h. Life.

The following facts are excerpted from State v. Rivera, 232 N.J. Super. 165 (App. Div. 1989).

"On July 16, 1983, [redacted], a 78 year old widow who used a cane for ambulation, was murdered in the bedroom of her second floor apartment located at [redacted] Newark. She lived on Social Security payments and benefits from the Veterans Administration. Defendant, his girlfriend, Diane Sanders, and their three children resided in a second floor apartment located next to the victim. The victim regarded defendant and his family as part of her extended family. She would baby-sit for defendant's children at times. The three children called the victim "grandmother."

"The victim visited Sanders in Sanders' apartment several times on July 16. The last time was about 4:15 p.m. Defendant came home at approximately 4:30 p.m., while the victim was visiting, and left 15 minutes later saying he was going out with friends. The victim went home at about 5:05 p.m. A short while

later, Sanders and her son James placed their ears against a common wall which separated Sanders' bedroom from the victim's bedroom after hearing suspicious noises. They heard what sounded like a bed squeaking. James also heard a man's voice in the victim's bedroom. Defendant returned home shortly after the noise ended. When Sanders told defendant about the bed squeaking and the man's voice, defendant responded that he had been in the victim's apartment looking for money when the victim walked in and surprised him. Defendant told Sanders that he struck the victim several times. In an effort to check on the victim, Sanders entered the victim's apartment through an unlocked door. From the kitchen,she saw the victim lying on the bed with her head back....

"At or about the time the victim was taken to the morgue, defendant was visiting with another girlfriend, Jeanel Daniels, who lived on Hawkins Court in Newark. Defendant told her that he had murdered an old lady with his hands. He said he strangled her.

"An autopsy was performed on July 17. It revealed the victim's face and neck were covered with bruises. There were pressure marks on the left side of her jaw. Marks on the right side of the face indicated linear abrasions surrounded by bruising. Hemorrhaging was found under the tongue, behind the eye and underneath the cheek. Bruises were located on her forearms and mid-back. Tiny abrasions were found on her lips. Gross examination of the rib cage revealed two fractured ribs. Hemorrhaging as well as black and blue marks were found which were caused by multiple impacts, probably inflicted by slapping,

punching or a series of blows to the victim. The cause of death was asphyxiation due to pressure being applied to the neck and throat, commonly called strangulation.

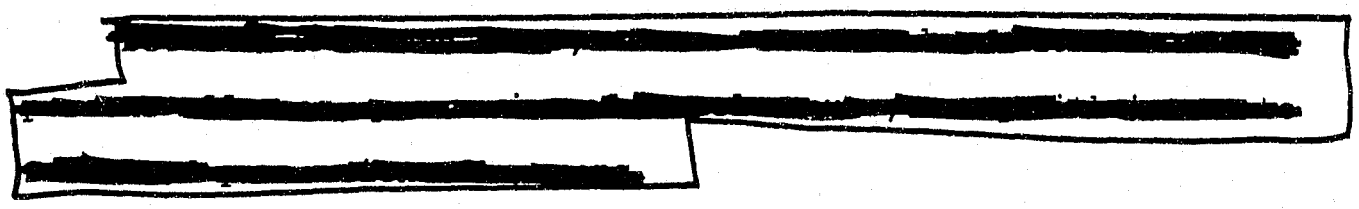
"In addition, the autopsy revealed that the victim had been sexually assaulted. Her vagina was torn in the back and was oozing blood. There was bruising of the mucous membrane and the area near the urethra. These injuries were caused by an object at least three inches in diameter such as the cane used by the victim for ambulation or defendant's hand.

"Based on the autopsy report, a homicide investigation was undertaken by Detectives Jack Eutsey and Charles Conte of the Newark Homicide Squad. Detective Eutsey took a statement from Sanders on July 17 and 18. Sanders also gave statements to Investigator Roger Spain of the Essex County Prosecutor's Office on July 17, 18 and 19, 1983. In her first statement, Sanders identified a male named Dennis as the only suspect and she did not indicate that defendant lived with her. But when detective Eutsey spoke to defendant a second time, he said "I killed her." Defendant was arrested and charged with the various crimes. He gave a written statement which was admitted as evidence during the trial."

AS, a fellow employee of D's, testified that D appeared drunk when he left work at 3:50 p.m.

W4, W1's nephew, testified that he saw D pass in front of his apartment building, located across from D's and V's building, about 15 minutes before W1 called to say that V was dead.

D obtained his GED while incarcerated on a previous conviction. D was employed as a truck loader at the time of the murder. D resided with his paramour and their three children in an apartment adjacent to the V's apartment.



D was charged with knowing and purposeful murder, felony murder, robbery, aggravated sexual assault and burglary. In a capital trial, D was found guilty on all counts except the felony murder count on May 30, 1986. At the penalty phase, the jury was served with three aggravating factors: 4(c), extreme suffering; 4(f) escape detection; and 4(g), contemporaneous felony. 4c and 4g were found. Mitigating factors 5c, age; 5d, mental disease; and 5h, any other factor were served; 5d and 5h were found by the jury. The jury was unable to reach an unanimous verdict regarding the weighing of the factors, thus, a death sentence was precluded. D was sentenced on September 4, 1986, to life imprisonment with a 30 year period of parole ineligibility. On the aggravated sexual assault count, D received a extended term of life imprisonment with a 25 year period of parole ineligibility. This sentence was made consecutive to the term imposed on the murder count. D was sentenced to 20 years on the robbery count, and 10 years on the burglary count. These terms were made concurrent to each other and to the other sentences imposed.

Revised 8/6/91

#2170

STATE V. ROSE (MICHAEL)

D, age 31, was hired by Co-D1 to kill V for $1,000 so she would not inherit his father's money. D stabbed V 83 times, and bludgeoned V approximately 20 times. V was 8 months pregnant when she was killed. D claimed self-defense. Jury verdict: murder 12/21/84. Penalty trial. One aggravating factor found: 4c. Four mitigating factors found: 5e, 5f, 5g, 5h. Life.

The following quotation is excerpted from the unpublished Appellate Division opinion, 2/16/89 A-4874-84T4.

"The following facts developed at trial. On July 20, 1983, the Glassboro Police were notified of a homicide at a store operated by Vlado Cveticanin. Upon arrival, they found the body of a female, later discovered to be [redacted], wife of Vlado, on the floor in the rear of the store, in a pool of blood. Blood was spattered around the room. In the area where the victim was found, there were blood-stained items, including handwipe towels, two broken knives, a tackhammer, a stick and a hacksaw frame and blade. There were foot prints in blood from a sneaker type shoe and a blood-stained towel was found in a cardboard box, outside the rear entry way. A subsequent analysis of the blood matched that of the victim. The room was in a state of disarray with items strewn about, suggesting there had been a struggle. Paint chips on the victim's shoulder and behind her ear matched the paint on the sump pump found in the area. Detective Norman Reeves of the Gloucester

County Prosecutor's Office, who was assigned to investigate the homicide, concluded that the victim was struck more than once with a blunt instrument.

"Dr. Klaus Speth, the assistant medical examiner, determined that the time of the victim's death was between 2:30 and 3:30 p.m. on July 20. The victim was in an advanced state of pregnancy at the time. The autopsy revealed multiple stab wounds from a sharp instrument in addition to wounds produced by impact with a blunt instrument. The doctor believed that the two knives, the hacksaw and the sump pump were used against the victim. The doctor found the cause of death to be "[m]ultiple stab wounds and blunt injuries to head and neck."

"In the course of their investigation the police spoke to Edwin Quinton, who was 15 years old at the time and lived with his family next door to the store. Quinton admitted his involvement about five days after the murder. He knew the Cveticanin family and a couple of months before the incident met Zoran Cveticanin, son of Vlado and stepson of the victim. The first day Quinton met him, Zoran spoke to him about wanting to have [redacted] killed and continued to mention the subject a couple of times a week. About a month before the incident, Zoran indicated to Quinto that defendant was going to kill [redacted]. He asked Quinton to lock the door after defendant entered the building and to act as a lookout. Quinton never discussed the matter with defendant.

"On the morning of July 20, Zoran told Quinton that this was the day for the murder and gave Quinton $60. Zoran called Quinton

around noon from Philadelphia and told him that defendant would be there at 2:00 p.m. When defendant arrived, in response to Quinton's question, defendant said that he would probably strangle her. Defendant requested Quinton to go into the store to see if anyone was there. Quinton spoke to [redacted] and reported to defendant that she was alone. Defendant waited about five minutes and entered the store. At that point, Quinton went to his home.

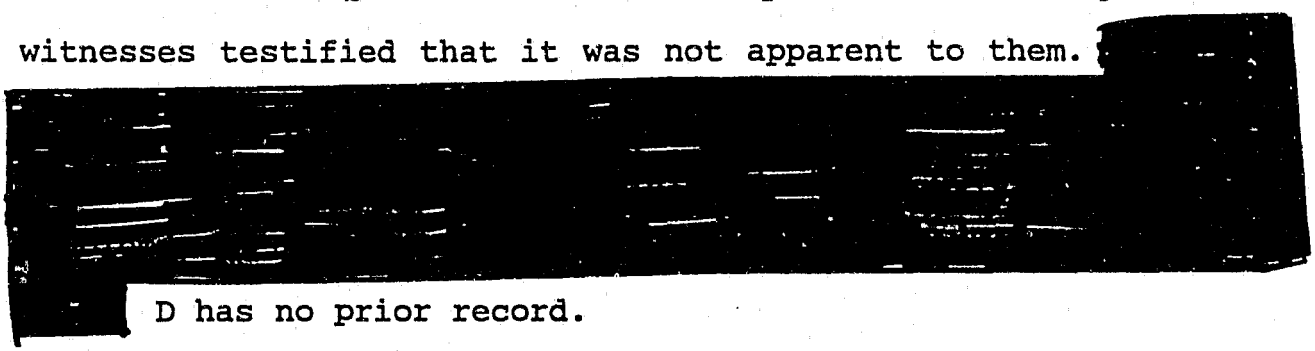
"Quinton called the store a few times and when there was no answer, he went to the store and saw [redacted]'s legs and blood in the back of the shop. Quinton went home and several hours later, he returned the keys to Zoran. A few days later, Quinton drove with Zoran to defendant's home in Philadelphia, but Quinton stayed in the car. When Zoran returned to the car, he said that defendant appeared to be in a state of shock and that he had told defendant to get rid of his clothes because they were full of bloodstains.

"Defendant took the witness stand on his own behalf. He claimed he went into the store to warn [redacted] that Zoran wanted him to kill her, and that when he did so, she went "berserk" and tried to kill him. He stated that she picked up a knife and tried to stab him with it, that they struggled and that he "freaked out" and killed her in self-defense. He then washed his hands and later threw his clothes into the trash in Philadelphia. The next day he saw Zoran who promised to pay him $1,000. Several days later Zoran and his sister, Vesna, gave him $540." End of Excerpt.

An expert in the field of blood stain analysis later testified at trial that the direction of the bloodstains found at the scene

indicated that V was backing away from her assailant. The medical examiner testified that V was first attacked from behind and had 36 to 38 defensive wounds with a total of 83 wounds. Zoran Cveticanin, whose motive was to prevent his aunt from inheriting his father's estate, fled to Yugoslavia and was convicted there.

At the time of the offense, D was collecting workman's compensation due to a job related injury. D completed the 10th grade and then dropped out in order to get a job. He had a common law wife (separated before the crime) and two children. There was substantial testimony from friends and family that D was "helpful", "quiet", "easy-going", "always there for me". He had been a church goer and in the Choir. It appears that he went downhill after meeting Zoran Cveticanin. Tests done after his arrest indicate that D has an I.Q. of 68 and is mildly retarded although defense witnesses testified that it was not apparent to them.



D has no prior record.

Zoran and his sister were tried in Yugoslavia. Zoran was convicted of murder and sentenced to 30 years hard labor. His sister was acquitted of all charges.

D was charged with purposeful and knowing murder by his own conduct and with conspiracy to murder. A notice of aggravating factors was served for the 4(c), wanton and vile; and the 4(d), murder for pecuniary value, factors. D claimed that the following

mitigating factors were present. 5(d), capacity of defendant to appreciate wrongfulness; 5(e), duress; 5(f), no significant criminal activity; 5(g), substantial assistance; and 5(h), any other relevant factor. In a jury trial on December 13, 1984, D was found guilty of purposeful and knowing murder and conspiracy to murder. In the penalty phase, the jury found aggravating factor 4(c) and unanimously found mitigating factors 5(e), 5(f), 5(g) and 5(h). The verdict sheet wrongly required such unanimity of mitigating factors, and the sheet seems to indicate that at least some jurors found the 5d factor both as a mental and alcohol or drug impairment. Of course, the judge instructed them not to weigh any factors not found, so the effect of the 5(d) factor can not be ascertained. The jury could not reach a decision on the weighing of the factors, so, on January 21, 1985, D was sentenced to life in prison, with 30 years parole ineligibility. On the conspiracy count, D received 10 years, with 5 years parole ineligibility, to be served consecutive to the sentence on the murder charge.

Appellate Division Docket Number: A-4874-84T4

Revised 8/8/91

#2190

STATE V. RUSSO

D had made friends with 3 gas station employees (V, NDV1, NDV2). D decides to rob station. D makes V, NDV1, and NDV2 lie on floor. D shoots V and NDV1 in head and NDV2 in hand. Jury verdict: murder 5/13/87. Penalty trial. Two aggravating factors found: 4b, 4g. Five mitigating factors found: 5a, 5c, 5d, 5f, 5h. Life.

The following quotation is excerpted from the Appellate Division opinion, State v. Russo, 243 N.J. Super. 383 (1990).

"The offenses for which defendant was convicted were committee on March 7, 1985 at Petteti Motors, a gas and automobile repair station located in Swedesboro, a small Gloucester County community. Defendant had been at the gas station a week or two earlier, when his car was towed there after breaking down on the New Jersey Turnpike. On that occasion, he talked to two of the victims, [redacted] and Dino Rossi, while he was filling out paperwork regarding his car and saw them process the gas station's receipts before closing for the evening.

"[redacted] and Rossi were also working when defendant returned to the gas station around 7 p.m. on March 7th. Defendant said that he was meeting someone at a local bar at 7:30 p.m. and that he had stopped by the gas station on his way. Defendant again engaged both Rossi and Iovanisci in casual conversation. Near the time for closing, the third victim, Ann Kiley, arrived to offer Rossi a ride after work. As Rossi was processing the gas station's receipts,

defendant suddenly brandished a nine millimeter handgun and told him that this was a "stick up." Defendant then ordered the victims to walk from the office to the parts room of the gas station and to lie on the floor. After the three victims lay down, defendant began firing his gun at point blank range killing [redacted] and inflicting serious brain damage on Kiley. Miraculously, Rossi, although shot twice, was not seriously injured.

"Based on the gas station's towing records, defendant was quickly apprehended. Defendant provided the police with an oral statement, which was tape recorded, that essentially constituted a confession to the crime and also told the police where they could find the murder weapon as well as various other evidence.

"At trial defendant relied on the defenses of diminished capacity and voluntary intoxication. In finding him guilty of purposeful and knowing murder, the jury evidently rejected both defenses...." (End of excerpt.)

D , 32 years old, stands 5'8" and weighs 138 pounds. [redacted]

D completed the 11th grade, but later obtained his GED. D took college courses after he enlisted in the Air Force. D entered the Air Force while in the 11th grade, and remained enlisted at the time of the offense.

D has one prior disorderly persons offense for unlawful possession of a weapon. Additionally, D was adjudicated both as a

juvenile and court martialed from the Air Force for drug related charges. D was later re-instated in the Air Force after serving three months in prison.

D was originally charged with: purposeful or knowing murder, capital murder, and felony murder (3 counts); attempted murder (2 counts); aggravated assault (4 counts); armed robbery; possession of weapon for an unlawful purpose; and unlawful possession of a weapon. D was acquitted of this final charge, and found guilty of all other charges on May 13, 1987. At the penalty phase, evidence was presented on the 4(b) (grave risk), 4(f) (escape detection), and 4(g) (contemporaneous felony) aggravating factors. Aggravating factor 4(c) was served but never presented to the jury. The jury found 4(b) and 4(g) present. The jury also found present mitigating factors: (a) emotional disturbance, (c) age, (d) mental disease or defect, (f) no significant priors, and (h) any other reason. The jury found that the aggravating factors did not outweigh the mitigating factors. D was sentenced to life imprisonment with a 30 year period of parole ineligibility.

Revised 8/7/91

#2195

STATE V. SAINVALLIER

D and V argued in bar over serving of drink. Argument continued outside. D shot V 3x, then fired 2 shots at V's companions. No violent priors. Jury verdict: murder 3/14/85. Penalty trial. One Aggravating factor found: 4b. Four mitigating factors found: 5a, 5d, 5e, 5f. Life.

During the evening of February 10, 1983, defendant, Remy Sainvallier (D), a 36 year old male, and a friend entered a tavern. D sat down at the bar next to victim (V), a 27 year old male, and ordered a Johnny Walker Black. When D received the drink, he complained to the barmaid that it was not full.

V indicated that the amount was fair and D told V to "mind his own business." An argument ensued. The part-owner of the bar then provided D with a double shot "on the house."

D left the bar, went home, got his .357 Dan Wesson Magnum, put four additional hollow nosed bullets in his pocket, and returned to the bar.

D and V eventually "stepped outside." V hit D several times on the head. D fell to the ground, picked himself up, and went back inside the bar.

In the bar, D told the part-owner that he was going to kill V. Then he went back outside.

At this point, two of V's friends and V were in a car. V's friends were trying to calm V down. D came up to the car and asked

where V was. V then stepped out of the car.

Shortly thereafter, D fired four shots at V, hitting him once in the head and three times in the back.

After the shooting, both of V's friends rolled out of the car. D pointed the gun at them, fired two shots and fled. One of V's friends (W1) followed D. W1 was subsequently picked up by W2, who had been in the bar and was following D in his limousine. The two trailed D to a house. W1 got out of the car to keep watch, while W2 returned to the bar to notify the police about D's whereabouts.

Eight to ten police officers followed W2 to the house. D was found in the basement behind a washing machine.

At the hospital where D was treated for his injuries, D told an officer that he shot V because "he was making me so mad that he was driving me nuts." However, at his trial, D testified that he fired his gun at V because he was terrified that V was going to kill him.

D has completed two years of college. D [redacted] has a history of steady employment. D was living with his girl friend at the time of the offense.

D's prior record consists of one conviction for unlawful possession of a handgun (9-8-82). He was accepted into the PTI program, then terminated from it and given 30 days M.C.C.I.

D was charged with purposeful and knowing murder, attempted murder, possession of a weapon and possession of a weapon for an unlawful purpose. D was convicted on March 14, 1985, of murder, two counts of aggravated assault, possession of a weapon and

possession of a weapon for an unlawful purpose. Notice of aggravating factor 4(b), grave risk was served and found. Mitigating factors: 5(a), emotional disturbance; 5(d), disease or defect; 5(e), duress; and 5(f), prior record were served and found. D was sentenced on April 9, 1985, to a life term with a 30 year parole disqualifier for the murder, and a three year concurrent term for possession of a weapon. The two counts of aggravated assault were dismissed by the judge. The charge of possession of a weapon for an unlawful purpose was merged with the murder charge.

Revised 8/7/91

#2235

STATE V. SCALES

D and Co-D planned to commit robbery. They met V in a bar and lured V to apartment and all used cocaine. Co-D got a clothesline. D and Co-D beat V. Co-D and D strangled V. They took V's car and credit cards. Jury verdict: murder 10/31/86. Penalty trial. One aggravating factor found: 4f. Two mitigating factors found: 5d, 5h. Life.

On September 20, 1984, the defendant (D), Terrence Robert Scales, a 27 year old male and the Co-D, Howard Thompson, were trying to find a robbery victim. D and Co-D were in desperate need of money, and planned to take a victim's auto and sell it for cash in another city. D and Co-D entered a local tavern where they met the victim (V), a male, who owned a new automobile. D and Co-D took V back to the apartment they shared with a female (W1). D and Co-D shared cocaine with V. Soon D and V left the apartment to purchase more cocaine. Meanwhile, Co-D obtained a clothesline. Co-D tested it on W1's neck and remarked that it was "perfect" for its intended purpose. Co-D told W1 that they were going to kill V and sell his car.

When D and V returned to the apartment, D took V into another room and Co-D soon followed. D and Co-D strangled V with the clothesline. As V struggled to flee, D and Co-D beat V about his face and body. Finally, D and Co-D tied V's elbows together by pulling the noose from V's neck. W1 and others heard the struggle.D and Co-D then wrapped V's body in a blanket, carried it

to V's auto, and drove to a nearby park where they dumped the body along a river.

Then, D and Co-D drove to a nearby town. During September 21st and 22nd, Co-D used V's credit cards to buy food, lodging, jewelry and clothes. Co-D attempted, unsuccessfully, to sell V's auto in New York. V's body was discovered on the 22nd. On September 23rd, V's body was identified and an alert was put out for his auto. On the same day, D and Co-D were arrested while driving V's auto. In their possession were V's credit cards. D claimed that V was dead when he (D) arrived at the apartment. However, W2 (D's fellow jailmate) told the prosecutor that D admitted to his involvement in V's death.

D stands 6'1" and weighs 175 pounds. [redacted] D dropped out of high school at age 16. At trial, there was testimony that D was beaten and his father was an alcoholic. At the time of the homicide, D was employed as a parking lot attendant and maintenance man.

[redacted]

D was charged with purposeful and knowing murder, felony murder, robbery, armed robbery and two theft counts. A notice of aggravating factors was served for escape detection, 4(f) and extreme suffering, 4(c). D relied upon the following mitigating

factors: 5(c), D's age; 5(d), intoxication; and 5(h), any other factor.

In a jury trial October 31, 1986, D was found guilty of all charges. At the penalty phase, the 4(f) aggravating factor was found and mitigating factors 5(d) and 5(h) were found. The jury deadlocked on the issue of death and D was sentenced on January 23, 1987, to life imprisonment with a 40 year period of parole ineligibility on the murder count. The court merged D's conviction for felony murder with the first degree murder conviction. The court merged D's robbery and theft convictions and sentenced him to 20 years imprisonment with a 10 year period of parole ineligibility. In an appellate decision dated February 22, 1989, the Superior Court modified D's sentence on the murder conviction by imposing a 30 year period of parole ineligibility instead of the originally imposed 40 year period.

Revised 8/1/91

#2270

STATE V. SETTE

D (23 yr., M) shared condo with V (23 yr., F). No romantic connection between the two. Two others also shared condo. D's version: D used cocaine, picked up 6" knife and stabbed V multiple times in chest, head and slit throat. NDV1 tried to help. D stabs NDV1. Runs after W5, but police apprehend D. No priors. Jury verdict: murder 4/20/89. Penalty trial. Two aggravating factors found: 4b, 4c. Four mitigating factors found: 5c, 5d, 5f, 5h. Life.

On March 21, 1988, at approximately 10:30 P.M., the non-decedent victim (NDV1/W1) came home to the condo he shared with the defendant (D), Mark John Sette, a 24 year old male and the victim (V),a female. Statements by D and others indicate that D wanted a relationship with V and she had previously rejected his advances. Present when NDV1/W1 returned were V, D, another resident of the condo, W2, and three other individuals. One of the individuals (W3) was playing a board game with D. D was using cocaine and marijuana with the other present individuals. NDV1/W1 went upstairs to his bedroom for 15 to 20 minutes, returned downstairs, and ultimately returned to his bedroom again. At approximately 11:00 P.M. NDV1/W1 was asleep until he heard V yell "Pete, Pete, wake up, help me."

NDV1/W1 got out of bed and saw D. NDV1/W1 asked D what he was doing and D replied, "No, no, it's ok, I'm not going to hell." NDV1/W1 observed that D and V had blood on their bodies. D stated "calm down, Rose...," and looked back at NDV1/W1 and stated "Get

out." NDV1/W1 again questioned D as to his actions, and D again stated "... it's ok." NDV1/W1 put his arm on D's shoulder and told D "... you don't want to do this." D then pulled out a knife and stabbed NDV1/W1 in the side.

V shouted for NDV1/W1 to go for help. NDV1/W1 ran to the apartment of W4 and W5. While NDV1/W1 was in the condo of W4 and W5, D chased V into another resident's bedroom and stabbed her again (having initially stabbed V when V responded to D's knock on her bedroom door). V ran down the stairs. D followed V and cut her throat as she lay on the floor. Defendant then left the apartment and walked across the parking lot to follow NDV1/W1. As W4 telephoned the police, D appeared at W4's and W5's apartment with a knife. W5 attempted to fight with D. D pushed W5 aside and pursued W4 who exited the apartment's sliding glass door, and ran down the street with D chasing her. W4 met strangers on the street who hid her in their home while D went past. W4 was met by the police who instructed her to sit in the patrol car. D was apprehended and placed in the patrol car. D kicked at the car's rear window and kicked the patrolman, W6, in the face as W6 attempted to restrain D's legs. D admitted stabbing V and NDV1/W1, but initially denied having any memory of the circumstances surrounding these offenses. D was clad in only his underwear when he was apprehended. Several citizens reported that a young male (later identified as D) was running in the vicinity, in only his underwear, covered with blood and carrying a large survival type knife with a 6 inch blade. D did not have the knife when he was

apprehended, but he had blood on his hands and legs, and a cut on his upper leg.

V was stabbed a total of ten times in chest area, abdomen, scalp, neck and upper leg. Additionally, her throat had been cut and she expired at the scene. NDV1 recovered.

D has a high school education. At the time of the offense, D was employed as a supervisor in the landscaping business. Experts testified that exposure to certain chemicals in his job may have supercharged the effect of cocaine that night and rendered D unable to act purposely or knowingly or rendered him pathologically intoxicated under 2C:2-8d. [redacted] D has no prior criminal record.

D was originally charged with purposeful and knowing murder, aggravated manslaughter, attempted murder, aggravated assault, another count of attempted murder, two other aggravated assault counts, possession of a weapon (knife), possession of weapon with intent to use, aggravated assault on a police officer and resisting arrest.

Following a jury trial, on April 20, 1989 D was convicted of the following final charges: purposeful and knowing murder (sentenced to life with a 30 year period of parole ineligibility); attempted murder (sentenced on September 9, 1989, to 20 years with a 10 year period of parole ineligibility, consecutive to count one); aggravated assault (sentenced to seven years, consecutive to first (2) counts); aggravated assault (seven years consecutive to

previous sentences); possession of a weapon (knife) (merged with next sentence); possession of a weapon with intent to use (four year sentence concurrent to previous sentence); aggravated assault on a police officer (four year sentence concurrent to previous sentences); and resisting arrest (nine month sentence concurrent to previous sentences). In the penalty phase, the jury was charged on aggravating factors 4(c), extreme suffering and 4(b), grave risk. Both factors were found. The jury was charged on mitigating factors 5(a), emotional disturbance; 5(c), age (23); 5(d), mental disease; 5(f), criminal history; and 5(h) any other factor. Mitigating factors 5(c), 5(d), 5(f) and 5(h) were found.

The jury did not find that the aggravating factors outweighed the mitigating factors.

Revised 8/5/91

#2318

STATE V. SLAUGHTER

D was at fast food restaurant. D ordered 3 employees to lay on the floor, then demanded combination to safe. They didn't know it, so he shot V 2x in back. Jury verdict: murder 6/28/85. Penalty trial. 1 aggravating factor found: 4g. 2 mitigating factors found: 5c, 5h. Life.

On February 10, 1984, at approximately 11:00 p.m., the defendant (D), a male, 22 year old Rafael Slaughter, 5'11", 162 pounds, entered a fast food restaurant. A female restaurant employee noticed that D was acting "suspicious" in that he came towards the counter, but then, went to one side of the restaurant and peered out the window. D then went to the other side of the restaurant and peered out the window before returning to the counter, ordering his food and leaving the restaurant.

Later, at approximately 2:00 a.m., the three restaurant employees, 2 females (W1 and W2) 19 and 20 years old respectively, and the victim (V), a male, 18 years old, were preparing the restaurant for closing. V was behind the restaurant putting out garbage when he was approached by D. D put a gun in V's back and ordered V inside the restaurant.

The shooting was recounted in the unpublished Appellate Division opinion, (2/15/88, A-567-85T4, at 2).

"... defendant viciously slaughtered a youthful employee of a fast food restaurant by firing two bullets into his body at point-

blank range. The senseless killing occurred during the course of defendant's unsuccessful attempt at robbing the restaurant, and was apparently precipitated by the victim's inability to provide him with the combination to the safe. After the killing, defendant left the scene empty-handed. He was arrested on the following day when the police learned that he had stolen an automobile in close proximity to the restaurant shortly before the attempted robbery and murder." End of Excerpt.

W1 called the police. Although shaken and hysterical, W1 and W2 described their assailant. V lived for 20 minutes and was conscious for approximately 12 minutes after the shooting. Subsequently, V drowned in his own blood.

On February 11, 1984, D was arrested when the police learned that he was arrested on the previous day for driving a stolen car. D's previous arrest had occurred near the scene of V's murder. The police learned that the car D was arrested in had been taken from a parking lot in a nearby city in exchange for a car taken from an area near the murder scene. D admitted stealing both cars. When arrested, the police did not find a gun in D's possession, but they did note that his physical characteristics and clothing matched the description given by W1 and W2 of V's murder.

Although W1 and W2 initially could not identify D from a line-up (and in fact identified two others as the perpetrator) they eventually identified D as the perpetrator.

Although D stated that he never visited the murder scene, a forensic chemist testified that D had paint chips on the soles of

his shoes which matched paint chips found at the fast food restaurant. Additionally, D had grease, from the restaurant rear entrance, on his shoes.

The prosecutor indicated that D has five prior car theft convictions.

D was charged with purposeful murder, felony murder, possession of a firearm for an unlawful purpose, possession of a handgun without a permit and two separate counts of theft of movable property. A notice of aggravating factors was served for the 4(g) (contemporaneous felony) factor. In a capital trial, D was found guilty June 28, 1985 on all counts. At the penalty trial, the jury was charged on the 4(g) aggravating factor and found the factor present. The jury was charged on mitigating factors 5(c) (age of defendant) and 5(h) (any other factor relevant to the case. The jury found both mitigating factors present, and that they were not outweighed by the lone aggravating factor. D was sentenced to an aggregate sentence of 50 years with a 30 year period of parole ineligibility.

Revised 8/7/91

#2375

STATE V. SPRAGGINS

D broke into V's apartment and raped then suffocated her. D took jewelry from the apartment. Jury verdict: murder 1/30/86. Penalty trial. 2 aggravating factors found: 4f, 4g. 2 mitigating factors found: 5d, 5f. Life.

On September 2, 1983, defendant Jerry Jerome Spraggins (D), a 28 year old male taxi mechanic, dispatcher, and driver, was walking home from work when he noticed victim (V's), (a female, age 68), window shade was up. D took the screen off the window and climbed in. V was lying on the couch. Because V was about to scream, D put a pillow over her face. He then sexually assaulted her and took her pocketbook and a gold neck chain. He left through the window, leaving the pillow on V's face.

Upon his arrest on April 9, 1985, D told police that he sexually assaulted V and placed a pillow over V's face, but that he did not know that V was dead when he left her apartment. He also denied removing any of V's belongings from her apartment. Because of the circumstances and the nature of this killing, D was also linked to the murders of two other women in the same apartment building. The jewelry of these women was found in D's apartment.

At trial, D denied ever entering V's apartment. However, his fingerprints were found on V's window screen which was lying 10 feet from the window in a grassy area.

D is a high school graduate who has held the same job for ten years. He has never married, but has one out-of-wedlock son who resides with D's ex-paramour. D was living with his parents at the time of the offense. [redacted]

D's prior record consists of convictions for invasion of privacy, larceny, criminal trespass, criminal sexual contact and indecent exposure between 1977 and 1985. Although D committed the present offense in 1983, he was not arrested until 1985.

D was charged with three separate offenses involving burglary, aggravated sexual assault and murder of V and two other victims, V1, a female whose murder occurred before the enactment of the capital punishment law and V2, a female. V1 and V2 resided at the same apartment in which V lived at the time of her death. D was charged with three counts of burglary, three counts of theft, one count of sexual contact, two counts of purposeful and knowing murder, one count of felony murder, two counts of aggravated sexual assault and two counts of felony murder. A notice of aggravating factors was served for: extreme suffering, 4(c); escaping detection, 4(f); and contemporaneous felony-sexual assault and burglary, 4(g).

D was convicted on January 30, 1986, of the burglary, aggravated sexual assault, purposeful and knowing murder and felony murder of V. At the penalty trial, aggravating factors 4(f) and 4(g) were found. Factor 4(c) was not found by the jury. Two mitigating factors were found: 5(d), mental disease or defect, and

5(f), no criminal history. D's age, 5(c) and any other factor, 5(h) were not found.

D was sentenced on May 16, 1986, to a life term with a 30 year parole disqualifier for the murder, a consecutive 20 year term with a 10 year parole disqualifier for the aggravated sexual assault, and a concurrent ten year term for the burglary. The felony murder charges was merged with the murder charge.

Revised 8/7/91

#2381

STATE V. STAMPS

D and 2 Co-Ds conspire to rob bank. While Co-Ds are waiting in line at bank, D enters and shoots V (bank guard). [redacted]. Jury verdict: murder 4/23/84. Penalty trial. One aggravating factor found: 4g. Two mitigating factors found: 5c, 5h. Life.

Aaron Stamps, defendant (D), a 26 year old male, conspired with his two brothers, Melvin and Charles Stamps, Co-defendants (Co-Ds), to rob a bank. On March 9, 1983, in the course of robbery, D shot victim (V), a male security guard in the bank, twice in the chest. D stayed in the bank and pretended to be a customer. After the shooting, D left and was not arrested until four months after the incident. D denies the killing. Both Co-Ds gave statements that D and Co-Ds planned the robbery and that D shot V, which was not part of the plan. W1 saw D leaving the crime scene.

D is a high school dropout. He was unemployed at the time of his arrest. His only known job was as a laborer at a sheet metal company. [redacted]

The victim was middle-aged and married.

One Co-D was convicted of felony murder and was sentenced to 30 years.

D was charged on April 23, 1984, with conspiracy to commit armed robbery, armed robbery, purposeful or knowing murder, felony murder, attempted murder, aggravated assault, possession of handgun for unlawful purpose, and unlawful possession of a handgun without a permit to carry. A notice of factors was served for: 4(b), grave risk; 4(c), depravity; 4(f), escaping detection; and 4(g), contemporaneous felony. (Factors 4(b) and 4(c) were never submitted to the jury.)

D was acquitted of attempted murder and aggravated assault. D was convicted of the other charges. At the penalty phase, aggravating factor 4(g) was found. Two mitigating factors were found: 5(c), D's age and 5(h), any other factor.

D was sentenced on May 31, 1984, to life imprisonment with a thirty year period of parole ineligibility on the murder. The conspiracy conviction merged with the armed robbery conviction. Felony murder merged with murder and possession of a weapon for an unlawful purpose merged with robbery and murder.

On the armed robbery, D was sentenced to 20 years, 10 years parole ineligibility. This sentence was consecutive. On the weapons offense, D was sentenced to 5 years, 2½ years parole ineligibility, concurrent.

Revised 8/7/91

#2403

STATE V. STONE

D hit V in head, face and brain with hatchet. Robbed V at boarding house where V and D lived. No violent priors. Jury verdict: Murder 5/21/86. Penalty trial. One aggravating factor found: 4c. Two mitigating factors found: 5f, 5h. Life.

On October 1, 1985, (V), a 61 year old male, did not show up for work at 7:30 A.M. As V had not called in sick or to otherwise explain his absence, V's supervisor (W1) repeatedly attempted to contact him by telephone. W1 was unable to reach V and he became concerned because V never left home without turning on his answering machine. W1, along with an assistant (W2), drove to V's home. When there was no answer at the front door, they went to a side door which was answered by Leonard Stone (D), age 25. When W1 explained the situation, D claimed that V had indeed left for work that morning. W1 wanted to check V's apartment himself but D again insisted that V was not at home. W1 then left and stopped a passing police patrol car. They returned, knocked on the side door, and again asked D if they could check V's apartment. D claimed to be V's nephew and he tried to quell all thoughts of there being anything wrong with his "uncle." The police then received authorization from a superior officer to enter V's apartment. As the officers, along with W1, attempted to pry the lock open, D, saying that he could get a flashlight, went upstairs.

When the police entered the apartment, they found V lying in a pool of blood on his bed, with a blood-soaked pillow covering his face. V had been struck 5 times in the head with an axe.

After finding V's body, the police called for back-up units to seal the crime scene and went upstairs to speak to D. When they were unable to locate D, the police returned to the ground floor. A young woman who knew D (W3) then told them that she had seen D jump from a second story window and flee the area. W3 said that D was wearing a brown terry cloth bathrobe, no shoes, and gold-yellow pajama pants, and a description was broadcast to other area patrol cars. About two hours later, D was seen by police walking out of a nearby basement and was immediately apprehended. Police later found the brown terry cloth bathrobe in that basement. Also D was carrying $252 in cash. D refused to give a statement. V's son (W4) told police that V had evicted D from his apartment on the evening prior to the murder.

At the time of the offense, D claimed that he did free-lance auto repair work and that payment was typically "off the books." D left high school in the 10th grade and claimed that he was allowed to stay in his apartment rent-free in exchange for doing various repairs and odd jobs. D was single, but was the father of three children. D [redacted] denied having anything to do with V's death. D's prior record is as follows:

Date	Offense	Disposition
10-31-77	Unauthorized use of a vehicle	3 years probation
5-14-82	1. Crim. Possession of a weapon 2. Deface/conceal	1 year confinement

D was charged with own-conduct capital murder, felony murder, armed

robbery, and two weapons offenses. A notice of factors was served alleging 4(c), the murder involved torture, depravity of mind, or an aggravated assault; and 4(f), the murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense committed by D. D alleged that the following mitigating factors were present: 5(c), D's age at the time of the murder; 5(f), D had no significant history of prior criminal activity; and 5(h), any other relevant factor. A death-qualified jury found D guilty of all but felony murder on May 21, 1986. In the penalty phase, the jury found factor 4(c) present, as well as mitigating factors 5(f) and 5(h). However, they could not reach a unanimous decision as to the weighing of the factors so D received on June 25, 1986, a term of life imprisonment with a 30 year minimum. D also received 7 years, concurrent, for the armed robbery conviction. The two weapons offenses merged with the murder conviction for purposes of sentencing.

Revised 8/8/91

#2463

STATE V. THOMAS (LOUIS)

D stabbed former g.f. (V) 22x in V's apartment. No priors. Jury verdict: murder 7/1/85. Penalty trial. One aggravating factor found: 4c. Four mitigating factors found: 5a, 5c, 5f, 5h. Life.

The following quotation is excerpted from the Appellate Division opinion, State v. Thomas, 224 N.J. Super. 221 (1988).

"On July 3, 1984, at 11:04 a.m., the Hillside police received a telephone call from the victim requesting an ambulance....

"The police responded promptly. [redacted], still alive, was lying in the hallway. The injuries were massive. Her left arm was almost severed. There were multiple cuts about her face, neck, right rib and left breast, and multiple defense wounds on her hands, arms and forearms. She was losing air from the neck and rib wounds, which were foaming with blood and other bodily fluids.

"At the request of Detective David Drescher of the Hillside police, Linda Voelker-Geiger, a mobile intensive care unit nurse, asked [redacted] who had assaulted her. Over objection, Voelker-Geiger testified that [redacted] responded, "Rasheem;" that "Rasheem" was Louis Thomas; that he was nineteen years old, defendant's then age; and that he lived at 132 Keer Avenue, defendant's address. The admissibility of these utterances is not raised as a ground of appeal. [redacted] was taken to University Hospital, Newark, where she died approximately one and one-half hours after admission...

"Defendant had dated [redacted] for about two or three years. According to her mother, the victim was dating another young man at the time of the incident.

"Defendant took the stand. He claimed self-defense. According to him, he and [redacted] were getting along well and had even made love on the morning of her death. A vaginal smear test confirmed the presence of semen. He claimed that he and [redacted] began to argue because she had expressed an interest in dating another man. Defendant claimed that when the argument escalated, the victim grabbed a knife from the kitchen and began to poke it at him. He was able to wrest the knife from the victim, who then obtained a rifle from a closet. Defendant followed [redacted] into the bedroom, and took the gun from her. [redacted] then picked up the knife again, defendant seized it from her and stabbed her several times. He had no recollection of how many times he had stabbed her. Defendant testified that he hid the knife, called an ambulance, and returned the rifle to a closet. He then fled the apartment." End of Excerpt.

Meanwhile, D, after leaving V's apartment, went to the apartment of his brother-in-law, W1. D had resided with W1, but moved out a month before the murder. D still kept clothes at W1's apartment. D arrived at W1's between 11:30 and noon. D called to W1 from the street. W1 saw D and threw down his key so that D could enter the building. Once inside the apartment, D headed straight for the bathroom and remained there for about 15 minutes. D exited the bathroom and changed into clothing he obtained from

the closet. Before leaving W1's apartment, D left a plastic bag next to the couch in the living room. A later police search of the plastic bag revealed blood saturated clothing, a 4-inch knife, and other items belonging to D. D was arrested later that day.

Four months after the murder, V's brother found a bent, blood-stained knife on the floor of a bedroom closet. Unlike the knife from the plastic bag, this knife was capable of inflicting all of V's wounds.

W1, testified to D's actions at W1's apartment on the day of the murder.

A detective and emergency nurse at the scene testified that V named D as her assailant.

D is a high school dropout, and reports his last employment as a warehouse worker although this was not verified. D last resided at the family home with his siblings and parents.

D has no prior criminal offense record.

D was charged with purposeful or knowing murder, possession of a weapon for an unlawful purpose and unlawful possession of a weapon. A notice of factors was served for the outrageously vile 4(c), statutory aggravating circumstance. In a capital trial, D was found guilty on all counts on July 1, 1985. At the penalty trial, the jury was charged on the 4(c) factor and found it present. The jury was charged on mitigating factors: 5(a), extreme emotional disturbance; 5(c), age of D; 5(f), no prior record; and 5(h), an other relevant factor. The jury found all 4 mitigating factors present. D was sentenced on August 7, 1985, to

life imprisonment with a 32-year period of parole ineligibility. D also received a 5-year term on the weapons counts which were merged for sentencing purposes.

D's conviction was affirmed in an Appellate Decision dated January 14, 1988; however, the sentence on the murder count was modified to reflect a life sentence, with a 30-year period of parole ineligibility (emphasis added).

Revised 8/7/91

#2500

STATE V. TIMPSON

V (12 yr., F) walking home from school when D forced V into wood and assaulted her. V may have kicked D in groin. D struck V unconscious, sexually assaulted her. When V came to, D stuffed panties down her throat. V suffocated. D continued sexual assault. D borderline retarded. Murder plea 6/13/85. Penalty trial. Two aggravating factors found: 4c, 4g. Four mitigating factors found: 5a, 5c, 5d, 5h. Life.

On January 31, 1984, Alfonso Timpson (D), a 19 year old male, approached V, a 12 year old female, as she was walking from school. D forced V into a nearby wooded area where he beat and otherwise physically assaulted her. V fought back, scratching D and kicking him in the groin, but D beat her so severely that V was rendered unconscious. While V was unconscious, D put his fingers and his penis into her vagina and repeatedly bit her breasts. One of the bites was so severe that V's breast was barely attached. Eventually, V regained consciousness and began to scream. D, however, stuffed V's panties deep into her throat, causing her to suffocate and die. While V struggled for air and then died, D continued to sexually assault her. Shortly thereafter, D left the scene.

At about 5:00 P.M. on January 31, 1984, V's parents called the police and advised them that V had not yet returned home from school. Police immediately conducted a search along V's usual route to and from school. At 7:35 P.M., V's body was found, lying

on her back in the woods where D left her. V's body was naked with only a white jacket covering her from her waist to the top of her head. [redacted]

Shortly after V's body was found, police received information that D had been seen in the area from which V had disappeared. D was picked up for questioning and, while he was in custody, police noticed scratches on his neck and on his hand. D originally denied being involved in V's death, but later gave a written and recorded statement in which he confessed to kidnapping, sexually assaulting, and killing V. D apparently blamed the killing on a build-up of anger he experienced after having a series of arguments and fights with his parents, his friend, ex-girlfriend, and his ex-girlfriend's brother.

At the time of the offense, D, the eldest of three children, lived with his mother and step-father. Prior to his arrest, D worked with his step-father in the floor cleaning business. While growing up, D experienced severe developmental difficulties, not walking until he was about three years old and not being able to speak intelligently until he was ten. D was classified as borderline mentally retarded, resulting in his being placed in special education throughout his school years. While a student, D was a consistent discipline problem, breaking windows and assaulting teachers when he became frustrated or angry. D also

once stole the principal's car. [redacted] D completed the 11th grade in high school but did not graduate. At the time of the offense, although D was chronologically 19 years old, mentally he was about 12 years old. [redacted]

D was indicted and charged on June 13, 1985, with three counts of purposeful murder and two counts of aggravated sexual assault. In a separate accusation, D was also charged with kidnapping. A notice of factors was served, charging 4(c), that the murder involved torture, depravity of mind, or an aggravated assault, and 4(g), that the murder was committed while D was engaged in the commission . . . of sexual assault . . . or kidnapping. D, in

return, claimed that the following mitigating factors were present: 5(a), D was under the influence of extreme mental or emotional disturbance insufficient to constitute a defense; 5(c), D's age at the time of the murder; 5(d), D's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired as the result of mental disease or defect or intoxication, but not to a degree sufficient to constitute a defense; 5(f), D has no significant history of prior criminal activity; and 5(h), any other relevant factor, namely that D was released from Jamesburg despite awareness that he needed extensive counseling, despite his mother's pleas that D remain institutionalized, despite D's request for help; and, that if D had not been paroled early, he would have still been incarcerated at the time of the offense. While a jury was being chosen for the trial, an agreement was reached whereby D pled guilty to capital murder, one count of aggravated sexual assault and kidnapping. The court, without a jury, held a penalty phase and found factors 4(c) and 4(g) present. The court, however, also found that statutory mitigating factors 5(a), 5(c), 5(d), and 5(h) outweighed the aggravating factor (factor 5(f) was never commented on by the judge), and the plea agreement was accepted. As a result, D , on the murder conviction, was sentenced on September 26, 1985, to life imprisonment, with a 30 year parole ineligibility. Also, on the aggravated sexual assault conviction, D was sentenced to 20 years with a 10 year minimum, consecutive to the murder sentence. For kidnapping, D received a sentence of 30

years, with a 15 year minimum, to be served consecutive to the other sentences.

Revised 8/5/91

#2627

STATE V. WASHINGTON (DELANO)

D (husband) and V (wife) argue as D drives V to work. D sees knife on floor of car, picks up knife and stabs V 30x. D alleges that he blacked out due to his history of epileptic seizures. No priors. Jury verdict: murder 7/26/85. Penalty trial. One aggravating factor found: 4c. Four mitigating factors found: 5a, 5d, 5f, 5h. Life.

The following quotation is excerpted from the unpublished Appellate Division opinion. State v. Washington, 223 N.J. Super. 367 (1988).

"The killing occurred shortly after 8:00 a.m. on March 2, 1984. A neighbor observed defendant and his wife drive away in their van. Approximately 15 to 20 minutes later, defendant came to the neighbor's door. He was drenched with blood. He said to the neighbor: "Please get help for me. Call the police ... I just did something terrible." Defendant then asked the neighbor's daughter to go down to the van and help his wife. The neighbor's daughter ran downstairs and found the victim's bloody body with a knife protruding from her neck.[1] An autopsy later disclosed that the victim had 30 stab wounds in the area of her face, neck and upper body. In addition, she had 10 or 11 superficial cuts on her arms and hands.

"Defendant did not testify at trial. His defenses of insanity

---

[1]A police officer testified that the knife was stuck in the victim's shoulder. This inconsistency in the testimony was not resolved and is immaterial to the issues on appeal.

and diminished capacity were presented through the testimony of members of his family and medical experts. That testimony indicated that defendant is an epileptic and that he had become violent during one of his epileptic seizures. On that occasion he had pulled his wife by the hair, attempted to punch his brother-in-law, and then had to be physically restrained by the members of his family until the police came and brought him to a hospital. Defendant had no recollection of these earlier events after this seizure was over. The essential theory of the defense was that defendant was experiencing a similar epileptic seizure when he killed his wife.

"Two Ocean County jail physicians who examined defendant on the day of the killing testified that defendant gave inappropriate, incoherent and non-responsive answers to their questions. The doctors concluded that defendant was in an acute psychotic condition. Consequently, they signed papers recommending that he be committed to Trenton Psychiatric Hospital pursuant to court order.

"When he was first in the hospital, defendant expressed a lack of awareness that his wife was dead and appeared to be utterly surprised when told that she was dead and that he probably had killed her. However, later during his hospitalization and in subsequent interviews with the doctors who testified at trial, defendant expressed a limited recall of the killing. He stated that he and his wife and gotten into an argument about how much money she was going to spend on clothing for their children and

that he had pulled the van to the side of the road. Defendant then saw a knife in his wife's pocketbook, which both he and his wife attempted to grab. A struggle ensued for possession of the knife, in the course of which his wife got stabbed in the stomach. Defendant told the doctors that he had no further recollection of the killing, although he stated to one doctor that he had found his wife with the knife in her throat.

"The defense presented the testimony of Dr. Seymour Kuvin, a psychiatrist, who stated that it was medically probable defendant was experiencing an epileptic seizure and did not know what he was doing when he killed his wife. In rebuttal, the prosecution presented the testimony of Dr. Chester L. Trent, who expressed the opinion that defendant was not experiencing an epileptic seizure and was not psychotic when he killed his wife."

D had no prior criminal record. He resided with V and their two children. D graduated from a vocational school while in Panama, and he also served in the country's Merchant Marines for about two years. He had been employed by Excel Woods for five years, but had been unemployed for nine months after quitting because he had not received a raise.

D was charged with purposeful or knowing murder and was found guilty by the jury on July 26, 1985.

A notice of factors was served for the 4(c), intent to cause suffering statutory aggravating factor. That factor was found. The defense served mitigating factors: 5a, emotional disturbance; 5c, age; 5d, mental disease; 5f, prior record; 5h, any other

factor. Factors 5a, 5d, 5f and 5h were found. The jury could not decide unanimously as to the weighing of the factors and a "hung jury" was declared by the court. On December 6, 1985, D was sentenced to a term of life imprisonment, with a 30 year minimum. The appellate court reversed D's request to instruct the jury on the lesser-included offenses of aggravated manslaughter and manslaughter.

Revised 8/7/91

#2647

STATE V. WESTON

D and V (65 yr., F) were acquaintances at bar. Friend drives V and D to V's house. They start to have sex. Argument. D punches V then gets rock and hits her 3x in head, crushing skull. [redacted] Jury verdict: murder 2/11/86. Penalty trial. Three aggravating factors found: 4c, 4f, 4g. Three mitigating factors found: 5a, 5c, 5h. Life.

On June 16, 1984, V, a 65 year old female, and friends went to a bar. While there, defendant ("Shorty," Elisha Weston), a 36 year old male, bought a round of drinks for victim (V) and her friends. The victim was a 65 year old widow who had stopped with friends at a local bar after going to bingo. She worked as a cleaning lady in town and was well liked and respected. She was acquainted with Weston who happened to be in the same bar and he asked her if he could have a ride home (he lived around the corner from the victim). Weston and V were driven to V's home. Weston stated he and V were having sex on her front lawn when V scratched him and he punched her. He was afraid she would tell that he had punched her, so Weston went down the street, got a rock and hit V with it three times, fracturing her skull.

Weston made the above voluntary statement while being questioned at the police station. At the trial, Weston denied making the above statement and stated that after he and V were dropped off, he saw his cousin who asked if V had any money. Suddenly, Weston was punched in the lip and fell into the bushes.

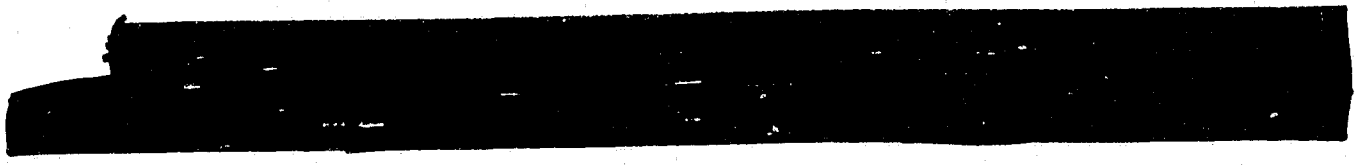
As Weston was getting up, he saw someone grab V. Weston was then hit in the head and passed out. When Weston woke up, his hands hit a rock and he saw V "laying there with no face whatsoever." Weston then panicked, took his hat, vodka bottle and V's purse and ran home. Weston did not realize he had V's purse until he got home. Weston's bloodstained jeans, shirt and shoes were recovered from the house where Weston stayed. V's purse was found there also.

The expert testimony varied about how many times the victim was struck with the rock (which weighed 44 lbs., 3-1/5 ozs.), however it was at least three times. There was also some evidence from which a struggle on the front lawn could be inferred in addition to the fact that the victim's clothes were ripped off her.

An important mitigating factor was the testimony of the victim's only surviving relative, a sister, who said she and her sister had discussed the death penalty on several occasions and they both were opposed to it. The sister basically asked the jury to impose a life sentence. This was admitted because the state, on cross-examination, had asked Professor Moran "you didn't bother to talk with the family of the victim to see how they felt, did you?"

Weston was raised in Elizabeth, New Jersey, by foster parents. Weston completed three years of college while in prison. At the time of the offense, Weston was employed full time with Color Chip in Garwood, New Jersey.

No military record found.



[redacted]

In June of 1984, Weston was charged with purposeful and knowing murder, aggravated sexual assault and first degree robbery. A notice of factors was served for the 4(c), extreme suffering; 4(f), escaping detection; and 4(g), contemporaneous sexual assault factors.

At the trial, the jury found Weston guilty of murder on February 11, 1986, aggravated sexual assault and theft, and not guilty of robbery. At the penalty trial, factors 4(c), 4(f) and 4(g) were found. Three mitigating factors were found: 5(a), emotional disturbance; 5(c), Weston's age; and 5(h), any other factor. 5(d), mental disease, was not found. The jury did not find that the aggravating factors outweighed the mitigating factors. Weston was sentenced on July 3, 1986, to life imprisonment with a minimum of 30 years served before parole consideration. Weston received 20 years with parole ineligibility for ten years on the aggravated sexual assault, to be served consecutively to the term imposed on count 1. Weston received a prison term of six months on count 3 to be served concurrently with the term imposed on count 1.

Revised 8/6/91

#2715

STATE V. WILLIAMS (WALTER)

D (police officer) poisons wife with cyanide to cover up a bigamous marriage and to receive her estate. No priors. Jury verdict: murder 5/9/86. Alleged that D murdered mother-in-law after wife's murder. Penalty trial. One aggravating factor found: 4f. Two mitigating factors found: 5f, 5h. Life.

Defendant, Walter L. Williams (D), a 36 year old male police officer, and victim (V), a female, were married October 25, 1969. They lived with their three daughters in a home owned by V's parents which was deeded to V and her mother upon her father's death. Sometime in 1979 D began having an affair with W1 (an underage female). D met W1 in his capacity as a police officer when he was working at a high-school related function. Unbeknownst to V, D married W1 on November 23, 1984. D falsified a judgement of divorce, a complaint of divorce and a birth certificate to get a marriage license. W1 believed he was divorced, and they were married by D and V's minister who likewise believed the deception. D then resided, most of the time, with W1 and her parents, telling V that he spent his nights at a VA hospital for agent orange treatment contracted while in Vietnam. However, V eventually became suspicious and confided to friends that she believed D and W1 were having an affair. She still loved D and remained with him. The rumors and other evidence of D and W1's relationship persisted,

and V confronted D a few times, including on the morning of her death.

In July, 1984, D, in his official police capacity, purchased cyanide and hydrochloric acid falsely claiming he would be using them in his police work to raise serial numbers off handguns. D also mentioned to co-workers his interest in poison and his reading of the book The Power of Poison.

On January 31, 1985, D stopped at his and V's marital home to discuss the situation. She had learned that W1 was with D in a car accident, and questioned D on it. She indicated that they would discuss it again that evening. V was recovering from the flu, but was cheerful. She, her mother and children ate dinner. Later that night V went into the bathroom and passed out. The police were called and D, who was on duty, rushed to his house to aid V. D did not appear to be upset. V was transported to the hospital where she died a painful death from cyanide poisoning. There was testimony that typical symptoms include a severe headache, an acrid taste in the mouth, difficulty breathing and nausea.

The morning after his wife's death, D moved back into her house. D told his daughter (W2) to go through V's wallet and give any money to her grandmother (G.L.). At V's funeral, D told his sister-in-law (W3), that he wanted V cremated.

Over D's objections, an autopsy was performed on V and the toxin analysis disclosed the presence of a large and lethal dose of potassium cyanide through V's organs, causing her death.

On February 11, 1985, D learned that V's 1972 Will left V's

house to her daughters, with her mother as administrator, and exactly $1.00 to D. W2 overheard D say something like "he knew this would happen, that he wouldn't get anything". About two weeks later, another daughter found a folded piece of paper that purported to be V's Will. She showed this to G.L., who read it and telephoned her attorney. This Will left the estate to D and the daughters.

[redacted] On March 8, 1985, D showed W3 and her husband, W4 the purported Will of V. That day, W3 and W4 went to the police. An expert witness later testified that the Will was a forgery.

On June 18, 1985, D was arrested. That same morning, pursuant to a search warrant for V and D's home, a bottle of potassium cyanide was found in the attic under the insulation. D's handwriting was on the bottle.

D was born in Texas, June 10, 1950, and served in the military in Vietnam. D claims to have a masters degree in behavioral science, but a check with the university revealed that he was never a student there. D does have an associates degree in criminal justice. D was employed as a police officer until his arrest for the instant offense. D has no prior convictions [redacted] He was a trustee at his church.

D was charged on May 9, 1986, with official misconduct,

forgery, perjury, purposeful and knowing murder, and bigamy. The State served a notice of factors for 4(d), pecuniary motive and 4(f), to escape detection. The Defense served a notice of factors for 5(c), age; 5(f), no significant prior criminal history; and 5(h), any other factor. The jury found aggravating factor 4(f) and mitigating factors 5(f) and 5(h). The jury concluded that aggravating factor 4(f), that D committed the murder for the purpose of escaping detection, was in equal balance with the mitigating factors: 5(f), no significant criminal priors, and 5(h), any other factor; and therefore, D did not receive the death penalty. D was sentenced on June 19, 1986, on count 6, murder, to life imprisonment with 30 years parole ineligibility and on official misconduct to 5 years imprisonment with 2 years parole ineligibility to run consecutive to the sentence for murder; on the 3 forgery counts, D received concurrent 18 month terms, on the 3 perjury counts, concurrent 5 year terms; and on the bigamy offense, a concurrent 6 month term. D filed an appeal of his conviction on August 6, 1986 and the conviction was affirmed on July 5, 1988.

D states that he has flashbacks related to his experience in Vietnam. He states that he received outpatient counselling for this for one year through the Veteran's Administration. Also, he states that he attended a veteran run outreach program.

Revised 8/7/91

#2722

STATE V. WILSON

D and Co-D (look-out) planned to rob store. D went in with gun, put gun to V's (Co-Owner) head. V pushed gun away. D fired one shot. [redacted] Jury verdict: murder. 11/4/88. Penalty trial. One aggravating factor found: 4g. Three mitigating factors found: 5c, 5d, 5h. Life.

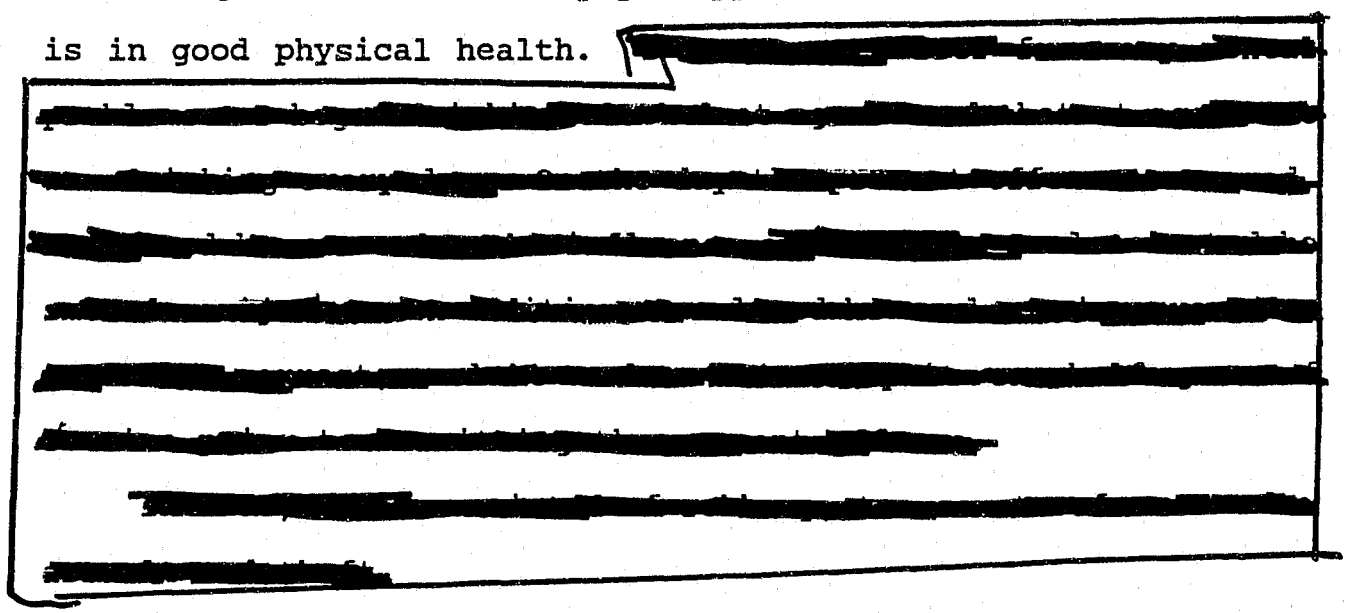
On February 26, 1988, W1, an employee, stated she was at her cash register at a market when a 19 year old male, J.L. Wilson, the defendant (D), came into the store wearing dark clothing and a ski mask. D went to W1's cash register and put a gun up to W2's face and W2 pushed the gun from his face and told D to get away. Next D went up to victim (V), a 24 year old male, and put the gun to V's head. V said "get out of here" and pushed the gun away. D put the gun back to V's head and fired one shot. D then immediately left the store.

W3, who was unloading a truck in front of the store at the time of the robbery, stated that shortly before the shooting, two males (D and Co-D, Leonard Chisum, a 20 year old male) approached him. D went in to the store and Co-D stood in the parking lot. W3 identified Co-D from a group of photographs as the man standing outside of the store during the robbery and shooting of the V.

The police arrested Co-D who stated that D committed the robbery and shooting while he, Co-D, acted as lookout. On February 27, 1988, the police received an anonymous phone call giving a

location for D and describing D as wearing a black bomber type jacket and a fur hat. The police observed D and approached him. They ordered him to drop to his knees and place his hands on his head. The D stated his name and was placed under arrest and transported to police headquarters for questioning. D initially denied all involvement in the shooting, however, D later gave a statement that he and Co-D went to the meat store and Co-D stayed outside while D went into the store to rob it. D stated that a man in the store grabbed his arm and that he shot the man in the face. Later the same day the weapon used in the robbery, a silver colored revolver, make, Meriden, model 1907, 5 shot, .32 caliber, serial #19266 was recovered.

D was born February 3, 1969. He completed ninth grade and was expelled from school for fighting. D worked as a cook, factory worker and gas station attendant. D has no military record. He has a daughter for which he pays support when he can. D related he is in good physical health.



D was charged with purposeful and knowing murder, felony

murder, armed robbery, conspiracy, possession of a weapon for unlawful purpose, unlawful possession of a weapon, aggravated assault-pointing a firearm. On November 4, 1988, D was convicted of everything except purposeful murder. Aggravating factor 4(g), (contemporaneous felony) was served and found. Mitigating factors 5(c), age; 5(d), mental disease; and 5(h), any other factor were served and found.

On December 9, 1988, D was sentenced on Count 1 (murder) to life imprisonment with a minimum parole ineligibility of 30 years. Count 2 (felony murder), Count 3 (armed robbery), Count 4 (conspiracy), and Count 5 (possession of a weapon unlawful purpose) were merged with Count 1. On Count 6 (unlawful possession of weapon), D was sentenced to 5 years with a minimum parole ineligibility of 2½ years to run consecutive to Count 1. On Count 7 (aggravated assault) D was sentenced to 18 months with a minimum parole ineligibility of 9 months to run consecutive to Count 1.

Revised 8/9/91

#2752

STATE V. WORLOCK

D believed that V1 stole his wallet. He mistook V2 for V1 and shot him in the chest. Then he chased V1 into an apartment and shot him in the back, head, arms and chest. Jury verdict: murder 12/10/84. Penalty trial. No aggravating factors found. Life.

The following facts are taken from State v. Worlock, 117 N.J. 596 (1990).

"The following summary is substantially consistent with defendant's version of the facts. Defendant, Carlyle Worlock, and his two victims, [redacted] and [redacted], had an unstable friendship in which [redacted] would periodically subject defendant to ridicule and physical abuse. On the night before the killing, the three young men went from Jackson Township to Seaside Heights, where, at defendant's expense, they spent the night smoking marijuana, drinking beer, and "partying" with two women "picked up" by [redacted] and [redacted]. After returning to [redacted]'s apartment the following morning, [redacted] asked defendant for his pants. The ostensible reason for the request was that defendant's pants were dirty and [redacted] wanted to launder them. Apparently, however, the request was a ruse to obtain defendant's wallet, which contained, among other things, approximately $130 and a photograph of defendant dressed in a sadomasochistic costume at a gay parade in Hollywood. Defendant viewed the theft of his wallet as an act of betrayal, and feared

that [redacted] could "destroy" him by disclosing the photograph.

"Burning and angry," defendant retrieved a semi-automatic .22 caliber rifle that he had hidden in a nearby wooded area because of a premonition that [redacted] "would do something like this." He test-fired the rifle, from which the stock was missing, and began "fuming about what had been done to him." While brooding, he decided to "let this guy [redacted] have it." Defendant proceeded to the vicinity of [redacted]s apartment, where he waited for the victims.

"Shortly thereafter, defendant saw [redacted] and [redacted] exit from a taxi cab. He knew that neither of them had any money, so the sight of the cab confirmed the suspicion that [redacted] had taken his money. According to a defense psychiatrist, defendant was "devastated" by the realization that [redacted] had stolen his wallet. Concealing the rifle in a cloth, defendant moved to the far side of the building and "wait[ed] in ambush." As they approached, he moved to within fifteen feet of them and quickly fired twelve rounds.

"As defendant testified, "I aimed at [redacted], and I ... hit [redacted]." The first bullet struck [redacted] in the chest and killed him. Three other bullets hit [redacted], one in each arm and one in the back. Defendant fired a second burst of bullets, hitting [redacted] with six more shots as he opened the screen door of a ground-floor apartment. According to the occupants of the apartment, [redacted] stumbled into the family room and collapsed on the floor.

"Defendant stated that he tried to "divorce [himself] from the act," ran into the woods, changed his clothes, and went to a pizza parlor. While eating pizza, he saw several police officers "scouting" around, and he asked "what's happening?". Defendant testified that he then walked to the home of [redacted]'s girlfriend, and told her that he had shot [redacted]. According to her, however, defendant said only that [redacted] had been shot. She left with two of her friends, one of whom called the police.

"Defendant next went to his parents' house. They told him that the police were looking for him. On leaving the house, defendant noticed a police car parked nearby, and decided to "give himself in." After defendant identified himself, Officer Barry Wohl handcuffed him, read him his Miranda rights, and told him that he was wanted "as a material witness involving an investigation."

At police headquarters, defendant again received Miranda warnings, signed a consent-to-questioning form, and confessed to shooting [redacted] and [redacted]. Defendant explained, however, that the hooting of [redacted] was an accident, stating that "[redacted] got in the way." 117 N.J. at 599-601.

There were four bullets in V1's body: two in the chest cavity, one in the face and one in the neck. The bullets caused massive bleeding, which produced shock and smothered V1 to death through the loss of oxygen normally carried in the blood.

W1 and his sister W2 had been in the line of fire. However, neither could identify D. W2 had not seen him at all, and W1 had only caught a glimpse of him.

D is a high school dropout (quit school during his last year), has a history of sporadic employment, and was living with his family at the time of the offense.

[redacted]

On December 10, 1984 D was convicted of two counts of purposeful or knowing murder, burglary, theft of a rifle, and possession of a rifle for unlawful purposes. Although both murders were originally treated capitally, the State proceeded to the penalty phase only for the murder of V1. At the penalty trial, the 4(b), grave risk, and 4(c), wanton, vile, factors were served but not found. All of the statutory mitigating factors, 5(a) - 5(h) were served but only factors 5(d), emotional disturbance; 5(b), victim solicitation; 5(c), age; 5(d), mental disease; and 5(h), any other factor, were submitted to the jury and never considered because no aggravating factors were found. D was sentenced on February 11, 1985, to consecutive terms of life imprisonment with 30 years parole disqualifiers, for the two murders, and a concurrent seven year term for possession of a rifle for unlawful purposes.

Revised 8/9/91

#2761

STATE V. WRIGHT (JEANNE ANN)

D, having mental and emotional problems, drowns her four children. Murder plea 2/21/84. Penalty trial. One aggravating factor found: 4c. Three mitigating factors found: 5a, 5d, 5f. Life.

On November 11, 1983, at about 2:00 a.m., Jeanne Anne Wright (D), age 25, 5'8", 140 pounds, sat with her four children, V1, age 7; V2, age 5; V3, age 2; and V4, age 11 months, in an alcove by a river. D and her children were hiding from her ex-boyfriend who had beaten the kids in the past and had also threatened to take the kids from D, telling her that she would be sorry if she did not give them to him. D's ex-boyfriend also said that he would return in a week. As the end of the week neared, D became increasingly desperate and depressed. Fearing that her ex-boyfriend would look for the kids at her mother's house, D arranged to have her and the kids stay overnight at a friend's house. While on the way to her friend's house, D stopped by the river to consider her options. After mulling things over for more than an hour, D decided that the kids would be better off dead than living with their father (her ex-boyfriend).

In State v. Wright, 196 N.J. Super. 516 (Law Div. 1984) the murders were described accordingly. "She stated that the tide pulled Emilio out and hat he was screaming for help. She said she could hear Jonathan screaming, "mommy help me." She stated Jana

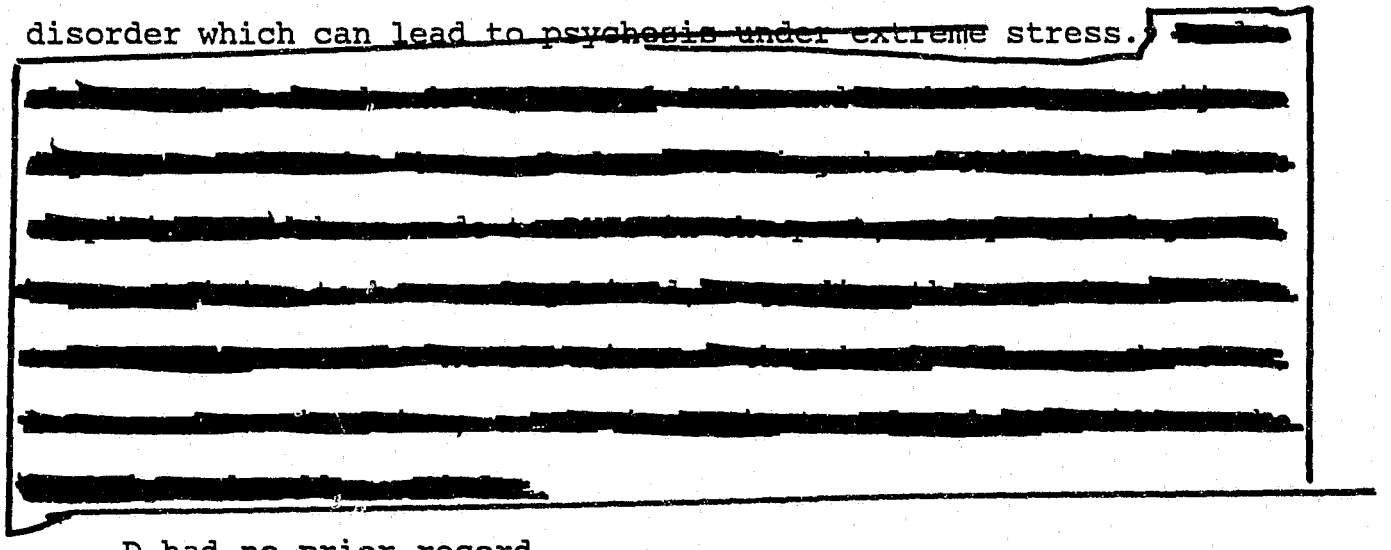
resisted initially when she laid her in the water, but that Jana hit one leg and went down immediately; that it seemed the weight of her coat was pulling her down. She later laid the baby in the water. He rolled around and came back closer to her. She grabbed that baby's leg and picked him up, but he was not moving. She believed he was dead so she put him back into the water. She sat around for awhile thinking about what she had done and then went back to a friend's home." 196 N.J. Super. at 524.

At about 4:00 a.m. on November 11, 1983, D, covered with mud, arrived at her friend's house. D told her friend that her ex-boyfriend, along with a friend of his, had kidnapped the kids. D's friend advised her to go to the police. D went to the police, but was told that she could not sign a complaint at that time. On November 13, 1983, D did sign a complaint against her ex-boyfriend, alleging that he had kidnapped her children. D's ex-boyfriend, when questioned by police, said that he had not seen D or the kids in quite some time. On November 27, 1983, V3's body was found on a river bank. The next day, police questioned D and she confessed to placing her four kids in the river and watching them float away. D also took police to the alcove where she had placed her kids in the river. On November 29, 1983, V4's body was found. V2's body was found on December 4, 1983. V1's body was never recovered.

At the time of the offense, D lived in a low income, high crime area with her parents and children. In the past, D had worked as a salesgirl and as a manager of a pizza parlor, but she was collecting welfare at the time of the offense. D also received $50 - $75 a week from V4's father. While a student, D had a poor

attendance record, an "F" average and had to repeat the 9th grade. D eventually dropped out of school because she was pregnant. She claims that she completed a GED program but never took the final GED test. At the age of nine, D received an electric shock which caused her to be hospitalized for two and one-half months and to lose feeling in her right arm for about three years. D also began experiencing blackouts after being shocked, and it is believed that she suffered some brain damage. She was treated by a psychologist for about one and one-half years and was then transferred to a neurologist.

After being brought into custody, D was seen by a doctor and a psychologist. It was found that D was suffering from severe depression which clouded her judgment and impaired her thinking. It was also found that D suffered from a borderline personality disorder which can lead to psychosis under extreme stress.



D had no prior record.

D was charged with four counts of own-conduct purposeful, knowing murder and two counts of hindering apprehension. A notice of factors was served, alleging 4(c) extreme suffering. On December 21, 1983, D entered a plea of not guilty to the above

charges, but on February 21, 1984, she retracted the not guilty plea and entered a plea of guilty. Both the State and the Defense believed that the aggravating factor could be withdrawn if D pled guilty. The court, however, ruled that it could not. On the State's motion, the two counts of hindering apprehension were dismissed. The penalty phase was conducted by the court and the aggravating factor, 4(c), was found to be present. The court, however, found that the mitigating factors: 5(a), emotional disturbance; 5(d), mental disease or defect; and 5(f), that no significant history of criminal activity, outweighed the aggravating factor. As a result, On April 19, 1984, D was sentenced to four concurrent life sentences, with a minimum parole ineligibility of 30 years.

NO PENALTY TRIAL/LIFE

Table of Cases

Table of Cases

Table of Cases

Revised 8/5/91

#0052

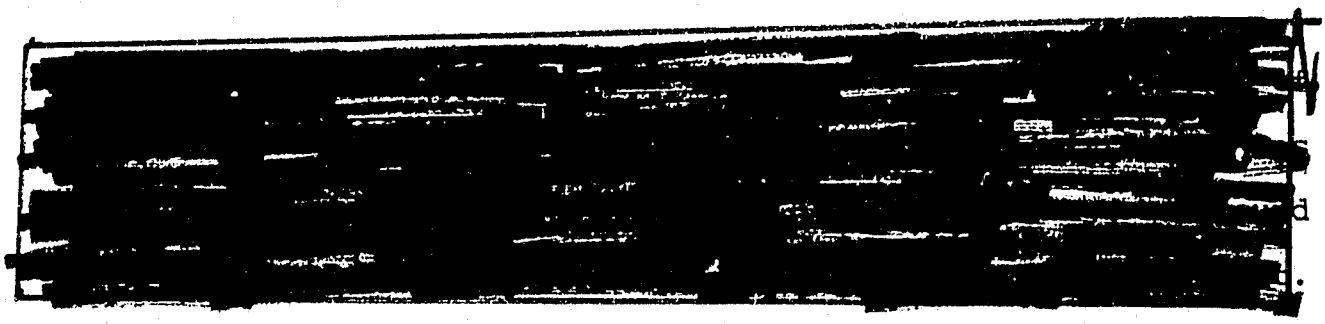
STATE V. ALLEN

[redacted] D went to V's (her mother) apartment to get money [redacted] When V refused to give money to D, D pulled out a knife and stabbed V 60x. After the stabbing, D stole V's jewelry. [redacted] Felony murder plea 4/4/89. No penalty trial. Life. Aggravating factors: 4c, 4g. Mitigating factors: 5d, 5f, 5h.

On January 14, 1987, defendant, Karen Allen, (D), a 33 year old female [redacted] went to victim's (V) (defendant's mother) apartment to ask for money. D had in her possession a knife, which she intended to use to threaten V in case V would not give her money. D asked V for money. V said she did not have any money. D then pulled the knife and stabbed V 60 times about the chest, back, legs, arms, head, chin, and neck.

D ransacked V's apartment, taking V's jewelry. [redacted] D went home, where she changed clothes and went to the hospital to receive treatment for the cuts to her hands.

V was found alive at approximately 7:16 p.m. and identified her daughter, D, as her assailant. V was rushed to the hospital, where she expired at approximately 9:10 p.m. as the result of multiple stab wounds. [redacted]



D completed high school and attended a business school to become a secretary. D was employed at the Department of Environmental Protection, until her arrest.

D has no prior record.

D plead guilty to an accusation for Felony Murder on april 4, 1989.

D was sentenced to a life sentence with a mandatory 30 years.

Revised 7/22/91

#0073

STATE V. ANDERSON (ANTOINE)

V and friend walking. D and Co-D attempt to rob V. V resists. D shoots V once in chest. [redacted] Jury verdict: murder 7/13/89. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5c, 5h.

On August 2, 1988, defendant (D), Antoine Anderson, a 20 year old male who was armed with a handgun, and co-defendant, Shane Culver (Co-D), approached victim (V), a 21 year old male, and friend, male (W1) as they were walking down the street. Co-D called to W1 by his nickname "Moo". As Co-D talked to V and W1, D walked behind V and W1. D attempted to reach into V's pocket. When V resisted, D pulled a silver revolver and fired one shot which hit V in the chest. V ran down the street, then collapsed. W1 ran the other way and did not see in which direction D and Co-D fled.

W1 went with the police to the scene of the crime and described the D and Co-D. An additional witness (W2), was later found. W1 and W2 identified D and Co-D by their streetnames "Sal" and "Shabar". On August 3, 1988, Co-D surrendered to the police and implicated D. D was arrested on August 4, 1988. He was found hiding in a crawl space in the basement of an apartment building.

[redacted]

[redacted]

D completed the 9th grade and was removed from school for social maladjustment or emotional disturbances. D was sent to a special education school in 1984 but stopped attending.

[redacted]

D was charged in this offense with Purposeful and Knowing Murder, Felony Murder, 1st Degree Robbery, 3rd Degree Unlawful Possession of a Weapon (Handgun), and 2nd Degree Possession of a Weapon for Unlawful Purpose.

D was convicted of all of the above charges on July 13, 1989. On July 27, 1989, D was sentenced to life with a 30 year parole ineligibility on the Purposeful Murder charge and to life with a 30 year minimum in the Felony Murder charge to run concurrent with the sentence on the murder charge. The remaining three charges were merged into the murder charges for the purpose of sentencing.

Revised7/31/91

#4004 (new)

STATE V. ARMSTRONG

D wanted V's guns to use when D started dealing drugs. D, Co-D and V went to rob a house. On the 5th floor, D turned and shot V in the chest. V fell and D shot him in the head. D stole V's guns. Jury Verdict: Murder. 3-2-90. [redacted] No Penalty Trial. Aggravating Factor: 4g. Mitigating Factors: 5b, 5h. Life.

Joseph Armstrong (D), a 27 year old male, planned to start selling drugs and D wanted to take V's machine guns. On June 5, 1989, D and Charles Pendleton (Co-D) told V they were going to rob a house. V wanted to go with them. The three men entered the building, with D in front, V in the middle, and Co-D in back. When they got to the fifth floor, D turned around and shot V in the chest. V fell down the steps, and D went down after V and shot him in the back of the head. D and Co-D then took V's three machine guns and put them in a blue bag. D and Co-D went to D's home. D told his friend, W1, what had happened. D also told W1 that a woman had seen their car and that they planned to go back there and try to pay her off, or else they would "take her out". W1 went to the police because he feared for his safety. On June 20, 1989, D and Co-D were arrested. [redacted] In the past D worked for a leasing company. D dropped out of high school in 10th grade, but he later earned his equivalency diploma. [redacted]

[redacted]

Fcr the present offense D was charged with murder (Counts 1 and 2), robbery (Count 3), unlawful possession of a weapon (Count 4), and possession of a weapon for an unlawful purpose (Count 5). On March 2, 1990, D was convicted on Counts 2 through 5. On April 27, 1990, D was sentenced to Life Imprisonment with a minimum parole ineligibility of 30 years for the Murder; Counts 3 and 5 merged, and for Count 4, D was sentenced to 5 years concurrent.

7/30/91
#4014 (new)

STATE V. BASHA

D suspects that V1, D's wife and V2 are having affair. D finds them together at D's home. D shoots V1 1x and V2 2x. Jury verdict: Murder 6/8/90. No penalty trial. Aggravating factor: 4g. Mitigating factors: 5a, 5f, 5h.

Abdulla Basha, a 47 year old male had suspected that his wife, V1 a 39 year old female was having an affair with V2, a 35 year old male. Basha had been taping their phone conversations and heard "love noises" on the tapes. Basha left for work on April 13, 1989 then returned to find V1 and V2 together at Basha's home. V1's breast was exposed. Basha shot one shot into the ceiling, then according to Basha, when they tried to get the gun from him he shot V1 one time above her navel and V2 two times in the ear and lungs.

At the time of the offense, Basha had worked as a writer for 28 years. He went to school until the fourth grade. Basha has no prior records [redacted]

Basha was charged with 2 counts of purposeful knowing murder, unlawful possession of a weapon and possession of a weapon for an unlawful purpose.

On June 8, 1990, a jury convicted Basha of all counts. Basha was sentenced to life, 30 years minimum on the murders, concurrent to four years for the unlawful possession of a weapon, concurrent. The other weapons offenses merged.

Revised 8/5/91

#0226

STATE V. BOLINGER

D (36 yr., M) entered home of V (23 yr., F) through fire escape window. D raped and stabbed V to death. [redacted] Felony murder plea 3/21/86. No penalty trial. Life. Aggravating factors: 4c, 4g. Mitigating factors: 5d, 5f, 5h.

In March of 1983, the defendant (D), Robert E. Bolinger, a 36 year old male, was employed as a meter reader working in the area near V's apartment. [redacted]

D had watched V, a 23 year old female, come and go for approximately three days, and also followed her with his car. D decided to burglarize V's home and, according to him, "get her." On March 9, 1983, D entered V's apartment through a fire escape window. Once inside, D heard the apartment door open and decided to hide in the closet. D watched V walk from one room to another and decided to try to leave the apartment without being seen. V saw D, and this prompted D to attack V. D grabbed V and stabbed V once in the upper chest area. D then used shoe laces from sneakers found in V's closet to tie V's hands and feet. V was also gagged, placed on her bed and sexually assaulted. After the assault, D took money from V's wallet and fled the apartment through the fire escape window.

V's body was discovered by her live-in fiance when he returned to the apartment on March 10th. D was arrested on July 21, 1983.

[redacted]

D stands 5'6½" tall and weighs 150 pounds. D is a Vietnam veteran who received an honorable discharge from the service. At the time of this offense, D had been employed for two weeks. Previous to this, D was employed as a meter reader. D is a high school drop-out. [redacted]

D has no prior criminal record.

D was charged with murder, felony murder, aggravated sexual assault, robbery, burglary and possession of a weapon for an unlawful purpose. D pled to felony murder and aggravated sexual assault on March 21, 1986.

Revised 8/5/91
#4038 (new)

STATE V. BRAND

**D wanted his brother killed and reportedly pursued co-d for at least 17 months to do it, offering increasing sums of money from $350 - $2000. [redacted]
Jury Verdict: Murder. No Penalty Trial. Aggravating factor: 4e. Mitigating Factors: 5a, 5f, 5h.**

D, 32 years old, was angry at and afraid of his older brother, the victim [redacted] (V). [redacted]

In early 1988, about 18 months before the murder, D began to implore Randy Burroughs (Co-D) his long-time high school friend, to kill V. Burroughs testified that Brand constantly pursued him to kill V, and had asked at least two others to do so as well. Burroughs said "Money was always mentioned, all the time, off and on, and it was always something different." Payment promised was initially $350, then $1700, then $2000. Thus his motive was to rid the family [redacted] Burroughs attempted to shoot V in 10/88 but "chickened out" and instead fired "at a wall" inside at the Brand house.

On 7/4/89 Burroughs broke up a fight between V and V's brother, Joey Brand. In doing so, he scuffled with V. Thereafter, on 7/11/89 at 3:00 a.m. Burroughs entered the unlocked back door of the Brand residence and then opened V's bedroom door. V, asleep, awoke and began to rise. Burroughs then looked him in the eye and said "You got to stop hurting people and you're done." He then

shot him twice with a shotgun he had brought with him.

D and Burroughs met later, and then, again the next day, there was no payment or discussion of payment. Burroughs had returned to the crime scene the night of the murder and asked police if D was there and inquired about a hat he had left there the previous day while he was visiting.

At noon on 7/11/89, Burroughs was questioned by the police. After receiving a polygraph examination, Burroughs admitted the killing, confessed that the shotgun was in his attic, and implicated D in the conspiracy. [redacted]

D had no juvenile or adult record. He expressed remorse over his brothers death, but denied any involvement in the killing. He testified that Burroughs acted on his own having been angered by V in the July 4 incident. D dropped out of high school in the 12th grade, but later received his diploma. [redacted] He was unemployed at the time of arrest, and his employment history includes janitorial services, was off and on.

D was charged on 7/19/91 with: (count 1), conspiracy to commit murder; (count 4), murder; (count 5), felony murder; (count 7), burglary, and (count 9), possession of a weapon for unlawful purposes. He was tried to a jury on 6/5/91 and convicted of count 1 and count 4.

The case was not processed as a capital case, although aggravating factor 4e was implicated. Mitigating factors would include 5a, 5f, 5h.

3/6/9191
#4003 (new)

STATE V. BROOKS

D and 2 co-defendants tried to rob V of his coat. D pulls gun, V tries to grab gun. D shoots V 2x. Jury verdict Murder: 12/13/90. [redacted] No Penalty Trial. Life Agg. Factor 4g. Mitigating Factor: 5c, 5d, 5f, 5h.

On April 14, 1990 Defendant, Kevin Brooks, a 19 year old male, Co-D1, Donald Herrington and Co-D2 Kevin Hayes were driving in a car. Defendant saw the Victim, a 23 year old male, walking on the street and decided that he wanted to take the V's coat. D approached V and demanded the coat. D pulled a gun, V grabbed at the gun and D shot at him. D then shot the V again. [redacted]

D is a high school dropout [redacted] D attended special education classes while in school. He was employed as a janitor for 6-7 months prior to this offense. [redacted] D has no prior adult criminal record.

For this offense, D was charged with murder, felony murder, three counts of robbery, unlawful possession of a weapon and possession of a weapon for unlawful purpose. D was tried by a jury and convicted of murder, felony murder, one count of robbery and the weapon offenses. The murder merged into the felony murder, and D was sentenced to 30 years with a 30 year minimum on the felony murder. The robbery merged with the felony murder. On the unlawful possession of a weapon D was sentenced to five years, concurrent. The possession of a weapon for an unlawful purpose

concurrent. The possession of a weapon for an unlawful purpose merged with the felony murder.

7-12-91
#4019 (new)

STATE V. BROWN

D in motel room [redacted] V (10 year old female) stopped by, looking for her aunt (D's paramour). D raped V. D and V left motel, V said she was going to tell her mother what V had done and ran away. D caught V, strangled her. Murder plea: 10/31/90. No penalty trial. Life. Aggravating factors: 4f, 4g. Mitigating factors: 5d, 5h.

On October 12, 1988, at about 7:00 p.m., the Victim (V), a 10 year old female, went to a motel room shared by her aunt and the defendant (D) Vincent Brown, 31 years old. Unbeknownst to V, her aunt had earlier had an argument with D and had moved out of the motel. D, 6' tall and weighing 215 pounds, [redacted] D invited V into the room, where he forced V to get on top of the bed and pulled down her pants and panties. According to D, he placed his penis against V's vagina, but he isn't certain whether he actually penetrated her. D discontinued his assault because V was crying and resisting him. He lifted himself off of V and then masturbated until ejaculation while standing next to V, who remained on the bed. D then told V to get dressed so that he could walk her home.

D and V left the motel room, and V began to run away from D. As she ran, V yelled that she was going to tell her mother what D had done. D ran after V, caught her near the railroad tracks and grabbed her around the neck. According to D, he strangled V for 2-3 minutes and let go of her after she began "foaming at the mouth." When D released V, she fell to the ground, and he dragged her to a nearby ditch. D left V in the ditch and ran from the area when he heard V try to summon help.

Shortly after he had killed V, D met a friend, W1. D told W1 that he had just raped and killed a young girl. W1 later told 2 other men, one of whom was a police informant, what D had told him. On October 13, 1988, V's mother filed a missing person report, and that, coupled with the information received from the informant, led police to begin an investigation. On October 14, 1988, D was located and brought to the police station. D at first denied having any knowledge of V's disappearance, but when told that W1 had told investigators of D's involvement, D changed his story. D claimed that it was W1 who had killed V, and he agreed to lead police to V's body. D led police to the drainage ditch, where they found V's body, fully clothed. After returning to the police station, D admitted that he had in fact killed V.

[redacted] D was a high school dropout and served in the U.S. Army Reserves for six months. D had been unemployed for three or four years. [redacted]

D was charged by direct indictment with murder, felony murder, aggravated sexual assault, and sexual assault. [redacted]

[redacted] On October 31, 1990, D pled guilty to murder and sexual assault. On the murder charge, D was sentenced to life imprisonment, with 30 years parole ineligibility. He also received a consecutive 10 year sentence, with five years parole ineligibility, for sexual assault.

Revised 8/5/91
#0321

STATE V. BURROUGHS

Co-D wanted his brother killed and reportedly pursued D for at least 17 months to do it, offering increasing sums of money from $350 - $2000. [redacted]. Co-D pays D $2,000. Murder plea 2/14/90. No penalty trial. Life. Aggravating factor: 4d. Mitigating factors: 5e, 5f, 5g, 5h.

Co-D, 32 years old, was angry at and afraid of his older brother, [redacted] (V). [redacted]

In early 1988, about 18 months before the murder, Co-D began to implore Randy Burroughs (D) his long-time high school friend, to kill V. D testified that Co-D constantly pursued him to kill V, and had asked at least two others to do so as well. D said "Money was always mentioned, all the time, off and on, and it was always something different." Payment promised was initially $350, then $1700, then $2000. Thus the motives were to help his friend to rid the family of the [redacted] and the promise of payment. D attempted to shoot V in 10/88 but "chickened out" and instead fired "at a wall" inside at the Brand house.

On 7/4/89 D broke up a fight between V and V's brother, Joey Brand. In doing so, he scuffled with V. Thereafter, on 7/11/91 at 3:00 a.m. D entered the unlocked back door of the Brand residence and then opened V's bedroom door. V, asleep, awoke and began to rise. D then looked him in the eye and said "You got to stop

hurting people and you're done." He then shot him twice with a shotgun he had brought with him.

Co-D and D met later, and then again the next day, there was no payment or discussion of payment. D had returned to the crime scene the night of the murder and asked police if Co-D was there and inquired about a hat he had left there the previous day while he was visiting.

At noon on 7/11/89, D was questioned by the police. After receiving a polygraph examination, D admitted the killing, confessed that the shotgun was in his attic, and implicated Co-D in the conspiracy. D's statements to the police about the promise of payment were in some conflict with his testimony at trial.

On October 31, 1989, D was indicted and charged with conspiracy (count 1), murder (count 2), felony murder (count 3), burglary (count 6), and possession of a weapon for an unlawful purpose (count 8).

On February 14, 1990, D entered a plea of guilty to count 2. The other counts charged were dismissed. On March 20, 1990, D was sentenced to a term of thirty (30) years, not to be eligible for parole for a period of 30 years.

[redacted]

D has graduated from high school. According to D, he was in special education classes. D has had various jobs within the past several years, not keeping one more than six months. [redacted]

[redacted]

Based upon D's confession, Co-D was also charged with the murder of V and was convicted of murder on 6/5/91.

Revised 8/5/91

#0350

STATE V. CALDWELL

D robbed an A & P as the security guard opened the safe. The guard resisted and reached for D's gun at which time D shot him in chest and head. Murder plea 11/20/86. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5a, 5d, 5h.

On April 8, 1986, at approximately 12:00 p.m., Lawrence Caldwell defendant (D), a 27 year old male, 5'11", 260 pounds went to a supermarket. [redacted] When D entered the store he saw victim (V), a 50 year old male who was working as a security guard, bending over a safe taking money out. D walked up behind V, pulled the gun from V's holster and told him to "freeze". D then demanded "Give me the money". V asked D, "What are you doing?", to which D responded, "Give me the money or I'll blow your head off". Witness 1, a bookkeeper, dropped the money she had, and backed away. D advanced and V said "Give me the gun". D and V began struggling and the D shot V twice in the neck and chest area. V's body fell to the floor, and D ran out of the store. This was seen by witness 1, witness 2 and witness 3. Witness 4, another security guard who was waiting in the armored car, heard the shots and saw D run out of the store. Witness 4 called his office on the car's radio and asked for help, then witness 4 drove off after D. Witness 4 lost

sight of D, but an elderly man told him that D went down an alley. Witness 4 lost D after that. D stopped in a parking lot near the alley, and hid the money underneath a rock. D ran down another street, where he saw an unmarked police car. When the police detective inside (witness 5) got out of the car, D fired 3 shots at witness 5. When witness 5 fired back at him, D threw his gun down and gave up. V was pronounced dead on arrival on April 8, 1986 at 12:50 p.m. Upon his arrest, D confessed that the guard came at him so he shot him. Numerous witnesses gave statements that D shot V.

[redacted] D has a limited employment history, with only a few brief periods of employment as an unskilled laborer. [redacted]. D dropped out of high school in the 11th grade when he was 16 years [redacted]

[redacted]

For the instant offense, D was charged with Murder (Count 1); Robbery (Counts 2 and 3); Attempted Murder (Count 4); Possession of a Weapon for an Unlawful Purpose (Count 5); Possession of a Weapon (Count 6); and Terroristic Threats (Counts 7 and 8). On November 20, 1986, D entered a plea of guilty to Murder, one count of Robbery (2) and Attempted Murder which was amended to Aggravated Assault. On February 2, 1987 D was sentenced as follows: for Murder, life imprisonment with a 30 year parole ineligibility; the Robbery count merged with count 1 for sentencing; for Aggravated Assault, D received 10 years imprisonment with a 5 year parole ineligibility, to be served consecutively.

The 4g factor is implicated both in the robbery and in the attempted murder of the chasing police officer.

Revised 3/14/91

#0356

STATE V. CALLOWAY

D and 2 Co-Ds rob V. D shoots V. Jury verdict: felony murder 12/17/86. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5c, 5h.

On April 18, 1985, defendant (D), Derrick Calloway, a 21 year old male, Co-D1, Arthur King and Co-D2, Russell Brooks confronted V, a male, 28 years old, [redacted] The Ds were grabbing at V's pockets and then V was shot and ran to his car. D, Co-D1 and Co-D2 pursued V to his car and shot him again. V's girlfriend, W1 drove V to the hospital where he died a short time after arrival.

Four witnesses identified D, Co-D1 and Co-D2 as the people involved in the shooting and robbery. Eyewitnesses W2 and W3 indicated that a man had been shot and a female drove off with him in the direction of the hospital. A witness, W4 indicated she had seen an individual who she identified as the person who shot V. This person was not D, Co-D1 or Co-D2. W1, V's girlfriend supplied a description of D, Co-D1 and Co-D2. W5 indicated that he witnessed the shooting and robbery and he identified photos of two of the suspects.

[redacted]

[redacted]

D was charged with and convicted of count 1, felony murder; count 2, first degree robbery; count 3, third degree unlawful possession of firearm; count 4, 2nd degree possession of gun for unlawful purpose. D was tried by a jury and found guilty on 12/17/86 of all counts. D was committed to a term of forty (40) years with thirty (30) years parole ineligibility on count 1. Count 2 merged with count 1 for purposes of sentencing. On count 3, D was committed for a term of five (5) years to run concurrent with count 1, and count 4 was merged with count 1 for purposes of sentencing.

The Appellate Division affirmed D's conviction.

#0382

7/31/91 (new)

STATE V. CARR

D stabbed V1, a female, and stabbed and shot, 3x, V2, a female, and V1's mother after an argument. [redacted] Murder plea 10/27/89. Aggravating factor: 4g. Mitigating factors: 5a, 5d, 5f, 5h.

On Friday, May 1, 1987, defendant Carlton Carr, Jr. (D), age 27, went to the residence of the victims to visit his children and their mother (V1), a 25 year old woman. Prior to doing so, D had [redacted] D carried with him a .22 caliber gun and a knife [redacted]

According to D, when he arrived at the V's residence, he entered through the front door, which he said was unlocked, and went upstairs. Once upstairs, he became involved in an argument with V1, which erupted into a physical confrontation between D, V1, and V2, a 49 year old woman (V1's mother). D said that V1 pushed him into a bedroom where V1 and V2 allegedly attacked him.

D recalled pulling out his gun, possibly before being pushed into the bedroom, and firing 2 shots. D also recalled cutting and stabbing someone. D said he remembered seeing blood and knowing that he had hurt someone.

When D left the Vs' residence, he stole V2's car. D went home and told his mother that he had hurt V1 and V2 with a knife and a gun. D left the house and returned home approximately 30 minutes later [redacted]

[redacted]

At the scene of the crime, the police found the bodies of V1 and V2 in the bedroom. V1 had been stabbed numerous times. V2 had been stabbed and shot 3 times. The police also found 3 young children in the home who did not appear to be physically harmed.

D has no prior juvenile or adult convictions. [redacted]

[redacted]

D is a high school graduate. [redacted]

On November 19, 1987, D was indicted and charged with murder (2 counts), felony murder (2 counts), robbery, burglary, possession of a weapon for an unlawful purpose (4 counts), unlawful possession of a weapon (2 counts) and contempt. On October 27, 1989, D pled guilty to 2 counts of first degree murder. Pursuant to the plea agreement, all other charges were dismissed.

On December 7, 1989, D was sentenced to a term of thirty years, with no parole eligibility for count 1. D was also sentenced to a term of 30 years with no parole eligibility on count 2. Count 2 is to run concurrent with count 1.

Revised 3/8/91

#0388

STATE V. ANTHONY CARROZZA

[redacted] **D kidnapped V, taped his head and mouth, and repeatedly hit him over the head. Aggravated manslaughter plea 2/8/89. No penalty trial. 18 years/9 minimum. Aggravating factor: 4g. Mitigating factors: 5b, 5e, 5h.**

D, Anthony Carozza, a 43 year old male, met V a 39 year old male, [redacted] The relationship between D and V soured [redacted] On January 22 of 1985 D and W1 kidnapped V, struck him over the head and then taped V's head with a 2" wide surgical tape. They pulled a wool cap over the top of V's head. This rendered V helpless and death was due to a fractured skull and blunt forces, to the back of the head causing massive hemorrhaging plus asphyxiation due to the head taping.

[redacted] D graduated from college and attended law school for one year. He was part owner of Skinnies Tavern and also owned apartment buildings.

[redacted]

D was charged with kidnapping, conspiracy, aggravated assault and purposeful and knowing murder. The case originally proceeded as a capital case. D plead guilty to kidnapping and aggravated manslaughter on February 8, 1989, and was sentenced to 18 years, 9 years parole ineligibility on the aggravated manslaughter and 24 years, 12 years parole ineligibility on the kidnapping, concurrent.

Revised 8/5/91
#0402

STATE V. CAVINESS

D and 2 Co-D's broke into D's stepfather's building to rob and kill D's stepfather, but decided instead to rob V. V had an apartment in the building. Co-Ds tied V up and along with D, ransacked the apartment. D hit V several times in the head with a baseball bat. Felony murder plea 4/26/85. No penalty trial. Life. Aggravating factors: 4f, 4g. Mitigating factors: 5c, 5f, 5h.

On June 8, 1984, the body of victim (V), a 54 year old male, was discovered by his sister on the floor of his residence. His hands and feet were bound and he had severe head wounds.

Defendant (D), Dwayne Caviness, a 19 year old male, Co-D1, Garfield Tillman and Co-D2, Jesse Chatman originally had planned to rob and kill D's stepfather, but they discovered that the alarm system was on in D's stepfather's apartment so they decided instead to break into V's apartment and the apartment on the top floor. D and Co-D1 went to V's apartment. D told Co-D1 to tie V "so that he can't holler out the window for help." D and Co-D1 then ransacked both apartments, looking for anything worth selling. D claimed that nobody struck V, but that he saw the bat and he saw Co-D1 with the bat in his hands. D stated he left Co-D1 with the bat in his hands. D stated he left Co-D1 with V and went to hide the stolen articles. When he returned Co-D1 met him on the street outside the building.

D initially stated that he had not been to the building for 2 months prior to the incident. Then D stated he had been to the building, but it was to rob and kill his stepfather. Then when the

police told D that his fingerprints were found in V's apartment as were the fingerprints of Co-D1, D admitted to the robbery.

When Co-D1 was arrested, he stated that he, D, and Co-D2 kicked in the door of V's apartment and ransacked the apartment. While Co-D1 and Co-D2 were in the back room, D was alone with V. When Co-D1 and Co-D2 returned to the room, D told Co-D1 and Co-D2 that he had to hit V. Co-D1 said D had the bat in his hands.

[redacted]

W1 stated that he saw two men going in to the building and one of the men was D. W2 stated that she also saw D with another man on the front porch of the building on the day of the murder. W3 stated that on the date of the murder he saw three men leaving the building heading towards the high school. W3 identified one of the men as D. W4 stated he saw the 3 men going to the rear of the school carrying items later identified as the articles stolen from V. W5 saw the three men carrying luggage. All of the above witnesses gave the police descriptions of the three men and they were similar to the descriptions of D, Co-D1 and Co-D2. D admitted killing V at his plea.

D left high school in the 10th grade and related a sporadic work history. D was unemployed at the time of the arrest. [redacted]

[redacted]

D's adult police record consists of [redacted] no convictions.

In the instant matter, D was charged with Count 1, Purposeful, Knowing Murder; Count 2, Felony Murder (Robbery); Count 3, Burglary; Count 4, Felony Murder; Count 5, Burglary/Robbery; Count 6, Burglary. The prosecutor filed a notice of aggravating factors. D pled guilty to felony murder, (count 4), and burglary (counts 3 and 6). On April 26, 1985, D was sentenced on count 3 to four (4) years, on Count 4, to life with a 30 year parole ineligibility, and on Count 6, to four (4) years. Counts 1, 2 and 5 were dismissed.

D appealed the court's denial of his motion to withdraw his plea. The Appellate Division affirmed the trial court's decision (A-5211-84-T4).

7/12/91
#4021 (new)

STATE V. CLARK (HASHONA)

D, Co-D1 and Co-D2 conspired to rob a jewelry store. Two weeks later, D and Co-D1 enter store, D holds gun on V while Co-D1 took $30,000 in jewelry from this counter. V made a furtive movement, D shot V 5x in the abdomen and mid-back, including twice when V was lying on the floor. Jury verdict: murder 2/1/91. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5c, 5h.

In mid-January, 1990 defendant (D), Hashona Clark; his brother, Co-Defendant (Co-D1) Raymond Clark; and Co-Defendant (Co-D2) Geraldine Jackson conspired to rob a store. D held a gun on the victim (V), the store clerk, age 51, while Co-D1 went behind the counter and removed about $30,000 worth of jewelry. While Co-D1 was removing the jewerly, V made a furtive movement. D shot V five times in the abdomen and mid-back. According to the medical examiner, two of V's wounds occurred while he was laying face down, and 3 of the 5 wounds were sufficient to cause death.

During the ensuing investigation, Co-D2 was found in possession of some of the stolen jewelry and was questioned by police. Co-D2 implicated D and Co-D1 in V's murder. Co-D1 was arrested in Pennsylvania and he later gave a written statement admitting his and D's involvement. D was arrested on February 7, 1990. Police recovered about $11,000 worth of the stolen jewelry from D, Co-D1 and Co-D2.

At the time of the offense, D was 18 years old [redacted]. D was 6'1" tall and weighed 185 lbs. He was expelled from high school during his senior year, [redacted]

[redacted] and worked part-time as a house person at a hotel. [redacted]

[redacted]

D was indicted and charged with conspiracy to commit armed robbery, armed robbery, felony murder, murder, possession of a weapon for an unlawful purpose, unlawful possession of a weapon, and tampering with physical evidence. On February 1, 1991, after a jury trial, D was convicted of all charges. For the murder conviction, D received a sentence of life imprisonment, with 30 years of parole ineligibility. For robbery, D received a concurrent 20 year sentence, with 10 years of parole ineligibility. For tampering with physical evidence, D received an 18 month consecutive sentence. The other offenses merged for sentencing purposes. In addition, Co-D2, on October 19, 1990 was sentenced to 10 years, three without parole, for conspiracy to commit robbery. That sentence was consecutive to another, earlier sentence. Co-D1 was pending trial at the time D was sentenced.

Revised 8/5/91

#0439

STATE V. CLARK (REGINALD)

D went to aunt's home (V), asked for $20.00. V refused. D pretended to be on phone while V in kitchen. D stabbed V 13x in the back and stole from V's purse and home. [redacted] Aggravated manslaughter plea 6/18/87. 20 years/10 minimum. No penalty trial. Aggravating factor: 4g. Mitigating factors: 5d, 5f, 5h.

The following factual recount was excerpted from an unpublished Appellate Division opinion in this case. 10/20/87. A-553-87-T5.

"All of the charges arose out of a tragic episode on October 24, 1986, when defendant went to the home of his aunt to see if she would pay him for cutting the grass. He wanted money to buy "crack." Since he had no home and was living "out of his car," he kept a knife in his sock for self-protection. Defendant's aunt refused to let him cut the grass and then refused his request for money. At that point defendant stabbed his aunt [thirteen times], killing her. He then took money out of her purse and left with a television set and some stereo equipment. At the time defendant stabbed his aunt, he knew that death or serious bodily injury was likely to result and his purpose in stabbing her was to get money. In addition to the foregoing facts, all of which came from defendant himself at the plea hearing conducted pursuant to R. 3:9-2, it is significant to note that prior to that hearing defendant was psychiatrically evaluated by a reputable doctor who

was prepared to testify on his behalf that his understanding at the time of the crime was impaired by reason of his long-term drug addiction which included ingestion of crack laced with PCP, a hallucinogenic." End of Excerpt.

V's neighbors had seen D at the house and gave a description to the police. They identified D from a photo.

D admitted guilt [redacted] D has no prior convictions.

D was charged with one count of purposeful, knowing, and felony murder, possession of a weapon for unlawful purpose, unlawful possession of a weapon, and first degree robbery.

D pled guilty to aggravated manslaughter on 6/18/87.

D was sentenced on 10/21/87 to 20 years, 10 years parole ineligibility, on the aggravated manslaughter, to 20 years, 10 years parole ineligibility on the robbery consecutive to the aggravated manslaughter, and 5 years on count 3 concurrent to the aggravated manslaughter and robbery.

[redacted] D quit school in the 11th grade.

The Trial Judge in this case had advised D that he could not accept a plea to aggravated manslaughter because the facts indicated guilt of Felony Murder. The Appellate Division reversed the Trial Judge, saying that, because of a question with regard to D's ability to form an intent to kill, a jury would have been charged with aggravated manslaughter. The plea was accepted.

Revised 8/5/91

#0447

STATE V. CLEARY

D and Co-D drove up to V, [redacted] but intending to rob him. D shot at V 6x, hitting him with one fatal shot in the back. D and Co-D fled with a bag of white powder. D was charged with murder. Aggravated manslaughter plea 10/16/87. No penalty trial. 30 years/15 minimum. Aggravating factor: 4g. Mitigating factors: 5c, 5d, 5h.

On September 8, 1987, in the evening, defendant Dennis Michael Cleary (D), a 24 year old male, and his friend, Co-defendant Edward Zimmerman (Co-D), a 25 year old male, left a bar and decided to rob a drug dealer for some cocaine. D took a .22 caliber automatic pistol out of the trunk of his car, then Co-D drove the car while D sat in the passenger seat. Victim (V), a 25 year old male, was talking to W1 when D and Co-D pulled up. D hollered out that he wanted a "one sixteenth" of cocaine. V approached D who displayed a $100 bill. V told D to go to another street corner and the car pulled off, but it stopped and let W2 in. W2 told D and Co-D that he could help them get it. W2 learned that Co-D's name was "Ed" and D's name was "Dennis" from their conversation during the ride. V and W1 followed D and Co-D, believing W2 would try to "rip them off". V's girlfriend, W3, went along. V approached the car and asked D if he remembered V from the projects, to which D responded "Yeah, yeah." W4 hollered to V that the car had to move because it was stopped in the middle of the street. V told D and Co-D to pull around the corner. Co-D moved the car and parked by the curb. V

approached the car on the side where D was sitting. V then hollered "no, no", as D drew and aimed his pistol. D then fired four to six shots at V, hitting him once in the back. V later died from this wound, on September 9, 1987, at 2:50 a.m.. W3 told police that D fired at V from inside, while Co-D claimed that D left the car and that he didn't see D shoot V. D took a bag of white powder from V, and told Co-D to drive off. The two men went to Co-D's house. When Co-D's mother left, [redacted]. D later threw the gun in a lake. D told Co-D that he didn't think V was hit because he kept running, and D continued to shoot to keep V running.

On September 10, 1987, D and Co-D met D's parents in a parking lot. D didn't have time to make up a cover story, so D's father (J.C.), a police officer, tried to arrest them. D and Co-D fled in D's car, eventually evading J.C.'s pursuit. D and Co-D eventually stopped at a motel to hide out. When Co-D saw police cars approaching, he fled on foot, leaving D in the room. Police identified D's car in the motel parking lot. D had registered under the name of "Steve Write" and gave a false automobile license plate number. Police called the room and told D that they suspected he was Dennis Cleary, and that he should come out with his hands on top of his head.

On September 11, 1987, at 3:15 a.m., D came out of the room and was taken into custody. D invoked his Fifth Amendment rights. At 4:30 a.m., Co-D's mother called for Co-D to check on D. Police

informed Co-D's mother that D was in custody. She told police that "both boys" were going to surrender in the morning. When asked if she had heard from Co-D, his mother replied, "I'll have him in the police station in the morning."

On September 13, 1987, at 7:00 a.m., Co-D was arrested on an active contempt of court warrant and was transferred for questioning on this case. Co-D gave a full confession implicating himself in the robbery and implicating D in the murder and robbery of V. The murder weapon was not recovered.

At the time of the offense, [redacted] Prior to his arrest, D worked as a bartender for one year. D graduated from high school in 1981, and has received no further education. [redacted]

D was charged with murder (count 1), felony murder (count 2), aggravated manslaughter (count 3), hindering apprehension and

prosecution (count 4) and burglary (count 5). Co-D was charged with murder (count 1), felony murder (count 2), aggravated manslaughter (count 3), robbery (count 4), possession of a weapon for an unlawful purpose (count 5), and unlawful possession of a weapon (count 6).

Co-D pled guilty to robbery, with all other charges dismissed, and on December 1, 1989, was sentenced to 9 years, 3 years without parole. On October 16, 1987, D pled guilty to aggravated manslaughter, hindering prosecution and burglary. The murder charges were dismissed. On November 20, 1987, D was sentenced to 30 years with a 15 year parole ineligibility for the aggravated manslaughter.

Revised 8/5/91

#470

STATE V. COLLINS (DAVID)

D killed paramour's mother because she refused to let him come and see paramour's baby. D laid in wait in apartment, beat V with a baseball bat, stabbed, sexually assaulted, and left V to die with head in bathtub. Also stole $200. Murder plea, 6/20/83. No penalty trial. Life. Aggravating factors: 4c, 4g. Mitigating factors: 5c, 5f, 5h.

The following paragraph is excerpted from an unpublished Appellate Division opinion in this case. 3/6/86. A-636-83T4.

"A factual basis for the plea was elicited at the plea proceedings. Defendant said he had gotten a table leg about the size of a baseball bat from a friend in order to use it against the victim, (V) [redacted], who was the mother of defendant's girl friend. It appeared that defendant had waited for about an hour for the victim in her house to "stop her from what she was doing with my girl friend." He viciously attached her from behind with the table leg. Defendant said "she wasn't moving then, but looked like she was trying to get back up, I tried to stab her with a knife in the chest and it bent so I threw it down." Defendant then admitted to dragging the victim in the hallway, undressing her and raping her. He next put the victim, who he believed was still breathing, in the bathtub and filled the tub with water in order to drown her. He then took money out of the victim's pocketbook, threw the table leg on the roof of the house next door and left. The victim died of a fractured skull." End of Excerpt.

The bat was found on an adjacent rooftop. Later, upon arrest, D confessed in detail to planning and carrying out the murder.

D was born on October 1, 1961 in Philadelphia, Pennsylvania, [redacted] D dropped out of high school in the eleventh grade. D was unemployed at the time of the offense. D has no record of convictions, [redacted]

D was apprehended on April 12, 1983 and charged with purposeful and knowing murder, by his own conduct (counts 1 and 2); robbery (count 3); burglary (count 4); aggravated sexual assault (count 5); possession of a weapon for an unlawful purpose (count 6); and hindering apprehension or prosecution (counts 7 and 8).

The prosecution had served a notice of aggravating factors.

On June 20, 1983, D plead guilty to knowing murder (count 2), as well as counts 3 thru 7. Under this plea agreement, there was no penalty trial and D was sentenced to life imprisonment with 30 years without parole for the murder, plus 20 years with a 10 year minimum for the robbery, 10 years with a 5 year minimum for the burglary, 20 years with a 10 year minimum for the aggravated sexual assault, 5 years with a 2½ year minimum for the possession of a weapon for an unlawful purpose, and 5 years with a 2½ year minimum for Hindering Apprehension. All of the lesser sentences are to be served concurrent to each other, but consecutive to the life sentence. D will not be eligible for parole for 40 years.

D appealed his sentence, but it was affirmed by the Appellate Division (A-636-83T4).

Revised 8/5/91

#0544

STATE V. CULLEY

D (19 yr., M) shot V (24 yr., M, gas station attendant) in course of robbery. D stated he did not want V to ID him. [redacted]. Jury verdict: murder 10/2/84. No penalty trial. Life. Aggravating factors: 4f, 4g. Mitigating factors: 5c, 5h.

In the early morning of November 21, 1983, Defendant Carl Culley (D), a 20 year old male, drove into a gas station at which victim (V), a 24 year old male, was the only attendant, in order to carry out a robbery. D had been there earlier and notice that V was alone. D had his uncle's automatic shotgun, a ski mask and a pair of gloves with him.

D asked V to fill his tank. After V filled the tank, D decided not to rob the station. D told V that he did not have any money to pay for the gas. When V told D that D would have to leave his car or else he (V) would call the police, D pointed his gun at V in order to scare him. According to D, V grabbed the barrel and the gun went off accidentally. V was struck in the chest. D then got out of the car and fired another shot at V's back. When asked by the police why he fired a second shot at V, D replied that he did not want V to be able to identify him. D further admitted to the police that he intended to kill V with the second shot.

After firing the second shot, D tried unsuccessfully to start his car. D then hid in a nearby wooded area where he was later apprehended by the police.

D was enrolled in college at the time of the offense. [redacted] D has worked as a landscaper and as a maintenance man.

[redacted]

D was charged with murder, felony murder and four counts of possession of a weapon. D was convicted on all counts on October 2, 1984. The murder and felony murder counts were merged and D was sentenced on November 9, 1984, to a thirty year prison term without parole. D was also sentenced to a concurrent 16 year total term for the four counts of possession of a weapon.

Revised 8/5/91
#4006 (new)

STATE V. DEAN

D and Co-D try to rob V and NDV. Co-D fought with V, D fought with NDV. D pulled a gun, shoots 3 times at NDV as NDV runs, hitting him once. D shoots at V 2 times, hitting V in the eye. Jury Verdict: Murder. 11/1/89. No Penalty Trial. [redacted] Aggravating Factor: 4g. Mitigating Factor: 5h. Life.

On June 9, 1988, V, NDV, and W1 were on the steps outside of a building. When W1 went to his car, John Dean (D) and Dwayne Stevenson (Co-D) approached V and NDV to rob them. V and Co-D started fighting, and D pulled a gun and pointed it at NDV. NDV grabbed D's hand that was holding the gun, and slammed D against the wall, but D would not drop the gun. NDV then ran off and D shot at him three times, hitting NDV once in the side. V then ran away and D shot at him twice, hitting V once in the eye. D and Co-D ran off. According to W2, a woman who arrived later, D yelled "Run man get out of here." W3, a cab driver chased them, but his passenger told him to stop because she knew and feared D and Co-D. D was arrested near the scene. NDV identified Co-D and gave his address. D denied his involvement in the crime.

At the time of the offense, [redacted] D worked as a laborer for a contractor. D was born in 1960, [redacted] D dropped out of high school in ninth grade. [redacted]

[redacted]

For the current offense, D was charged with Robbery (Count 1), Felony Murder (Count 2), Murder (Count 3), Aggravated Assault (Count 4), Unlawful Possession of a Weapon (Count 5) and Possession of a Weapon for an Unlawful Purpose (Count 6). On November 1, 1989, D was convicted on Counts 1, 3 and 5, for Robbery, Murder and Unlawful Possession. On January 1, 1990, D was sentenced as follows: for Murder, D received Life Imprisonment with a minimum parole ineligibility of 30 years; for Robbery, 21 years with a 7 year minimum parole ineligibility, consecutive; and for Unlawful Possession of a Weapon, 7 years concurrent.

Revised 8/5/91

#0624

STATE V. DELVALLE

D [redacted] shot V (acquaintance [redacted] in head after V threatened to tell police about D's [redacted] activities. [redacted] Murder plea 2/6/84. Life. No penalty trial. Aggravating factor: 4f. Mitigating factors: 5f, 5h.

On September 13, 1983, defendant (D), Efrain Delvalle, a thirty-one year old male was under observation as a part of an undercover investigation by a narcotics task force. Also on September 13, 1983, officers discovered the body of victim (V), a female, in a wooded area approximately 15 feet from the shoulder of a road. V had sustained a gunshot wound to the left side of the head just above the left eye. An investigation revealed that the V had last been seen in the area where the narcotics task force had been conducting the undercover investigation [redacted] On September 14, 1983, numerous officers with a search warrant proceeded to the area and conducted a raid of two apartments and subsequently arrested nine individuals at the scene, among them the D.

W1, a resident of the apartment who was not charged, told police that on September 12, 1983, D was in a bedroom with the V, as W1 was exiting the bathroom, he heard a gunshot coming from D's room. W1 said he saw blood coming from under D's door. D and W1 subsequently put the body in the trunk of a car and drove off. On

the following day, W1 awoke and was instructed by D not to leave the apartment. During this discussion D told W1 that the V had told him that she was "sick of your shit and everybody else and I am going to narc on you" so he shot her.

The bullet fragments taken from the V's skull and from the bedroom in the apartment and the remaining bullets from the gun were subjected to a Neutron Activation Test, which revealed that the lead from the bullets in the gun came from the same batch of lead as the fragments in the V's skull. The cause of death was due to "laceration of the brain as a result of a gunshot wound to the head".

D was questioned regarding the murder [redacted]

D was born in San Juan, Puerto Rico on March 15, 1952. [redacted] D completed the 12th grade. Since completing high school, D related that he has been an auto mechanic, and an undercover informant for the DEA in San Juan. [redacted]

[redacted]

D was charged with 1st Degree Murder (1st count); Unlawful Possession of Controlled Dangerous Substance, With Intent to Distribute (2nd Count); Unlawful Possession of Controlled Dangerous Substances, (3rd count); Conspiracy to Possess Controlled Dangerous Substances and to Possess Controlled Dangerous Substances with Intent to Distribute, (4th count); Unlawful Possession of Weapons, Firearms, for Unlawful Purpose (2nd Degree), (5th count); Receiving Stolen Property, (6th, 7th and 8th counts); Tampering with Physical Evidence (4th Degree), (9th count).

D pled guilty on February 6, 1984, to Murder (1st Degree), (1st count); Unlawful Possession of C.D.S., with Intent to Distribute (2nd count).

D was sentenced on March 9, 1984, to 50 years NJSP, to serve 25 years without parole on count 2, and 20 years NJSP, to serve 10 years without parole on count 1; service of said sentences to run concurrent with each other.

Revised 8/5/91

#0658

STATE V. DINKINS

V parked on D's land. D wanted V to move truck. D shot V 4x (1x in head, 2x in abdomen). D then shot 3 witnesses in a U-Haul 5x to eradicate witnesses. Jury verdict: murder 5/23/86. No penalty trial. Life. Aggravating factor: 4b. Mitigating factors: 5f, 5h.

On April 13, 1985, victim (V) parked his U-Haul truck on defendant Robert Lee Dinkins'(D's), male, age 32, property. (NDV1), (NDV2) and (W1) were passengers in the truck. D wanted V to move his truck immediately. V responded that he could not move it until the next day. At this point, D left the area and then returned with a gun. He shot V one time in the abdomen. Then D turned toward the U-Haul in which NDV1, NDV2, and AW were seated and fired five shots at them. Four struck NDV1, two in the abdomen, one in the head and the other in the hand or arm, and one struck NDV2, in the left buttock. W1 shielded by NDV1 and NDV2 was unharmed.

[redacted]

He graduated from high school and was working as a general laborer for a masonry company at the time of the offense. [redacted]

[redacted]

D was charged with murder (count 1), three counts of aggravated assault (counts 2, 3, and 4), hindering apprehension

(count 5), possession of a weapon for an unlawful purpose (count 6), possession of a handgun (count 7), and three counts of criminal attempt (counts 8, 9, and 10).

D was found guilty of all counts on May 23, 1986. He was sentenced on July 3, 1986, to a 45 year prison term with 30 years of parole ineligibility on count 1, a consecutive ten year term with 5 years of parole ineligibility on count 9, a consecutive 10 year term with 5 years of parole ineligibility on count 6, and a concurrent 5 year term on count 9. Court 2 merged with count 8, count 3 merged with count 90 and count 4 merged with count 10.

Revised 8/5/91
#4027 (new)

STATE V. DOLLARD

D, Co-D1 and Co-D2 meet NDV and W1 leaving apartment. D and Co-Ds search W1 and NDV for drugs at gunpoint. NDV and W1 told to knock on V's door. D kicked the door open, D and Co-D1 went in. V got out of bed, so D shot V one time in the chest. Jury Verdict: Murder 5-2-91. No Penalty Trial. [redacted] Aggravating Factor: 4g. Mitigating Factors: 5c, 5h. Life.

On July 14, 1990, Thomas Dollard (D), 21, Dwayne Knight (Co-D1) and Leon Durhan (Co-D2) entered an apartment building to rob someone of money or drugs. D was armed with a silver automatic handgun, and Co-D1 was armed with a shotgun. They were coming up the stairs, while NDV and his girlfriend, W1, were coming down on the second floor landing. NDV and W1 encountered D, Co-D1 and Co-D2. When they were asked if they had any drugs, V responded no. Co-D1 said "If I find some on you, I'm going to kill you." Co-D2 patted them down while D and Co-D1 watched. D then told NDV and W1 to pull down their pants so they could check them for drugs. They complied and Co-D2 looked in their pants. They were then told to pull up their pants. As NDV and W1 were going to leave, Co-D1 told D that they needed someone to knock on doors. They made NDV and W1 go to the second floor and told them to knock on a door. V told D that the resident of that apartment didn't know him and would not open the door. D told W1 to knock, W1 complied and when someone asked who it was, she replied "Mary". The occupant said "Ain't nothing happening." W1 was going to knock again when someone NDV knew came up. That person talked to Co-D1 and then left. Co-D1 walked back and hollered for the occupants to open the door. They replied "Get away from the door." [redacted]

[redacted] Co-D1 kicked in the door and he and D rushed inside, leaving Co-D2, NDV and W1 in the hall. Co-D2 told them they could go, but Co-D1 told Co-D2 to bring them inside. Co-D1 then pushed NDV and W1 down on the couch. At this point, one of the occupants of the apartment, V, a 47 year old male, started getting out of bed. D told V to get back in bed and lie down. V asked, "Why are you all doing this, there's nothing here." D then pointed his gun at V and shot him once in the chest. V asked "Why did you shoot me, you didn't have to do that." V then staggered back and fell in front of his girlfriend, W2. NDV was afraid Co-D1 was going to shoot him so he jumped out the window to the sidewalk below. The police arrived and interviewed NDV, W1, and W2. Police recovered a gymbag labeled "Newark Small Fry 1989 Champions." W3 was later questioned and she told police she gave the bag to her boyfriend, Co-D1. On August 10, 1990, Co-D1 was arrested. In his statement, Co-D1 implicated Co-D2 and gave police [redacted]'s nick-name, "Omar". On October 3, 1990, Co-D2 was arrested. Co-D2 gave a statement implicating Co-D1 and D. D was arrested on January 11, 1991.

At the time of the offense, [redacted] Prior to his arrest, D worked as a material handler. D dropped out of high school in the eleventh grade. [redacted]

For the current offense, D was charged with Burglary (Count 1), Aggravated Assault (Counts 2 and 3), Robbery (Counts 4, 5 and 6), Felony Murder (Count 7), Murder (Count 8), Possession of a prohibited Weapon (Count 9), Unlawful Possession Weapon (Counts 10 and 12) and Possession of a Weapon for an Unlawful Purpose (Counts 11 and 13).

On May 2, 1991, D was convicted on all counts. On May 21, 1991, D was sentenced as follows: for count 1, 10 years, concurrent; count 2, 18 months concurrent; count 3, 10 years consecutive; count 4, 10 years concurrent; counts 5 and 6 merge with count 7; count 7, Life with a 30 year parole ineligibility; count 8, merges; count 9, 5 years concurrent; count 10, 5 years concurrent; count 11, 5 years concurrent; count 12, 5 years consecutive; and count 13 merges. D faces a maximum of Life plus 10 years, with a minimum of 35 years.

Revised 8/5/91

#0684

STATE V. DREHER

D (43 yr., M) and V (39 yr., F) in troubled marriage. Plot by D and paramour (Co-D) to kill V. D drags V to basement, binds her hands, strangles V with cord, stabs V in throat. Paramour hits V over head with cobbler's tool 3x, and stabs her 8x after she is dead or nearly dead. [redacted] Jury verdict: murder 2/23/89. No penalty trial. Life. Aggravating factor: 4c. Mitigating factors: 5f, 5h.

On January 2, 1986, John Dreher, defendant (D), a 43 year old male, went to meet his paramour Nancy Seifrit (Co-D), at 4:30 a.m., [redacted] He returned home in time to see his sons off to school. The boys left at approximately 7:30 a.m. Co-D arrived shortly thereafter and saw D taking victim (V) (D's spouse) into the basement. Co-D heard V pleading for her life. D then told Co-D to bring him a knife. When she got down there, Co-D saw V on her knees tied to a pole (lolly column) with a nylon rope around her neck. D was on his knees behind the pole pulling on the rope around her neck. V's wrists and arms were tied behind her back. D then took the knife from Co-D and stabbed V in the throat.

D ordered Co-D to gather some of V's valuables (fur coat, jewelry) and to mess up the house so it looked like a burglary had taken place. D dressed for work while Co-D gathered V's valuables and the knife, none of which was ever recovered. D left to pick up his father. Instructed by D to make sure V was dead, Co-D then struck her head three times with a cobbler's tool and stabbed the

body eight times. D went to work but returned home to retrieve diamond earrings left near V's body, which he later reported stolen. D then left the house again.

At approximately 3:30 p.m. D returned home, and with one son present, indicated that there had been a robbery and called the police to report the robbery. Six minutes later D called back and said his wife (V) might be dead. Police arrived and conducted an investigation. [redacted] Since there did not appear to have been a struggle, the police became suspicious that V knew her assailant. More of the nylon cord used to tie V up was found in D's den, and earrings V wore at her funeral were not found in a previous search of the house. Because of the above, subsequent investigation included surveillance of D's activities.

This investigation revealed that D had been having an affair with Co-D for about a year. Co-D was granted immunity from prosecution, and then told everything about V's murder, and on May 18, 1987 D was arrested.

The medical examiner who conducted the autopsy reported that V died as a result of ligature strangulation. V had been struck in the face, evidenced by bruising and blood under her eyelids. The internal bleeding and bruising of the liver and heart indicated V received a severe blow to the lower chest and upper abdomen. This blow could have been sufficient enough to stun V where she would become defenseless for a period of time. V's hands were tied behind her for at least several minutes before death, as evidenced by the swelling of her wrists/arms. An apparent attempt was made

at manual strangulation indicated by the type of bruising found on her neck. V had been struck on the head three times with a blunt instrument, either as she was dying, or after death. The three gashes on her scalp exposed the underlying bone of her skull. The shape of the gashes matched the shape of the cobbler's tool found near V's body. V was stabbed nine times. (8x in back, 1x in throat) One of the stab wounds penetrated her throat and two other stab wounds pierced her lungs. These stab wounds were inflicted either as V was dying or after death, indicated by the lack of sufficient blood loss. It was determined that V was not sexually abused. The medical examiner testified that the fact that she defecated reflect her extreme fear. The trial judge noted at sentencing that the murder was "cold-blooded" and committed in a "rather especially heinous manner." He said "[redacted] was butchered by her husband and his evil accomplice."

D is a college graduate and owns a successful corporation. [redacted] He denied everything and claimed he was at work at the time of the murder. V was 39. [redacted] There was testimony that D had abused V at a party a year or two prior to the murder. V's friend testified that the marriage had worsened and that D threatened that V would not get custody of the two boys due to her "psychiatric" bills. The states' theory was that the marriage was "bad" and that D wanted to avoid a costly divorce. While D has no criminal record, [redacted]

[redacted] D's first wife testified that D beat her, choked her, and threatened her with a gun. She divorced him on grounds of extreme cruelty. [redacted]

D was charged with Murder, Conspiracy and weapons offenses. D was found guilty of all charges by a jury on February 23, 1989. On April 14, 1989, D was sentenced to life imprisonment with a minimum parole ineligibility of 30 years. The lesser charges merged for the purpose of sentencing.

Revised 8/5/91

#0712

STATE V. EDWARDS (EUGENE)

D & Co-D lure V [redacted] into D's house [redacted] Co-D and V go upstairs. Co-D holds knife to V and orders her to undress. Co-D has sex with V. D then has sex with V. After D finishes, Co-D stabs V 3 or 4x. D strangles V. D then takes V's purse after concealing her body in basement. Murder plea 11/2/89. No penalty trial. Life. Aggravating factors: 4c, 4g. Mitigating factors: 5d, 5f, 5h.

On July 10, 1987, defendant, Eugene Everson Edwards (D), a 30 year old male, and his friend, co-defendant Michael Prater (Co-D) raped, robbed and killed victim (V), a 23 year old [redacted] Earlier that evening D and Co-D planned to lure a prostitute to D's house by offering drugs in exchange for sex. They also agreed that if one of the prostitutes "got strange, they would eliminate her." To this end, D directed Co-D to a knife in a first floor room. Co-D lured V in [redacted]. Co-D and V went up to a second floor room where Co-D produced the knife and ordered V to disrobe. Co-D then forced V to the floor and raped her, while holding the knife to her head. About this time, D entered and watched the rape, while V pleaded with D and Co-D not to harm her. D urged Co-D to hurry up so that D could rape her. D then took his turn raping V, and when he finished, D left the room to clean himself up. While gone, D heard a thump, so he returned and found V lying crouched against the paneling up against the wall. V had been stabbed by Co-D.

D told Co-D that the killing needn't be bloody. D began to strangle V with his belt, but this only made V gag. D then tried to asphyxiate V by covering her mouth with one hand and pinching her nose closed with the other. Meanwhile, Co-D stabbed V 3 or 4 more times with the knife. After V appeared dead, D checked her pulse. Feeling no pulse, D believed V was dead. D got a quilt to absorb the blood, and the D and Co-D wrapped V's body in it. Co-D and D then carried V down to the basement. D went back upstairs to clean up the blood and returned to find Co-D hitting V over the head with tin cutters. Co-D said he wanted to make sure V was dead. D told him to "let it rest", and both men went upstairs and went to sleep.

On July 11, 1987, D took V's purse and threw it off a bridge. D also took V's watch. On July 12, 1987, D wrapped V's body in a different quilt, and he threw the knife onto the roof of the church next door. That evening, with Co-D as a lookout, D took V's body and laid it along an outside wall of his residence. It was found there the next morning, July 13, 1987. That evening, D returned home from a job and discovered that the body was gone. On July 14, 1987, at 11:50 p.m., D was arrested. D was informed of his rights and signed a waiver, [redacted].

On July 16, 1987, at 12:15 a.m., D gave a voluntary statement implicating himself and Co-D. On July 17, 1987 Co-D was arrested. Co-D waived his Miranda rights and gave a statement implicating Co-D and D.

D has no prior record [redacted]

D was charged with one count of Murder, two counts of Felony Murder, one count of Robbery, three counts of Aggravated Sexual Assault, and one count of Possession of a Weapon for an Unlawful Purpose. On November 2, 1987, D plead not guilty to these charges; but on December 16, 1988, D plead guilty to Murder, Robbery and Aggravated Sexual Assault. D was sentenced to life imprisonment, with parole ineligibility of 30 years on the Murder charge. The Felony Murder charges were dismissed. On the Robbery, D received twenty years with 10 years parole ineligibility concurrent. 2 counts of Aggravated Sexual Assault were dismissed, and on the third, D received twenty years with parole ineligibility of ten years, consecutive to the murder count.

#0742

7/31/91 (new)

STATE V. ETHRIDGE

D and V (his girlfriend) argue over V dancing with another man. D thinks V wants him dead. Next day, V went to see D. D [redacted]. D and V argue, V confesses to seeing another man. D stabbed V repeatedly in the chest, overpowered others, then stabbed V some more. [redacted] Jury verdict: murder 3/11/87. No penalty trial. Life. Aggravating factor: 4c. Mitigating factors: 5a, 5d, 5h.

On the evening of September 20, 1985, defendant (D) Willie Ethridge, age 35, saw his girlfriend, the victim (V), age 30, dancing with another man at a local bar. D and V argued, and V told D that she was breaking up with him. Later that evening, D told W1, his niece, that he had seen V with another man and that he was going to "get her" before the night was over. Early the next morning, at another local bar, D told W2, a friend, that V had asked some men to "jump" him, but he was going to "kill the bitch".

Later that morning of September 21, 1985, D, W3, and others were drinking at W3's apartment. D told W3 that V had tried to have him killed the night before, but he "was going to take somebody with him". A short while later, V entered the apartment, sat down in a chair, and began drinking a beer. D told V that he knew that she was trying to have him killed. V responded that she had been dating the man D had seen her with the previous night for 1½ years. D stood up, walked over to V, pulled out a knife, and repeatedly stabbed V in the chest and hand as she tried to defend herself. When V slumped forward in the chair, V began stabbing her

in the back. Others in the apartment tried to stop D, but D, who was 6'1" and weighed 275 pounds, overpowered them and continued to stab V. W4, a female friend, shouted, "Don't do that, Willie", but D only looked at W4, tilted V backward, and stabbed her again in the stomach. D then pulled the knife from V's stomach, wiped the blade on V's jacket, put it back in his pocket, and walked out the door.

At 8:39 a.m., police were called to W3's apartment. When they arrived a short while later, they attempted to find V's pulse but were unable to do so. At 9:17 a.m., D's uncle called the police and told them that D was with him. Police then went to D's uncle's home and arrested D. D told W5, a detective, that V was going to have 2 men kill him and that V was "dogging" him. D later brought the police to a field where he said he disposed of the knife. It was found 2 days later stuck in a tree.

At the time of the offense, D was employed as a tax stamper for a tobacco company. [redacted]

D was indicted and charged with non-capital purposeful murder, knowing murder, possession of a weapon for an unlawful purpose, and unlawful possession of a weapon. On March 11, 1987, after a jury trial, D was found guilty of all charges. For purposeful murder, D was sentenced to a term of life imprisonment, with 30 years of parole ineligibility. For unlawful possession of a weapon, D was sentenced to a consecutive term of 18 months. The other two convictions merged with the conviction for purposeful murder for sentencing purposes. D appealed his convictions, but they were affirmed by the Appellate Division.

Revised 8/5/91

#0754

STATE V. FAINS

D (26) and V (51) neighbors. D robbed V in V's home, beat V 13x about head with hammer. Stabbed V 1x in back. V in wheelchair. [redacted] Jury verdict: murder 7/18/85. No penalty trial. Life. Aggravating factor: 4g. Mitigating factor: 5h.

The following facts are excerpted from an unpublished Appellate Division opinion. 12/7/87. A-1154-85T4.

"Defendant's convictions arose out of the brutal murder of his "friend" and next-door neighbor. The victim, (V) [redacted] lived with a home health aide, Ella Johnson since he was confined to a wheelchair as the result of an accident in 1972. Johnson moved in with him in 1974 and maintained their two-bedroom apartment.

[redacted] received social security benefits, an army pension and disability payments. It was widely known by his friends that he kept large amounts of money in the apartment, usually in his sock, under the pad on his wheelchair or in his dresser drawers. He also had numerous medicines around the apartment, including a prescription drug, Valium.

"On Wednesday, March 14, 1984 Johnson left [redacted] alone in order to care for a sick elderly woman. Because she did not expect to be back until the next morning she unplugged the telephone in her bedroom so that it would not annoy [redacted] who had a

different telephone number. Early Wednesday evening, at approximately 5:00 to 5:30, Lisa Daniels visited with [redacted]. The defendant, who lived next door, came over about 15 minutes later at which time [redacted] gave him some money and sent him to buy cigarettes, sandwiches and a [redacted]. Daniels and [redacted] each ate a sandwich and then Daniels smoked a marijuana cigarette. [redacted] Daniels stayed on with [redacted] several hours and left at 10:30 p.m.

"At approximately 1:00 a.m. on Thursday morning, Darlinda Coles, who lived directly behind the victim, saw defendant walking from his building to the back of her apartment building....

"Johnson did not return home until Friday morning at approximately 11:15 a.m. She immediately noticed a stack of mail on the floor in the apartment which seemed strange since [redacted] usually picked up the mail at the door every day. She then discovered [redacted] body lying on the floor with dried blood everywhere, including on the chairs and walls. A long knife was sticking out of his back. Johnson began screaming and defendant ran over. He called the police from her bedroom and told her not to touch anything.

"The victim's bedroom was in disarray; drawers had been pulled out of the dresser and the floor was littered with their contents. However, Johnson's bedroom was very neat and nothing had been disturbed. A white plastic bag had been pulled over [redacted] head and a green trash bag was wrapped around his neck and tied to the arm of his wheelchair. A red-stained claw hammer was recovered at

the scene. His telephone was off the hook and there were no signs of forced entry.

"Johnson's screams had also attracted Coles to the scene but defendant instructed her to leave as he did with McCullough when she arrived. However, McCullough asked defendant if he had seen her at the door on Thursday. He indicated that he did not see her then but that he thought he saw her later in the day at a time when McCullough was actually in Philadelphia.

"The cause of death was a contusion of the brain caused by three fractures on the right side of the skull, a semi-curved lacerated wound on the bridge of his nose and eight semi-lunar contused lacerated wounds on the entire right side of his head. The configuration of these injuries corresponded to the shape of the head of the claw hammer. The victim had also sustained a muscle-deep knife wound in the small of his back which did not contribute to the cause of his death." End of Excerpt.

When questioned regarding the murder, D gave a false name, changed his story numerous times and volunteered information about the crime that was not generally known to the public. V's wrist watch was found by police in D's bedroom. D admitted to the theft of V's wrist watch but denied any participation in the murder of V. Upon D's arrest, a pair of blood stained dungarees was found in his apartment.

D was born September 16, 1958 in Camden, NJ. He graduated from high school in 1977. [redacted] D was enlisted in the army from June 23, 1977,

until July 14, 1977, and received an honorable discharge.

[redacted]

D was charged with knowing murder (count 1), robbery (count 2), felony-murder (count 3) and possession of a weapon for unlawful purpose (count 4). The jury found D guilty of all counts on July 18, 1985.

On the murder count, D was sentenced to life imprisonment, not eligible for parole for 30 years. On the robbery count, D was sentenced to 15 years to run concurrent to count 1. Count 3 was dismissed as merging into count 1 and on count 4, D was sentenced to a concurrent term of 4 years which will be concurrent to the sentence of count 1.

D appealed his conviction. The conviction for the weapons offense was merged, but all other convictions were affirmed.

7/30/91
#4024 (new)

STATE V. FARROW

D (21 year old male) and other young people lived together. D was awakened at 5:30 a.m. by a friend who wanted to borrow his phone. D, angry, takes his phone back and blocks his door. D's friend leaves with 2 girls to use the phone at a local store. When they return, D outside watching the house burn. 2 Vs, D's housemates and friends die. D later confesses. Aggravated Manslaughter Plea 2/14/90. No penalty trial. 25 years. Aggravating Factor: 4g. Mitigating Factors: 5a, 5f, 5h.

On October 23, 1988, D, Richard Farrow, male, age 23 called in a fire in progress. When the police arrived on the scene, D was standing on the front lawn. D indicated to the police that he (D) started to open his bedroom door to get out but was unable to do so because of the smoke and heat, D stated that he yelled to both victims - V1, 20 year old male and V2, 19 year old female, to get out. D then went out his bedroom window onto a porch roof and jumped to the ground. D stated to the police after he opened his bedroom door to get out he was unable to close it because of the heat and smoke. Upon searching the house the police found the D's bedroom door closed and difficult to open. The door had to be forced open because it was partially blocked by a chair and dresser. [redacted] Thus, facts clearly indicate two knowing murders.

Investigation by arson investigators indicated that the fire was purposely set. The investigation revealed that at 5:30 a.m. on

October 23, 1988, M.B. went to D's room to borrow D's telephone. M.B. was followed downstairs by D, who was angry about being bothered and awakened and took his phone back without allowing anyone to use it. M.B. and friend then went to get D's car keys so he could drive his friends to a phone. When he went to check D's room D's door was blocked with something. M.B. and friend walked to a nearby convenience store to make the phone call. Upon their return to the house they found the house burning and D standing on the front lawn. When D was asked if he knew where V1 and V2 were and if he notified the fire department about them D said "no". The fire department was subsequently notified of Vs' whereabouts.

As the investigation continued, D was confronted on October 25, 1988, at which time he stated to the detectives that he had set the fire. D was immediately arrested.

D dropped out of high school while in the eleventh grade, [redacted] D was employed as a dishwasher part-time during school. After dropping out he worked in New York City insulating pipes. D worked as a landscaper for 7 years and for a temporary agency pending his sentence. [redacted]

D was charged with Count 1 and Count 2 Homicide (amended to Aggravating Manslaughter) Count 3 and 4 Murder and Count 5, 6 and 7 Aggravated Arson, he was found guilty on Count 1 and 2 and sentenced to 25 years on each count to run consecutively. Counts 3, 4, 5, 6 and 7 were dismissed.

8/5/91

#772 (New)

STATE V. FERRARI

V (78 years old) refused to give money to her son (D). D stabbed V 7x and strangled her. [redacted] Jury verdict: murder 3/7/90. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5a, 5d, 5f, 5h.

On July 4, 1989, W1 and W2 noticed that the door to the victim's (V's) apartment was ajar. They notified V's sister (W3), who then went to V's apartment. Upon entering the apartment, W3 found V, a 78 year old female, lying on her back in the doorway of her bedroom. A knife was sticking out of V's chest. W3 called the police. An autopsy later determined that V had been stabbed seven times and was also strangled. It was estimated that V had been dead for three days.

The ensuing police investigation soon focused on the defendant (d), Salvatore Ferrari, who was V's son. It was believed that D, who was 5'10" tall and weighed 270 pounds, kill V when she refused to give him money. On July 12, 1989, D was arrested at police headquarters.

At the time of the offense, D was 37 years old [redacted] D attended special education classes before dropping out of high school. He was employed as a watchman [redacted]

D has no prior criminal record [redacted]

D was indicted and charged with purposeful or knowing murder, burglary, felony murder, unlawful possession of a weapon, and possession of a weapon for an unlawful purpose. On March 7, 1990,

after a jury trial, D was convicted of all five counts of the indictment. For purposeful or knowing murder, D was sentenced to life imprisonment, with 30 years parole ineligibility. D was also sentenced to a concurrent life sentence for felony murder and a four year concurrent term for possession of a weapon for an unlawful purpose. For sentencing purposes, the burglary conviction merged with that of felony murder, and the conviction for unlawful possession of a weapon merged with the conviction for the other weapons offense.

Revised 8/5/91

#0791

STATE V. FLOYD

D (20 yr., M) robbing V (29 yr., M) of denim jacket, shot V 1x in face. [redacted] Jury verdict: murder 11/4/88. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5c, 5h.

On January 14, 1988, defendant Lamont Floyd (D), age 20, attempted to rob (V), age 29, of his denim jacket in the stairwell of a housing project. During this attempted robbery, D shot V one time in the face. V bled to death at the scene. W1, who was also robbed by D, witnessed the crime. He provided police officers with details of the incident and positively identified D as the shooter.

D is a [redacted] 20 year old man [redacted] D dropped out of high school after completing 11th grade, and has worked as a laborer. [redacted]

D was charged with robbery (count 1), 2 counts of murder (counts 2 and 3), armed robbery (count 4), aggravated assault (count 5), receiving stolen property (count 6), unlawful possession of a handgun (count 7), and possession of a weapon (count 8). He was convicted on all counts except armed robbery (count 4).

D was sentenced to life imprisonment with a 30 year parole disqualifier; on count 2, a concurrent life term with a 30 year parole disqualifier; on count 3, a concurrent 15 year term; on count 1, a concurrent 9 month term; on count 5, a concurrent 4 year term; on count 6, a concurrent 4 year term; on count 7, and a concurrent 7 year term on count 8.

Revised 7/30/91
#0828

STATE V. FREEMAN (Jonathan)

D had a dispute with his girlfriend and her brothers (NDV & V). D was forced to leave the house, saying "I'll be back". Approximately 10 minutes later, D returned, banged on the door, pulled out a gun and shot through the door, striking NDV in the hip. D kicked in the door and shot V in the chest. [redacted] Aggravated manslaughter plea. Aggravating factors: 4b, 4g. Mitigating factors: 5c, 5d, 5f, 5h. 30 years.

On February 9, 1989, Jonathan Freeman (D), a 19 year old male, was angry with his girlfriend (W1) and her brothers (V and NDV). According to D, he was angry with them because [redacted] After having some drinks, D went to W1's house and started arguing with her. D started pushing W1 down when a family friend (W2) came in and said "You don't have to do that." D responded "What do you want to do?" At this time, V and NDV came into the room. NDV said "let my sister go" and "get out of the house, or I'll kick your ass." D, while walking out of the house, said "I'll be back." D went home and got his .38 caliber revolver. D then returned to W1's home. At this point, the friend who gave D a ride (W3) and his passenger (W4) returned. They both saw D banging on the door and arguing through the door. D then pulled out a gun and shot through the door, hitting NDV in the hip. D kicked the door in and shot V in the chest. W1 and W2 heard the shots. W3 saw D shoot V and W4 saw D shoot into the door, but didn't see D shoot V because he ducked. D ran back to W3's car and said, "You have to take me to Newark." W3 told him "No way." D asked "What should I do with the gun?", but W3 told D to get away

from his car. D ran off with the gun in his right hand. V and NDV were taken to the hospital. V died 16 hours later. On February 10, 1989, at 3:45 a.m., an unidentified caller telephoned the police and told them where he was staying and that he was going to New York. At 8:45 a.m. the police went to the address given, but D was already gone. At 9:08 p.m., the police searched D's home and found two boxes of .38 caliber ammunition, a notebook, D's phone bill, foil, plastic bags, two notes, two straws and eight empty vials. On February 11, 1989, at 7:44 a.m., D was arrested in his brother's apartment. D admitted firing the gun, but did not admit to shooting V. Later, D admitted shooting V, but claimed V was armed with a knife.

At the time of the offense, [redacted]. In the past, D worked for a carpet company, and did construction work. D dropped out of high school when he was 17 years old. [redacted]

D was charged for the present offense with burglary (count 1), murder (count 2), felony murder (count 3), attempted murder (count 4), possession of a weapon for an unlawful purpose (counts 5 & 6), and unlawful possession of a weapon (count 7). On September 13, 1989, D pled guilty to count 2 as amended to aggravated manslaughter and to count 4 as amended to aggravated assault. On November 17, 1989, D was sentenced to 30 years with a 15 year parole ineligibility for count 2; and to seven years with a three year parole ineligibility for count 4 to run consecutively to count 2.

Revised 8/5/91

#0826

STATE V. FULLARD

D stabbed V (D's sister's best friend) 7x during attempted burglary & sexual assault. [redacted] Jury verdict: murder 10/85. No penalty trial. Life. Aggravating factor: 4g. Mitigating factor: 5h.

The following excerpt in quotations is taken from an unpublished Appellate Division Opinion 3/8/88. A-2164-85T4.

"The evidence at trial indicated that at about 8:30 a.m. on May 12, 1985 Paterson Police Officer Phillip Pagliaro was dispatched to 534 Broadway, a large multi-apartment dwelling. Upon arrival he and Officer Laux went into the building together. There was fresh blood inside and outside of the building and witnesses told them that they believed someone had been stabbed on the fourth floor. In apartment 4E Pagliaro saw the body of a woman lying on the floor in a large pool of blood with more blood all over the floor and walls in the apartment.

Pagliaro also observed bloody footprints from what appeared to be large sneakers leading out of the apartment. He followed the footprint trail down the hall, and then down the stairs and out into the street. There he spoke to Darlene Martin, who told him that five minutes before the police arrived she had seen a male leave the premises. He was crying, holding his bleeding leg and was dressed in white tennis shoes and blue pants.

Pagliaro continued to follow the "clearly visible" footprints along Broadway, up 23rd Street, down Hamilton Avenue to East 22nd Street and across to the rear entrance of a building at 280 12th Avenue, a distance of approximately three and one-half blocks. There he saw a large group of bloody footprints outside the locked back door. The footprint trail continued inside of the building and up to the fourth floor landing where there were signs that the sneakers had been removed. Pagliaro saw the last of the footprints near a fire door and discovered drops of blood which appeared to have been washed or wiped. He followed that trail to apartment 4E in this building.

He knocked on the closed apartment door, but no one answered. He then heard moaning from inside and finally, one Teresa Holman opened the door and said: "Somebody stabbed him, oh my God." As soon as the door was opened, Pagliaro went inside where the trail of blood continued down the hallway into a first bedroom directly to a bunk bed in that room, then came back out again and led into another bedroom. In that second bedroom, defendant was found lying on a bed at the end of the bloody footprint trail. He was wearing green pants and one sock and had blood on his foot. There was a bloody sock on the floor and blood all over the room. Defendant was frisked, handcuffed and read his Miranda rights. Defendant had a small puncture on his thigh.

There was a closet directly opposite the bed on which defendant had been found, and bloody footprints leading to the closet, which had bloody handprints on the door. Pagliaro opened

the closet door, which was ajar, in search of a weapon and saw a bloody sneaker in the back of the closet. A knife was found on one of the bunkbeds in the first bedroom and in the bathroom was a pail filled with water in which was soaking a pair of bloody blue sweat pants.

Forensic pathologist, Dr. Ernest E. Tucker, determined that death had occurred within the four hours prior to its discovery. The body had eight stab wounds located on the right arm, the chest, the back, the right side of the neck and the left side of the head above the ear. He concluded that the causes of death had been blood loss and the injury to the brain. He also said that the assailant had delivered the wounds with the left hand. Defendant is left-handed. He opined that the knife which had been recovered from the apartment could have caused all of the wounds.

Darlene Martin had been standing outside of the victim's apartment building at about 8:15 a.m. and testified that she saw the defendant come out wearing white sneakers. The left sneaker appeared to be covered with blood and defendant was making a crying noise and holding his left arm in an upward position. He attempted to run, but could only walk with a limp. She saw him go across Broadway to 23rd Street. She followed him to the corner and looked down about two blocks but lost sight of him. Martin then told the building superintendent what she had seen, and they followed the trail of blood up the stairs to the victim's fourth floor apartment where they saw the door partially open and called the police."
End of Excerpt.

[redacted]

D discontinued his education at age 13 a[redacted]

[redacted]

D was indicted on nine charges, the first four of which resulted from a different incident and were tried separately. For this incident, D was indicted for burglary, possession of a weapon for an unlawful purpose, attempted aggravated sexual assault, murder, and felony murder. D was tried in October, 1985 and was acquitted of burglary and convicted of attempted aggravated sexual assault, murder, felony murder and possession of a weapon for an unlawful purpose. For sentencing purposes, all other charges were merged with felony murder. D was sentenced on December 3, 1985 and received a sentence of seventy years with thirty years of parole ineligibility.

Revised 8/5/91
#4020 (new)

STATE V. GAINER

D sets building on fire. Police try to enter, D threatens to kill, throws chairs out of windows. Police kick door in, D attacks them with a hammer. V killed, NDV injured in the fire. Jury Verdict: Murder 5/6/87. No Penalty Trial. [redacted]. Aggravating Factors: 4b, 4g. Mitigating Factors: 5a, 5d, 5h.

On January 26, 1986, Fred Gainer (D), a 49 year old male, tried to break into the home of his aunt, who was hospitalized. The building was occupied by Gainer's brother W1, NDV and V. The police were called to investigate the break-in at approximately 9:30 a.m. When they arrived the police saw that the front storm window had been broken out. As an officer approached the house, he heard a voice from within the house yell, "Come any closer and I will kill you." The front door of the house was locked. When an officer tried to enter through the rear door, Gainer appeared at the top of the staircase and threw a kitchen chair through the window. Gainer threw another chair and then ran back behind a door. Gainer then started yelling that he was going to burn the house down. At this point, NDV stuck her head out the window and asked what was happening. The police told her to get everyone out of the building. The police entered the building and climbed the stairs. When Gainer repeated his threat, the police tried to calm him down and reminded him of the occupants in the building, Gainer replied "Fuck them, they will burn too." When police told them they were his relatives he replied "Fuck them, I will kill everybody." One officer tried to kick in the door of the room,

while Gainer yelled, "I am pouring gasoline all over the house." A moment later, gasoline ran out from under the door. At this point, the officer kicked open the door as Gainer dropped a match in the gasoline. The officer was engulfed in flames, and he jumped down the stairs and was pulled to safety. Meanwhile, other officers forced open the front door and W1 ran out. Gainer then came running out swinging a hammer at the police. He hit one officer in the leg before he was subdued. Gainer was dragged out of the building and handcuffed. NDV stuck her head out of the window and screamed for help. The police retrieved a ladder from a neighbor and rescued NDV. V, a 90 year old woman was still in the house, but the smoke was too thick for the police to get past. The Fire Department then arrived, and a fireman with a mask got V out of the building. On February 2, 1986, V died of smoke inhalation, bronchial pneumonia and congestive heart failure.

At the time of the offense, [redacted] Gainer was unemployed and collected social security. Gainer dropped out of high school in the tenth grade. [redacted]

Gainer was charged with murder, aggravated arson, aggravated assault, unlawful possession of a weapon, unlawful purpose,

resisting arrest and terroristic threats. On May 6, 1987, Gainer was convicted on all charges. The Aggravating factor 4b and 4g are implicated due to his clear (stated) intent to kill the occupants (4b) by means of arson (4g).

Revised 8/5/91

#0889

STATE V. GLOVER

V & D argued. D went to Florida to get a shot gun. 2 weeks later, D set fire to V's house. As V tried to escape from house, D shot V at close range in front of V's wife, daughter and mother-in-law. [redacted] Jury verdict: murder 10/26/87. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5a, 5d, 5f, 5h.

The following facts in quotations are excerpted from State v. Glover, 230 N.J. Super. 333 (App. Div. 1988).

"The facts surrounding this tragic crime are of little dispute. Defendant at approximately 1:00 a.m., on October 30, 1986, poured gasoline on to the back porch and side entrance of the home of his next-door neighbors and set the building ablaze. As the family exited their burning home, defendant fired two blasts from his shotgun and killed the head of the household. Defendant then threw the shotgun into his car which was parked on the common driveway between the two houses. Upon hearing sirens approaching, he entered his car and drove away.

Defendant was arrested within a short time as he spoke from a telephone booth on the New Jersey Turnpike. Defendant was later turned over to the East Orange Police Department which had jurisdiction over the investigation. He confessed to the police that he set the fire and shot his neighbor, asserting he did it because the victim terrorized defendant's two children.

Everyone but defendant acknowledges that the victim did not terrorize the children. Defendant later expressed the belief that

the neighbor sexually abused the children. The defendant's ideation that the neighbor terrorized the children were concededly the result of his mental illness which was diagnosed as paranoid schizophrenia. Defendant has been treated for many years for this condition. Defendant pursued only an insanity defense, which was rejected by the jury." End of Excerpt.

At the time of the offense, [redacted] D never completed his high school education. D is trained as a carpenter, and had worked as such for 14 years prior to his arrest. [redacted] but it was rejected by the jury. D had no prior criminal record.

D was charged with murder (count 1); unlawful possession of a weapon (Counts 2 and 3); aggravated arson (Count 4); and aggravated assault (Count 5). D pled not guilty on April 1, 1987. On October 26, 1987, D was found guilty of murder (Count 1); unlawful possession of a weapon (Count 2); and arson (Count 4). For Count 1 (murder), D was sentenced to life imprisonment with parole ineligibility of 30 years; Count 2 was merged with Count 1 for sentencing; for Count 4 (arson), D was sentenced to 7 years imprisonment to be served concurrent with Count 1.

D appealed his conviction, and it was affirmed by the Appellate Division on December 22, 1988, State v. Glover, 230 N.J. Super. 333 (App. Div. 1988).

Revised 8/5/91

#0917

STATE V. GRAF

D shot V (male driver who gave him ride and allegedly made sexual innuendos at D) 4 or 5x in face. Stole V's auto after the assault. [redacted] Jury verdict: murder 2/3/86. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5f, 5h.

As told by the defendant, on May 30, 1985, while D, Joseph Graf, a 22 year old male, was walking on the beach, victim (V), a 32 year old male, drove up and began asking D questions about the town and the streets. V asked about a particular street. D said he would show V where it was if V gave D a ride. Once D was in the car, V pulled a gun and held it on D. V then told D he wanted sex with D. D managed to get V to drop the gun. D pulled up the gun and shot V four times in the face and head. D then went around to the driver's side and pulled V out of the car and got into the driver's seat. As he pulled away, D threw the gun over the hood of the car into a creek area.

D removed all identifying paperwork from the car and changed the license plates. D used the V's car for a few days and then abandoned the car.

[redacted]

[redacted]

D obtained his GED. D was last employed June, 1985.

D was charged with Purposeful and Knowing Murder, Felony Murder, Armed Robbery, Theft - Movable Property, Possession of a Weapon for Unlawful Purpose, and Unlawful Possession of a Weapon. D was acquitted of Possession of a Weapon for Unlawful Purpose and convicted of all other charges on February 3, 1986. D was sentenced to a term of life imprisonment with a 30-year period of parole ineligibility for felony murder. D also received a 4 year term with a 2 year period of parole ineligibility, to run consecutive with the felony murder conviction, for unlawful possession of a weapon.

8/5/91

#4001(new)

STATE V. GRANT

D approached V, [redacted], and asked if V had robbed D's sister of her drugs. V denied doing so, D and V began fight. V dropped his cash, D shot V 1 time in chest, picked up V's money and fled. Jury verdict: murder 6/8/90. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5a, 5c, 5f, 5h.

On November 25, 1989, police officers responded to the scene of a shooting and found V, the male victim (V) lying on his back. W1, a male bystander, informed police that his friend, V, had been shot. W1 also furnished officers with a description of the defendant (D), Michael Grant, a 19 year old male, and also described the vehicle D fled in. While emergency medical personnel were treating V, a plastic envelope containing alleged CDS came out of V's waistband. Police confiscated the envelope.

W1 stated that, prior to the shooting, D told him that someone "beat his sister out of her drugs." D also asked W1 where he could buy some drugs and then spoke to V about buying drugs. D then walked over to a car and spoke to a woman. Upon returning to V, D began to pat him down.

W2, stated she saw D and heard him yell to V "you beat my sister?" V said "No, what the fuck you talking about?"

D then crossed the street, and he and V started to fight. During the fight, D dropped his money. Both W1 and W2 saw D shoot V one time in the chest. W2 saw D pick up V's money. D then ran

back across the street, hopped into the car and fled the scene.

The autopsy stated the cause of death was a gunshot wound to the heart, aorta and left lung. The bullet struck eight ribs and caused massive internal bleeding.

As part of the ensuing investigation, detectives spoke to D's ex-girlfriend, [redacted]. D's ex-girlfriend furnished the detectives with two photos of D and gave them D's address.

On November 29, 1989, detectives arrested D at his home. D was advised of his rights and denied any knowledge of the incident.

At the time of the offense, [redacted] D was expelled from the 11th grade for fighting. He was employed as a roofer. [redacted]

D was charged with Count 1 - 1st degree murder, Count 2 - Felony Murder, Count 3 - 1st degree Armed Robbery, Count 4 - 2nd degree Possession of Weapon for Unlawful Purpose, and Count 5 - 3rd degree Unlawful Possession of Weapon. On June 8, 1990, D was convicted of all counts by a jury and sentenced to: Count 1 - 30 years-30 years parole ineligibility; Count 3 - 15 years, to run concurrent with Count 1, 5 years parole ineligibility; Count 5 - 4 years to run concurrent with Counts 1 and 3. The other counts were merged for sentencing purposes.

9/13/91
4033 (new)

STATE v HENDERSON

Defendant (D) and Co-D picked up V and drove to a secluded area, where V was beaten, raped, strangled, stabbed and tortured with a stick, before being hoisted into a tree, twisted around it, hidden, left to die. Murder Plea, 06/17/87, Life 30 yrs. No Parole. No Penalty Trial. Aggravating factor 4c, 4g. Mitigating factors 5d, 5h.

On August 18, 1986, James Henderson, a 27 year old male and his friend, Co-D, Gary Lippen, a 19 year old male, were cruising in Lippen's pickup truck. They encountered V, a 17 year old female acquaintance walking along a road adjacent to her place of employment.

Henderson and Lippen stopped and offered V a ride. V climbed into the truck, and Henderson and Lippen suggested that they drive around together. V indicated that she had to go home first. Henderson and Lippen drove V to her home, and Henderson, Lippen and V entered the house. Several minutes later they returned to the vehicle, with V seated between Lippen who was driving, and Henderson. Lippen drove to a local liquor store, and Henderson purchased a single two liter bottle of wine cooler. They proceeded to drive around aimlessly, drinking the shared bottle.

Lippen suggested that they park at a remote wooded location known to Lippen as "Stoney Mount", a "cool place to hang out." They proceeded to drive down a dirt lane leading towards a small embankment, with a clearing beyond a small wooded hill.

Lippen parked the pickup truck at the clearing, turned on the radio, and dropped the tailgate. Henderson, Lippen and V sat and continued drinking the wine cooler, passing the bottle among

themselves. Lippen announced that he had to relieve himself, tossed the empty container of wine cooler on the ground and wandered into the woods. Henderson and V continued to converse while seated on the tailgate. Henderson began to ask V to "let me see your tits." V rebuffed Henderson's advances, and Lippen encouraged Henderson to cease his advances towards V when he returned from the woods.

Henderson stopped his advances for about one minute, and suddenly threw V off of the tailgate onto the ground. Henderson then shouted, "If she ain't gonna give it to me, I'm gonna take it." V laughed until Henderson began to tear her shirt, sitting atop V to restrain her legs. Lippen came over and knelt, placing his hands on V's shoulders and arms to further prevent her struggle. V pleaded with Henderson and Lippen to leave her alone, as Henderson removed her pants. Lippen continued to exert force on V's shoulders and upper arms. Lippen then threw sand in V's face and eyes. V complained that she was blinded by the sand. V began screaming, and Henderson struck her and warned her to "shut up bitch." Henderson then picked V up and dragged her further from the truck, as Lippen approached and dealt a closed-fisted blow to the left side of V's face.

When V was naked, Henderson threw her back to the ground. V pleaded with Lippen to help her. Lippen stood by with no response. He later told authorities he felt "helpless".

Henderson removed his pants and commenced sexual penetration and intercourse on the V, while Lippen held V's arms and fondled her breasts. Lippen asserted to police that he was derided by

Henderson for refusing to have sex with V after Henderson ejaculated inside V. Lippen stated to Henderson, "I don't want sloppy seconds." Henderson maintains that Lippen also had sexual intercourse with V after Henderson climaxed. Lippen indicates that Henderson jumped up and pulled a pocket-knife after sex with V, and implored that it was Lippen's turn to rape the V. Lippen walked away and refused, and Henderson acquiesced, telling Lippen "you do what you want." Henderson continued to hold a closed five inch penknife during this exchange with Lippen, while V continued to lay supine on the ground.

Henderson maintains that V consented to "screw" both Henderson and Lippen after some initial resistance, although Henderson admitted to tying her hands with a handkerchief. Henderson also related that he used a stick to place across V's throat to subdue her, as both Henderson and Lippen "screwed" V. Henderson emphasized that V consented after she was tied up by the hands and restrained with a stick over her throat.

Lippen maintains that although he committed physical assault on V, he did so at the behest of Henderson, whom he feared was "crazy". Lippen indicated his participation was prompted by the goading of Henderson, as well as his own surreal and "dreamlike" otherworldly distortion of reality. Lippen admitted, however, that he kicked V on the leg after refusing to have sex with her, and then punched her in the jaw as she lay passive on the ground after Henderson's sexual assault.

Lippen stated that Henderson grabbed a stick and beat the V about her head, while spouting insults at her, calling her a

"worthless nothing" and a "junkie". Lippen saw V shaking, and Lippen started crying, at which time Henderson derided him for "backing-out". Lippen asserts that Henderson threatened to kill him. Lippen admitted to striking the V with a stick on her hip as she lay on the ground on her side. Lippen stated that Henderson again admonished Lippen that he could "not go anywhere" as he was "in this too." Lippen claimed that Henderson then sat upon the V and began to choke her with his hands, for about three minutes, grunting and complaining that "she ain't dying." Lippen admitted to handing Henderson a three foot stick at Henderson's command. Henderson placed the stick on V's throat and pushed, moving it back and forth over her neck, jumping up to stomp up and down on it, continually protesting that she refused to die. Lippen then grabbed one end of the stick at Henderson's direction. Lippen admitted to pressing the stick against V's neck, while Henderson applied pressure to the opposite end with one hand, while wielding the penknife in the other. Lippen released his pressure and grasp on the stick after crushing V's throat, while Henderson assumed full control strangling V's throat with the stick. Lippen stood by while Henderson opened his penknife and stabbed V in the chest. Lippen described how Henderson rolled V over onto her stomach, and stabbed V "in her cunt" and three more times in the chest. Lippen asserted that Henderson then seized V by her hair, pulled her head up, and perforated the back of her neck with the knife, twisting it while pulling V's hair. Lippen told authorities Henderson bragged that "now you know what I'm capable of", and commented "It's just like an ant when you step on it. There's no spirits and ghosts. This is

just what happened to the other people." Lippen indicated that Henderson boasted about other murders. After slicing V's throat, Lippen indicated Henderson penetrated V's back with the knife two or three times, while Lippen stood by passively. Lippen heard Henderson comment that a gurgling sound was emitting from the V, and he thought it was "neat". Lippen later retracted his initial assertion that Henderson stabbed V in the vagina, indicated instead that Henderson punctured her lower abdomen above V's pubic hairs.

Lippen indicated that V was fully clothed during the events that occurred immediately subsequent to Henderson's sex attack on the V, recalling that Henderson helped V dress herself, although her pants remained unfastened.

Lippen acknowledged that he helped Henderson drag V up a hill after Henderson issued a command. They pulled the V through the sand as she lay on her stomach. After Henderson and Lippen dragged V by the arms, they stopped, dropping her by a tree. According to Lippen, Henderson hoisted V by the legs into a tree, where she dangled in an inverted position. Lippen admits to grabbing V's arm on Henderson's command, while Henderson twisted V's legs around the tree, breaking them, and continuing to twist her body, while Lippen held her arms stationary, providing leverage for Henderson to wrench the V's body. Lippen recalled Henderson saying he would "do what I always wanted to do" and sever V's breast from her body with the knife, although Lippen told authorities he could not recall if Henderson carried out the idea, although Lippen remembers Henderson stabbing the V "everywhere" repeatedly.

Lippen recalls leaving V in the woods, and walking back to the

clearing with Henderson, as Henderson commented "now you see what I can do. Now you see what I'm made of." Henderson told Lippen to get his truck. Henderson filled V's pocketbook with sand, placing the bloodied knife inside. They drove to a pond and threw the purse in the water. Lippen encouraged Henderson to pitch the purse, predicting that noone would ever find it.

Lippen stated he eventually confided the killing to his 17 year old girlfriend, as he was emotionally distraught over the incident in the two days immediately following the murder. Lippen told his girlfriend Henderson "made me do it", and "we killed her." Lippen expressed a desire to leave the South Jersey area to "get away" from Henderson. Lippen also confided in a close male friend about the killing. The friend expressed disbelief that Lippen could have allowed himself to be manipulated by Henderson, whom the friend had warned Lippen about some time prior to the murder. The friend told Lippen that Henderson had threatened him on one occasion. Lippen insisted to police later that he was "totally straight" during the attack.

Lippen told authorities that he had discussed rape and murder with Henderson prior to the killing of V. Lippen recalled how Henderson would habitually hurl lascivious remarks at "all the little girls." Subsequent to this offense, Lippen indicated that Henderson joked about the murder, with Lippen responding "you're sick". Lippen said Henderson often suggested that they stalk another victim, as he was "horny". Lippen related how he had urges to get a gun and kill Henderson in the months following the attack, and prior to the discovery of V's body on 11-16-86.

Lippen expressed remorse, and a guilt-ridden conscience, as well as empathy for Vs family, although Lippen never went to the police until the body was discovered. Lippen attributed this to his terror that Henderson would kill him, as Henderson had threatened to do. Lippen apparently continued to associate with Henderson in the interval between the incident and the discovery of Vs body. Henderson reportedly bragged again about prior undetected murders, and discussed his involvement in satanic worship. Henderson joked about this murder under a "full moon". Police noted that the killing also occurred on the evening of a full moon, but no indication of ritualistic satanism could be conclusively substantiated in the killing of V.

Henderson asserted that Lippen was equally responsible for the murder in a statement he also volunteered after the discovery of the body. Both Lippen and Henderson were briefly held in a common detention area, where police overheard Lippen saying "You made me do it," with Henderson responding "We did it, Gary. You're as much to blame as I am. You fucked her too, Gary."

Henderson admitted to "striking" V with the knife, in the back of the throat, and to "dumping" the body. Henderson also confirmed Lippen's assertion that Lippen did not participate in the stabbing, but stated that both Henderson and Lippen kicked her head. Henderson indicated that V's initial fear at being tied with a handkerchief dissipated, with V relating how she had "fantasized about being tied-up and screwed by two guys." According to Henderson, both he and Lippen then stripped V of her clothing, with V commenting, "OK if you fuck me, but don't hurt me." Henderson

admitted to having sex with V, and stated that Lippen then had coitus with her as well.

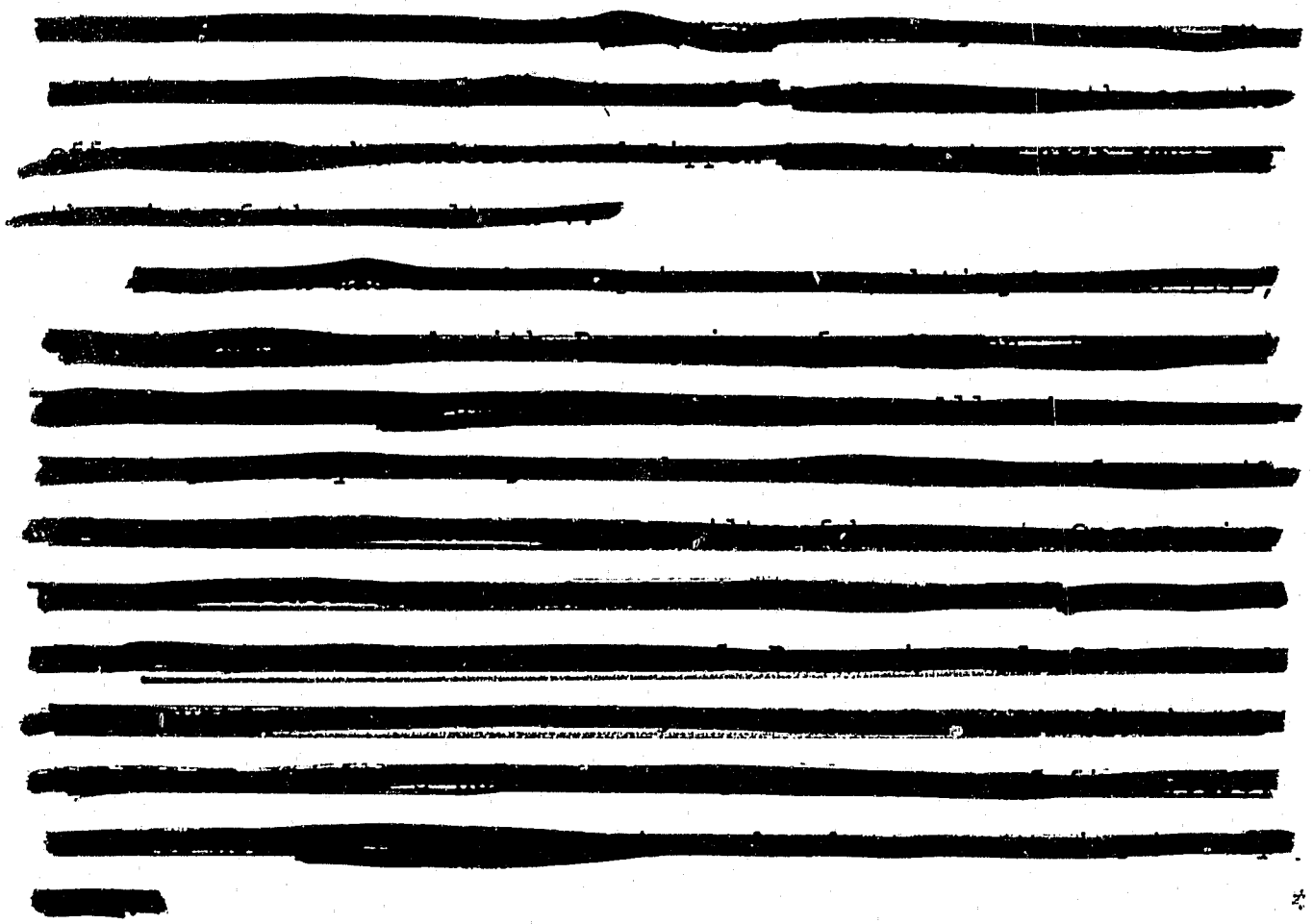
Henderson also maintained that V "came loose" from her bonding after sex and getting dressed, and both he and Lippen struck closed-fisted blows to V's head, before retrieving a stick, and placing it over Vs neck. Henderson said V was "choking, kicking, fighting." Henderson stated that both Henderson and Lippen then dragged V to a tree, kicking her when she slipped out of their grasp. Henderson recalled how V was hoisted into some trees, at which time both he and Lippen began twisting her, "trying to snap her neck." Henderson stated that it was at this point that he "wafted her in the back of the neck...after the tree thing." According to Henderson's version, both Henderson and Lippen then drove to a lake and disposed of the knife.

Henderson related to authorities how in the weeks following the attack, both he and Lippen would joke about the killing. Henderson recalled "We kidded around about it. I've been sick over it." Henderson denied any connection between the full-moon on the night of the offense, and his involvement in Satanic cultism.

Henderson reportedly contacted Lippen after learning of the discovery of V's body, and indicated to police later that Lippen's reaction was immediate concern that both he and Henderson would be detected. Henderson then discussed his involvement in the murder with his parents, and a counselor [redacted]

James Henderson [redacted]. He spent the bulk of his life in Philadelphia prior to moving with his family to New Jersey at the age of 17, where he graduated from high school. D was classified in the special education curriculum in high school. [redacted] Army officials concluded that defendant was unamenable to training, due to his reading problems. [redacted] His last known employment was as a delivery driver for a newspaper.

[redacted]



Henderson pleaded guilty to original charges of Murder 2C;11-3, and two counts of Hindering Apprehension or Prosecution 2C:29-3(b) (1). James John Henderson was sentenced to Life Imprisonment with no parole for 30 years on the Murder, with a consecutive 2 1/2 year prison sentence on the Hindering Apprehension or Prosecution Convictions.

Revised 8/5/91

#1110

STATE V. HOLMES

D entered house of estranged wife and kids through basement window. Saw his wife and V (her B.F.) asleep on couch. D stabbed his wife 2x and V 6x. [redacted] Aggravated manslaughter plea 5/20/85. No penalty trial. 17 years/7 minimum. Aggravating factors: 4b, 4g. Mitigating factors: 5d, 5h.

On the morning of January 1, 1985, Gregory Holmes, defendant (D), a 33 year old male, entered the home of his estranged wife (NDV1/W1) and children through a basement window. He was intoxicated. He had some time earlier found his wife in bed with the V. This night he [redacted] got a knife, and entered the house. D found his wife (NDV1/W1) and her boyfriend, victim (V) asleep on the living room couch, fully clothed. D stabbed NDV1/W1 one time in the hand and one time above the breast. When V attempted to come to NDV1/W1's rescue, D stabbed V six times, 2 in the chest, one in the upper arm, one in the back, one in the hand. Three children heard the commotion; one of these witnessed the stabbings. [redacted] his ex-wife with another man.

D finished one year of college before leaving [redacted] D worked as a sheet metal mechanic at the time of the offense. [redacted] programs.

D was charged with Purposeful and Knowing Murder, Possession of a Weapon for Unlawful Purposes, Unlawful Possession of a Weapon and Attempted Murder. On May 20, 1985, D pled guilty to Aggravated Manslaughter, the two Weapons charges, and Aggravated Assault. On June 14, 1985, D was sentenced to 17 years in prison with a 7 year parole disqualifier for the Aggravated Manslaughter, a consecutive 5 year term with a 2 year parole disqualifier for Possession for Unlawful Purposes, and a consecutive 8 year term with a 3 year parole disqualifier for Aggravated Assault. The Unlawful Possession charge merged with the other Weapon charge.

On January 10, 1990, D appealed. On February 2, 1990, the Appellate Court affirmed D's plea agreement and sentence.

Revised 7/3/91

#1103

STATE V. HUDSON

D entered home, took NDV1 (homeowner) upstairs at knifepoint and tied her up. V (boarder) returned home, confronted by D, struggle, D stabbed V. V broke free, D pursued him and hit him over the head 2x with a bat. Money taken from NDV1 and V. [redacted]

Murder plea 11/21/86. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5d, 5h.

On the morning of September 1, 1986, Franklin Flowers Hudson, Jr. (defendant), a 22 year old male, broke into the home of NDV1 (homeowner) and V (male, age 66) through a basement window. D surprised NDV1, who was walking down the stairs to the basement to do laundry. D forced NDV1 upstairs to the master bedroom at knifepoint, tied her hands and feet with electrical cord, placed a handkerchief inside her mouth as a gag and used a necktie to hold it in place. He forced her to lie in bed and placed a cover over her head. D took some of NDV1's jewelry and a small sum of cash. D told NDV1 that he wanted V's money and car keys. (V had left the house a few minutes before in order to go to the gas station.)

Soon after, D and NDV1 heard a car door opening and closing. D told NDV1 that if she made any noises, he would stab her in the chest. Then he went downstairs and confronted V. V offered D money and his car keys. A struggle ensued. D stabbed V multiple times. V ran upstairs. D followed him, then kicked him, causing him to fall down. D then hit V over the head with a baseball bat

red vinyl pouch. V died on November 15, 1986, four days before sentencing for aggravated assault charges on this case.

Two neighbors, W1 and W2 heard unusual noises coming from NDV1's and V's house on the morning of September 1, 1986. They went to investigate. When they couldn't get any response at the front door, W2 stationed himself there and W1 saw D's face at the back window, and asked D what was going on. D said that NDV1 and V were hurt and needed help. When W1 asked to be let in, D told him to use the front door. As W1 started walking toward the front door, he heard a storm window sliding up. W1 turned around and saw D running away and then jumping over a fence. D yelled to W1 that he had to use a telephone.

D admitted to everything except stealing NDV1's jewelry. D [redacted] of crime.

D stands 5' 9" tall and weighs 165 pounds. He had worked as a groom at two race tracks and as a sanitation worker for a disposal company. [redacted]

On November 21, 1986, D pled guilty to an accusation for Felony Murder. Charges for Aggravated Assault and Burglary were dismissed. The same day, D was sentenced to life imprisonment with a 30 year period of parole ineligibility.

Revised 9/17/91

#1163

STATE V. JACOBY-IRWIN

D, age 40, (landlady) alleged that V (boarder) [redacted] and awakened her by putting a knife to her throat. D inflicted 124 wounds (40 stab, 84 trauma) using an assortment of kitchen utensils and a chair leg. V died from hemorrhage. D claimed [redacted]. [redacted] Jury verdict: murder 7/24/87. No penalty trial. Life. Aggravating factor: 4c. Mitigating factors: 5a, 5f, 5h.

During the early morning hours of April 12, 1987, D Barbara Ann Jacoby-Irwin, a 40 year old female, [redacted] then went to bed. V is D's boarder and he drives V around town to do her errands. V apparently [redacted] there was a confrontation between D and V. D hit V in the head two or three times with a frying pan, three or four times with a chair leg, poked him five or six times with a barbecue fork and stabbed him over 40 times. In total, D inflicted 124 wounds on V.

Police learned of V's death when D called them. When questioned, D first said that she found D dead on the kitchen floor when she awoke. She also claimed that she had been with another man. After the man vigorously denied being with D and upon more questioning, D admitted to killing V.

D claimed her attack on V was in self defense according to the following quote from the unpublished Appellate Division opinion. 2/15/90, A-2756-88T3.

"Although defendant gave numerous accounts of the killing to

police, her final version appears to be that the event was triggered when the intoxicated decedent came to her bedroom, held a knife to her throat and attempted a sexual assault. She stated that she resisted and that in the ensuing altercation she beat the decedent into unconsciousness and then left him to bleed to death on the kitchen floor after she returned to her bed. The decedent's body showed that he had sustained a combination of 124 injuries, including contusions caused by blunt force, stabbings and lacerations. The laboratory report revealed that he had a blood alcohol level of .276%. The cause of death was found to be "[s]evere blood loss due to multiple stab wounds of the extremities and lacerated wounds of the head." End of Excerpt.

She admits that she was still [redacted] from the [redacted] several hours before. Forensic, medical and other evidence greatly conflict with V's story. Given the extremely high blood alcohol level, expert testimony showed that V would have had severe trouble with balance, seeing clearly and motor skills. Forensic studies showed that D used eight different items as weapons on V. Also, V's blood and bloody footprints consistent with a small female's foot like D were found throughout the house. Finally, the autopsy report showed that V bled to death as a result of numerous stab and puncture wounds.

D stands 5'4" and weighs 140 pounds. [redacted] D married when she was twelve years old.

[redacted]

D was charged with own-conduct purposeful murder. She was found guilty of this offense by a jury on July 24, 1987, and sentenced to life with 30 years parole ineligibility.

Revised 3/11/91

#1164

STATE V. NELSON JALIL

D had planned to kill his pregnant wife (V) for five months due to on-going arguments between them. D called V to meet him, they argued. D handcuffed V's hands behind her back, beat her then strangled her. Aggravated manslaughter plea 11/9/89. No penalty trial. 30 years/15 mandatory. Aggravating factors: 4g, 4c. Mitigating factors: 5f, 5h.

Defendant, Nelson Jalil (D), a 32 year old male, 5'6", 150 pounds, had been planning to kill his wife, victim (V), a 22 year old pregnant female for five months because of arguments between them. On November 23, 1987, D decided to carry it out. That evening, D told V that he had to clean an office, and asked her to accompany him. On November 24, 1987, at approximately 4:00 a.m., D parked his car on a street, and began arguing with V. D handcuffed V's hands behind her back, beat her back, beat her about the face and finally, strangled her to death. V's face was swollen, bruised and bloody. V's clothes and shoes were stained with blood, as were D's. There were also bloodstains on the carpet and floor mats of D's car. D covered V's body with a white blanket and drove to work. D parked the car with V's body still in it, and went to work as a porter in a hospital. Later, D drove to a second job at a race track. Again, D parked the car with V's body in it, and went to work. On November 25, 1987, at approximately 1:30 a.m., D drove to a deserted area of a junkyard, where he dumped his wife's body.

Later that day, at 7:30 a.m., V's body was discovered by a worker at the junkyard, who saw V's feet protruding from underneath the blanket. The worker called the police. V's body had no shoes, coat, purse or identification.

On November 26, 1987, police questioned D about V's death, and D confessed to the kidnapping, assault and murder of his wife. D was arrested for the murder of V.

Prior to his arrest, D [redacted] D worked as a maintenance man at a hospital, a race track, and at an office. [redacted] D dropped out of high school in the 10th grade. [redacted] D has no prior record.

D was charged with purposeful, knowing murder (count 1) and unlawful possession of a weapon (count 2) by Indictment, and with kidnapping by accusation. On November 9, 1989 D pled guilty to Count 1 of the Indictment amended to aggravated manslaughter, and to the accusation for kidnapping. On December 2, 1989, D was sentenced as follows: for aggravated manslaughter, 30 years imprisonment with a 15 year parole ineligibility; and for kidnapping, 20 years, 5 year minimum, to be served consecutively with the first sentence.

Revised 8-5-91
#1193

STATE V. JAMES (DARRYL)

D shot V2 1x in neck. D then said he would "take V1 out" and shot her 2x. [redacted] Jury verdict: murder 3/10/89. No penalty trial. Life/Life. Aggravating factor: 4g. Mitigating factor: 5h.

During the afternoon of December 10, 1986, in an incident that [redacted] Roger Williams, co-defendant (Co-D), alias "Akbar," gave a gun to Darryl James, defendant (D), age 27. D, who was 5'10 1/2" tall and weighed 183 pounds, turned and shot victim (V2), a twenty year old male, one time in the neck. D then turned toward V2's companion, (V1), a 24 year old female, and said that he was going to "take her out." D then shot V1 twice, one time in the back of her head. D and Co-D then walked out of the building.

After the shootings, police immediately responded to the area. They found both V1 and V2 lying in a common hallway of a building that was part of a housing project. V2 was still alive and was immediately transported to the hospital, V1, her head lying in a pool of blood, was already dead. Police found a pill, known as a "hit," near V2's body. During the autopsy, it was discovered that V1 had 15 bags of marijuana hidden in her panties, along with 60 "hits" and a large amount of cocaine hidden in her bra.

As part of the investigation into the death of V1 and the shooting of V2, numerous individuals were questioned by the police. On December 10, 1986, W1 identified Co-D as being involved in the

incident. W2 also identified Co-D the following day, and a warrant was issued for Co-D's arrest. Co-D turned himself in on December 15, 1986. Also on that day, W3 gave a statement in which she reported seeing the incident and that D had shot both V1 and V2. D was arrested on December 16, 1986, and gave police a statement regarding his involvement in the shootings. V2, his spinal cord severed by the shot to his head, was left a quadriplegic as a result of the shooting. V2 died on March 23, 1987. An autopsy determined that V2 died from bronco-pneumonia following a gunshot wound to the spinal cord.

D, at the time of the offense, [redacted] D dropped out of high school and claims to have skills in construction, carpentry and masonry. [redacted]

D was indicted and charged with purposeful, knowing murder, aggravated assault, and unlawful possession of a weapon. After V1 died, the aggravated assault charge was dropped, and in a separate indictment, D was charged with another count of murder. In a jury trial, D was found guilty of both murders as well as the weapons offense. For the 2 murder convictions, D was sentenced to two 30 year terms in prison, without parole. The sentences are to be served consecutively. For sentencing purposes, the weapons offense merged with the murder convictions.

7/30/91 (new)
#3008

STATE V. JAMES (Marvin)

V and his passenger, W1, picked up D and drove him to a parking lot. D came back to V's car with a gun. D fired 1 shot at the car's floor and told V to "give it up". As he reached for his wallet, D fired another shot into the car. V exited the car and walked to the rear of it. D shot V in the chest. Jury verdict: Murder. No penalty trial. [redacted] Aggravating factors: 4b, 4g. Mitigating factor: 5h. 30 years.

On June 24, 1987, at approximately 9:05 a.m., Victim (V), a 34 year old male was driving his car with a female companion, Witness (W). V told W, who was a recent acquaintance, that he was going to pick up a horn. The defendant, Marvin James (D), a 29 year old male, gestured to V to pick him up. V stopped the car and let D in. D told V to drive to a parking lot. When they arrived, D exited V's car, went to a pickup truck, and took something out of the back. D returned to V's car, pulled out a handgun, and fired a shot into the floor. D told V to "give it up", and V reached for his wallet. D then fired another shot into the car. V got out of the car and walked to the rear of the car. W was still in the car when she heard another shot. W saw D walk in front of the car and then away from the scene. W then got out of the car and saw V lying on the ground, shot in the chest. V was pronounced dead on arrival at 10:05 a.m..

The police received several anonymous phone calls identifying D as the killer. W was shown a photo array, and she picked out D's photograph. Police then received another anonymous phone call, which disclosed D's location. The police

were met outside of the apartment by the women who rented it. They told her who they were looking for. As the woman fumbled for her keys, another occupant opened the door. The police searched the apartment and found D hiding in a closet under several large pieces of clothing. When he was discovered, he bolted from the closet and ran into the kitchen. D was subdued and handcuffed. The police found a .22 caliber handgun inside the kitchen garbage can. D was arrested and charged.

At the time of the offense, D [redacted] In the past, D worked as a shipping and receiving clerk, and as a truck loader. [redacted] D left high school at age 17 [redacted] He later obtained his G.E.D. [redacted]

[redacted]

For the present offense, D was charged with Robbery (counts 1 & 4); Murder (counts 2 & 3); Unlawful Possession of a Weapon (Count 5); and Possession of a Weapon for an Unlawful Purpose (count 6). On March 9, 1990, D was convicted on all counts, except for count 3. On April 26, 1990, D was sentenced as follows: counts 1, 4 and 6 merged into count 2; for Murder (count 2) D was sentenced to 30 years imprisonment with a 30 year parole ineligibility; for count 5, D was sentenced to 5 years imprisonment, consecutive to count 2.

#1177

Revised 8/1/91

STATE V. JEFFERSON (RICHARD)

D and V roommates. D and V doing drugs. D hits V several times in the head with a hammer and takes money. Jury verdict: murder 5/22/87. Life. No penalty trial. Aggravating factor: 4g. Mitigating factors: 5a, 5d, 5h.

The following quoted excerpt is taken from an unpublished Appellate Division opinion. 3/7/90. A-638-87T4.

"The following facts, some of which were read into the record from statements given by defendant, were developed at trial. On August 5, 1986, [the victim (V)], a 35-year old, was killed as a result of a blunt trauma to the head. [V] was found dead at 3 Scholar Drive, Union Beach, which was used as a "hangout" for friends and where he conducted an illegal drug business. [V] and his wife, Penny, owned and lived in a condominium in the Highlands.

"In April 1986, defendant resided with [V]. They had been friends for about 15 years and from April to August 1986, they saw each other every day. Nevertheless, Penny asserted that her husband "hated" defendant, but conceded that he permitted him to be in his home. Defendant stated that the last time he saw [V] was on August 3 when he retrieved a tool box from [V's] house.

"On Monday, August 4, defendant and [V] went to the Scholar Drive home at about 2 p.m. and had a few beers. Defendant

stayed there throughout the day during which, in the course of the afternoon and evening, several people stopped by. Sometime toward the late afternoon and evening, several people stopped by. Sometime toward the late afternoon, Penny arrived but left the next morning to go to the airport for a trip to the Bahamas to withdraw money from a checking account in V's [redacted] name. That was the last time she spoke with V [redacted]. Some 11 or 12 persons were at Scholar Drive on August 4, including Paul Jordan and Eddie Holzfus. Some of these persons testified at trial and presented an overview of the activities at the V [redacted] home on the evening of August 4.

"In his transcribed statement to the police, defendant related that at about 12:30 a.m. or 1:00 a.m. on August 5, everyone left the house except him and V [redacted]. Defendant realized they were out of beer, so he told V [redacted] to go out and buy some more. In the meantime, he and V [redacted] smoked some cocaine. He left the house to buy some beer but turned back when he realized he had no money with him. When he returned to the house, he knocked on the door, walked in, and started talking to V [redacted] without looking at him. He noticed money scattered all over the floor and picked it up. As he was bending down, he saw V [redacted] on the couch with something sticking out of his head. He went over to the couch and tried to lift V [redacted] up by his shoulders. The body rolled off the couch and the handle of what he then realized to be a hammer came out of V's [redacted] head. He then counted the money which amounted to $2,800 and kept it.

"In contrast to this version taken from defendant's statements to the police, is the testimony of Anthony Lordi, an inmate who had been incarcerated with defendant. Lordi testified that defendant told him that he and [redacted] had been arguing a lot about drugs and that they had almost gotten into a fist fight because defendant told [redacted] that the baby his wife was carrying was not his. After their last argument, defendant walked off into another room to smoke cocaine. Defendant stated that he wanted to kill [redacted] at that point but wanted to think things over. He then came back into the room where [redacted] was, saw a hammer, picked it up, and brought it down with all his might on his head. According to Lordi, defendant went out for a walk to collect his thoughts, came back, picked up about $2,000 and left.

"Defendant denied relating this version of events to Lordi, and denied ever speaking directly to Lordi about the case. He acknowledged that he became talkative and excited after making telephone calls to a Karen Quirk while in jail, and told Lordi that Quirk told him that Penny's baby was not [redacted]. He further conceded that he talked to Lordi about the police reports in the case and told Lordi that the police had failed to discover that he had checked into a second hotel room in New York the day after [redacted] death.

"At trial, defendant testified that he was scared because of his police record and, since he was always with [redacted], he knew the police would be looking for him. He stated that Jordan, one of the guests that had been at the house earlier that evening, came

back to V's [redacted] house after the death. He heard a knock at the door, answered it, and told Jordan "there was nothing happening" because he did not want Jordan to come into the house. Jordan then left.

"With the exception of minor, irrelevant discrepancies, the sequence of events after Jordan left until the time defendant was arrested is essentially undisputed.

"At approximately 1:30 a.m., on August 5, defendant called Douglas Johnson (a/k/a Dee), a transvestite and an entertainer, at the Odyssey Lounge in Asbury Park. At Johnson's suggestion, defendant went to Johnson's apartment. Johnson testified that defendant related that he had just been to a party where he had seen a girl throw a hammer into a man's head. According to Johnson, they both snorted the cocaine and, at Johnson's suggestion, they took a cab to New York City.

"Upon arriving in Manhattan, defendant and Johnson went to several bars and a woman's clothing boutique. Eventually, they checked into the Hotel Rio, went to a bar and, according to defendant, he rented another room so that he could smoke cocaine without sharing it with Johnson.

"After spending about 30 hours in New York, defendant returned to New Jersey and called his father and also his girlfriend who both advised him to call the police. Defendant called the police from a bar and then called a cab and was driven to another bar where he spoke with the bartender, John Vena, who told him that V [redacted] was found dead in his house with a hammer in

his head. Defendant told Vena he had called the police but was afraid to go to the station because he assumed they would suspect him because it was his hammer. He eventually took a cab to the police station and began talking to the cab driver. The driver could smell that defendant had been drinking heavily. Upon arriving at the police station, the dispatcher told defendant that everyone was at V's [redacted] house. Defendant walked to the house which was only a block away and related his version of the events.

"Detective Joseph Nappi described defendant's demeanor in the police car: he smelled of alcohol, his speech was slurred, and his clothes and hair were in disarray. Nappi thought defendant was intoxicated. Defendant was not placed under arrest at that time, and was not required to go to the police station with Nappi and other officers. Nevertheless, according to Nappi, defendant voluntarily chose to accompany them to the station, where he was read his Miranda rights. He signed a waiver form, and gave a statement in which he related his version of the events of the evening of August 4 and 5, stated above.

"About one week after this conversation with the police, defendant was approached by several detectives and asked to come to the police station and discuss some inconsistencies in his statement. Defendant was taken to the prosecutor's office in Freehold where he was questioned further. Defendant testified that the detectives told him, "[W]e know you did it. Tell us why." Defendant started to cry and stated he got into an argument with Det. Manzo concerning the way he was being questioned and stated

"either arrest me or I'm leaving." A few hours later he was arrested by Det. Nappi. At some point, defendant admitted he made a statement along the lines of "you did a nice job" to the police.

"A forensic specialist explained there were no usable fingerprints on the wine glass found near V's body and also that, because of the rough surface of the handle of the hammer, fingerprints could not be obtained. There was also expert testimony that an autopsy revealed that the amount of cocaine in V's brain was only about one-third to one-fourth the amount usually found in overdoses of cocaine." (End of excerpt.)

D was

As an

. . .

D was indicted for purposeful, knowing murder (ct. 1), felony murder (ct. 2), armed robbery (ct. 3), unlawful possession of weapon (ct. 4), possession of weapon for unlawful purpose (ct. 5). D was found guilty by a jury of murder, unlawful possession of weapon, and possession of weapon for unlawful purpose. D was found guilty of a lesser charge of theft and found not guilty as to felony murder. D was sentenced to life with parole ineligibility

of thirty years on count 1, 4 years, count 3, and 4 years on count 3 and 5 to be served concurrently with count 1.

Revised 8/5/91

#1219

STATE V. JOHNSON (NATHANIEL)

Defendant (D), stabbed victim (V), his grandmother, twice in the chest during an argument over money. After stabbing V, D robbed the V's apartment. D charged with felony murder. Felony murder plea 2/1/84. No penalty trial. Life. Aggravating factor: 4g. Mitigating factor: 5h.

On August 20, 1983, Defendant (D), Nathaniel Johnson, a 32 year old male, killed the victim (V), his grandmother, during a robbery. D stabbed V twice in the chest and placed V's body in a closet. V's apartment was ransacked.

V's body was discovered by a neighbor, witness, (W). W discovered V's apartment was unlocked, ransacked, and V's body stuffed in a closet. W stated to the police that prior to her discovering V's body, she noticed D and a friend sitting on the steps of the apartment building. W2 stated D had earlier expressed his intent to rob his grandmother.

On August 20, 1983, D stated to the police that after a heated argument with V over money, he stabbed her twice in the chest with a butcher type knife he picked up from the area of the kitchen sink.

On August 21, 1983, D was charged with felony murder. On February 1, 1984, D entered a plea of guilty to the charge of felony murder.

On February 29, 1984, D was sentenced to a term of thirty (30)

years without parole eligibility.

[redacted]

Revised 8/5/91

#1251

STATE V. JONES (MICHAEL)

D went to V's home. D had borrowed money from V, and knew V kept lots of money. In V's home, D got a large steak knife and stabbed V 10x in the face and 4x in the hands. As V lay dying, D stole $300. [redacted] [redacted] Jury verdict: murder 9/15/89. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5c, 5d, 5f, 5h.

On January 17, 1987, at about 4:30 a.m., Michael Spencer Jones (defendant), a 19 year old male, 5'9", 160 pounds, entered the home of V, a 59 year old male. D, [redacted] knew that V kept large sums of money on hand because D had previously borrowed money from V. Inside V's house, D armed himself with a large steak knife and stabbed V ten times in the face, head and neck four times in the hands and elbow, described as "defensive wounds." While V lay dying in the front foyer, D stole $300 and then left with the knife in one hand and a beer in the other. In the process of leaving, D stepped over V and stepped in V's blood. D then [redacted]

The police responded to a neighbor's call and found V, D's bloody footprints and an I.O.U. signed by D. Later that morning, police interviewed D, who denied his involvement. The police noticed blood on D's sneakers and that the soles matched the footprints in V's house. When confronted by the police with this evidence, D gave a full written confession.

At the time of the offense, [redacted]

[redacted] Up to the time of his incarceration, D was employed as a security guard at a shopping center. Prior to that, D worked a series of odd jobs. D dropped out of high school in his senior year [redacted] a few months later, but he did not [redacted]

D was charged with one count of Murder, one count of Felony Murder, one count of Robbery, one count of Possession of a Weapon for an Unlawful Purpose, and one count of Unlawful Possession of a Weapon. The last two counts were dismissed prior to trial. The state had served a notice of aggravating factors listing 4(c), intent to cause suffering and 4(g), contemperaneous felony. These factors were withdrawn on November 28, 1988. On September 15, 1989, a jury found D guilty on all three counts, including Purposeful and Knowing Murder.

Revised 4/3/91
#1257

STATE V. JONES (TRACY L.)

D moved in with V1, the former paramour of D's mother, and V2, V1's stepson. D shoots V1 and V2. Jury verdict: murder 12/12/85. No penalty trial. Life. Aggravating factor: 4b. Mitigating factors: 5c, 5h.

On June 2, 1984, defendant (D) Tracy Jones, a 19 year old male, moved in with V1 and V2, V1's son. V1 had previously had a romantic relationship with D's mother, and considered himself D's stepfather. D's mother believed that D would benefit from a positive male role model.

The first indication that something was amiss appeared on June 12, 1984, when V1 failed to report to work, giving no notice of his absence. V2's employer reported that V2 had last worked the day shift of that same date. A neighbor noticed D wearing V2's clothing on June 13 or 14. D told V1's employer that V1 was visiting his sick mother. Several calls were made to the apartment by friends of V1 and V2, and D told all callers that V1 and V2 were out of town.

On June 13, W1, a friend of D's, visited D in V1's apartment, which D claimed as his own. D offered to sell W1 a .32 caliber gun and stereo equipment from the apartment. W1 used the bathroom, noticing that the shower curtain was drawn and incense was burning.

That evening, another friend of D, W2, was invited to the apartment. D showed him the gun and told him that he had already

killed two people with it. W2 used the bathroom the following morning, and noticed boxes and suitcases piled in the bathtub. He could discern a foul odor despite the burning incense.

On the evening of June 14, W3 visited the apartment. She was told that the plumbing was malfunctioning, causing a foul odor and preventing use of the facilities. A cloth was placed under the door to keep the smell isolated from the rest of the apartment.

On June 15 and 16, W2 and D sold the stereo equipment from the apartment to a pawn shop. On June 16, D showed W4 a gun he had hidden in his pants. He stated that it used .32 long bullets. Later that day, D told W2 that he had sold the gun. On June 17, D was hospitalized for dog bites resulting from being apprehended for unrelated offenses.

Meanwhile, V1's family had been looking for him. On June 22, they contacted the police. At 3:45 a.m. on June 23, the police broke down the door to V1's apartment. They discovered two badly decomposed bodies in the bathtub, which were later identified as V1 and V2. Both victims were killed with a gun using .32 caliber long bullets. The gun was never found. V1 was shot twice in the head, and V2 was shot once in the head and once in the stomach. Though the date of the murder is reported as June 15, the facts indicate that the victims were killed during the evening of June 12, 1984.

In his first statement to police, D denied knowledge of the murders, claiming to have last seen victims on June 15, after they returned from a trip which began on June 12. D admitted to selling

the stereo equipment. After his arrest on June 27, D gave a different account of the incidents to police. He claimed that another man had entered the apartment on June 11 to speak with V1 and V2. D was asked to leave during the conversation. D stated that he had found the gun, which he showed to witnesses, and sold the same several days later.

During his stay in jail, however, D admitted to and described the killings to W5, a fellow inmate. D killed V1 while he was watching television, and when V2 returned from the liquor store, he was lured into the bathroom and shot as well.

D was nineteen at the time of his arrest. [redacted] He was a high school drop out and had no history of gainful employment.

On December 12, 1985, D was found guilty by jury of purposeful and knowing murder (two counts, 1 and 2), possession of a weapon for an unlawful purpose (two counts, 3 and 4), possession of a handgun without a permit (count 5), sale of firearms (count 6), and theft by unlawful taking (count 7). On January 10, 1986, D was sentenced to life terms with 30 years to be served before being eligible for parole for each of the murders, and the weapons charges were merged with the murder charges. The sentences for counts 5, 6 and 7 were to run concurrently with the murder

sentences, giving D an aggregate sentence of life with 60 years to be served before parole.

D appealed his convictions, and they were affirmed by the Appellate Division.

Revised 8/5/91
#4012 (new)

STATE V. KERESTY

D suffocates V1, V2, V3 (D's children). D then attempts to kill himself. Murder plea: 10/20/83. No penalty trial. Aggravating Factor: 4b. Mitigating factor: 5a, 5h. 30 years.

On April 2, 1983, Walter Keresty, a 27 year old male, suffocated his three children, V1 an 8 month old female, V2 a 3 year old female (twins) and V3 an eight month old female. After killing the Vs, Keresty attempted to kill himself by drinking and taking sleeping pills then by driving his car into an abutment.

The three children were the result of a paramour relationship which ended in February of 1983. Keresty received custody of V's three children.

Keresty has never married and never served in the military. He was unemployed since October of 1982 to the date of the offense. Prior to his unemployment he worked on and off as a truck driver. Keresty is a high school drop-out who never obtained his GED. [redacted]

Keresty was charged with three counts of purposeful knowing murder and pled guilty to each count. Keresty was sentenced to 30 years with a 30 year minimum on each count, concurrent.

Revised 8/5/91
#4005 (new)

STATE V. KERSHAW

D, Co-D1 and Co-D2 and others involved in embezzling scheme. V uncovered the scheme. D shoots V repeatedly as V leaves for work. Jury Verdict: Murder. 6/2/89. No Penalty Trial. [redacted]. Aggravating Factor: 4f. Mitigating Factors: 5f, 5h. Life.

Albert Kershaw (D), age 24, John Keith Oliveri (Co-D1), Michael Kershaw (Co-D2) and other people were involved in an embezzling scheme. The bookkeeper for V's company had been giving checks to Oliveri. V uncovered this scheme and was going to fire the bookkeeper. Kershaw, Oliveri and Kershaw planned to kill V to silence him. On December 15, 1987, at 7:00 a.m., as V backed his van out of his garage. Kershaw fired several shots through the van window, fatally wounding V. V's wife, W1, heard a car drive off and saw V on the ground. On December 20, 1987, a police informant told police that Oliveri was involved in the murder. Oliveri's girlfriend (W2) and her roommate (W3) were questioned and they told police about the embezzlement scheme. Oliveri was arrested the next day. On February 5, 1988 W4 and W5 told police about Kershaw's involvement in the embezzling, and of Kershaw's conflicts with V. On February 7, 1988 Kershaw was arrested.

At the time of the offense D lived in a home owned by his parents in California. Kershaw was the vice-president of a home insulation company. Kershaw is a high school graduate, and he attended one semester of college. [redacted]

[redacted] Kershaw has no prior record.

Kershaw was charged with conspiracy to commit murder (count 1), murder (count 2), possession of a weapon for an unlawful purpose (count 3), unlawful possession of a weapon (count 4), and conspiracy to hinder the apprehension of another (count 5) Oliveri plead guilty to Count 1. On June 2, 1989 Kershaw was found guilty of counts 1 through 4. On July 14, 1989 Kershaw was sentenced to Life Imprisonment.

Revised 8/5/91

#1332

STATE V. KLATZKIN

D & V drinking at bar. D & V go to V's apartment. D takes shower, V makes sexual advances at D. D hit V. V grabbed scissors & came at D. D took scissors & stabbed V 3x or 4x in chest & then slit V's throat. D set V's body on fire. Elderly V2 dies in fire. [redacted] Murder plea 7/9/87. No penalty trial. Life. Aggravating factors: 4b, 4g. Mitigating factors: 5b, 5c, 5d, 5f, 5h.

On April 14, 1987, Gerald Klatzkin (D), a 21 year old homosexual male, went to a bar with V1, a 39 year old male friend. Then they went to V1's apartment so defendant could pick up some clothing he had left there. While at V1's apartment, D decided to take a shower. According to the D, when D got out of the shower, V1 made sexual advances toward D. He ripped off D's towel and said "things of a sexual nature" to D. V1 approached D. D punched V1 in the face several times. V1 grabbed scissors and came at D with them. D hit V1 again and disarmed him. Then D "went off" and stabbed V1 several times in the chest and cut his throat. D took another shower to wash the blood off of him. He then covered V1's body with clothing and set the clothing on fire, in an attempt to cover up the crime. The fire led to the death of another tenant in the apartment building, V2, an 86 year old woman. V2 died of asphyxia by smoke inhalation. The building sustained heavy damage and the fire left 14 people homeless.

D is a high school dropout (quit school after completing 11th grade) who was unemployed at the time of the offense. When unable to find odd jobs in the carpentry field, [redacted] D was living with a male friend at the time of the offense. [redacted]

D plead guilty on July 9, 1987, to an accusation charging him with two counts of purposeful or knowing murder. D was sentenced to consecutive life terms with 30 year parole disqualifiers.

Revised 8/1/91

#1377

STATE V. LaPOINTE

D & V are business partners. Dispute over the business. D goes to V's apartment & shoots him 4x. One shot passes close to V's roommate and into wall. Jury verdict: murder 6/4/85. No penalty trial. Life. Aggravating factor: 4b. Mitigating factors: 5d, 5h.

The following factual quotation is taken from an unpublished Appellate Division opinion. 3/15/88. A-803-85T4.

"On December 20, 1982, [redacted] [V] was shot and killed in his apartment. The assailant rang the bell of a third floor apartment. John Freeman, its occupant, went to the front door. The visitor stated that he wished to see [redacted] As [redacted] apartment entrance was directly across from the building entrance, Freeman opened the main door and knocked on [redacted] door.

"The entry to the apartment was the beauty salon of Josephie Malmstrom, and Malmstrom, believing that the visitor was Freeman because the knock was on the inside door, requested that Regine answer it. When [redacted] opened the door, the intruder pushed his way inside. Although the door was shut, it was left open a crack. Malstrom witnessed the two men wrestling. She heard the intruder (whom she identified as defendant) say, "I told you I would get you, f---ing bitch." She tried to push defendant, but was unsuccessful. She saw [redacted] push defendant and defendant fired a gun. Freeman went to the front door to lock it, but was distracted

when he heard the arguing. He too heard shots.

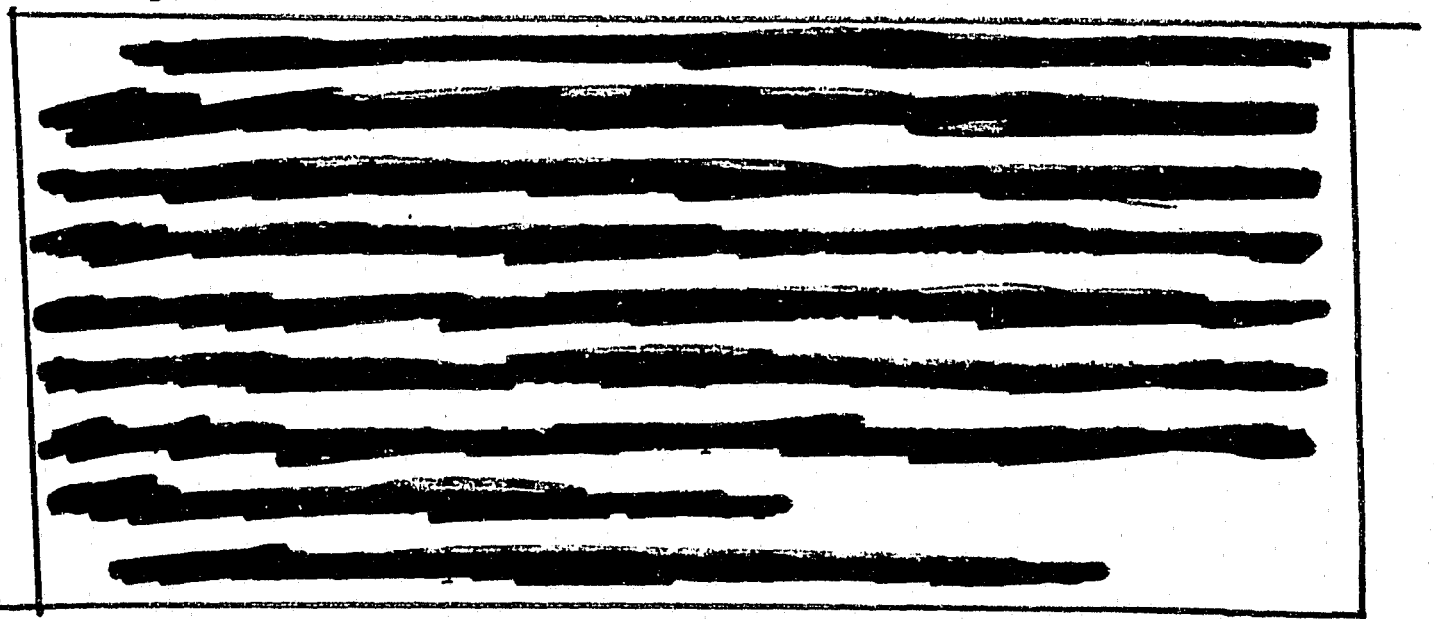
"As the shooting began, Malmstrom tried to call the police from the phone in the salon. At the second shot, she retreated to the back. From there she then heard two more shots.

"Freeman testified that the intruder ran out of the apartment and out the front door, which Freeman had not yet locked, followed by a stumbling [redacted] who fell face down in the hallway with his feet inside the salon. In Freeman's presence, the intruder reentered the building, straddled [redacted] prostrate body and fired two more shots in the back of his head. He then ran out the front door. During this entire episode, Freeman was standing in the hallway, approximately three feet from the front door in the presence of the murder and the victim....

"Expert testimony revealed that [redacted] died of a bullet wound to the head and brain and a bullet wound to the face and chest. Three bullet wounds were found in the body, two in the back of the head and one in the right side of the chin which traveled to the clavicle and eventually penetrated the lung. The pathologist testified that the bullet fired at the chin and the bullets fired at the back of the head posed a "substantial risk of death."

"Evidence of defendant's motive to kill [redacted] was overwhelming. Defendant and [redacted] had been business associates in a jewelry store. Throughout their business relationship both men threatened each other more than once. [redacted] had given Malmstrom and his associate Bruce Newman power of attorney before beginning a prison term in 1980. While [redacted] was in prison, Malmstrom had

taken control of the store and locked defendant out. In January of 1981, defendant demanded the keys to the store from Malmstrom, and in the course of these demands, defendant threatened to kill Malmstrom, [redacted] and their families and burn down Malmstrom's beauty parlor. Defendant's efforts to obtain a court restraining order against [redacted] and his agents concerning the jewelry store had been hampered because defendant was a fugitive. Upon his release from prison in September of 1981, Regine had reopened the store. The business had then been sold, assertedly for $20,000, all of which was received by Malmstrom. Defendant was also in contract with the FBI. During a telephone call on November 9,1981, defendant told FBI Agent Daily that he had a gun and that, given the opportunity, he would kill [redacted] and Malmstrom." (End of excerpt.)



D was charged with purposeful or knowing murder, burglary and two weapons offenses. D was found guilty by a jury on 6/4/85 of all charges. D was sentenced on 7/19/85 to life for murder, to ten

years for burglary and to five years for one of the weapons offense. The second weapons offense was merged into the murder. The sentences are to run consecutively. D's total parole ineligibility is 37½ years. On appeal, the appellate division affirmed the convictions but remanded for resentencing to conform with State v. Yarborough, 100 N.J. 627.

3-6-91
#4034

STATE V LIPPEN

D and Co-D picked up acquaintance V and drove her to a secluded area. V was beaten, raped, strangled, stabbed and tortured with a stick, hoisted into a tree, twisted around it, hidden in the woods and left to die. Aggravated Manslaughter Plea, 30 years, 15 years no parole, No Penalty Trial. Aggravating Factors: 4c, 4g. Mitigating factors: 5c, 5d, 5e, 5f, 5h.

On August 18, 1986, D, Gary Lippen, a 19 year old male, and his friend, Co-D, James Henderson, a 27 year old male were cruising in Lippen's pickup truck. They encountered V, a 17 year old female acquaintance, walking along a road adjacent to her place of employment.

Henderson and Lippen stopped and offered V a ride. V climbed into the truck, and Lippen suggested that they drive around together. V indicated that she had to go home first. Lippen and Henderson drove V to her home, and Henderson, Lippen and V entered the house. Several minutes later they returned to the vehicle, with V seated between Lippen who was driving, and Henderson. Lippen drove to a local liquor store, and Henderson purchased a single two liter bottle of wine cooler. They proceeded to drive around aimlessly, drinking the shared bottle.

Henderson suggested that they park at a remote wooded location known to Lippen as "Stoney Mount", a "cool place to hang out." They proceeded to drive down a dirt lane leading towards a small embankment, with a clearing beyond a small wooded hill.

Henderson parked the pickup truck at the clearing, turned on the radio, and dropped the tailgate. Henderson, Lippen and V sat

and continued drinking the wine cooler, passing the bottle among themselves. Lippen announced that he had to relieve himself, tossed the empty container of wine cooler on the ground and wandered into the woods. Henderson and V continued to converse while seated on the tailgate. Henderson began to ask V to "let me see your tits." V rebuffed Henderson's advances, and Lippen encouraged Henderson to cease his advances towards V when he returned from the woods.

Henderson stopped his advances for about one minute, and suddenly threw V off of the tailgate onto the ground. Henderson then shouted, "If she ain't gonna give it to me, I'm gonna take it." V laughed until Henderson began to tear her shirt, sitting atop V to restrain her legs. Lippen came over and knelt, placing his hands on V's shoulders and arms to further prevent her struggle. V pleaded with Lippen and Henderson to leave her alone, as Henderson removed her pants. Lippen continued to exert force on V's shoulders and upper arms. Lippen then threw sand in V's face and eyes. V complained that she was blinded by the sand. V began screaming, and Henderson struck her and warned her to "shut up bitch." Henderson then picked V up and dragged her further from the truck, as Lippen approached and dealt a closed-fisted blow to the left side of V's face.

When V was naked, Henderson threw her back to the ground. V pleaded with Lippen to help her. Lippen stood by with no response. He later told authorities he felt "helpless".

Henderson removed his pants and commenced sexual penetration and intercourse on the V, while Lippen held V's arms and fondled her breasts. Lippen asserted to police that he was derided by

Henderson for refusing to have sex with V after Henderson ejaculated inside V. Lippen stated to Henderson, "I don't want sloppy seconds." Henderson maintains that Lippen also had sexual intercourse with V after Henderson climaxed. Lippen indicates that Henderson jumped up and pulled a pocket-knife after sex with V, and implored that it was Lippen's turn to rape the V. Lippen walked away and refused, and Henderson acquiesced, telling Lippen "you do what you want." Henderson continued to hold a closed five inch penknife during this exchange with Lippen, while V continued to lay supine on the ground.

Henderson maintains that V consented to "screw" both Henderson and Lippen after some initial resistance, although Henderson admitted to tying her hands with a handkerchief. Henderson also related that he used a stick to place across V's throat to subdue her, as both Lippen and Henderson "screwed" V. Henderson emphasized that V consented after she was tied up by the hands and restrained with a stick over her throat.

Lippen maintains that although he committed physical assault on V, he did so at the behest of Henderson, whom he feared was "crazy". Lippen indicated his participation was prompted by the goading of Henderson, as well as his own surreal and "dreamlike" otherworldly distortion of reality. Lippen admitted, however, that he kicked V on the leg after refusing to have sex with her, and then punched her in the jaw as she lay passive on the ground after Henderson's sexual assault.

Lippen stated that Henderson grabbed a stick and beat the V

about her head, while spouting insults at her, calling her a "worthless nothing" and a "junkie". Lippen saw V shaking, and Lippen started to cry, at which time Henderson derided him for "backing-out". Lippen asserts that Henderson threatened to kill him. Lippen admitted to striking the V with a stick on her hip as she lay on the ground on her side. Lippen stated that Henderson again admonished Lippen that he could "not go anywhere" as he was "in this too." Lippen claimed that Henderson then sat upon the V and began to choke her with his hands, for about three minutes, grunting and complaining that "she ain't dying." Lippen admitted to handing Henderson a three foot stick at Henderson's command. Henderson placed the stick on V's throat and pushed, moving it back and forth over her neck, jumping up to stomp up and down on it, continually protesting that she refused to die. Lippen then grabbed one end of the stick at Henderson's direction. Lippen admitted pressing the stick against V's neck, while Henderson applied pressure to the opposite end with one hand, while wielding the penknife in the other. Lippen released his pressure and grasp on the stick after crushing V's throat, while Henderson assumed full control strangling V's throat with the stick. Lippen stood by while Henderson opened his penknife and stabbed V in the chest. Lippen described how Henderson rolled V over onto her stomach, and stabbed V "in her cunt" and three more times in the chest. Lippen asserted that Henderson then seized V by her hair, pulled her head up, and perforated the back of her neck with the knife, twisting it while pulling V's hair. Lippen told authorities Henderson bragged that

"now you know what I'm capable of", and commented "It's just like an ant when you step on it. There's no spirits and ghosts. This is just what happened to the other people." Lippen indicated that Henderson boasted about other murders. After slicing V's throat, Lippen indicated Henderson penetrated V's back with the knife two or three times, while Lippen stood by passively. Lippen heard Henderson comment that a gurgling sound was emitting from the V, and he thought it was "neat". Lippen later retracted his initial assertion that Henderson stabbed V in the vagina, indicated instead that Henderson punctured her lower abdomen above V's pubic hairs.

Lippen indicated that V was fully clothed during the events that occurred immediately subsequent to Henderson's sex attack on the V, recalling that Henderson helped V dress herself, although her pants remained unfastened.

Lippen acknowledged that he helped Henderson drag V up a hill after Henderson issued a command. They pulled the V through the sand as she lay on her stomach. After Lippen and Henderson dragged V by the arms, they stopped, dropping her by a tree. According to Lippen, Henderson hoisted V by the legs into a tree, where she dangled in an inverted position. Lippen admits to grabbing V's arm on Henderson's command, while Henderson twisted V's legs around the tree, breaking them, and continuing to twist her body, while Lippen held her arms stationary, providing leverage for Henderson to wrench the Vs body. Lippen recalled Henderson saying he would "do what I always wanted to do" and sever Vs breast from her body with the knife, although Lippen told authorities he could not recall if

Henderson carried out the idea, although Lippen remembers Henderson stabbing the V "everywhere" repeatedly.

Lippen recalls leaving V in the woods, and walking back to the clearing with Henderson, as Henderson commented "now you see what I can do. Now you see what I'm made of." Henderson told Lippen to get his truck. Henderson filled V's pocketbook with sand, placing the bloodied knife inside. They drove to a pond and threw the purse in the water.

Lippen stated he eventually confided the killing to his 17 year old girlfriend, as he was emotionally distraught over the incident in the two days immediately following the murder. Lippen told his girlfriend Henderson "made me do it", and "we killed her." Lippen expressed a desire to leave the South Jersey area to "get away" from Henderson. Lippen also confided in a close male friend about the killing. The friend expressed disbelief that Lippen could have allowed himself to be manipulated by Henderson, whom the friend had warned Lippen about some time prior to the murder. The friend told Lippen that Henderson had threatened him on one occasion. Lippen insisted to police later that he was "totally straight" during the attack.

Lippen told authorities that he had discussed rape and murder with Henderson prior to the killing of V. Lippen recalled how Henderson would habitually hurl lascivious remarks at "all the little girls." Subsequent to this offense, Lippen indicated that Henderson joked about the murder, with Lippen responding "you're sick". Lippen said Henderson often suggested that they stalk

another victim, as he was "horny". Lippen related how he had urges to get a gun and kill Henderson in the months following the attack, and prior to the discovery of V's body on 11-16-86.

Lippen expressed remorse, and a guilt-ridden conscience, as well as empathy for Vs family, although Lippen never went to the police until the body was discovered. Lippen attributed this to his terror that Henderson would kill him, as Henderson had threatened to do. Lippen apparently continued to associate with Henderson in the interval between the incident and the discovery of Vs body. Henderson reportedly bragged again about prior undetected murders, and discussed his involvement in satanic worship. Henderson joked about this murder under a "full moon". Police noted that the killing also occurred on the evening of a full moon, but no indication of ritualistic satanism could be conclusively substantiated in the killing of V.

Henderson asserted that Lippen was equally responsible for the murder in a statement he also volunteered after the discovery of the body. Both Lippen and Henderson were briefly held in a common detention area, where police overheard Lippen saying "You made me do it," with Henderson responding "We did it, Gary. You're as much to blame as I am. You fucked her too, Gary."

Henderson admitted to "striking" V with the knife, in the back of the throat, and to "dumping" the body. Henderson also confirmed Lippen's assertion that Lippen did not participate in the stabbing, but stated that both Lippen and Henderson kicked her head. Henderson indicated that Vs initial fear at being tied with a

handkerchief dissipated, with V relating how she had "fantasized about being tied-up and screwed by two guys." According to Henderson, both he and Lippen then stripped V of her clothing, with V commenting, "OK if you fuck me, but don't hurt me." Henderson admitted to having sex with V, and stated that Lippen then had coitus with her as well.

Henderson also maintained that V "came loose" from her bonding after sex and getting dressed, and both he and Lippen struck closed-fisted blows to Vs head, before retrieving a stick, and placing it over Vs neck. Henderson said V was "choking, kicking, fighting." Henderson stated that both he and Lippen then dragged V to a tree, kicking her when she slipped out of their grasp. Henderson recalled how V was hoisted into some trees, at which time both he and Henderson began twisting her, "trying to snap her neck." Henderson stated that it was at this point that he "wafted her in the back of the neck...after the tree thing. "According to Henderson's version, both Lippen and Henderson then drove to a lake and disposed of the knife.

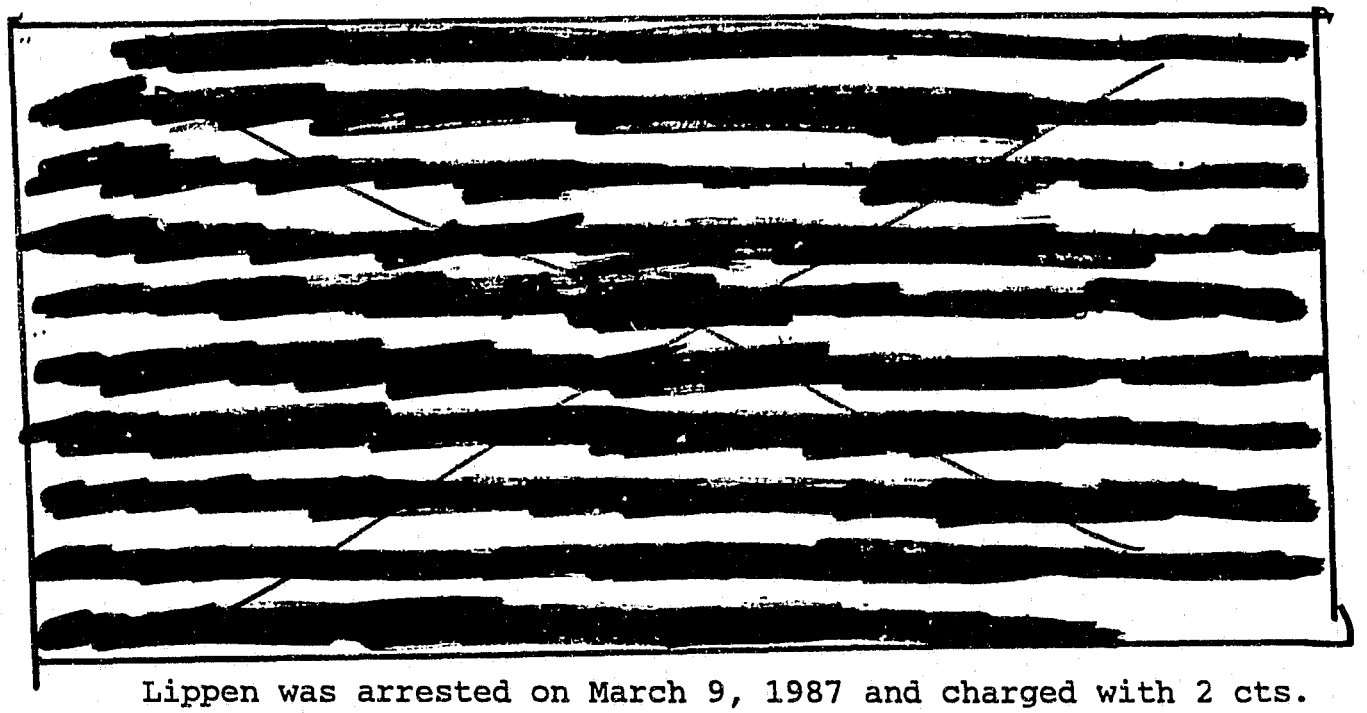
Henderson related to authorities how in the weeks following the attack, both he and Lippen would joke about the killing. Henderson recalled "We kidded around about it. I've been sick over it." Henderson denied any connection between the full-moon on the night of the offense, and his involvement in Satanic cultism.

Henderson reportedly contacted Lippen after learning of the discovery of V's body, and indicated to police later that Lippen's reaction was immediate concern that both Lippen and Henderson would

be detected.

Lippen was unemployed at the time of his arrest. He initially lied to authorities who questioned him regarding the offense, but retracted his statements after a self-described sleepless night of nervous apprehension. Lippen contacted police and gave a voluntary detailed statement regarding both his and Henderson's complicity in the murder.

Lippen graduated from high school, and held employment at an unknown establishment until his arrest. Lippen was single with no offspring.



Lippen was arrested on March 9, 1987 and charged with 2 cts. murder 2C:11-3, 3 cts. aggravated sexual assault 2C:14-2a(3), 2C:14-2a(4), and 2C:14-2a(5), 2 cts. conspiracy 2C:5-2, 2cts. hindering apprehension or prosecution 2C:29-3b(1), 2 cts. possession of a weapon for an unlawful purpose 2C:39-4(d), and 2 cts. of hindering apprehension or prosecution 2C:29-3a(3).

Lippen pleaded guilty on April 25, 1988 to Aggravated Manslaughter, receiving a sentence of 30 years with a 15 year parole disqualifier.

Lippen also pleaded guilty to one count of conspiracy 2C:5-2, receiving a 5 year concurrent sentence.

Lippen entered a guilty plea to one count of hindering apprehension or prosecution 2C:29-3b(1), for which he was sentenced to a consecutive term of 5 years in prison with a 2 1/2 year parole ineligibility.

Revised 9/17/91

#1509

STATE V. MANDICH

D (B.F.), V (G.F.). V wanted to end relationship. D goes to V's home and sees V's ex-husband. They argue. D breaks in apartment and stabs V multiple x. [redacted] Jury verdict: murder 10/21/86. No penalty trial. Life. Aggravating Factor: 4g. Mitigating factor: 5a, 5h.

Defendant, John F. Mandich (D), a twenty-six year old male, and victim (V), a female, had lived together for two years. D was a body builder which V did not like. She referred to D as a faggot and homosexual every time he (D) became involved in body building. Finally, V told D that she needed to be by herself and she asked D to leave. D left and went to live with his mother. D became very upset and claimed that he missed V and their daughter, and V's other children. D and V got back together but D began preparing for the Mr. America contest. D claimed that V started changing her hair, using fake fingernails, smoking and using drugs. V also began to neglect the children and stopped making love to D. Once again, D and V separated. D begged V to come back. V refused and called D names. V only allowed D to see their daughter for 5 minutes on Easter.

The following facts in quotations are taken from an unpublished Appellate Division opinion. 3/20/90. A 5634-87T4.

"We need not recount the facts at length. The record fairly reeks of defendant's guilt. In violation of a restraining order

based upon a domestic violence complaint, defendant broke through the kitchen window of the victim's apartment and, finding her there with her former husband, became enraged. After chasing the victim's ex-husband from the apartment, defendant returned and repeatedly struck the victim with a knife. Awakened by the incident, the victim's landlord stepped out into the hallway, where he observed defendant descending the stairs carrying a knife. As defendant left the building, he shouted "I stab. She's got boyfriend."

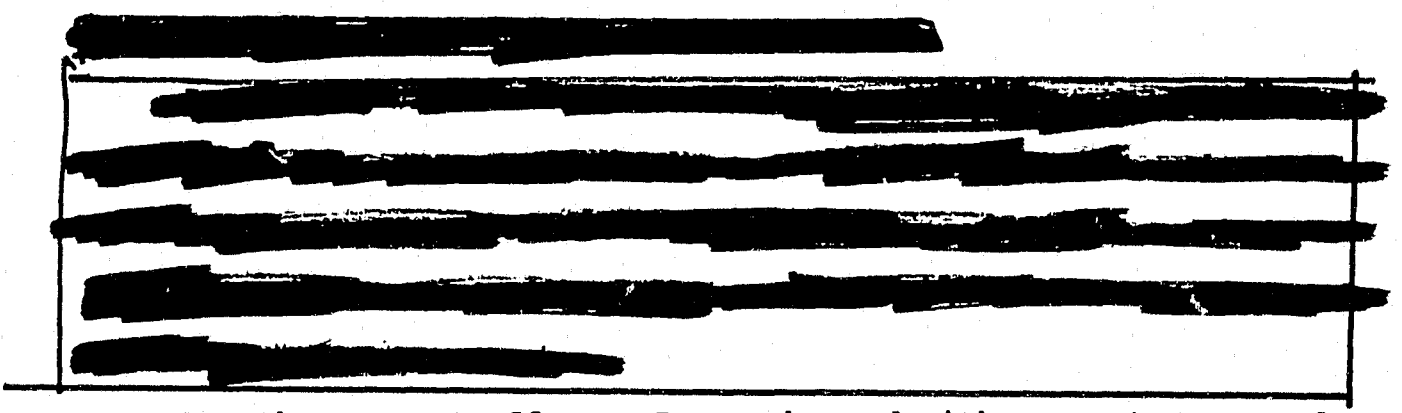
"The police were immediately summoned to the apartment where they found the victim seated in a chair in the kitchen, lifeless and covered with blood. Her left arm was dangling, her eyes were open and her head was thrown back. The nearby wall telephone was disconnected and a large pool of blood surrounded the victim on the floor. A "clump" of the decedent's hair, several false fingernails and yellow metal charms were found under the chair.

"An autopsy revealed that the victim had been brutally beaten and stabbed twice, once in the neck and the second in the chest. There were bruises about the forehead, right eye and nose and contusions on the decedent's lips. There were also bruises on the victim's forearm and left hand." End of Excerpt.

D did not testify but has indicated that he went back to the apartment, knocked down the front door, and went from room to room looking for V asking for an explanation. When D got to the kitchen, V came at him with a very large knife and said "I'm gonna kill you, you faggot". D took the knife and asked V, "Why did you

do this to me? I love you." D claims that he does not remember actually stabbing V, but he realized the movement of his hand.

D graduated from high school. At the time of his arrest, D had been working for a shipping company and as a body guard. [redacted]



For the present offense, D was charged with count 1, Purposely or Knowingly Committing Murder; Count 2, Possession of a Weapon for Unlawful Purpose; and Count 3, Unlawful Possession of a Weapon. D was found guilty on 10/21/86 of Count 1, Count 2 was dismissed, and a mistrial was declared as to count 3. D was sentenced on 11/14/86 to a term of life with a thirty year parole disqualifier.

8/7/91 (new)
#2819

STATE V. McCOLLUM (WILLIAM)

V accuses D, her father, of sexual abuse. Three days before the trial is to begin, D enters V's apartment and shoots V 3X in the chest and stomach with a shotgun. Felony murder plea 5/3/85. No penalty trial. Life. Aggravating factors: 4f, 4g. Mitigating factors: 5a, 5h.

On December 6, 1984, defendant (D) William Henry McCollum, age 38, and his attorney, W1, reviewed a Grand Jury transcript which outlined sex crimes D had allegedly committed against his daughters. W1 informed D that the matter was set for trial on December 10, to which D replied that he didn't think that his children would testify against him. When W1 told D that it had been confirmed that D's children would be testifying against him, D became very upset.

Later that day, D went to W2's, a neighbor of V, D's eldest daughter, where he told W2 to give V a phone number where he could be reached. D also went to his mother's home, where he removed a shotgun and it's beige carrying case. He took the shotgun to work and cut it down.

On the evening of December 7, 1984, between 8:00 and 9:30 p.m., D returned to W2's apartment and asked W2 if she had relayed his message to V. W2 told D that she had spoken to V, but that V said that she didn't want to speak to D. V also said that she didn't want any of D's money. Upon learning this, D

became very angry and upset. As D left, W2 saw him retrieve a beige carrying case from the bushes outside her home.

At approximately 10:25 p.m. on December 7, 1984, police were called to V's apartment. Upon arriving, police found V, age 19, laying on her back across her bed. Two spent shotgun shells were found near V's body. It was later determined that V had been shot three times, once in the chest and twice in the stomach, and had died from internal hemorrhaging. V's two-week old daughter was also found in the apartment, unharmed. It should be noted that V had claimed that D was the father of her child.

Minutes after their arrival, police learned that two teen-aged girls, W3 and W4, had witnessed the shooting. One of the girls had been in V's apartment when the shooting occurred, and the other saw D carrying a shotgun as he left the apartment.

At 3:22 a.m. on December 8, 1984, D, who was driving his sister's car, pulled into a gas station and told the attendant, W5, that he had shot someone and wanted to turn himself in to the police. D parked the car and waited inside the service office for the police to arrive. When the police arrive, D was crying and said that he had killed his own daughter (V) and that he should die because of that. As D was read his rights, he repeated that he had killed his daughter and should die. D directed the officers to the car he had been driving, where they found a partially hidden shotgun on the front passenger seat.

D was taken to the police station, where he was again read his rights. D indicated that he understood his rights, that he

was waiving them, that he did not want an attorney, and that he was willing to speak to the police. When asked why he had shot V, D replied, "She was taking me to court Monday. She said that I was having sex with her since she was 13 years old, but that's a lie...I never did that to my kids, but I did kill my daughter." When asked how long he had been planning to kill V, D said, "It was always on my mind, but I knew that Monday the trial would be starting."

At the time of the offense, D had been separated from his wife for about a year and was living with his mother. D is a high school dropout and was employed by a screen printing company. [redacted]

D was indicted and charged with burglary, murder, felony murder, possession of a weapon for an unlawful purpose, possession of a prohibited weapon, unlawful possession of a weapon, and theft. D was also charged by accusation with retaliation against a witness. On May 3, 1985, D entered a plea agreement whereby burglary, murder, and theft would be dismissed at sentencing, in exchange for a plea of felony murder. In

addition, the 5 count indictment charging D with various sex offenses would also be dismissed at sentencing.

Revised 7/31/91

#1588

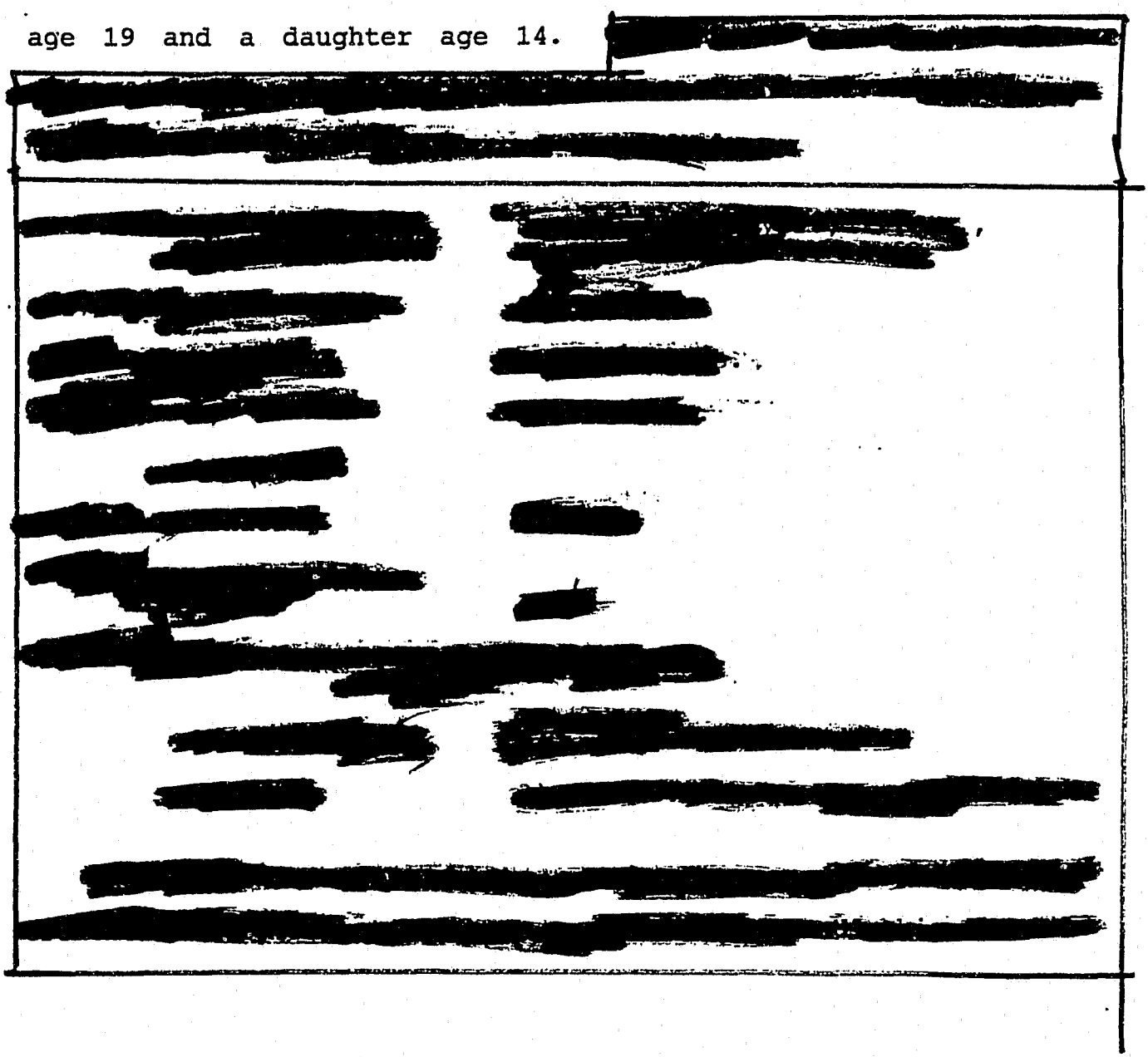
STATE V. McCOY

D (BF, 40 yrs.) and V (GF, 21 yrs.) had violent argument. D attacked V in hallway, grabbed her by hair, stabbed V 12 times in back and chest in presence of V's 6 yr. old son. [redacted] under influence of alcohol. [redacted]. Jury verdict: murder 6/19/86. No penalty trial. Life. Aggravating factor: 4c. Mitigating factors: 5a, 5d, 5h.

On December 13, 1984, at about 6:00 p.m. (V), a 21 year old female, paramour, was visiting a friend and became involved in an argument with her boyfriend, James Lonnie McCoy (D), a 40 year old male, 5'6" and 175 pounds. Apparently, D became angry because V refused to have sex with him. In front of several witnesses, including D's niece, V's 6 year old son, and other small children, D threw V, 5'4" and 100 pounds, down a stairway. D then took V's head, banged it against a hallway window, and threw her further down the stairs. When D's niece told D to leave or she'd get the police, D replied, "When you come back, she will be all sliced up." D then pulled a knife from his pocket, grabbed V by the hair, and stabbed V 12 times in the back and chest area. The medical examiner later determined that 5 of the wounds were fatal. After stabbing V, D immediately fled. On January 3, 1985, D was arrested in Brooklyn, New York on a drug charge where it was discovered that he was wanted in New Jersey for killing V, as well as in North Carolina for violating parole. It was also discovered that D was

suffering from syphilis. In his statements to police, D claimed that he had been severely intoxicated and had no recollection of killing V.

At the time of the offense, D lived in Brooklyn, New York and was employed as a truck driver/cook. D spent much of his adult life in prison and had been paroled from North Carolina State Prison in April, 1983. D had a normal childhood. D dropped out of school after the eighth grade in order to seek employment. He was married in 1966, but divorced in 1978. D has two children, a son age 19 and a daughter age 14.



[redacted].

D was charged with own-conduct murder and two weapons offenses. In a jury trial on June 19, 1986, D was found guilty of all three charges. He was sentenced on July 25, 1986, to 30 years imprisonment with no parole on the murder charge. D also received 18 months to be served concurrently on one of the weapons offenses. The other weapons offense merged with the murder sentence. D appealed to the appellate division where his conviction was upheld.

Revised 8/5/91

#1611

STATE V. McIVER

D, a male prostitute, went to the home of V, his client, intending to rob V. D spends the evening with V, then stabs V 1 time in the neck and took money and V's car. D charged with felony murder. Guilty plea 3/22/85. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5c, 5d, 5f, 5h.

On April 25, 1984, at about 8:00 a.m., Vernon McIver, defendant (D), age 19, 6'7", 165 pounds, a male prostitute, went to the home of the victim (V), age 66, 6'2", 281 pounds, a male homosexual client. D admitted that he went to V's home armed with a 2 inch knife, and that he intended to rob and kill V. D had met V the night before when V engaged the services of D and another male prostitute. D initiated their final encounter. D went to bed with V, and later took a bath with V. D left the bathtub and went to the kitchen to make more drinks. While there, D took a large butcher knife from a drawer and hid it under the mattress of V's bed. D was afraid his small knife would be ineffective on V, who was heavy set. V came into the bedroom, and got on top of D, and later rolled off and lay on his stomach. D claims he reached for the knife 15 times before he had the nerve to use it. At approximately 10:00 a.m., D took the large butcher knife in both hands, and plunged the knife into the back of V's neck. In doing so, D cut his right hand. D became disoriented, and could not find his clothes. D ransacked the apartment, and stole $28 from V's

wallet. D also took V's coat and left his own in the apartment. D then took V's keys, locked the front door on the way out and stole V's car.

On April 26, 1984, at about 7:00 a.m., D was arrested by the police and told them that he killed V. D initially claimed that he killed V after an argument. Acting on this information, police went to V's home and found the body, with a knife sticking out of his neck. D then confessed to the murder.

At the time of the offense, D had no permanent address. D ran away from home when he was sixteen and has lived "on the streets" ever since. He ran away to get away from his alcoholic father. has never been employed, a [redacted] out of school, he obtained a diploma through the GED Program. [redacted]

D was charged with one count of purposeful, knowing murder, one count of felony murder, one count of robbery, and one count of unlawful possession of a weapon. On March 22, 1985, D pled guilty to felony murder, and as per the plea agreement, to avoid the imposition of a capital sentence, the remaining counts were dismissed. On April 4, 1990, D was sentenced to 40 years in prison, with a minimum of 30 years before parole.

Revised 3/19/91

#1624

STATE V. McNEIL

D (19 yr., M) and Co-D (18) knew V (51 yr., M). They went to V's house to play cards intending to rob him. D strangled V and hit V with hammer on head and beat to death. Took TV, ring, credit card and car. [redacted]. Felony murder plea 11/14/83. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5c, 5h.

On March 17, 1983, defendant, Keith McNeil (D), a 20 year old male, and co-defendant Theodore Robinson went to V's (a male, 51 years old, a reputed homosexual), residence to rob V. D, Co-D and V played cards for a while. Then Co-D left, leaving D and V alone. There is some evidence that D and V were to engage in sexual activity. D strangled V with his hands, beat V and hit him over the head with a hammer. When Co-D returned, V was lying on the floor nude and D was holding a hammer. D told Co-D that he had hit V with the hammer. D and Co-D took a VISA credit card, a television set, a ring, and V's car. [redacted]

When D was questioned the next day, he admitted robbing V, striking V with his fists and choking him, after an argument. However, in a later statement, D denied strangling V. He also would not admit that he beat V with a hammer. A hammer was found in D's girlfriend's bedroom. Co-D also admitted that he and D went to rob V, and that it was D who killed V.

D alleges that he is a professional heavyweight boxer. He has also worked as a stockperson at an aluminum company. D completed

the sixth grade, and then later earned his GED. He was living with his mother, stepfather and siblings at the time of the offense. [redacted]

D was charged with Purposeful or Knowing Murder, Felony Murder, Conspiracy, Armed Robbery, two counts of Theft by Unlawful Taking, Credit Card Theft, and Credit Card Fraud. D plead guilty on 11/14/83 to Felony Murder and was sentenced on 12/23/83, to 30 years without parole.

Revised 8/5/91

#1637

STATE V. MELENDEZ (ANGEL)

D and V argue. Later D sets fire to V's home, killing V1, V2, and V3. D drunk. [redacted] Jury verdict: felony murder 5/24/84. No penalty trial. Life. Aggravating factors: 4b, 4g. Mitigating factors: 5d, 5h.

The following quotation is excerpted from the unpublished Appellate Division opinion. 10/31/90. A-2332-88T4.

"On January 2, 1984, Irene Fitzgerald owned a three-floor rooming house located at 46 South Street in Newark. The first floor was occupied by Charles Smith. The second floor front was occupied by [redacted] and the second floor rear was occupied by [redacted]. The third floor was occupied by [redacted]. The State's evidence revealed that the fire was caused by the defendant spreading gasoline in the entrance hallway and over wooden doors in the hallway and then igniting the gasoline.

"There was a vacant lot next door to the rooming house. This lot was used by neighborhood residents as an informal meeting place. A steel drum barrel was used by area residents to make a fire to keep warm. Defendant lived a few blocks from the rooming house and often frequented the lot. The State produced evidence showing that defendant and [redacted] were not always on the best of terms. [redacted] assisted the owner in helping to keep defendant out of the rooming house. Defendant and [redacted] also argued over [redacted] and wine. Further, on July 15, 1982, the owner had warned

defendant not to come in the house, and she called the police because defendant broke through the front door. As a result of that incident, she also filed trespass charges against defendant.

"On January 1, 1984, [redacted] and defendant had an argument that resulted in a fight. They argued again on January 2, 1984 when [redacted] went outside to shovel snow at approximately 7:00 a.m. One witness, Omelio Navarro, testified that on January 2, 1984, he heard defendant and [redacted] again arguing about [redacted] Kathleen Greely saw defendant that morning at approximately 10:30 a.m. and noticed that defendant was wearing blue pants and a sports jacket. She observed no holes in his pants.

"At approximately 12:45 p.m. to 1:07 p.m., on January 2, Domingo Lorenzo Hernandez was in [redacted] apartment and he observed defendant carry a plastic container of gasoline with cardboard wrapped around it. He saw defendant pour the gasoline over double wooden doors that were inside the entrance to the house and then ignite the gasoline. Some gasoline that had spilled on to defendant's pants and shoes ignited, causing his hand and pants to be burned. Hernandez was able to escape by jumping onto a mattress. Smith also escaped after the building was engulfed in flames. When police officers arrived, they were informed that people were inside the building. [redacted] who died as a result of the fire, were the victims referred to in Counts Two, Three and Four of the indictment." End of Excerpt.

[redacted]

[redacted]

D was born on May 31, 1931 in Bieljaban, Puerto Rico. D moved to the United States in 1956 and had lived in Newark ever since. D left school at the age of nine to go to work. D does not speak much English and does not appear to be literate in Spanish. Since his arrival in New Jersey, D has worked occasionally, but has been maintained mainly by public welfare assistance. [redacted]

[redacted]

D was charged with count 1 - Third Degree Arson; count 2 - Felony Murder; count 3 - Felony Murder; count 4 - Felony Murder; count 5 - Fourth Degree Unlawful Possession of a Weapon.

At trial, D was found guilty of counts 1 through 4 on May 24, 1984. D was sentenced on June 22, 1984, to five years on count 1 to run concurrent with the sentence for count 2. On counts 2 through 4, D was sentenced to serve a term of natural life with a mandatory minimum of 30 years.

D appealed his conviction. On October 31, 1990, the Appellate Court upheld the conviction and sentence.

Revised 8/5/91

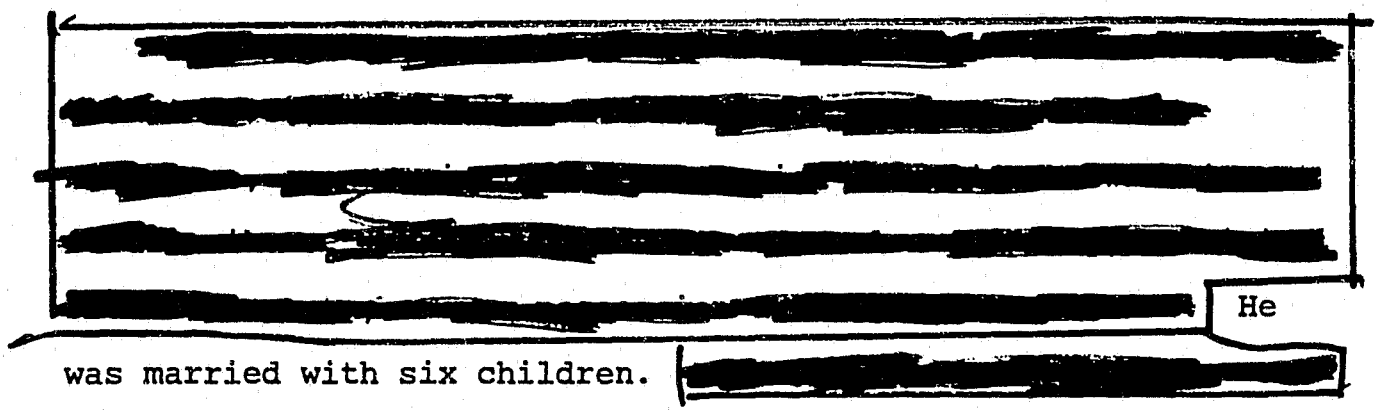
#4002(new)

STATE V. MENDEZ (OSCAR)

D and V argue on a street. D leaves and returns with an uzi and fires into a crowd, striking and killing V. Jury verdict: Murder, Life. No penalty trial. Aggravating factor, 4b. Mitigating factors: 5a, 5h.

Defendant, Oscar Mendez (D), a 29 year old male, had a verbal quarrel with the victim (V) a 19 year old male on a street corner, on September 28, 1988, shortly before midnight. Mendez left and returned a short time later with a traveling bag containing an uzi-type machine gun. He attempted to shoot the V who was standing with his friends on the sidewalk, and the crowd started to run. Then Mendez fired the gun into the crowd at V and struck him in the head. A witness stated that Mendez handed the weapon to an accomplice who also fired at the crowd.

Police received an anonymous tip that the killer was Oscar Mendez. Witnesses identified Mendez from a photo lineup. Defendant was arrested four months later in Puerto Rico by the FBI and returned to New Jersey.



was married with six children.

[redacted] Employment history is sporadic, but he had been working at a food market for nine months. He had been raised in Cuba, and his father had deserted the family when Defendant was 11 days old.

Mendez was indicted for purposeful murder and two counts of weapons charges and was convicted by a jury of all three counts on May 23, 1990. He was sentenced on June 15, 1990 to life with a 30 year stipulation on the murder charge, plus five and ten years consecutive terms with another consecutive five year parole stipulation on the weapons charges. He also received a six month consecutive contempt of court sentence.

Revised 8/5/91

#1648

STATE V. MEROLA

D and 3 others buy drugs from V and 2 others. Deal goes bad. D shoots V 1x in chest, robs another, 3rd runs and D shoots him 1x in shoulder. Vs were going to rip off D, D claims he was hit 1st. [redacted] Jury verdict: murder, 9/24/84. No penalty trial. Life. Aggravating factors: 4b, 4g. Mitigating factors: 5b, 5h.

The following facts are excerpted from State v. Merola, 214 N.J. Super. 108 (App. Div. 1986).

"In the early morning hours of November 24, 1983 [redacted] was shot and killed and Michael Bambo was wounded during the course of a heated dispute concerning a drug transaction. The State's theory at trial was that defendant shot both men when they refused to permit him to sample a quantity of cocaine he was about to purchase. The defense contended that [redacted] and Bambo accidently shot each other while they were attempting to rob the defendant.

"The record discloses the following salient facts. In the evening of November 23, 1983 defendant, Joseph Deleva, Terri Giannetta and Dominie Buda were having drinks at the Finnish Line, a tavern located in Newark, when they decided to purchase some cocaine. The group proceeded to an address located on Fifth Street and Bloomfield Avenue where Deleva attempted to buy the drugs from an acquaintance, Bryone Robinson. Although Robinson did not have any cocaine in his possession, Bambo, who apparently overheard the conversation, suggested that they could purchase the drugs from

him. After brief negotiations, it was agreed that the group would follow Bambo to his apartment in Nutley.

"Bambo and Robinson then met [redacted] and drove off in [redacted] automobile. During the ride, Bambo confided to Robinson that he intended to "beat [those] white guys" by selling them something other than cocaine. Bambo agreed to pay the other two men $40 each and "some beer and wine" in return for their assistance.

"Defendant, Deleva, Giannetta and Buda followed in Buda's automobile. En route to Bambo's apartment, Buda became increasingly alarmed because it appeared that [redacted] was driving in circles. When they finally arrived at the parking lot adjacent to Bambo's apartment building, Buda, because of her concern, parked her automobile facing the exit approximately 27 feet from [redacted] vehicle. Defendant then accompanied Robinson, [redacted] and Bambo into the building. While in the apartment, Bambo obtained a tinfoil apparently containing cocaine.[1]

"The men then returned to the parking lot. At that point, an argument developed because defendant refused to pay for the cocaine without first sampling it. Deleva and Giannetta observed [redacted] "unzip his jacket' and reach across his chest in a manner which caused them to fear he was in possession of a firearm. Deleva urged defendant to return to the car. Defendant refused, however,

---

[1]A tinfoil was later discovered by the police in close proximity to Muhammed's automobile. A laboratory analysis disclosed that the tinfoil contained approximately one-eighth of an ounce of cocaine.

and proceeded to the driver's side of [redacted] automobile.

"It is at this point that the State's and the defense's version of what transpired differs markedly. According to the State's witnesses, [redacted] was seated in the driver's seat with the door open when defendant approached. The window on the driver's side was also open. Robinson testified that as [redacted] leaned across the seat to unlock the door on the passenger's side, defendant reached in the driver's window and shot the deceased in the chest. After hearing the shot, Robinson attempted to escape, but was confronted by defendant who pointed the gun at him and demanded the cocaine. Robinson told defendant that he didn't have the drugs and emptied the contents of his pockets. When defendant bent down, Robinson ran off.

"Bambo testified that Buda drove out of the parking lot when the shots were fired. At that point, defendant, who was apparently still chasing Robinson came upon Bambo and, without warning, shot him in the shoulder. Bambo and Robinson then ran toward a police patrol car that was approaching the parking lot. The two men frantically told the officer about the shootings. Bambo was immediately taken to the hospital for treatment of his wounds.

"The accounts of Robinson and Bambo were corroborated by the testimony of several residents of the apartment complex. Although they were unable to positively identify defendant as the perpetrator of the shootings, their descriptions of the fast-moving events confirmed the version of Robinson and Bambo in several particulars. In addition, Michael Liscari, a visitor who observed

the incident from the window of a fourth floor apartment, testified that, as the police officer's patrol car pulled into the parking lot, his attention was diverted to a man, resembling defendant, leaning into [redacted] automobile apparently searching for something. When he finished, the man wiped the car door, the steering wheel and the dashboard with his sleeve and fled into the adjacent field.

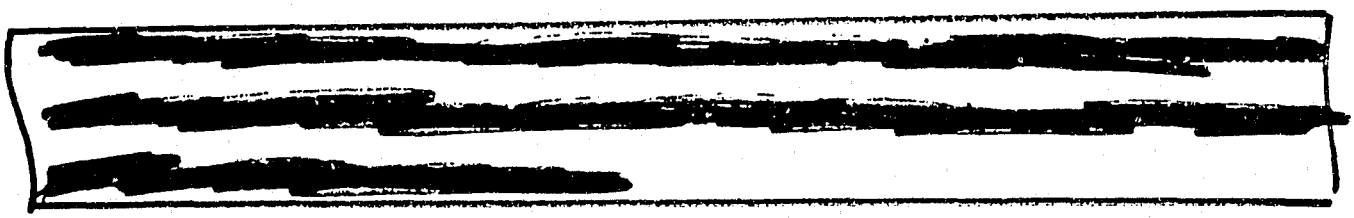
"Defendant elected to testify. As we have noted, his account of the events immediately prior to the killing generally mirrored the evidence presented by the State. He denied, however, shooting [redacted] and Bambo. According to his testimony, a heated argument developed between him and [redacted] upon returning to the parking lot after Bambo had obtained the cocaine. He testified that as he was reaching into his pocket in order to pay for the drugs he was suddenly "struck twice in the face with a hard object." [redacted] stood on one side of him and Bambo on the other. Both men brandished handguns. As he heard shots being fired, defendant struck [redacted] in the mouth and escaped.

"Defendant testified that he was cut and bleeding from the attack by [redacted] and Bambo. In a dazed condition, defendant fled into the nearby streets where he was ultimately found by Deleva and Giannetta who, along with another friend, had returned to look for him. Deleva accompanied defendant to his apartment where they stayed that night.

"Defendant testified that upon entering his apartment he immediately took off his bloody clothing and set it afire.

Defendant then flushed the remnants down the toilet. A piece of charred remains was eventually discovered by defendant's landlord and was given to the police. Defendant's explanation for attempting to destroy his clothing was thoroughly elicited during his direct examination and repeated during his cross-examination. Defendant testified that he had been convicted previously of distributing controlled dangerous substances and uttering a forged instrument and was on probation at the time of the incident. According to defendant, he feared that disclosure of his attempt to purchase cocaine would result in revocation of his probation and imprisonment. Moreover, defendant testified that he did not know [redacted] and Bambo had been shot. According to his testimony, he first learned of [redacted]s death while reading a local newspaper several days later at which time he retained an attorney and surrendered. Defendant admitted, however, that on the day after the incident he had his sister take photographs depicting his wounds."

At the time of the offense, D lived alone and worked as both a construction laborer and as a professional boxer. D was a high school graduate. D's parents separated when D was about 7 years old, and D and his sister were raised by their paternal grandparents. [redacted] D lived with friends and an uncle for about 2 years before he was allowed to return home. [redacted]



D was charged with own-conduct murder, robbery, 2 counts of aggravated assault, and a weapons offense. In a jury trial, D was found guilty of all charges. D was sentenced to 30 years, without parole, on the murder charge. The remainder of D's sentence is as follows: robbery - 15 years, 7 1/2 minimum - to be served concurrently with the murder sentence; 2 counts of aggravated assault - 7 years each, 3 1/2 minimum - to be served concurrently. The weapons offense merged with the robbery for sentencing purposes. D appealed his convictions, but they were affirmed by the Appellate Division, State v. Merola, 214 N.J. Super. 108 (App. Div. 1986).

Revised 7/24/91

#1650

STATE V. MESSAM

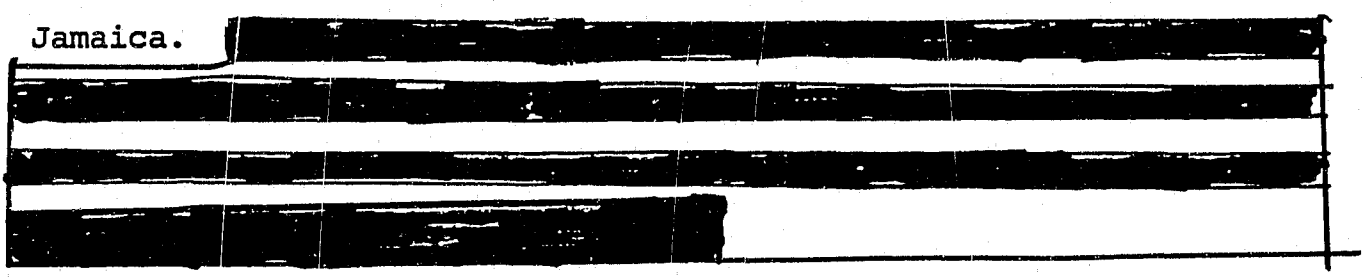
D was having an extra-marital affair with V and V became pregnant. When V refused to abort the child, and threatened to expose D, D became enraged, stabbed V 21x in the face, neck and chest, and dragged her to an abandoned building. Jury verdict: murder 1/13/89. No penalty trial. Life. Aggravating factor: 4c. Mitigating factors: 5f, 5h.

On September 24, 1984, Gladstone Messam (D) age 44, 5' 8", 165 pounds, a male, took V, (age 26, a female), killed his paramour and left her body in an abandoned building. D had been having an extramarital affair with V which had resulted in V becoming pregnant with D's child. D insisted that V submit to an abortion, which V apparently refused to do. V decided to talk to D's wife about the pregnancy and seek financial support. Apparently, because of this conflict, D became enraged, killed V and took the body to an abandoned building. V was stabbed once in the left cheek, once in the left side of the neck, once under the chin, twice in the right hand, once in the back, twice in the back of the left arm, four times in the center of the chest and nine times in the left breast. D then left with blood on his shoes and left blood in his car.

On September 25, 1984, police interviewed V's mother (W1). W1 revealed that V was having an affair with D, and that D had impregnated V. Police went to the business that D owned to interview him. D was wearing blood stained shoes. The police

decided to ask D to come to Police Headquarters for further interviewing. D agreed to go, but insisted on taking his own car. Because D did not know the way to the station, he allowed a detective to ride with him. As the officer was entering the car, he saw blood stained papers and coffee mugs, and saw blood stains on the car's hood and on the passenger's side. D was arrested and was charged with murder.

At the time of the offense, D lived with his wife and children. D and his wife own a mortgaged single family residence. D was self-employed as the owner of a sandwich shop. D graduated from high school, and was enrolled in college for two years in Jamaica.



D was charged with one count of Purposeful and Knowing Murder by his own conduct, one count of Unlawful Possession of a Weapon, and one count of Possession of a Weapon for an Unlawful Purpose. On September 26, 1986, D's attorney objected to the search of D's car. The court suppressed the evidence because D consented to the search prior to receiving his Miranda warnings. On January 27, 1987, the state appealed the ruling. The Appellate Court reversed the suppression order because Miranda was designed to protect the defendants right against self-incrimination, not against searches.

On January 13, 1989, a jury found D guilty of Purposeful and Knowing Murder, as charged. On February 2, 1989, D was sentenced to Life Imprisonment with 30 years parole ineligibility. The weapons offenses merged with the murder count.

Revised 8/5/91
#4009 (new)

STATE V. MINCEY

D (age 27) broke into home of V (73 year old) severely beat, raped and strangled her. D stole 2 dolls and a TV which he gave away as gifts. D was arrested 6 1/2 years later. Jury Verdict: Murder 6/25/90. No Penalty Trial. [redacted] Aggravating Factors: 4c, 4g, 4f. Mitigating Factors: 5h. Life.

On November 8, 1982, Samuel Mincey (D) a 27 year old male broke into the home of V, a 73 year old female, by forcing the kitchen door. D beat V severely, raped her, and strangled her. D then stole 2 oriental dolls and a black and white TV. Pubic hair and semen were found at the scene. D refused to take a blood test. On November 16, 1988, police searched the home of W1 following another burglary. One of the V's dolls was found. W1 told Police that D gave her the doll in 1982. D was questioned on November 21, 1988. D said he was given the dolls by someone else. D's blood and salvia matched the genetic marker of the specimens in V's home.

At the time of his arrest, D lived with his wife and four children. D owned his own landscaping business. [redacted]

D was charged with murder (count 1), felony murder (count 2), burglary (count 3), kidnapping (count 4), robbery (count 5). Counts 3, 4 and 5 were barred by Statute of Limitations. On June 25, 1990, D was convicted of murder and felony murder. On August

2, 1990, D was sentenced as follows: the felony murder charge merged and for murder, D was sentenced to life imprisonment with a 30 year parole ineligibility. An issue in this case is whether the prosecutor did not seek the death penalty due to his belief regarding deathworthiness or because he believed the aggravating factor was barred by the statue of limitations.

Revised 8/5/91

#1705

STATE V. MONTALVO

D (30 yr., M) met V (F) in bar, offered to drive her home. Made sexual advances, but V denied him. Threw V off bridge. Prior murder. [redacted] Jury verdict: murder 3/21/86. No penalty trial. Life. Aggravating factor: 4a. Mitigating factors: 5d, 5h.

The following quotation is taken from the unpublished Appellate Division opinion. 12/13/90. A-3960-86T4.

"Based on the evidence presented at trial, the following facts may be outlined. On January 26, 1984 Jose Jimeniz notified the Newark Police Department that his sister, [redacted] had not been seen since January 23, 1984. When last seen she was wearing blue jeans, a beige coat, black shoes and three gold chains. He described his sister as 22 years of age, about four feet, 10 inches in height and weighing about 100 pounds. A detective from the police department received a composite description of [redacted] from family and friends several days later. The detective ascertained that the woman was last seen in a bar with her girlfriend.

"On March 25, 1984, the detective responded to an industrial complex area at 625 Doremus Avenue in Newark's East Ward where what appeared to be a human body was floating face down in the water about 20 feet from the shore....

"The body was taken to the medical examiner's office for an autopsy. A New Jersey driver's license in the name of [redacted] with a picture on it, was found in the victim's jeans' pocket. As a result of the autopsy it was determined that the cause of death was asphyxiation by drowning. The body was in an advanced stage of decomposition and the medical examiner was unable to determine the time of death. Alcohol and suicide were ruled out as a cause of death, although suicide was characterized as a "remote possibility" on cross-examination at defendant's trial.

"About 11 months later, on January 9, 1985, two Jersey City police officers were dispatched to 175 Webster Avenue in Jersey City in response to a report from Christ Hospital of an unattended child. The officers rang the doorbell and Orlando Montalvo opened the door and was holding a child in his arms. The officers explained why they were there. Montalvo told them that everything was alright and invited them inside. The officers checked the apartment and found everything in order.

"As the officers were about to leave, Montalvo said he wanted to talk to them "to lift a burden off his shoulders and make peace with God." He told the officer that "he pushed a girl off a bridge." After he told them this, Montalvo was advised of his rights by one of the officers who read the Miranda warning from a little card that he kept inside his hat.

"Montalvo and the child were transported to a Jersey City police precinct where a detective and a police officer again read Montalvo his rights in English, as well as in Spanish by a Spanish-

speaking officer. Thereafter, Montalvo said he wanted to give a statement and told the officers:

> ... [H]e was out one night and he had met a Hispanic female in her twenties in a bar in Newark. He said she was wearing a long jacket. They had left in his vehicle and he had made sexual advances toward her and she refused him and he stopped on the bridge [with alleged car trouble] and threw her off the bridge ... He wasn't sure if it was the bridge by Doremus Avenue or the Hackensack River bridge.

He also stated that at the time of the murder the victim was wearing pants, a coat and lots of jewelry....

"...At trial, Montalvo testified and denied killing [redacted] He essentially relied on an alibi defense....

"...He denied throwing anyone off a bridge or giving an oral or written statement that he did so. He said he was arrested around 4:00 p.m. on January 9, 1985 because he had left the baby alone. He denied telling the police that he threw a woman into the water or that he had a burden he wanted to lift from his shoulders.

"According to Montalvo, he was taken to Jersey City Police Headquarters but was not read his rights. He also said that he was handcuffed and taken in a police car to Newark. According to Montalvo, on the way to Newark "they stopped the car and they opened the back door and beat [him] up completely inside the car. They put a gun all over [his] face. They beat [him] up and said do exactly what we say or we're going to blow your brains."...

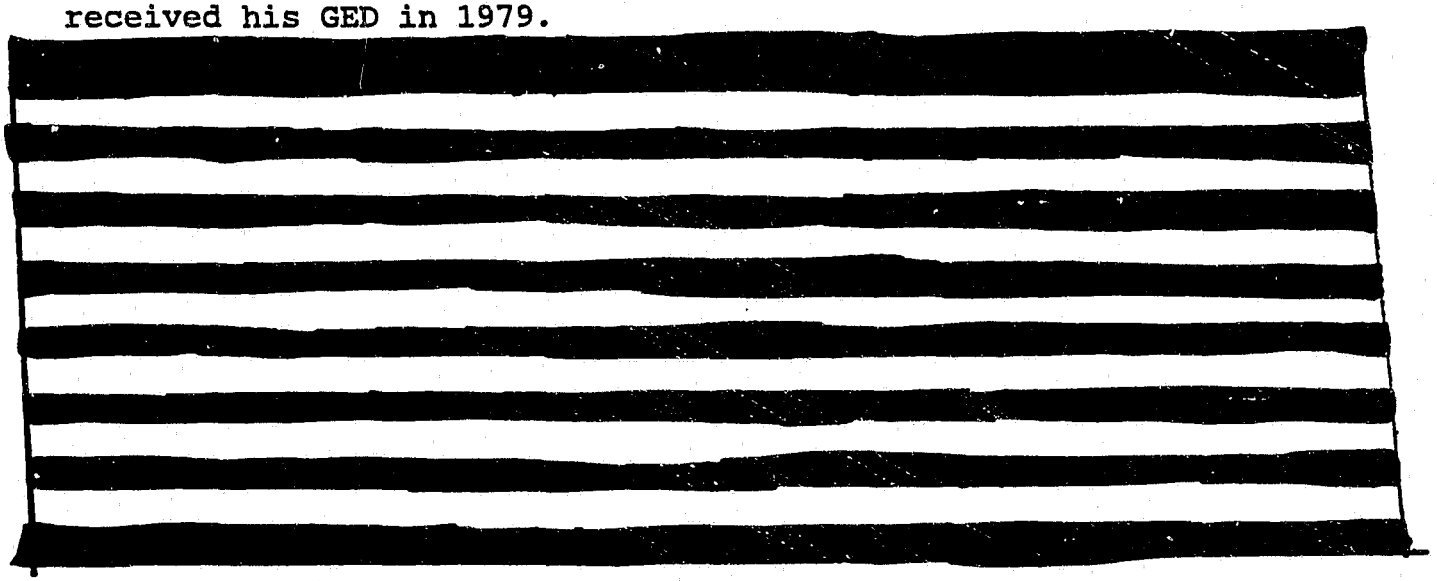
"...During the defense case, defense counsel sought to raise as an alternative to the alibi defense, defenses of insanity or diminished capacity....

"...Defense counsel offered the court copies of various

reports which antedated by many months, and in some cases years, the time frame of the January 3, 1984 incident when the victim was thrown from the bridge....

"...We essentially agree with the trial judge. The reports presented did not relate to the date of the incident and there was no expert or expert's report proffered from which the jury could make any determination about defendant's state of mind at or around the time the victim was thrown off the bridge. Defendant's attorney wanted the jury to, in effect, speculate that perhaps at the time of the incident Montalvo had had some sort of relapse. However, this would allow a jury to speculate, and that is not proper." End of Excerpt.

At the time of the offense, D lived with his wife and daughter on the third floor of a three family dwelling. In the past, D had worked as a clerk in a bank, but was unemployed two weeks prior to his arrest. D dropped out of school in the eleventh grade, but he received his GED in 1979.



On February 21, 1985, D was indicted on the charge of

Purposeful and Knowing Murder. On February 27, 1985, D entered a plea of not guilty. On October 23, 1985, D moved to suppress his statement as a coerced confession. The Trial Court denied this motion. Notice of factors was not served.

On March 21, 1986, the jury found D guilty of Murder as charged. On May 7, 1986, D was sentenced to life imprisonment with 30 years of parole ineligibility. On May 4, 1987, D filed a notice of appeal. The appeal claims error by the trial judge for refusing to instruct the jury on diminished capacity, for telling the venire men that this was a non capital case, and for allowing the prosecutor to make an improper summation.

Revised 8/2/91

#1738

STATE V. MORTON

D (28 yr., M) knew V (32 yr., F) and her family for several years. [redacted] V found in basement of her house with several stab wounds and blow to head by blunt instrument which fractured skull. D, after murder, stabbed V's 15 yr. daughter several times in chest and choked her to unconsciousness. Murder plea 1/14/86. No penalty trial. Life. Aggravating factors: 4b, 4g. Mitigating factors: 5d, 5h.

On September 13, 1985, Adrian Morton, defendant (D), a 28 year old male, went to the Unemployment Office [redacted]. D admitted going to visit victim (V), a 32 year old female defendant had been a friend of the family. He claims he cannot remember what happened inside the house. This conflicts with another statement D gave in which he claimed he hit V with a baseball bat after she cut him with a knife. It is not disputed that D attacked V by beating her numerous times about the head, crushing her skull. D also stabbed V numerous times in the chest and arms, and once in the forehand. Judging by the blood stains upstairs, and the location of the body, it seems likely that D moved V's body to the basement after the attack. No motive is apparent, [redacted] V's blouse was pulled up, indicating a possible sexual assault.

Shortly after the attack, V's daughter (W1), age 15, and her friend (NDV) age 10, came to V's home after school. W1 needed to

unlock the door with her key. Both girls entered and confronted D, whom they both recognized, in the living room. W1 asked D what he was doing there, and where her mother was. D responded that V was in the basement preparing a surprise for W1 and then D told W1 to wait upstairs until it was ready. When W1 went upstairs, D took NDV down to the basement, where she saw V's body. In an attempt to eliminate her as a witness, D stabbed NDV in the chest, then he started to choke her and he left her unconscious on the floor. As he did this, W ran outside and asked W2, W3, and W4 for help. All three entered and saw D with blood on his hands. W2 went downstairs and saw V and NDV, and called out to W3 and W4. At this point, D walked out the front door, and W3 and W4 chased him, just as W5 was walking by. W5 saw D leave V's house wearing bloody gloves. W3 and W4 began hollering to other people as D began running. The group finally caught D and began beating him up when the police arrived and took D into custody. D was taken to a hospital for treatment of the injuries received from the beating. At this time NDV was taken to the hospital for treatment of the two or three stab wounds inflicted by D.

After D was arrested, he stated "that after being cut with a knife by (V), he picked up a baseball bat and struck her on the head". D also admitted that after "hitting her, he knew she was dead". All of the enumerated witnesses gave statements to the police.

[redacted] D had worked as a laborer from 1982 until the day of his

arrest. D attended vocational school, and later received his GED Certification through the National Guard in 1977. D served in the National Guard from 1976 until 1983 when he received a general discharge. [redacted]

D was charged with Purposeful and Knowing Murder (counts 1 & 5); Possession of a Weapon for an Unlawful Purpose (counts 2 & 3); Attempted Aggravated Sexual Assault (count 4); Hindering Apprehension or Prosecution (count 6); Aggravated Assault (count 7); and kidnapping (count 8). On January 14, 1986, D plead guilty to Murder (count 1) and Aggravated Assault (count 7). Under this plea agreement, all remaining charges were dismissed. For the Murder of V, D was sentenced to life imprisonment with no chance of parole. For the aggravated assault of V, D was sentenced to 10 years in prison, with no parole for 5 years, to be served consecutively to the first sentence.

7/30/91
#4028 (new)

STATE V. MUHAMMAD (ABDUL)

D approached V [redacted] D and V scuffled. D pushed V into his car and shot V one time in the head. D & Co-D went through V's pockets and took money and jewelry. D shot V again. Aggravated Manslaughter Plea 4/14/91. No Penalty Trial. [redacted] Aggravating Factor: 4g, Mitigating Factor: 5h. Life.

On September 13, 1990, Abdul Muhammad (D) a 29 year old male and an unidentified co-perpetrator (Co-D) tried to rob W1. They left W1 alone when he said he had no money. A few minutes later, Muhammad approached V. Muhammad claims he was angry with V [redacted] Muhammad pushed V into his car and shot him in the head. Muhammad and the Co-D went through V's pockets and took his money. Muhammad also took V's rings. Muhammad walked away counting money, then walked back, pulled V's hood over his head, and shot him again. Muhammad was arrested on November 7, 1990. [redacted] At the time of the arrest Muhammad was unemployed, but in the past Muhammad worked as a delivery man and a professional boxer. [redacted]

For the current offense, Muhammad was charged with murder (count 1); robbery (count 2); felony murder (count 3); unlawful possession of a weapon (count 4), possession of a weapon for an unlawful purpose (count 5); conspiracy to hinder apprehension

unlawful purpose (count 5); conspiracy to hinder apprehension (count 6); terroristic threats (count 7); witness tampering (count 8); obstruction of justice (count 9). On April 14, 1991, Muhammad pled guilty to aggravated manslaughter (count 1 amended) robbery and obstruction of justice. On May 6, 1991, Muhammad was sentenced as follows: for count 1, 30 years with a parole ineligibility of 15 years; count 2, 10 years consecutive, for count 9, 4 years concurrent.

Revised 7/22/91

#1750

STATE V. MUHAMMED (JIHAD)

D and Co-D saw V and girlfriend on the street [redacted]. V refused and argument began. Co-D took V's girlfriend's pocketbook. Argument. D shoots V with shotgun. [redacted] Murder plea 4/9/85. No penalty trial. Life. Aggravating factor: 4a. Mitigating factor: 5h.

On August 3, 1984, at approximately 1:00 p.m., Jihad Muhammed defendant (D), a 32 year old male, 5'5", 148 pounds, approached victim (V), an 18 year old male, and W1, V's female companion, in front of W1's home. D offered to sell them "speed". W1 went inside to tell her mother, but W1's mother told W1 to tell D they didn't want any. When W1 returned, D called to someone across the street, "come on, this guy don't want nobody messin' around with his lady", and D left. Approximately 20 minutes later, D returned with Forrest Boyer (Co-D). D pulled out a silver handgun and pointed it at V and W1. D said to W1, "Don't move - you move and I'll shoot you first", then D fired the gun into the ground. D argued with V, he was trying to force V to purchase drugs, but V refused. While D and V argued, Co-D took W1's pocketbook and started going through it, and emptied it into a car. V told Co-D to give it back, but Co-D responded "Hell, no, that's your woman." D and Co-D were arguing with V, then D took about two steps, pulled out a sawed off shotgun and shot V. V fell to the ground saying "Oh, it hurts." D responded, "You're not hurting, I didn't even

hurt you." D gave Co-D the handgun, as W2, W1's father, came out of the house. W2 had heard the shots, and saw D standing over V with a shotgun in his hand. W2 asked, "Why did you shoot him?", and D responded, "I didn't like his attitude. You'd better get in the house or I'll shoot you too...I want to shoot me a white boy." Co-D said to D, "I'll shoot this one, I'll shoot this one." D and Co-D walked away.

On August 9, 1984, Co-D turned himself in, and on August 18, D was arrested. On August 29, 1984 at 2:44 a.m. V died in a hospital trauma unit. D and Co-D were charged with homicide.

[redacted] Prior to the offense, D worked for four years as a house man at a hotel. D has a 5th grade education. [redacted]

[redacted]

For the present offense, D was charged with Murder (count 1); Murder (count 2); Conspiracy (count 3); Robbery (count 4); Criminal Attempt - Distribution of a C.D.S. (count 5); Aggravated Assault - Pointing a Firearm (counts 6, 7 and 8); Terroristic Threats (counts 9, 10 and 11); Possession of a Weapon for an Unlawful Purpose (count 12); Possession of a Handgun (count 13); Possession of a Rifle or Shotgun (count 14); and Certain Persons Not to Have Weapons (count 16). Count 15 was not charged since it did not apply to D.

On April 9, 1985, D pled guilty to count 2, 12, 14, and 16; all remaining counts were dismissed. Under the plea agreement, D was convicted of Murder, Possession of a Weapon for an Unlawful Purpose, Possession of a Rifle or Shotgun, and Certain Persons Not To Have Weapons. The Prosecutor recommended a Life Sentence, plus 12 years for the contemporaneous charges, with a 30 plus 6 year parole ineligibility.

Revised 3/12/91

#1753

STATE V. MUJAHID

D argued with 3 residents of boarding house [redacted] and threatened to burn house down. D, with Co-D poured flammable liquid and set building on fire. 2 Vs died. Approximately 20 people injured. [redacted] Jury verdict: murder 12/19/88. No penalty trial. Life. Aggravating factors: 4b, 4g. Mitigating factors: 5d, 5h.

On February 12, 1988, Rasheed Mujahid, defendant (D), a 31 year old male, 5'10" and 160 lbs, had an argument with W1, W2 and W3. [redacted] D then threatened to burn down their residence, a rooming house with approximately 30 residents living in it. Later, D returned with Herbert Richardson (Co-D). D poured a flammable liquid, and set a match to it, which caused a large explosion and then caused the rooming house to catch fire. W1, W2 and W3 were not injured because they either escaped, or were not present at the time of the fire. The fire destroyed the entire building. Out of approximately 30 residents living in the rooming house, 20 were injured, and 2 were killed. One of the people killed was V1. The other person, burned beyond recognition and not identifiable, was V2. After interviewing as many former residents as possible, D became a suspect. On February 16, 1988, D and Co-D were arrested. D denied any involvement in the offense.

At the time of the offense, [redacted] He last

worked as a maintenance worker for minimum wage. D dropped out of high school in ninth grade, but he received his G.E.D. [redacted] D also took some college courses [redacted]

D was charged with Aggravated Arson (count 1); Felony Murder (counts 2 and 3); Purposeful and Knowing Murder (counts 4 and 5); Attempted Murder (counts 6, 7 and 8); Aggravated Assault (counts 9 through 28); and Making Terroristic Threats (count 29 and 30). On July 29, 1988, D entered a plea of not guilty. The case went before a jury and on December 14, 1988, D was found guilty as charged on all the counts except for one count of Attempted Murder (count 6) and Making Terroristic Threats (count 29 and 30). The case did not advance to the penalty phase.

On January 12, 1989, D was sentenced to serve two life prison terms with no parole for 30 years each, to run consecutively. The Arson and Felony Murder convictions were vacated and merged with the Murder counts for sentencing. For Attempted Murder, D received 20 years with a minimum of 10 years to be served consecutively with the life sentence for the first count and concurrently for the second count. The sentences for the 19 counts of Aggravated

Assault (counts 9 through 28) break down as follows: for counts 9 through 14, D received ten years with a 5 year minimum to be served concurrently; for count 15, D received 10 years with a five year minimum to be served consecutively; for counts 16 through 21, D received 10 years to be served concurrently; for count 22, D received 10 years with a 5 year minimum to be served consecutively; and for counts 23 through 28, D received 10 years to be served concurrently. D will not be eligible for parole for 80 years.

Revised 7/3/91
#1771

STATE V. MUSGROVE

D and Co-Ds force V to withdraw $2,400 from his bank and then take it from him. They then hold V and tie him up. While riding in V's car, D strangles V and, with Co-D2, throws V down an embankment. Murder plea 12/3/85. No penalty trial. I[illegible]. Aggravating factor: 4g. Mitigating factors: 5d, 5f, 5h.

Defendant Ira Musgrove, (D), a 23 year old male, 5' 9", 190 pounds and Co-defendant (Co-D1), Monica Koonce, a 34 year old male to female transsexual planned to rob and kill victim (V), a 69 year old male and an acquaintance of Co-D1.

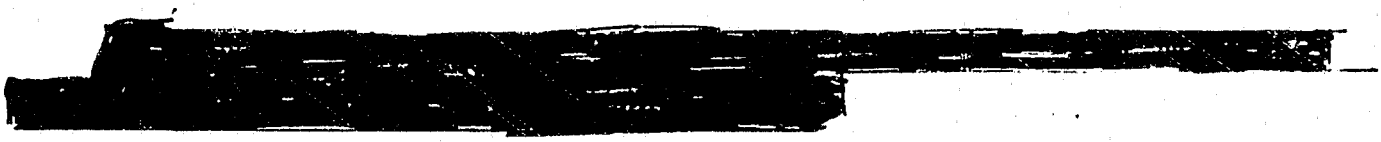
On August 19, 1985, Co-D1, in V's car, arrived with V at a hotel, where D waited for them. All three sat in their room for a while and had a few drinks. D then tied and gagged V, and tried to force V to withdraw money from his bank account. D and Co-D1 kept V tied up for several hours until he agreed to get the money. D and Co-D1 took V to his home to get his checks, and then to a bank where V cashed a check for $2,400.00. V gave $1,000 to one of the Co-Ds.

D, Co-D1, and V got a room at another motel, and rented a limousine. D went to Philadelphia in the limo, and Co-D1 was left behind with V. Co-D1 took V for a ride and was supposed to kill him. However, Co-D1 told V to get into the trunk of his car. V refused, and V and Co-D1 got into a fight. Co-D1 was all scratched up, and V was badly beaten.

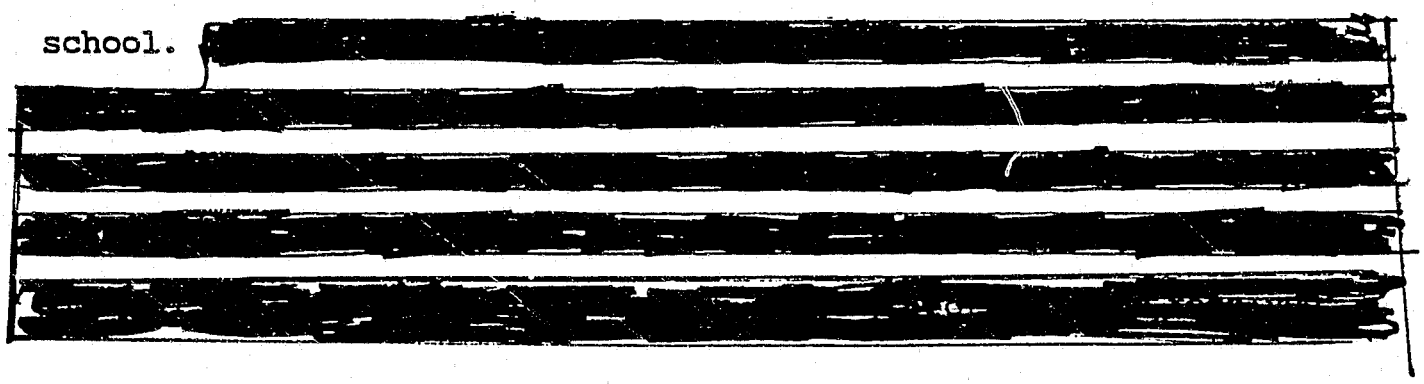
Several hours later, D returned with an unidentified man in his 20's known only as "Casper" (Co-D2). Co-D1 left the motel in

the limo, driven by witness 1 (W1); and V left in his car with D and Co-D2. Co-D2 drove the car, while D sat in the backseat with V. Soon after leaving, D put a rope around V's neck and strangled him. They stopped the car and D and Co-D2 threw V down an embankment into some bushes. D took V's remaining $1,400 and gave $200 to Co-D2 and $1,200 to Co-D1.

On September 4, 1985, V's body was found. That same day, D was arrested for an unrelated armed robbery, while still in possession of V's car. After his arrest, D admitted to taking part in the robbery of V, but claimed that Co-D1 killed V. Co-D1 was arrested and told the police that she did not kill V, and that V was alive when she left with D. Co-D1's story was confirmed by W1, the limo driver who took Co-D1 to Philadelphia, and who saw V leave with D. W2, a friend of D's, told police that D confessed to him that D, Co-D1 and Co-D2 robbed and killed V. When Co-D1 confronted D, D confessed to the police that he was the one who murdered V.



At the time of the offense, D lived in a house with his wife. D had worked for a fast food restaurant from 1979 until 1985. D graduated from high school, and completed training at a beauty school.



[redacted]

D was charged with conspiracy to commit murder (count 1); purposeful and knowing murder (count 2); kidnapping (count 3); and robbery (count 4). On December 3, 1985, D pled guilty to conspiracy, murder and robbery. The kidnapping charge was dismissed. On December 18, 1985, D was sentenced to 30 years in prison with a parole ineligibility of 30 years for the murder and the conspiracy. For the robbery, D was sentenced to 15 years in prison with a parole ineligibility of 5 years, to be served consecutive to the first sentence.

On January 28, 1986, D filed an appeal of his conviction and on July 14, 1986, the conviction was affirmed.

7/12/91

#4011 (new)

STATE V. NORMAN

Co-D3 invites V1 and NDV to apartment where D, Co-D1 and Co-D2 are waiting to retrieve a $10 loan, related to drugs. The Ds were also angry that V had robbed their drug dealers. D chases V1 and NDV, shoots V in stomach and NDV in hand. Jury verdict: murder 2/16/90. No penalty trial. Life. Aggravating Factor: 4g. Mitigating Factors: 5c, 5h.

On February 18, 1989, D, Anthony Norman, a 21 year old male, waited in an apartment with Co-D1, Douglas Sherman, and Co-D2, Edward Duncan.

V and NDV entered the apartment with Co-D3, Caldwell Thomas. Co-D3 had invited V and NDV to the apartment with the purpose of retrieving $10.00 that V had lent to Co-D earlier in the day. The $10.00 loan was apparently related to drugs. Upon entering the apartment, V and NDV were confronted by D and Co-D2, who brandished handguns. V and NDV fled down a flight of stairs, through a glass door, and into the street. They were pursued by D, who fired shots which hit V in the stomach and NDV in the hand. V died about three hours later. NDV ran to police headquarters and reported the incident. NDV told police they had been set-up by Co-D3, who NDV alleged to have lured both victims to the apartment with knowledge of the intended shootings.

After NDV reported the shootings, police went to the apartment, where they found Co-D3. Co-D3 identified D and Co-D2 as the gunmen and claimed that they belonged to a gang of drug dealers. Co-D3 claimed that the shootings occurred because NDV had robbed several of the street dealers employed by the gang. Co-D1

was apprehended on February 20, 1989. D and Co-D2 were both arrested on March 12, 1989.

D is the third of five children, and has three offspring who were born out of wedlock. He completed the 9th grade, and attended a job training program, acquiring course instruction in plastering, carpentry and clerical work. D received a GED subsequent to his training, but was unemployed at the time of his arrest.

D was indicted and charged with Murder, 3rd degree possession of a weapon, 2nd degree possession of a weapon for an unlawful purpose, and 2nd degree aggravated assault. Following a jury trial, D was convicted of murder on February 16, 1990, and sentenced to 30 years with no opportunity for parole. He received 4 years for the weapons possession charge, to be served concurrently with the murder conviction. He was also found guilty of aggravated assault, receiving a concurrent sentence of 7 years with a 3 year parole disqualifier. The weapons possession charge was vacated and merged with the charge of possession of a weapon for an unlawful purpose.

Revised 6/25/91

#1828

STATE V. O'NEAL

D burglarized V's home. V confronted D and D beat V severely, then put a bag over V's head, dragged her downstairs and stuck her head in a furnace. [redacted] Jury verdict: murder 10/20/88. No penalty trial. Life. Aggravating factors: 4c, 4g. Mitigating factor: 5h.

During the night of June 29, 1987, Louis O'Neal, (D), age 39, illegally entered the home of (V). D, who was 5'11" and weighed 225 pounds, was surprised by V, who was very elderly and of slight physical stature. V apparently confronted D, who beat her severely with his fists. D then put a bag over V's head and dragged her down a flight of stairs to the basement. Once in the basement, D put part of V's body in the furnace. After V's death, D remained in V's home for a few days, leaving on July 1, 1987. A police investigation led to D being arrested on January 5, 1988.

At the time of the offense, D claimed that he had no place to live. D had a very unhappy childhood and claims that he began stealing to help his family because his father spent all his money on alcohol. [redacted] went to school as far as the 8th grade [redacted] D held a number of unskilled jobs in the past, but never for any extended period of time. [redacted] D is the father of 3 children.

[redacted]

D was indicted and charged with purposeful, own-conduct murder and felony murder in attempt to commit burglary. D claimed that V died after falling down the stairs, but in a jury trial, the jury apparently believed the testimony of the medical examiner. The medical examiner testified that V's death was caused by the beating D gave her with his fists. The medical examiner also concluded that V was still alive when D put a bag over her head and partially put her in the furnace. As a result, D was convicted on both counts. On the murder conviction, D was sentenced to life imprisonment with 30 years parole ineligibility. For felony murder, D was given a 30 year concurrent term.

Revised 7/24/91

#1951

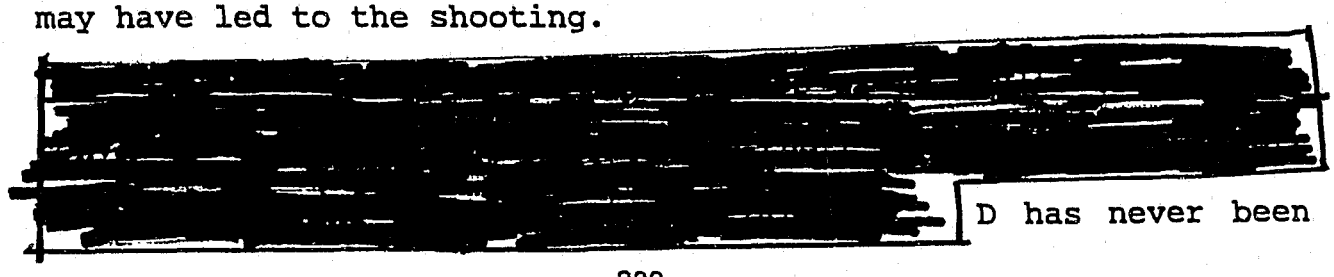
STATE V. PINERO

V and friend (W1) were standing on corner in front of car. D approached with a shot gun. V jumped into car. D shot V 2x (chest and leg) through passenger window. V exited car and ran up the street. D shot 1x at V again. D then turned and fired 2x at W1, missing. Aggravated manslaughter plea 10/30/86. No penalty trial. 15 years/7 minimum. Aggravating factor: 4g. Mitigating factor: 5h.

On July 26, 1986, Victim (V) a 48 year old male, and Witness (W1) were standing on the corner. V was approached by defendant (D), Edwin Pinero, a 24 year old male, carrying a sawed-off pump shot gun. V ran and jumped into a car parked on the corner. D stuck the shot-gun into the car and shot twice at the victim hitting him once in the chest. V exited from the vehicle and ran up the street, at which time D shot at V, hitting him in the legs. V collapsed on the sidewalk. D turned and shot twice at W1, but did not injure him.

After the shooting, D fled and threw the shotgun in the vacant lot. D gave a statement to the police admitting that he shot and killed the victim.

According to W2, V and D knew each other and had argued in the past. W2 also said that V cut D several weeks ago, an event which may have led to the shooting.



D has never been

with his sister and brother-in-law. D claims to have graduated high school but school records indicate that he only completed the eleventh grade. D has worked as a laborer in the past.

D was charged by accusation with aggravated manslaughter. On October 30, 1986 D entered a plea of guilty to the crime of aggravated manslaughter.

On December 12, 1986 D was sentenced to a term of 15 years, with a minimum of 7 years parole ineligibility.

7/30/91

#4018(new)

STATE V. POMALES (DENNIS)

Apparent confrontation between rival gangs. D shoots into crowd, killing V1 and V2. Aggravated Manslaughter Plea, 4/10/90. No penalty trial, 30 years. Aggravating factor: 4b, 4g. Mitigating factors: 5c, 5f, 5h.

On 5/24/89 a shooting occurred. A group of men and women where standing there talking when three vehicles drove by. Several shots were fired at the group. W1 stated he was talking to V1 who fell to the ground after the shots were fired. W1 and W2 rushed V1, a 19 year old male, to the hospital. V2, a 22 year old male, was also shot and expired at the hospital. Police at the hospital then transported W1 and W2 to police headquarters to take their statements. While there, W3 case in to the station very upset stating that his brother was dead. W3 then accused W1 and W2 of the shooting. W2 told police he knew who did it. "Scooby shot him." Scooby was identified as a male.

Later, W3 gave the police description of the three vehicles involved in the shooting. One car belonged to ARG. RG was seen driving by the scene of incident by the police with a passenger, D, Dennis Pomales, male age 19. On June 6, 1989, Pomales was extradited from New York for the murders of V1 and V2. Pomales voluntarily consented to the extradition. Apparently, there was a confrontation between rival gangs and Pomales shot into a crowd, killing V1 and V2.

Pomales dropped out of school in 9th grade, and only worked for five months. [redacted]

[redacted]

Pomales was charged with: Count 1, first degree murder; Count 2, first degree murder; Count 3, second degree possession weapon for an unlawful purpose; Count 4, third degree unlawful possession of a weapon; Count 5, third degree hindering apprehension. Pomales plead guilty to two counts of aggravated manslaughter and was sentenced as follows: Thirty years with a 15 year parole ineligibility on each of the aggravated manslaughters, concurrent with each other. Count 3 and Count 4 dismissed. Count 5, 5 years to run concurrent to Count 1.

Revised 9/17/91

#1976

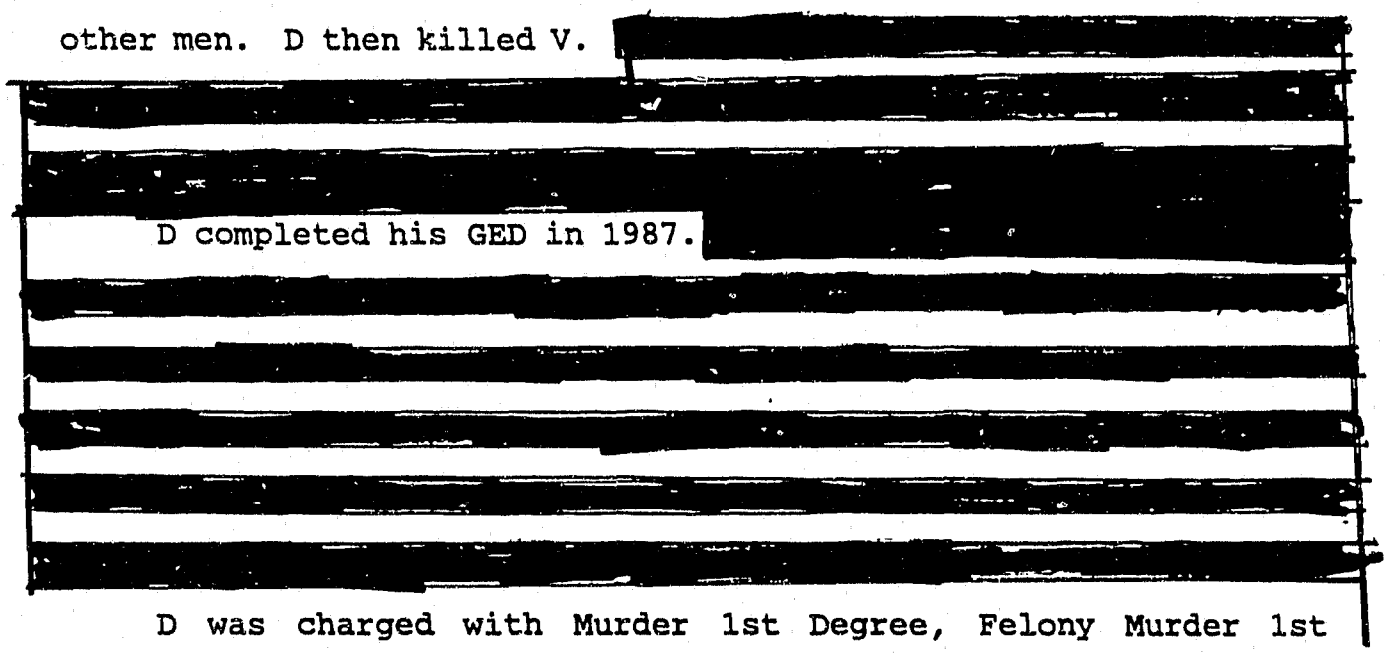
STATE V. PRESHER

D waited for V's husband to leave the house, then entered V's home through a window. D tied V to her bed. D got a steak knife and beat, strangled with a telephone cord and stabbed V repeatedly. [redacted] Murder plea 12/8/89. No penalty trial. Life. Aggravating factors: 4c, 4g. Mitigating factors: 5c, 5h.

On July 22, 1988, defendant (D), Joseph A. Presher, a 21 year old male went to victim's (V), a female, age 30, home and waited for V's husband to leave for work. D then entered the home through a dining room window. D went upstairs, closed both the kids bedroom doors and went into V's room and covered her mouth. V struggled. D gagged V with his sock and tied her to the bed and tried to talk to her but D claimed that V would not listen. D became furious and hit V. D grabbed the phone cord and tried strangling V with it. "She just wouldn't die", D said. D then cut V's left hand loose and had her lying half on the bed and half off the bed. D got a towel and wrapped it around his hand and started cutting V with the knife. D claims that the next thing D remembered was running through the woods back to his house. V's body was found by her ten year old son (W1). [redacted]

The motive for the killing is unclear. When questioned immediately after the murder, D first claimed that he witnessed V's

husband, who sometimes gave D a ride to work, kill V. D then admitted killing V stating that D had had a relationship with V for about 6 months. The relationship ended when D went to jail. After being released from jail, D talked with V about getting back together, but V told D that she wanted to stay with her husband (W2). Then D said he found out that V was running around with other men. D then killed V.



D completed his GED in 1987.

D was charged with Murder 1st Degree, Felony Murder 1st Degree, Burglary 2nd Degree and Possession of a Weapon for an Unlawful Purpose 3rd Degree. D pled guilty on December 8, 1989, to Knowing Murder 1st Degree and Possession of a Weapon for Unlawful Purpose 3rd Degree. D was sentenced on February 2, 1990, to life imprisonment with a 30 year parole disqualifier on the Murder Count. The weapons charge merged with the Murder charge.

Revised 3/7/91

#1977

STATE V. PRESTON

D, Co-D1 and Co-D2 entered V's grocery store to rob V. When V went for a weapon, Co-D1 and then D shot V. V died from his gunshot wounds. Jury verdict: felony murder 12/17/86. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5c, 5h.

On April 13, 1986, at approximately 8:00 p.m., Johnnie Preston defendant (D), age 19, 5'5", 140 pounds, along with Darryl Brodie (Co-D1) and Robert F. Lee (Co-D2) entered a grocery store owned by victim (V). V was standing next to the cash register, while his son (W1), age 13, played video games with V's 16 year old employee (W2) and a 13 year old girl (W3). All three witnesses recognized D as a prior acquaintance. When D and his Co-defendants entered the store, V asked them what they wanted. Co-D1 announced that they were going to rob the store and that he would shoot anyone who moved. Co-D1 had a gun, as did D; Co-D2 had a switch blade knife. One of the robbers ordered V to give them the money in the cash register. Unfortunately, the cash register jammed and V could not open it. When V thought no one was looking, he tried to reach for a gun. Co-D1 saw this and yelled "he has a gun", and shot V. As all three robbers ran out, D fired two more shots into the store, hitting V once. After the robbers fled, the police were called and V was taken to the hospital. V died in the hospital from gunshot wounds to the left temple and chest.

On May 14, 1986, W2 picked the photographs of D, Co-D1 and Co-D2 out of an array of 18 photographs. On May 22, 1986, W1 picked out D and both Co-Ds out of the same array. Finally on May 28, 1986, W3 picked out D and Co-D1 out of the array. Later that day, D was arrested and confessed to taking part in the robbery and shooting of V, and implicated Co-D1 and Co-D2. On May 29, 1986, Co-D1 and Co-D2 were arrested.

At the time of the offense, D lived on the second floor of a two-family house with his mother. D was never married, but has two out-of-wedlock children who live with their mother. D dropped out of school in the 11th grade, and has never received his GED. D was born out-of-wedlock on June 6, 1967. D's father died before he was born. [redacted] D was unemployed at the time of the arrest. [redacted]

For the present offense, D, Co-D1 and Co-D2 were charged with first degree robbery (count 1), murder while engaged in a felony (count 2), third and fourth degree unlawful possession of a weapon (counts 3 and 5), and second and third degree possession of a

weapon for an unlawful purpose (counts 4 and 6).

On July 31, 1986, D was indicted for all six counts. On August 20, 1986, D entered a plea of not guilty to the charges. On December 3, 1986, the trial judge held a hearing in which he denied D's motion to disclose the identity of the State's confidential informant; held that the photographic identification procedures were not suggestive; that D waived his Miranda rights knowingly and intelligently, and that D's statement was voluntary.

On December 9, 1986, D went to trial on all six counts. On December 17, 1986 the jury found D guilty on all six counts of the indictment. Prior to sentencing, the court merged counts 5 and 6 with count 1, and merged counts 1 and 4 with count 2. The court sentenced D to 30 years with no parole eligibility for count 2 (murder). For count 3 (possession of a weapon), D was sentenced to four years without parole to be served concurrently.

D filed a Notice of Appeal on April 9, 1987, claiming that the court improperly allowed D's confession; that the photographic identification was unreliable; that the jury charge was misleading; that the denial of D's request to disclose the identity of an informant was prejudicial, and that the court improperly denied D's request for Judgement of Acquittal. The Appellate Court held that these claims were without merit and affirmed the judgement against D.

On May 15, 1987, Co-D1 was convicted on counts 1, 2, 5 and 6. On July 10, 1987, Co-D1 was sentenced to 30 years imprisonment without parole for the murder charge.

On October 26, 1987, pursuant to a prior plea agreement, all charges against Co-D2 were dismissed.

Revised 7/3/91

#2061

STATE V. RICHARDSON

D, the ex-paramour of V, broke into V's apartment and stabbed V 19 times. The stabbing was witnessed by V's son. Jury verdict: murder 1/6/87. No penalty trial. Life. Aggravating factors: 4c, 4g. Mitigating factor: 5h.

On January 14, 1986, at approximately 1:00 a.m., Arthur Richardson, Jr., defendant (D), 5'8", 165 pounds, 41 years old, climbed up the fire escape and entered the rear window of victim's (V's) apartment. [redacted] D entered the apartment as V, 2 of her children, and her sister's children slept. V's son [redacted] (W1), woke up and saw D enter through the window, enter V's bedroom and close the door. W1 got up to use the bathroom, and on his way back to sleep, W1 looked through the doorknob hole, and saw D stab V. V was asleep when D attacked her, and D stabbed her 3 times in the head, 4 times in the neck, 3 times in the left arm, and 9 times in the chest. W1 ran back to the sofa bed and pretended to be asleep because he was afraid of being discovered by D, who had beaten W1 on several prior occasions. D left V's bedroom and climbed out the rear window and down the fire escape. W5 saw D in the road near V's apartment. W1 fell asleep. V's body was found the next morning by V's nephew

(W2). Later, D told V's sister (W3) and mother (W4) that he saw someone else leave via the rear window, and that when he entered he found V's body. Other witnesses revealed that D was constantly fighting with V. [redacted] On June 24, 1986, D was arrested for the murder. D denied his involvement.

Prior to the offense, [redacted] V ended their relationship just prior to the homicide. D has been employed in construction and factory work, but was unemployed at the time of his arrest. D's formal education never extended beyond the 6th grade [redacted]

D was charged with murder (count 1), burglary (count 2), and unlawful possession of a weapon (count 3). D pled not guilty to the charges.

On January 6, 1987, D went to trial with a jury for all three counts.

On January 16, 1987, D was found guilty of murder and unlawful

possession of a weapon.

On March 27, 1987, D was sentenced to life in prison with a 30 year parole ineligibility for count 1. Count 3 merged with count 1 for sentencing.

On May 24, 1989, D appealed his conviction. On June 30, 1989, the Appellate Court upheld the conviction and sentence.

Revised 8/6/91

#2146

STATE V. ROGERS

D, 31 (B.F.), V, 20 (G.F.). D accused V of infidelity. D went to V's home to seek reconciliation, but they argued instead. D alleged V closed the door on D's hand while he was leaving. D forcibly re-entered. D claimed V attacked him, he took knife from V and stabbed V 11x. [redacted] Jury verdict: murder 3/10/86. No penalty trial. Life. Aggravating factors: 4a, 4c, 4g. Mitigating factors: 5a, 5h.

The following quotation is taken from the unpublished Appellate Division opinion. 3/12/88. A-5037-85T4.

"The homicide occurred in the family home of the victim, (V) [redacted], where she then resided. Defendant resided in New York City. Defendant had been the victim's boyfriend, but the relationship had ended a few weeks before the homicide. Approximately ten days before the homicide, defendant came to Freehold to see the victim. However, she refused to meet with him. Instead, her father, Leroy LaBarrie, met defendant in a local park, where he gave a ring the victim had been wearing to defendant and also gave him $10 for bus fare back to New York. Mr. LaBarrie advised defendant not to return to Freehold.

"On the day of the homicide, the victim had a date with another man to attend a social function. That morning, she and her father went shopping to buy a gown. They returned to the house around 2 p.m. Mr. LaBarrie left again a few minutes later to buy some paint at a nearby store. Upon his return approximately a half

hour later, he found the plate glass window in the middle of his front door knocked out. When he entered the house, he found his daughter's lifeless body on the floor of the living room. An autopsy disclosed that she had been stabbed ten times, four times in the chest, two times in the stomach and four times in the back. Most of the stab wounds were three inches or more in depth. Two of the wounds penetrated the victim's heart and one severed her aorta.

"Defendant called the LaBarrie house several times during the two hours after the crime. According to Mr. LaBarrie, defendant asked him, "Is V [redacted] there? Do I have to come back and finish what I didn't do right the first time?" According to a police officer who monitored his last call, defendant also said, "I left her for dead. If she's not, I'll come back." By tracing the last of these calls, the police apprehended defendant in a telephone booth....

"Defendant further testified that when he initially found no one home in the LaBarrie house, he went to a liquor store and bought some alcoholic beverages which he consumed in a local park. According to defendant, when he returned to the LaBarries, he knocked on the door and the victim admitted him into the house. Defendant testified to the following version of what then occurred:

Q. Just tell us what happened.

A. What happened was we talked.

Q. Where did you talk?

A. In the living room we talked.

Q. How did you get in the house?

A. She opened the door. She let me in.

Q. What did you talk about?

A. First why was I off from work, why wasn't I at work. Did I get fired. That was the conversation.

Q. Then what happened?

A. Then the conversation went on to about the condition I was in, and then went on to about if Mr. LaBarrie seen me in this condition here -- it was like back and forth.

About this time, we heard a car. [redacted] got up, went to the door. She stood for a minute or two, looked out. It wasn't Mr. LaBarrie. It wasn't no one for her.

The conversation went on about meeting me in the park. I said I didn't want to go to the park. Why every time I have to come up I have to go to the park to meet. So, the conversation went on about whose house this is.

I got up, I said all right. I got up. I went to the door. As I got between the screen door and the front door, I turned around, and that is when I just said, I said like the Puerto Rican had his ass here and nothing was said. Why every time I come here I have to go to the park. So, like it was, like, what Puerto Rican. It was like -- So, I said, like, while you was out at the babysitter's house, I was talking to your mother. She ran towards me and started hitting me in the chest, saying that no one had that right, not even me, no one.

I pushed her away. At this time, I said, like, what was he doing. She said, he just stopped by to visit. I said, like what, are you running open house for Puerto Ricans. She said no, he doesn't know anyone and this and that or something. He just moved into town or something like that. So, I said, you know, you are nothing but a fucking liar and a tramp.

As I was turning to go out the door, the door hit me. She had pushed the door on me. Like, I staggered out the door, but the door wasn't shut, it just hit me. My hat was lying in the doorway.

I reached in to get my hat and she slammed the door on my hand. I was pushing on the door, trying to get the door off my hand. She raised up the door. I got my hand out the door, and I was holding it. I was cussing at her. The door was shut at this time, and she was in the glass. She was saying that I didn't sleep with him. I didn't sleep with him.

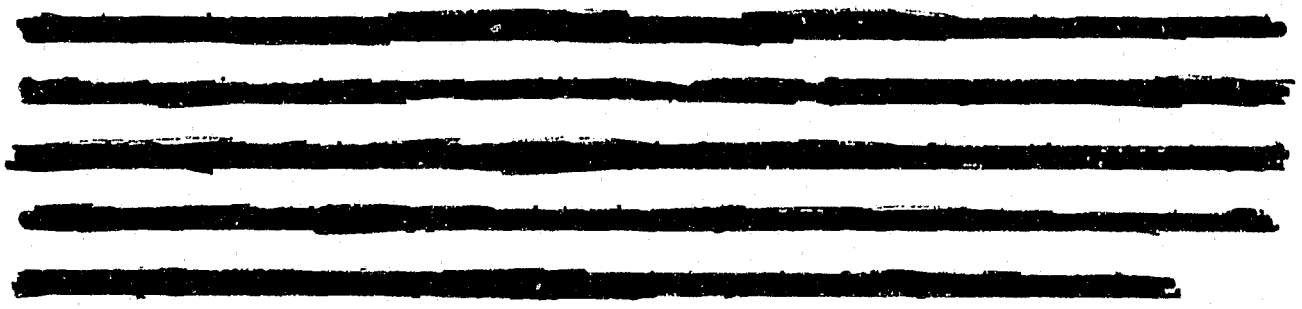
I was just calling her names and stuff. Then she disappeared. So, I kicked the door. The glass broke. I came inside. She was in like the hallway. She came running and she said that my baby, my baby. I didn't do nothing to Theresa [the victim's baby]. Theresa was on the couch. I looked at her, and she was laying on the couch. I didn't do nothing to her.

Then I seen [redacted]. She had the knife. It was a knife that I had got for her. She had it. It was open. I ran and I grabbed her. She was tussling.

* * *

A. There was blood everywhere. I got up. The knife was laying on my leg." (End of excerpt.)

At the time of the offense, D [redacted], and was employed as a stock person at a furniture store. D was expelled from high school for fighting, but he later completed his high school education while in the Army. D also completed about 2 years of college courses [redacted]. D served almost 4 years in the Army, but was released with a less than honorable discharge [redacted]



D was charged with Own-Conduct Murder, Felony Murder, Burglary, Possession of a Weapon for an Unlawful Purpose, and Unlawful Possession of a Weapon. On March 10, 1986 in a jury trial, D was found guilty of all charges. D was sentenced to Life Imprisonment with a 30 year minimum for Felony Murder; and 5 years consecutive for Unlawful Possession. The other charges merged.

D appealed his convictions and they were affirmed by the Appellate Division.

Revised 2/27/91

#2182

STATE V. RUANO

D believes that V robbed a person that worked for D. D and Co-D plan to rob V. As V runs away, D shoots V 1x in the head. Aggravated manslaughter plea 7/8/86. No penalty trial. 18 years/9 minimum. Aggravating factor: 4g. Mitigating factors: 5f, 5h.

On June 23, 1985, victim (V), a 19 year old male, walked by a local bar, trying to sell a radio equalizer and motorcycle jumpsuit that he was carrying in a shopping bag. V was seen by Heriberto Ruano, defendant (D), a 41 year old male, 5'2", 96 pounds. D asked W1 if V was the same man who stole from her. Two weeks prior, someone had stolen either $25, or some cocaine from W1, who was allegedly dealing for D. W1 told D that she was not sure, but that V "looked like the guy". D and William Hernandez (Co-D) then planned to rob V. According to Co-D, D told him to take the equalizer and the jumpsuit from V. Co-D had a .357 magnum revolver in his hand and he confronted V. V began to argue with Co-D, saying that he didn't take anything from W1. At that point, D came out of hiding from behind some bushes, armed with a small handgun. V started to run, and D aimed at him. Co-D grabbed D's arm, but he was still able to shoot V in the back of the head. D and Co-D fled the scene. W2 and W3 saw the two men running with V's shopping bag. D and Co-D ran to the house of W4. W4 and W1 were present. D and Co-D got a change of clothes from W4, and put their guns on

the kitchen table while they changed. W1 saw the small handgun and asked D if that was the gun he used to kill V. D told her that it was the murder weapon, and that he would kill her if she told anyone. When they heard on a police radio scanner that two possible witnesses were being picked up, Co-D said he would kill them if they said anything. The two men split up; Co-D went to a bar, and D went to the house of his girlfriend, Co-D's sister. Co-D went to the same house at approximately 5:00 a.m. Police questioned W2 and W3, who identified Co-D, but were unsure of D's identity, and gave the nickname of W4. When police contacted him, W4 identified D and Co-D, and told police that W1 was present when he was with D and Co-D. W1 also identified D and Co-D.

On June 24, 1985, Co-D was arrested, and gave a statement incriminating himself and D in the robbery and murder of V. D evaded capture until March 6, 1986, when he was found in his girlfriend's apartment and was arrested.

At the time of the offense, [redacted] he worked cleaning offices, and that he ran his own restaurant. D was born in Cuba, and was educated there until the 8th grade, when he dropped out of school [redacted] D served as a cook in the Cuban Army from 1961 until 1964. D entered the country on September 24, 1980 [redacted] D had no prior criminal record.

D was charged with conspiracy (count 1); robbery (count 2); murder (count 3); felony murder (count 4); possession of weapons for an unlawful purpose (count 5); and unlawful possession of weapons (count 6). On July 8, 1986, D retracted his plea of not guilty and entered a plea of guilty to count 2 (robbery), and to count 3, which was amended to "aggravated manslaughter". Under the plea agreement, all other counts were dismissed.

On September 12, 1986, D was sentenced as follows: for aggravated manslaughter, 18 years with a minimum parole ineligibility of 9 years; and for robbery, 18 years with parole ineligibility of 9 years to be served consecutively.

Revised 8/5/91

#2183

STATE V. RUGGS

D and 2 Co-Ds go to rob V on a stairway landing. V moves at D. D shoots V 2 times. Jury verdict: felony murder 3/17/87. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5c, 5f, 5h.

The following quotation is excerpted from the unpublished Appellate Division opinion. 8/15/88. A-4567-86T4.

"On December 13, 1985, at approximately 11:00 p.m., the victim, V [redacted], was gunned down in an upstairs hallway of 112 Lincoln Street, East Orange, the apartment building where he resided with his brother-in-law, Frank Gedin, and other members of his family. The gunfire was heard by Gedin and by Theresa Brown, another tenant. Gedin and Brown were able to observe only the backs of the three perpetrators as they ran across the street and fled in a blue car. The three ran in front of the automobile of Reginald Grant, who was driving north on Lincoln Street. Grant saw them enter a "bluish Buick Skylark," and flee the scene at a high rate of speed with no headlights. He engaged in a chase, eventually flagged a police car for assistance, but neither he nor the police could find the blue car. Grant later gave the license plate number (581 P22) of the car to the police.

"On December 18, 1985, the vehicle, which had previously been stolen from Preston Davis, was observed by the East Orange police in front of 38 Winans Street. Shortly thereafter, Craig Jacobs, a

co-defendant, left 38 Winans Street and went to the vehicle. Jacobs was stopped by the police and eventually arrested. A "gas gun" was found in his right front pocket; he had the keys to the Buick in his left hand. Later that evening, Cornelius Norvell, a resident of 38 Winans Street, led police to a .22 caliber gun which he claimed to have just discovered at the side of the building. The gun was the murder weapon.[2]

"Defendant was arrested later that evening. He gave a voluntary statement to the police in which he confessed to his participation in the robbery and shooting. He told the police that he went to 112 Lincoln Street with Jacobs and Walter Green "to stick up some Haitians," whom he believed to be marijuana dealers who always carried cash, and who, if robbed, were in no position to call the police.

"When the victim entered the front door of the apartment building, Jacobs whistled to signal his two confederates. As [redacted] got to the landing between the first and second floor, defendant pointed his gun from the second floor, and Jacobs drew his gun behind the victim. Green then emerged from the basement where he had been hiding. Defendant told the victim to give him money, drugs and his car keys. When [redacted] responded that he had nothing to give, Jacobs told Green to take the car keys from the victim's hand. As Green went for the keys, [redacted] moved toward the defendant. Defendant fired his gun. According to defendant's

---

[2]Norvell was originally charged with possession of the weapon. A Grand Jury returned a "no bill" on this charge.

statement, "the gun went off. The guy was on me, the gun fell to the floor. Then [Green] picked up the gun and shot the guy again like in the chest. Then we all ran outside and got in the car." End of Excerpt.

At the time of the offense, [redacted]. D worked as a union laborer for two years prior to his arrest. D graduated from high school, and studied computer programming for 2 years. [redacted]

On February 25, 1986, D was indicted for felony murder (count 1); robbery (count 2); unlawful possession of a weapon (count 3); and possession of a weapon for an unlawful purpose (count 4). D entered a plea of not guilty, and went to a trial by jury. On March 17, 1987, D was found guilty as charged on all four counts of the indictment. On April 24, 1987, D was sentenced to 50 years imprisonment, with a 30 year parole ineligibility for the murder charge, and 4 years, to be served consecutively to the first sentence for the unlawful possession of a weapon charge. The

remaining two counts were merged with the first for the purpose of sentencing. D appealed the conviction on five different points, but the Appellate Court affirmed the trial court's judgment.

Revised 8/6/91

#2202

STATE V. SANABRIA (II)

D shot and killed 2 Vs on the street, with a handgun, [redacted] Jury verdict: murder 7/15/86. No penalty trial. Life. Aggravating factor: 4b. Mitigating factor: 5h.

On December 3, 1984, defendant (D), Hector Sanabria, a 25 year old male, shot and killed with a handgun, two victims (V1 and V2), on the street. The unpublished Appellate Division opinion (3/24/88 - A-4595-8577) stated that it was "an attempt to gain a monopoly over the sale of drugs in a section of Paterson." Also there was evidence that the victim "reached for his gun" [end of excerpt] immediately prior to the shooting.

V2, a 28 year old male, was found lying on the sidewalk with his chest covered in blood. V2 was shot twice, in the chest and back. V1, a twenty nine year old male, was found lying in a doorway with his chest covered with blood. V1 had been shot in the chest, liver, pancreas and stomach.

V2, after being shot, told the police that he had been shot by a man with the name "Sanabria" with a possible address of 255 or 265 Park Avenue. In addition, V2 stated that [redacted] In addition, a witness identified D, Hector Sanabria, as the perpetrator.

D is a 23 year old male who is a native of Puerto Rico. [redacted]

[redacted]. D left high school in the ninth grade. At the time of the offense, [redacted]

[redacted]

In addition, [redacted]

On December 6, 1984, D was arrested and charged with purposeful, knowing murder (counts 1 and 2), unlawful possession of a weapon (count 3), and possession of a weapon for unlawful purpose (count 4).

On July 15, 1986, after a jury trial, D was convicted of all counts charged. On September 19, 1986, D was sentenced to two 30 year terms with no parole eligibility, to run consecutively, on counts 1 and 2. D was sentenced to 5 years on Count 3, to run concurrent with counts 1 and 2. D was also sentenced to 5 years on count 4, to run concurrent with counts 1, 2 and 3.

Revised 6/25/91

#2230

STATE V. SAXTON

D (38 yr., ex-husband of V and father of V's son) came to V's apartment and threatened to break down door if not let in. D stabbed V 13x in neck, chest, lungs and wrapped cord around V's neck. 8 yr. old son was a witness. [redacted] Jury verdict: murder 1/13/88. No penalty trial. Life. Aggravating factor: 4c. Mitigating factors: 5a, 5d, 5f, 5h.

During the afternoon of December 27, 1985, defendant Calvin Saxton (D), age 36, stopped by the apartment of his friend, W1 Shortly after D arrived, W1, while looking out a window, noticed that D's wife, victim (V), and his 8 year old son, W2, were walking past the apartment. [redacted] He also helped V, who was blind, with the household chores. At D's request, W1, who was also V's friend, invited V and W2 into her apartment.

For a short while after V entered the apartment, V, D and W1 engaged in pleasant conversation. Soon, however, D became enraged when, after whispering in V's ear, V replied, "I don't have any money". D and V began arguing, and D began swearing at V and called her names. V left for home, while D remained in W1's apartment. D, however, began to verbally attack W1, causing her to leave in fear for her daughter. W1 eventually had a male neighbor assist her in removing D from her apartment.

After D left W1's apartment, he proceeded to V's home. There,

for about 45 minutes, D kicked and banged on the door with his fists, threatened V, and screamed obscenities. D demanded that V allow him into her home, at one time yelling, "Bitch, open this door or I will kill you." D also called his son names and threatened to beat him unless he let D inside the house.

While D was banging on the door and threatening her and her son, V called 3 different people for assistance. Finally, at about 4:20 p.m., V called her neighbor, W3, and asked her to try to get D to leave. W3 left her apartment and spoke to D in front of V's apartment. W3 noticed that D [redacted] had urinated on himself. W3 spoke to D for a few minutes, during which time another neighbor heard D say, "She owes me five dollars." Eventually, W3 persuaded D to leave.

Later that evening, at about 11:00 p.m., W3 phone V "to see how she was doing". While speaking to V, W3 heard the doorbell ring, and then heard V tell W2, her son, not to open the door. W3 then hear V say, "I thought I told you not to open the door." Shortly thereafter, W3 got off the phone.

According to W2, that night there was a knocking at the door and V told him to answer the door, but not to open it. W2 went to the door, asked who was knocking, and upon recognizing D's voice saying "Calvin", opened the door despite V's instructions. When D entered the apartment, W2 ran upstairs to his bedroom.

Shortly after he allowed D into the apartment, W2 was disturbed by V yelling, "Rape me, but don't kill me." W2 went to his mother's bedroom, where he saw D holding a knife in one hand

and grabbing V with the other. D noticed that W2 entered the bedroom, and he told W2 to "get the hell back in his room". D then chased W2 back into his bedroom, and W2 slammed the door in D's face.

According to W2, things calmed down after D chased him into his room. D and V engaged in a normal conversation, and W2 fell asleep. In the middle of the night, however, W2 was awakened by D and V arguing, followed by V screaming. The screaming soon stopped, and W2 fell back asleep. A neighbor, however, W4, saw D leaving V's apartment at about 4:30 a.m. on December 28, 1985.

When W2 woke up on the morning of December 28, he went to V's bedroom. He found V lying on her bed naked and surrounded by a pool of blood. In addition, V had an electrical cord wrapped around her neck. W2 went to his neighbor's apartment and told them that his mother was dead. The police were notified, and upon their arrival they confirmed that V was in fact dead. The medical examiner found that V had been stabbed a total of 13 times in the neck, chest, lungs, liver and heart, and that 11 of the wounds would have been fatal by themselves. The examiner also noted that there were no defensive wounds, a reflection of the fact that V was blind and could not have seen the direction from which the lethal blows were delivered.

When the police first questioned W2, he claimed that V's killer had a Haitian accent in an effort to protect D, his father. V, at the time of her death, had a boyfriend with a Haitian accent, and W2 hoped to shift police suspicion to this boyfriend. On

February 7, 1986, however, as he and his aunt arrived at the police station to look at photos of possible suspects, W2 said that he didn't have to look at any photos because he already knew the identity of V's killer. W2 then admitted that D, his father, had killed V. D was arrested 4 days later.

At the time of the offense, D was employed as a laborer by the Water Department, where he had worked for 16 years. [redacted]

D was charged with murder, unlawful possession of a weapon, and possession of a weapon for an unlawful purpose. D went to trial 3 times on the above charges, and the first 2 trials resulted in hung juries, and in mistrials being declared. On January 13, 1988, In D's third trial, a jury found him guilty on all 3 counts. On March 15, 1988, D was sentenced. On the murder conviction, D was sentenced to life imprisonment with 30 years of parole ineligibility. For unlawful possession of a weapon, D received a sentence of 18 months, to be served concurrently. The other weapons offense merged with the murder conviction and was vacated. D appealed his conviction.

7/312/91
#4008 (new)

STATE V. SLOVER

D and Co-D rob V, a junkyard watchman, of $41. D hits V over head 3x with flashlight. Co-D hits V 12-15x with metal pipe. Plea to agg. mans. 4/6/90. No penalty trial. Aggravating Factors: 4g, 4f. Mitigating Factors: 5c, 5d, 5f, 5h. 40 years, 20 without parole.

On the night of August 1, 1988, defendant (D) Joseph Christopher Slover, age 18 [redacted] with co-defendant (Co-D) Larry Sego, Jr. in a parking lot next to a bar. At approximately 11:30 pm, D and Co-D were joined by a female acquaintance, W1. D, Co-D and W1 drank and chatted in the parking lot for about 2 hours, during which time D and Co-D spoke of their belief that the Victim (V) a junkyard watchman, carried $1000 in cash at all times. D proposed that he and Co-D rob V, and Co-D agreed to do so. At about 1:00 AM, August 2, 1988, W1 drove D and Co-D to the junkyard. D had a car at the junkyard, and D and Co-D planned to sleep in it that night. When they reached the junkyard, however, D stated that he didn't want to got to sleep at that time, so W1 returned D and Co-D to the parking lot where they had earlier been [redacted]. W1 last saw D and Co-D walking toward the junkyard at about 1:30 A.M.

D and Co-D, when they reached the junkyard, slept in D's car. Sometime during the night, D became involved in a confrontation with V, who accused him of stealing a flashlight. D and Co-D followed V to his trailer, where D hit V 3x in the head with the flashlight. D and Co-D left V in the trailer, vomiting and semi-conscious. After discussing that V could identify them if he had

to got to the hospital, D and Co-D returned to V's trailer. Co-D hit V 12 to 15X in the back of the head with a metal pipe. Before leaving the trailer, D took V's wallet and he and Co-D split the $41.00 that they found in it.

The next day the junkyard owner's stepson, W2 discovered V's body. The police were notified and their investigation led them to W1. Soon after, both D and Co-D were arrested, and both gave formal statements to the police.

At the time of the offense, D was employed as a forklift driver. D dropped out of high school in the 12th grade. [redacted]

D was charged with Purposeful and Knowing Murder, 2 counts of Felony Murder 3 counts of Robbery, 2 counts of Burglary, and Theft by Unlawful Taking. On April 6, 1990, D pled guilty to Aggravated Manslaughter and 1 count of Robbery. All other charges were dismissed. For Aggravated Manslaughter, D was sentenced to 30 years, with 15 years parole ineligibility. For Robbery D received a consecutive 10 year sentence, with 5 years parole ineligibility.

Revised 7/10/91

#2362

STATE V. SOSSIN

D, [redacted] shot V1 and V2, D's mother and father, at home. Jury verdict: murder 5/22/84. No penalty trial. Life. Aggravating factor: 4b. Mitigating factors: 5a, 5d, 5f, 5h.

On June 5, 1983, at approximately 4:00 a.m., Mark Sossin, defendant (D), a male, age 27, called his brother, W1. D, who was 5'7" tall and weighed 168 pounds, told W1 that he was in the southern part of the state and that he was driving their mother's car. [redacted] W1 felt that their mother would not have given D her car. After speaking to D, W1 called his parents' home and when there was no answer, he drove over there with his girlfriend. When W1 entered his parents' home, he found that they had both been murdered. (V1), a male, age 68, was found lying face down in the kitchen, clad in pajamas. V1 had been shot in the midsection and in the wrist. (V2), a female, was also found lying face down in a pool of blood in the kitchen. V2, age 63, was fully clothed and had been shot twice in the midsection. Autopsies later determined that both V1 and V2 had died from extensive internal injuries resulting from their gunshot wounds.

Immediately after finding his parents' bodies, W1 called the police. When the police arrived, they transported W1, who was extremely upset, to the hospital and began their investigation.

Later that day, D, who was driving V2's car, was apprehended in the southern part of the state.

At the time of the offense, [redacted] parents. D was a high school graduate and also attended college for a year. D was also in the Navy for a short time and received an honorable discharge. D had [redacted]

D was indicted and charged with 2 counts of purposeful and knowing murder. At trial, D's attorney argued that D should be found not guilty by reason of insanity. [redacted]

[redacted] In a jury trial, on May 22, 1984, D was convicted of both counts of murder. On July 6, 1984, D was sentenced to 2 terms of life imprisonment with a minimum parole ineligibility of 30 years, to be served concurrently. [redacted]

Revised 8/7/91

#4007

STATE V. SOTO

D and Co-D attempt to rob chinese restaurant. V tells them there is no money. D shoots V and NDV. Aggravated Manslaughter Plea, 2/13/91. No Penalty Trial. Aggravating factor: 4g. Mitigating factors: 5c, 5d, 5f, 5h, 30 years.

On 9/4/89, Defendant, (D), Jose Soto, a nineteen year old male, Co-Defendant Eddie L. Jorge, a male, and W1 stop at a chinese restaurant. W1 was unaware that Soto and Jorge intended to rob the restaurant. Soto and Jorge entered the restaurant where the victim (V), a 23 year old female, co-owner of the restaurant, and NDV, a 30 year old male, co-owner and Victim's husband were present. Soto demanded money and according to NDV, Victim told Soto there was no money and Soto shot Victim 1 time [redacted] She was dead on arrival at the hospital. According to NDV, Soto then shot at him, the bullet grazing his chin. The crime is aggravated by both the attempted murder and the robbery.

Soto claims that the V was picking up the phone and wouldn't put it down so he shot her. Soto claims that NDV then went for the phone so he shot him.

Soto is a high school dropout who has worked as a truck driver and a delivery man. At the time of the offense he claimed to have been working at the same complex for six months. Soto [redacted]

[redacted] Soto has no prior adult criminal record.

Soto was charged with purposeful, knowing murder, felony murder, attempted murder, robbery, burglary, aggravated assault, possession of a weapon for an unlawful purpose and unlawful possession of a weapon.

Soto plead guilty to aggravated manslaughter and robbery and was sentenced to 30 years, 15 years minimum on the aggravated manslaughter and to 20 years with a minimum of eight years on the robbery consecutive.

Revised 9/17/91

#2372

STATE V. SPILLANE

D (23 yr., M) killed mother (64 yr.) and stepfather (74 yr.) by strangulation (mother) and beating with hammer (stepfather). [redacted]. Jury verdict: murder, 10-3-86. No penalty trial. Life. Aggravating factors: 4b, 4c. Mitigating factor: 5a, 5h.

The following quotation was taken from the unpublished Appellate Division opinion. 11/15/89 - A-1787-86T4.

"Defendant, who was born in 1961, resided with his mother and step-father in Ho-Ho-Kus, New Jersey. From the time he was in high school, defendant suffered from psychological problems resulting in severe thought disorders, including delusional thinking deviating from reality, a condition complicated by the use of illicit drugs. As a result of his mental disorders, defendant was hospitalized several times in the early 1980's.

"In March 1984, the victims (Vs) [redacted] planned a trip to Washington, D.C. to commence on Thursday, March 29. On March 28, victim 1 (V1) [redacted] cancelled their reservations at a Quality Inn Motel in Washington. Defendant drove his mother to work at Burns & Roe in Paramus, New Jersey, at approximately 8:00 a.m. on March 28....

"At about 12:00 p.m. on March 29, Park Ranger, Thomas Bradley, while on patrol at Harriman State Park observed defendant walk from a park information building to a light color Chevrolet Nova with New Jersey license plates, which was later identified as the

Vs' [redacted] vehicle. The vehicle was disabled and Bradley called a tow truck at 1:27 p.m. Defendant sat in Bradley's automobile for about two hours until the tow truck arrived. Defendant explained to Bradley that he had been hiking, but Bradley noticed that defendant was wearing sneakers. Defendant's footwear was particularly noteworthy because there was approximately 15 inches of fresh snow on the ground....

"On April 2, 1984, at about 1:34 a.m., defendant called the Ho-Ho-Kus Police Department and reported that his parents had not returned from a trip to a local motel....

"During the afternoon of April 6, personnel of the Bergen County Prosecutor's Office searched the victims' home. The officers seized several items including Spillane's sneakers. After testing, it was determined that human blood particles were found on defendant's left sneaker, and some blood, otherwise unidentifiable, was found in sweepings from a vacuum cleaner found at the Vs' [redacted] home.

"The tests established that the blood on the sneakers was not defendant's but it could have been Victim 2's (V2's) [redacted] Accordingly, this test discredited Spillane's explanation to his sister Mina that the blood was his own from a foot blister. The Nova also tested positive for blood on the front floor and the back seat but the blood type could not be determined....

"Early on the morning of May 5, 1984, defendant's brothers, John and James took him to the basement of their parents' home and asked defendant to disclose the location of the bodies. John and

ames placed defendant in a chair in the middle of the basement floor and began interrogating him. The brothers were not acting under the direction of any law enforcement official. Defendant was not physically harmed in any way. Defendant confessed to his brothers that he had murdered the V's and drew a map indicating where in Harriman State Park he had buried the bodies. James went to the park, followed the map and discovered the bodies in a crevice. Thereafter, James notified the Ho-Ho-Kus police.

"On May 7, 1984, Andrew Smith, a park ranger, discovered a ballpeen hammer, a hacksaw, and a trowel while he was searching through garbage bags from Harriman State Park. Autopsies established that V2 had been killed by a blow to the back of his head. The medical examiner noted that each victims' lower left leg bone was sawed completely through, while their right legbones were only partially sawed. The medical examiner noted that all of V2's injuries were consistent with the use of the hacksaw and the ballpeen hammer discovered by Ranger Smith.

"The examiner also testified that V1 had been strangled to death, that both victims had been dead for about one to three months, and that the victims were dead when they were placed in the crevice." End of Excerpt.

At the time of the offense, D was employed through a temporary service and had various short-lived jobs.

[redacted] but this had no bearing on this particular offense. [redacted]

D was charged with 2 counts of own-conduct murder. Prior to the trial, it was ruled that D's confession to his brothers was not voluntary, and therefore not allowed in as evidence. In a jury trial, D was found guilty of both counts and was given 2 life sentences, with a minimum parole ineligibility of 30 years, to be serve concurrently. D appealed his convictions, but they were upheld by the Appellate Division.

Revised 8/9/91

#2389

STATE V. SPRUELL

D and Co-D planned to rob V [redacted]. V shot 1X at door. Then 4X more in kitchen. V shot in arm, neck, scalp and head. $9,000 taken by D and Co-D. Witness claims D said he did shooting. [redacted] Jury verdict: murder, 10/30/85. No penalty trial. Life. Aggravating factors: 4c, 4g. Mitigating factors: 5c, 5f, 5h.

The following is excerpted from State v. Spruell, 121 N.J. 32 (1990):

"The record discloses that on February 22, 1985, [redacted] (the victim (V)) was found dead in the kitchen of his third-floor apartment at 299 South Harrison Avenue, East Orange, a ten to twelve-story apartment building with an awning over its front door and a parking lot across the street. A suspected narcotics dealer, [redacted] (V) had been shot several times at close range in the head, neck, chest, and arms. Death occurred on either February 20 or 21, 1985. A search of [redacted] (V's) apartment revealed that there had been no forced entry. The body was found lying in the kitchen area with a pillow over its head and "a considerable amount of blood" on the floor and throughout the apartment. Two .25-caliber automatic shell casings were found in the apartment.

"The East Orange Police Department developed a lead in the investigation when it received information from Aaron Diggs and his mother, Mrs. Alberta Diggs. On April 23, 1985, Alberta Diggs made a sworn statement in which she said that on a Saturday morning in

February 1985 she had overhead defendant, who at the time had been standing on her front steps with Shawn Cummings and two others she knew by sight, say, "I now that motherfucker is dead the way I shot him in his ass." The information received from Aaron and Alberta Diggs led the police to Derrick Notis and Onnie Simmons.

"Notis gave a statement to Detective McGarry on April 27, 1985. Notis related that on a Thursday evening in late February 1985, defendant and Cummings had come to Simmons's house, where Notis was staying. He said defendant and Cummings had awakened him and Simmons and had told them they had "pulled a job in East Orange," and that "they ripped a dude off and got about nine thousand dollars." According to the statement, defendant had told Notis "the man took too long so he popped his ass." Using "a .25 caliber," he had "shot the man." Defendant had "put the gun in front of him and he showed me how it happened. He said the man tried to run but ... he caught his ass. Then he dragged him in the kitchen and Freak [Cummings] found the money and [defendant] said he put two bullets in his head." Defendant had told him that "there was blood all over the apartment." About a month after the incident, Notis's statement said, he had accompanied defendant when defendant sold "the gun he shot the man with" to someone known as Little Red. When asked why the job had been done, Notis said, "[f]rom what I hear the dude who got shot by Tariq [defendant] beat up Fat Betty Barber and she had him set up."

Simmons gave a similar version of the facts in a statement made to Detective McGarry on April 29, 1985. Simmons, a juvenile, was accompanied by his father when he gave his statement.

Simmons's statement indicated that one night in late February 1985 defendant and Shawn Cummings had awakened Notis and Simmons at his home, showing money and saying it had come from a robbery in East Orange. Defendant had given Simmons $200 and Notis $20 because "[w]hen anybody scores on a job we share the money." Simmons's statement also said defendant had had "a .25 caliber auto" and that defendant had "said the man tried to run and [defendant] shot him at the door. After that they chased him through the apartment and caught him." Defendant had told Simmons he had shot [redacted] "more than twice," and that "the man was holding his head after he shot him." The statement further said that one time while he was in Maryland, defendant had told "a friend of his that he came off with $8000.00 from a job in East Orange and he said he got over ... he didn't get caught by the police." 121 N.J. at 35, 36.

On April 30, 1985, D was arrested in Maryland. On May 2, 1985 D gave a statement in which he admitted participating in a robbery in late February of 1985 in an apartment but denied having a gun and denied any knowledge of a murder occurring in the apartment.

On December 6, 1985 D stated that he was not guilty of any of these charges and that he did not know anything about them.

[redacted]

D was charged with felony murder (count one), robbery (count two), unlawful possession of a weapon (count three), and possession

of a weapon for an unlawful purpose (count four). D, on August 7, 1985, entered a plea of not guilty.

After a jury trial (10/30/85), D was convicted on all four counts. On December 13, 1985, D was sentenced to imprisonment for a term of 30 years with no eligibility for parole for count one. On count two, D was sentenced to imprisonment for a term of 15 years with a 5 year parole disqualifier to run concurrent with count one. On count three, D was sentenced to imprisonment for a term of four years to run concurrent with sentences imposed on counts one and two. On count four, the verdict of guilty was vacated and dismissed for purpose of merger with count two.

On June 14, 1988, D appealed his conviction to the Appellate Division seeking a reversal of the jury verdict. The Appellate Division ruled the matter should be remanded for a supplemental hearing under Evidence Rule 8 to determine whether the statements of W3 and W4 were given in circumstances establishing their reliability. The convictions shall abide that determination. On July 30, 1990 the New Jersey Supreme Court affirmed the judgment of the Appellate Division.

Revised 9/17/91

#2387

STATE V. STATEN

D entered a restaurant and randomly fired at patrons seated at the bar. V died, NDV1 shot 4 times, NDV2 shot 5 times. [redacted] Jury verdict: murder 11/7/85. No penalty trial. Life. Aggravating factor: 4b. Mitigating factor: 5d, 5f, 5h.

On the evening of April 3, 1984 (D),Robert Staten, a twenty-eight year old male in the company of his nephew, W1, left their residence in Pennsylvania and drove to New Jersey. After entering the car, D placed an object covered by a bedsheet on the rear seat. D and W1 arrived at a restaurant in New Jersey. D got out of the car, opened the rear door and removed the bed sheet. There appeared a rifle which W1 had seen under D's bed in their residence. D loaded the gun, inserting a 30 round clip, then, with the rifle in his hand, D walked into the side door of the restaurant. W1 ran from the scene. W1 asked people he met to call the police.

D burst through the door of the restaurant and fired his weapon at V, a 52 year old male, NDV1, a 56 year old male patron of the bar, and NDV2, the owner of the restaurant, a 52 year old male, who were all seated at the bar. After a short time, D turned and ran out the door. V, NDV1 and NVD2, all shot, were lying on the floor. V, who sustained 4 separate entrance and exit wounds, died minutes after the shooting. NDV1 was hit in the arm, right chest, stomach and left leg. NDV2 was hit 5 times, twice in the kneecap,

twice in the thigh and one grazing wound to the stomach. NDV2 underwent 5 operations on his knee.

Pursuant to information supplied by W1, D was arrested at his residence in Philadelphia. Pursuant to a search warrant, the police found 2 receipts, one which pertained to the purchase of a .30 caliber M-1 carbine, magazines and ammunition, and a pair of Pro-Ked sneakers. The police also found an M-1 .30 caliber carbine loaded with a 30-round banana clip, or magazine, containing 16 unfired cartridges, in addition to the one contained in the firing chamber of the weapon itself. Police also located a pair of men's black trousers obtained from D. An eyewitness of the shooting, W2, described the shooter, D, as wearing a black jacket and black pants. W2 stated that D was between 5' 10" and 6' 1" in height, slender, weighed about 150 pounds, had frizzy facial hair rather than a full beard, hair cut close to the head and was age mid 20's to 30 at the very most. D is 6' 2", weight 155 pounds, age 28. W2 stated that on the night of the offense, D was wearing a black leather jacket, black pants, sneakers and a hat. W2 testified that the rifle and magazine were both used by D on the night of 4/3/84. W3, a patron at the restaurant, testified that she saw D enter the restaurant and shoot Vs. W4 testified that the bullets test fired from the rifle matched those taken from the bar in the restaurant.

[redacted]

It appeared that D selected the restaurant at random, [redacted]

[redacted]

D claimed to have completed high school and one year of college [redacted]

D was charged with 1st count, purposeful and knowing murder; 2nd count, attempted murder; 3rd count, attempted murder; 4th

count, aggravated assault; 5th count, aggravated assault; 6th count, aggravated assault; 7th count, aggravated assault; 8th count, possession of a weapon for unlawful purpose; 9th count, unlawful possession of a weapon; 10th count, aggravated assault; 11th count, aggravated assault.

Counts 4, 5, 6, 7, 9 and 11 were dismissed and count 8 was amended to a second degree offense. D was found guilty of all remaining counts. D was sentenced as follows: Count 1, life imprisonment including 30 years without parole; count 2, six years imprisonment including 3 years without parole, to be served consecutively to sentence of count 1; count 3, six years imprisonment including 3 years without parole, consecutive to counts 1 and 2; count 8, seven years imprisonment including 3 years without parole, concurrent to the sentences imposed under counts 1, 2 and 3 and on count 10, seven years imprisonment including 3 years without parole, concurrent to the sentences under count 1 through 3 and 8.

Revised 3/11/91

#2391

STATE V. STEVENS

D and Co-D1 set out to rob V, [redacted] V tried to run and D and Co-D1 chased him and beat him up. As D and Co-D1 were leaving the scene, D turned and fired one shot and hit V in the chest, killing him. Jury verdict: Felony murder 6/20/88. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5d, 5h.

On January 29, 1987, Larry Stevens (D) was in a car with his brother Lenny Stevens (Co-D1); the driver, Jeffrey Blackmon (Co-D2); and Angelo Champion (Co-D3), who was armed with a .357 magnum handgun. [redacted] Co-D3 gave Co-D1 his gun and D and Co-D1 got out of the car to look for someone [redacted]. Meanwhile V, [redacted], was with his cousin W1 and W1's sister [redacted] V and W1 went outside to "hang out". Another man, W2 was also "hanging out" across the street, when he was approached by D and Co-D1. They asked W2 if V was "holding" any drugs. W2 went over to warn V that D and Co-D1 were going to rob him, but V apparently ignored this warning. At approximately 5:00 a.m., D and Co-D1 approached V and W1. Co-D1 asked W1 for a cigarette, but he replied that he had none. V and W1 walked away, but Co-D1 followed telling V, "you are calling me a stick-up artist". V said he had to watch his back. Co-D1 pulled out the gun, V and W1 tried to walk away, then V started to run, followed by D and Co-D1. W1 followed all three. V ran into a park and fell. D got on top of him. W1 tried to get

D off but Co-D1 pointed his gun at W1. In the meantime, V got to his feet, but Co-D1 knocked V down and pointed the gun at him. Co-D1 then handed a knife to D and D held W1 off. Co-D1 hit W1 in the head with the gun. V was still struggling on the ground when W1 ran out of the park towards the police station. W2 and W3 saw one of the assailants tear V's pocket and take something. [redacted] D and Co-D1 then ran from the park with V in pursuit. At this point, D had the gun. D and Co-D1 ran to where Co-D3 and Co-D4 were waiting in the car. As Co-D1 was entering the car, D turned, took aim and shot V one time in the chest. V grabbed his chest and fell to the ground. D entered the car and Co-D2 drove away. W1 had notified the police and then ran back and saw V's body surrounded by a crowd.

When W1 went to police headquarters, he saw a wanted poster of Co-D1 and told police that he was one of the robbers. W1 was then shown a photo line-up with 8 pictures, and positively identified D. On January 31, 1987, Co-D2 was arrested and gave a statement implicating himself and his co-defendants. On February 5, 1987, D was arrested. D initially blamed Co-D3 for the shooting, but when police informed him of statements made by Co-D2 and W1, D admitted shooting V, but claimed that the gun accidentally discharged. On February 17, 1987, Co-D3 was arrested. On February 20, 1987, Co-D1 was apprehended in his home hiding under a bed, and placed under arrest.

At the time of the offense, [redacted]

[redacted] In the past, D worked in a chemical company for four years. D graduated from high school. [redacted]

D, Co-D1 and Co-D3 were charged with felony murder (count 1), armed robbery (count 2), possession of a weapon for an unlawful purpose (count 3), and unlawful possession of a weapon (count 4). Co-D2 pled guilty to hindering apprehension or prosecution and was sentenced to 3 years. D, Co-D1 and Co-D3 were tried by jury, and on June 20, 1988 were convicted on all four counts. On July 22, 1988, D, Co-D1 and Co-D3 were each sentenced as follows; for felony murder, they each were sentenced to life imprisonment with a 30 year minimum parole ineligibility, counts 2 and 3 were merged with count 1 for sentencing, and for unlawful possession of a weapon, they received 4 years concurrent with count 1.

7-29-91
#4029 (new)

STATE V. SULLIVAN

D, [redacted], goes to V's apartment to get money [redacted]. V refuses to give D money, and screams. D stabs V three times in chest, back and stomach. Jury Verdict: Murder 6/23/90. No Penalty Trial. [redacted] Aggravating Factor: 4g; Mitigating Factors: 5d, 5h. Life

On April 26, 1989, Roy Sullivan, 29, (D) decided to rob his friend V [redacted]. Sullivan called V and said their mutual friend W1 was in the hospital and that he had to give her W1's keys. Sullivan was lying to gain entrance to V's apartment. V, who was partially paralyzed from a stroke, let Sullivan in; and using her cane, walked into the kitchen to make coffee. Sullivan followed V and grabbed her by the nightgown around the neck. He told her he wanted money [redacted]. V said "Why are you doing this?" Sullivan replied he needed money [redacted]. V said she didn't have any money so Sullivan stabbed her. V started screaming and she defecated on herself. Sullivan stabbed her again in the chest, breaking off the blade and cutting his own hand. V fell down and Sullivan called out her name. When she didn't answer, Sullivan went to a kitchen cabinet and stole $23.00 in cash and change. When police investigated they found Sullivan's slipper under the body. W1 identified the slipper. A search of W1's garbage produce Sullivan's blood stained clothing and the other slipper. On April 29, 1989, Sullivan was arrested. Sullivan gave a full confession to the police.

At the time of the offense, [redacted] Sullivan worked as a helper for a

disposal company. Sullivan dropped out of high school in the eleventh grade. [redacted].

D was charged with Murder (count 1) Robbery (count 2), Felony Murder (count 3), Unlawful Possession of a Weapon (count 4), and Possession of a Weapon with Intent to Use (Count 5). On June 23, 1990, Sullivan was convicted on all counts. On September 14, 1990, Sullivan was sentenced as follows: Counts 3,4 and 5 merged; for Robbery, 20 years concurrent and for Murder Sullivan was sentenced to Life Imprisonment with a parole ineligibility of 30 years.

Revised 7/22/91

#2445

STATE V. TAYLOR (LEROY)

D sexually assaults and strangles V, a 13 year old girl and the niece of D's girlfriend. Felony murder plea 1/13/88. No penalty trial. Life. Aggravating factors: 4a, 4g. Mitigating factors: 5h.

On November 15, 1986, Leroy Taylor (D), age 25, was at the home of his girlfriend, (W1), preparing to go to work. D and W1 worked together, and although D actually lived with his mother, he spent many nights at W1's apartment. W1, in fact, had given D a key to her apartment. At about 10:30 p.m., D, W1, and W1's friend left in W1's car, leaving W1's niece, (V), age 13, to babysit W1's 2 small children. W1's friend was dropped off, and D and W1 then drove to the airport to report for work. Upon arriving at the airport, D and W1 were told that they were not scheduled to work that night and that they had the night off.

When D realized that they had the night off, he asked W1 if she wanted to go out. W1 declined D's offer, and she also refused to take D home. In response to D's questioning, W1 eventually admitted that she was going out with another man, W2. W1, in fact, had called W2 from the airport, and he came and met her there. D became angry at W1 and W1 and W2 soon left the airport.

When W1 and W2 left the airport, D called his mother's home and asked for a ride. No one, however, would come for D, and he apparently had to walk home. D claimed that he arrived home at

4:30 a.m., and this was confirmed by his brother.

W1 and W2 returned to W1's apartment at about 4:30 a.m. Worried that D might be in her apartment, W1 immediately checked her children's bedroom. Finding nothing wrong there, W1 then went to her bedroom and turned on the light. She found V lying face up on the floor, between the bed and a dresser. V's pants had been removed, and her panties had been slightly torn and were stained with a small amount of blood. V's bra had also been partially removed. V had a torn piece of nylon stocking on her neck, and froth and blood were coming from her nose and mouth. [redacted]

[redacted]

At about 5:40 a.m., the police arrived. During the course of their investigation, it was discovered that the linens had been removed from the bed. The linens were found placed behind a laundry basket down the hall, spotted with blood. In addition, W1, who had earlier gone to D's home to tell him of V's death, told police that D told her that he had raped and killed V. W1 later retracted this statement, but she then told police that when she and D had argued in the past, D had said that he'd kill someone if W1 ever "put him down".

D was also interviewed on the morning of November 16, 1986. D told police that he was wearing the same clothes that he wore the night before, and upon police request, he turned over his underwear to them. A spot of human blood was later found on the undershirt, and semen stains were on the underpants. Fifteen minutes into the

interview, an attorney arrived, and he advised D not to say anything further. A few weeks later, the prosecutor's office sought a court order to obtain blood and hair samples from D. D, however, fled the area. On March 20, 1987, D, who was accompanied by W1, was arrested in California. He was eventually returned to New Jersey, where he faced charges for V's murder.

At the time of the offense, D was employed by a maintenance service at the airport. D was a high school drop out, but he later acquired a G.E.D..

D was charged with murder, felony murder, 2 counts of 1st degree aggravated sexual assault, aggravated sexual assault, threatening, hindering prosecution, and tampering with a witness. As part of a plea agreement, D pled guilty to felony murder, 1 count of 1st degree aggravated sexual assault, and tampering with a witness. On the felony murder charge, D was sentenced to life imprisonment, with a 30 year parole ineligibility. That sentence is to be consecutive to the sentence D received for violation of parole. For tampering with a witness, D received 5 years, with 2½ years parole ineligibility, consecutive to the sentence for felony murder. For sentencing purposes, D's guilty plea to 1st degree

aggravated sexual assault merged with the sentence for felony murder.

Revised 7/24/91

#2448

STATE V. TAYLOR (WILEY)

[redacted] D and V scuffle. D shoots V then fires shots at NDV1 and NDV2. Aggravated manslaughter plea 10/21/88. No penalty trial. 25 years/12 minimum. Aggravating factor: 4b. Mitigating factors: 5f, 5h.

On December 21, 1987, Wiley Duane Taylor (D), a 23 year old male, 6'1", 190 pounds was brought over from Pennsylvania by W1, who was a [redacted] rival of V, the purpose of which was to have D threaten or frighten V with respect to a problem between [redacted] W1 and V. D, while outside the home of W2, threatened V. NDV1 claims that D attacked V, and a scuffle began. The men fought, then D pulled out a hand gun and shot V in the chest. NDV1 and NDV2 fled, while D fired 2 or 3 times at them. NDV1 was hit in the right wrist, NDV2 was not injured. D and W4 left the scene on foot, and W4 told W5 to drive D home. W4 identified D and directed police to D's apartment. On December 30, 1987, D was arrested. D admitted to shooting V, but claimed that "if the scuffle didn't happen, the gun wouldn't have went off."

At the time of the offense, [redacted] he worked two months driving a van for a snack food company. In 1983, D graduated from high school. D also claims that he joined the U.S. Navy on January 2, 1984, and received an honorable discharge on January 2, 1988. [redacted]

D was charged with murder (ct. 1), conspiracy (ct. 2), unlawful possession of a weapon (ct. 3), possession of a weapon for an unlawful purpose (ct. 4), criminal attempt-murder (cts. 5 and 6), and hindering apprehension or prosecution (ct. 7). On October 21, 1988 D plead guilty to count one, which was amended to aggravated manslaughter, and to count 5, criminal attempt-murder. All remaining counts were dismissed. On December 1, 1988, D was sentenced to 25 years in prison, with a minimum parole ineligibility of 12 years, 6 months for count 1, and for count 5, D was sentenced to 10 years with a parole ineligibility of 5 years, to be served concurrent with count 1.

7-29-91
#4030 (new)

STATE V. TELFORD

D barricaded himself in his apartment with wife (V) and their 2 kids. D argued with V and stabbed her repeatedly in the chest. [redacted]. Murder Plea 8/3/90. No Penalty Trial. Aggravating Factor: 4g. Mitigating Factor: 5a, 5d, 5f, 5h. 30 years.

On August 14, 1989, Mark Telford (D) was arguing with his wife, V. Telford had beaten, V on the head and arms with a wooden 4x4. Telford refused to allow V to got to the hospital until she promised not to leave him or press charges. Telford also threatened to kill V and their two children if she did not comply. Telford was arrested when they arrived at the hospital.

On August 26, 1989, Telford was arguing with V again. On this occasion Telford barricaded himself and his family in their apartment. V's parents (W1 and W2) her cousin (W3) and her sister (W4) came over to check on V's well being and found they could not get in. W3 jumped to the second floor rear roof and talked to V. V told W3 to leave because it was a life and death situation. Telford also talked to W3 and W4 and stated Telford was argumentative. One of V's relatives called the police, before the police could arrive, the witnesses heard screams coming from Telford and V's apartment. The police could not enter the three family house through the locked first floor because no one was there. One of the officers tried to call Telford and V through the window, but there was no response. W3 again climbed to the rear roof and spoke to Telford. W3 saw a large knife in Telford's hand

and he told the police. A few minutes later Telford appeared in the window with a large brown handled knife. Telford sounded angry about the presence of the police and his mother-in-law. Moments later he threw a blood stained shirt out the window. At that point the police stormed the house and forced open the barricades on the first and third floor. When the police got in, Telford was clutching his six month old daughter in one arm and had a large knife in the other hand, Telford refused to release her until she was wrestled from his arms. Telford was then subdued and placed under arrest. Both children were unharmed. The police found V's body naked from the waist up with multiple stab wounds in the upper chest.

At the time of the offense [redacted]. Telford was unemployed at the time, but prior to this he worked for a bakery. Telford dropped out of high in the eleventh grade. [redacted]. Telford was charged with Kidnapping count 1, Felony Murder count 2, Murder count 3, Aggravated Assault, counts 4 and 5, Criminal Restraint count 6, Terroristic Threat count 7, Endangering the Welfare of Children count 8, Unlawful Possession of a Weapon count 9, Possession of a Weapon for an Unlawful Purpose count 10, and Resisting Arrest count

11. On August 3, 1990 Telford plead guilty to counts 1,2,3,9 and 10. On August 27, 1990 Telford was sentenced as follows: counts 2 and 9 merged; for count 1, 20 years concurrent; for count 10 4 years concurrent; and for count 3, Murder, Telford was sentenced to 30 years with a parole ineligibility of 30 years.

Revised 7/24/91

#2453

STATE V. THAMMAN

D, angry because he believed that V,s family had destroyed his car, burnt down their building, killing V and injuring NDV1, NDV2 and NDV3. D charged with felony murder. Felony murder plea 2/24/89. No penalty trial. Life. Aggravating factors: 4b, 4g. Mitigating factors: 5a, 5f, 5h.

On January 14, 1988, at approximately 2 a.m., W1 arrived at his apartment building and saw defendant (D), Naresh Thamman, a 38 year old unemployed male and a resident in the same building. D was standing outside with a plastic bag in his hand. D walked to the corner of the street, turned around and came back in the building. D asked W1 if he had a pack of matches. W1 said "yes" and gave D matches. D went outside again. W1 saw D walk to the corner, then return to the building. W1 recalled that D smelled of gasoline.

W1 stated that D went out of the house again and returned with a plastic bag and an orange juice bottle with a hole in the bottle's cap. W1 saw a fuse or black wire sticking out of the hole, and gasoline in the bottle. D told W1 that "while he was in jail, somebody destroyed his car, that he was going to get these motherfuckers back, those Puerto Ricans down there on the corner."

W1 and D talked a while longer and D put the juice bottle back into the bag and went back outside. W1 saw D run back into the house saying "I'm gonna get them, you watch".

At approximately 3:40 a.m., W2, a Camden police officer on routine patrol, saw V's house on fire and observed a glass bottle with several inches of liquid in it and a wick in the neck. Non-decedent V (NDV1) also saw the bottle. [redacted] The fire killed victim (V), an 11 year old female and injured V's mother, father, and another relative.

In his statement, the fire marshall did not rule out the possibility that a 5 (five) gallon kerosene bottle may have been knocked over, allowing its contents to spill onto the kitchen floor. He concluded that the fire began as a result of an incendiary device (Molotov Cocktail) that probably ignited the kerosene and spread the fire throughout the house.

When D's landlord's daughter told D that a young girl had died in the fire, D laughed and said "they are Puerto Ricans, aren't they?"

[redacted]

. D is a college graduate. D has a sporadic, short term employment history. [redacted]

[redacted].

D was indicted on 10 felony counts, and pled guilty on February 24, 1989, to one felony murder count. D was previously convicted of theft. D was sentenced on March 29, 1989, to 30 years without parole eligibility.

On appeal, D has insisted on withdrawing from the plea bargain, despite potential for re-exposure to death penalty. Appeal is pending.

8/8/91
#4013(new)

STATE V. THOMAS (CHRISTOPHER)

D [redacted], stabs V (89 year old) 77x, strangles and beats her then takes VCR. Felony murder plea. 1/29/90 No penalty trial. 30 years. Aggravating factors: 4c, 4g. Mitigating factors 5d, 5h.

The Defendant (D), is Christopher Thomas, a 26 year old male, stabbed, strangled, and beat Victim (V), an 89 year old woman. According to W1 (V's granddaughter), V had been staying with W, and D's brother. W1 and D's brother were paramours. On the date of the offense W1 found V in a pool of blood. V had been stabbed 77 times in the upper torso and extremities, strangled and beaten. The telephone line had been cut and a VCR was missing from the apartment. Thomas subsequently confessed to the murder [redacted] Thomas dropped out of high school in the 10th grade but received a GED. After leaving school he was in the National Guard for 18 months. Thomas claims to have worked at a Roy Rogers as a cook for over a year prior to this offense. [redacted]

Thomas was charged with purposeful, knowing murder, felony murder, burglary, robbery, unlawful possession of a weapon and

Revised 9/17/91

#2471

STATE V. THOMPSON

D and Co-D met V in a bar, took him home with them so they could rob him. D and Co-D [redacted] V, then beat and strangled him. D and Co-D took V's car and credit cards. Jury Verdict: Murder plea 11/20/85. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5a, 5c, 5d, 5h.

In September of 1984, defendant (D) Howard Thompson and his wife were having a variety of marital problems. [redacted]. Shortly thereafter, co-defendant (Co-D), Terrance Scales and witness 1 (W1) moved in with D.

By September 20, 1984, D and Co-D were facing serious financial difficulties. Neither of them had jobs, they were behind in the rent, and the electricity had been turned off. [redacted], D, age 20 and Co-D decided to rob someone of his car and sell it in New York. They met the victim (V) at a local bar and brought him back to their apartment.

At the apartment, V, who had recently purchased a new car, [redacted] with D and Co-D. V and Co-D then left [redacted], while D remained at the apartment with W1. D went outside, cut down a clothesline, and made a noose out of it. D

[redacted]. D worked at a variety of unskilled jobs in the past [redacted].

D was charged with purposeful and knowing murder, felony murder, 2 counts of robbery, and 2 counts of theft. On November 20, 1985, D was convicted on all charges. D was sentenced to life with a 30 year parole ineligibility.

8/5/91
#4025 (new)

STATE V. TORO

V and NDV broke into D's car several times. D, angered by this, retrieved his shotgun and shot V & NDV. Aggravated Manslaughter Plea 3/1/90. [redacted] Aggravating factor: 4g. Mitigating factors: 5a, 5f, 5h. 10 years.

On July 9, 1988, V, a 17 year old male, and NDV, a 20 year old male, broke into defendant, William Toro's, car. Toro, a 39 year old male, retrieved his shotgun and shot both V and NDV. Toro left the scene, drove to New York where he dumped the shotgun into the water, and then to his brother's apartment. Toro later indicated that he shot V and NDV because they were "worthless and they had broken into his car several times."

W1, an eyewitness to the incident, implicated Toro in the shootings. W2, Toro's common law wife, gave police Toro's address and told police that Toro had a gun. W2 also showed police Toro's shoe box hidden in the suspended ceiling inside the apartment, where Toro kept the bullets. While at Toro's apartment W2 received a call stating Toro's whereabouts. A warrant was issued for Toro's arrest and he was arrested without incident in West New York.

Toro stated he dropped out of high school in the 6th grade [redacted]. He was employed at Cherry Packing Company as a processor packer for two years. [redacted].

Toro was charged with count 1, murder; count 2, attempted murder; count 3, agg. assault; count 4, possession of a weapon for an unlawful purpose; and count 5, unlawful possession of weapon. On

Revised 8/7/91

#2535

STATE V. TREADWAY

V's (16 yr., F) ex-boyfriend D threatened to kill her. Complaint filed against D. 2 days later, D abducts V from school. V found strangled in wooded area. [redacted] Aggravated manslaughter plea 1/10/83. No penalty trial. 20 years/10 minimum. Aggravating factor: 4g (abduction). Mitigating factors: 5a, 5c, 5f, 5h.

On September 7, 1982, the victim (V), a 16 year old female high school student, went with her father to the local police station. There, they filed harassment complaints against John Treadway, defendant (D), V's 21 year old former boyfriend. According to V and her father, D, who was 5'10" and weighed 145 pounds, called the house at all hours, followed V, and had on occasion gotten physical with both of them. In addition, if D saw V with another boy, he would threaten both of them. D reportedly threatened to kill V on more than one occasion.

On September 9, 1982, D went to V's high school, found V, and led her out of the school against her will. D drove V to a wooded area, where a violent argument apparently ensued. D strangled V with a hose from a Rinse 'N Vac machine, a hose that D carried in his car. D then dragged V's body through a corn field and threw it down a 15-foot deep well. D covered V's body with peach crates, covered the well with a piece of plywood, and walked back to his car. When D returned to his car, he discovered that the police had

abducted from school by D on September 9 and had not been seen since that time. Police then returned to the wooded area and found V's body at the bottom of the well, draped by a Rinse 'N Vac hose. On September 14, 1982, D was charged with homicide and he gave a statement admitting to the offense. [redacted]

At the time of the offense, [redacted] D was expelled from school for disciplinary problems after completing the 10th grade. He has worked as a printing machine operator and as a welder's helper. [redacted]

D was charged with Murder for the death of V. There was also a bench warrant out on D for Contempt of Court after he failed to appear to face charges of Burglary and Theft, and those charges were joined to the Murder indictment. Also joined was another indictment charging D with Receiving Stolen Property, as well as the complaints charging D with obstructing Justice, Giving False Information to a Police Officer, and 2 counts of Harassment. As part of a plea bargain, the Murder charge was reduced to Aggravated Manslaughter and the charges of Receiving Stolen Property, Obstructing Justice, and False Information were dismissed. On the

Revised 8/7/91

#2545

STATE V. TUCKER

Defendant (D) bound, strangled, stabbed and slashed the victim (V), a 25 year old female in her apartment. D then robbed the apartment. Jury verdict: murder 7/10/89. No penalty trial. Life. Aggravating factors: 4c, 4g. Mitigating factors: 5d, 5h.

On the night of November 23, 1987, Stanley Tucker, defendant (D), a 30 year old male, went to victim's (V's) apartment accompanied by his 13 year old nephew (witness, W1). D had previously armed himself with a boning knife, which he carried concealed in the inside pocket of his jacket. V, who had previously met D, invited D and W1 into her apartment. After approximately 15 minutes of talking, D and W1 got up to leave. W1 stood in the hallway near the stairs. D and V stood in the hallway near V's bedroom.

According to W1, D suddenly and unexpectedly grabbed V by the neck, warning her not to say anything. D pushed V into the bedroom as V pleaded for him not to hurt her. D then stuffed a rag deeply into V's mouth and with an electrical cord bound V's hands and strangled her. As W1 watched, D took out his knife and slashed and stabbed V's neck 11 times. In the process, the blade of the knife broke in half. D then carried V to the bathroom and placed both V and the knife in the bathtub. After putting V's body in the bathtub, D robbed V's apartment and stole V's car.

Early in the morning on November 24, 1987, D and W1 again

On November 29, 1987, an autopsy was performed on V. V died from acute asphyxia due to gagging stuffed inside her mouth and ligature strangulation. Contributing to V's death were a deep stab wound to the left side of the neck and eleven (11) slashing cuts on the throat, several of which cut the jugular veins on both sides of V's neck.

[redacted] D completed the eighth grade and was unemployed at the time of the present offense.

[redacted]

D was charged by indictment with murder (count 1), possession of a weapon for unlawful purposes (count 2), burglary (count 3), and theft (count 4). On July 10, 1989, D was found guilty on all four counts by a jury.

8/7/91

#4016(new)

STATE V. VALDEZ (GILBERTO)

Defendant (D), codefendant (Co-D1), and codefendant (Co-D2) beat up victim. Co-D1 strangled victim with a tie. Defendant stabbed victim. Victim was disrobed and dragged to the railroad tracks. Aggravated manslaughter plea. No penalty trial 8/8/89. [redacted] Aggravating factors: 4c, 4g. Mitigating factors: 5d, 5f, 5h. 25 years.

On September 22, 1988, victim told Raymon Fernandez (CoD2) where he could get some battery chargers. When CoD2 discovered the machines did not work, he became angry with V. CoD2 was drinking with Gilberto Valdez (D) and Ricky Watkins (CoD1) when V returned. Co-D2 punched and slapped V. D and Co-D1 joined in beating him. Co-D1 wrapped a tie around V's neck and dragged him to the railroad tracks. They tied V up with a hose. D, Co-D1 and Co-D2 continued beating V. Co-D2 took off V's clothes. D hit Victim with a steel object. D then pulled out a knife and stabbed V. V died as a result of the beating and strangulation. When Co-D2 was arrested he gave a full confession implicating D and Co-D1.

At the time of the offense [redacted]. At the time of his arrest D was unemployed. In the past, D worked as a mechanic and a stone mason. [redacted]

Revised 8/7/91

#2574

STATE V. VASQUEZ

D argued with V (live-in paramour) who threatened to leave him. D strangled and stabbed V in the chest, then cut up the body into 14 pieces and hid the parts in various locations. Jury verdict: murder 11/28/88. No penalty trial. Life. Aggravating factor: 4c (mutilation). Mitigating factors: 5a, 5f, 5h.

On February 29, 1988, Pedro Vasquez defendant (D), a male, age 27, 5'6" and 170 pounds, argued with his live-in girlfriend, victim (V), age 21. V apparently threatened to leave D, and D reportedly stabbed V in the chest and strangled her. D then cut V's body into 14 pieces and wrapped the pieces in plastic bags.

On March 1, 1988, D went to his cousin's (W1) home and asked W1 to help him drop off some packages. W1 went with D to D's home and waited while D went inside. Shortly thereafter, D returned with several packages which he put in the trunk of W1's car. D then directed W1 to several locations, where each time D would take a package from the trunk and dispose of it. After the last stop, W1 asked D what he was doing, and D replied that he had killed his girlfriend, and that he had just gotten rid of her body parts. Two days later, W1 went to the police, who immediately began a search for V's body parts. Under the direction of W1, police found 9 of the 14 body parts at various area locations. Police arrested D at his mother's home on March 4, 1988. A medical examiner later determined V's cause of death to be strangulation and stab wounds

7/11/91
#4035 (new)

STATE V. WASHINGTON (COREY)

D, Co-D1, and Co-D2 rob check cashing store, make V and NDV lie face down on the floor. D shoots V 1x in the head, Co-D1 shoots NDV 1x in the head. Murder plea 8/3/90. No penalty trial. Life. Aggravating factor: 4f, 4g. Mitigating factors: 5c, 5h.

On October 23, 1989, D, Corey Washington, a 19 year old male; Co-D1, John Bultran; Co-D2, Jerome White, sat outside a check cashing establishment and prepared to rob it. Co-D1 knew V, a 25 year old male and a clerk at the establishment; and had told D and Co-D2 that they would not have any trouble getting behind the counter. [redacted]

D, Co-D1 and Co-D2 approached the store. D and Co-D2 had guns. The door to the store was locked, so Co-D1 and Co-D2 shot into the floor to make V open the door. The Ds then entered the store and made V open the safe and sit on the floor. In the meantime, NDV, a 68 year old male and co-employee of V, entered the store. The D's made V and NDV lie flat on the floor while they robbed the safe. As they were leaving, D shot V one time in the head and Co-D2 shot NDV one time in the head.

[redacted] D is a high school dropout who claimed to have worked as a laborer for six months prior to the present offense. [redacted]

D was charged with purposeful, knowing murder, robbery, felony

8/7/91

#4017 (new)

STATE V. WATKINS (RICKY)

D, Co-D1, and Co-D2 beat up V. D strangled V with a tie. Co-D(1) stabbed V. V was disrobed and dragged to railroad tracks. Jury verdict: Felony murder. 10/5/89 no penalty trial. [redacted] Aggravating factors: 4c, 4g. Mitigating factor: 5d, 5h. 35 years.

On September 22, 1988, V told Raymon Fernandez (Co-D2) where he could get some battery chargers. When Co-D2 discovered the machines did not work, he became angry with V. Co-2 was drinking with Ricky Watkins (D) and Gilberto Valdez (Co-D1) when V returned. Co-D2 punched and slapped V. D and Co-D1 joined in beating him. D wrapped a tie around V's neck and dragged him to the railroad tracks. They tied V up with a hose. D, Co-D1 and Co-D2 continued beating him. Co-D2 took off V's clothes. Co-D1 hit V with a steel object. Co-D1 then pulled out a knife and stabbed V. V died as a result of the beating and strangulation. When Co-D2 was arrested he gave a full confession implicating D and Co-D1.

At the time of the offense, D lived in a trailer house inside a warehouse where he worked as a forklift operator. D dropped out of high school in the eleventh grade. [redacted]

Revised 8/7/91

#2649

STATE V. WHEELER

D claims that he asked the daughter (V) of his employer for his bonus, and she wouldn't give it to him. D stabbed V 13 times and took her pocketbook. Felony murder plea 7/5/84. No penalty trial. Life. Aggravating factor: 4c, 4g. Mitigating factors: 5f, 5h.

On December 16, 1983, Ronald Leon Wheeler defendant (D), a 23 year old male, 5'6", 150 pounds, went to the office of his place of employment. The office was run by victim (V), a 30 year old female, the daughter of D's employer. D claims he went to ask V for his Christmas bonus. D claims that when he asked V for his bonus, she said no. D then grabbed for V's pocketbook, which was on her desk. The two began fighting, and D hit V, giving her bruises on her forehead, left cheek, left knee and hands. D then got a knife and stabbed V 13 times in the chest, neck, abdomen, back and legs. [redacted] D took V's pocketbook and left the scene of the homicide. It also appears that D searched the office and took the company's petty cash and V's pay. An office clock was accidentally unplugged, and was stopped on the time 1:45 p.m. At approximately 3:01 p.m., V's body was found by her father (W1). W1 called the police. He told them that he was away from the office over an hour. W1 also told police that the office would have been

prison with a minimum parole ineligibility of 30 years.

Revised 8/7/91

#2673

STATE V. WIDER

D shot V1, female, in chest and abdomen and V2 (V1's son) in chest during an altercation. [redacted] 2 others injured in shooting spree. [redacted] Aggravated manslaughter plea 2/24/89. No penalty trial. 30 years/10 minimum. Aggravating factor: 4b. 4g. Mitigating factors: 5a, 5d, 5f, 5h.

On June 29, 1985, at approximately 12:50 a.m., D, James Wider, a 49 year old male, shot 4 persons at his home with a handgun. D, [redacted] returned to his home and began to argue with V 1 (D's girlfriend), female, age 49, in an upstairs bedroom. The parties moved downstairs and continued arguing. D then went upstairs and returned.

According to W1 (V 1's daughter), D called V 2 (V 1's son) a "motherfucker". D then produced a handgun from behind his back and shot V 2 once in the chest. D then fired 4 more shots into the kitchen area where several persons were gathered. W1 stated that she ran from the home, but she heard D fire additional shots. V1 was shot 3 times and two others were injured. V1 and V2 expired.

[redacted]

D stated that there was an argument and he is not sure what occurred. D only remembers firing the gun. D later stated that he had been struck in the head and retaliated with the firearm.

D has a 10th grade education and does not possess a GED

Revised 7/22/91

#2684

STATE V. WILLIAMS (GERALD)

D and Co-D robbed V at home of cash and a TV, then threw V out window. [redacted] Jury verdict: felony murder 3/13/86. No penalty trial. Life. Aggravating factor: 4g. Mitigating factors: 5d, 5h.

On the evening of November 23, 1984, Gerald Williams (defendant), age 34, 5'11", and 185 pounds, was walking home his 8 year old daughter (witness 1) after buying her ice cream. While walking with his daughter, D came upon his friend, J.C. Boyd (Co-defendant). [redacted] D and Co-D, however, did not have much money, so they went to Co-D's wife's home to borrow money from her. Co-D's wife was not home, so D and Co-D went to another apartment upstairs to ask Co-D's friend for some money.

On the way, they noticed that the door to one of the other apartments was ajar. Hearing a television, D and Co-D knocked on the door, and when there was no answer, they entered the apartment, while W1 remained at the door. Upon entering the apartment, D and Co-D found victim (V), male, age 51, asleep in the bedroom. V had 2 televisions in the apartment, and as D turned off the one in V's bedroom so that he could steal it, V awakened. Co-D punched V and then pushed him toward D, who threw a cover over V and banged V's head against a windowsill. V then apparently broke free and went to the window and called for help. D picked up the television and

[redacted] D left school in the 10th grade [redacted]

D and Co-D were indicted and charged with Felony Murder, Burglary, and Robbery. After being granted immunity, Co-D agreed to testify against D. W1 also testified against D. D elected to testify in his defense and claimed that V, as he called for help, climbed partially out of the window. D further claimed that as he tried to prevent V from jumping, V accidentally fell from the window. This is much different than D's earlier statement to the police, in which he said that they noticed V lying in the street as they entered the apartment building, but did nothing because it was none of their business. In a jury trial, D was convicted of all 3 counts. On the Felony Murder charge, D was sentenced to a term of life imprisonment, with a parole ineligibility of 30 years. For sentencing purposes, the other 2 convictions merged with the Felony Murder conviction. D appealed his conviction, but it was upheld by the Appellate Division.

Revised 8/5/91

#2685

STATE V. WILLIAMS (HERMAN)

D, 22, shot V 1 x in chest in V's home during robbery and burglary. V dies 17 days later of shotgun wounds of chest, stomach, small bowel, kidney and spine. [redacted] Jury verdict: Murder 10/17/84. No penalty trial. Life. Aggravating factor: 4g. Mitigating factor: 5h.

The following quotation is excerpted from the unpublished Appellate Division opinion. 3/19/87. A-978-85T4.

"The essential facts which the jury could have found were these. On February 3, 1984, at about 11:00 p.m., there were six family members and friends present in the victim's (V's) [redacted] home in Newark. Defendant and a minor named Saladean Suber came to rob one of the family members who was not yet home but who defendant believed had been paid that day. Defendant carried a handgun. They took money, jewelry, a case of wine and a television set. Defendant struck Michael Spencer in the face with the handgun. During the robbery, V [redacted], an older handicapped man with alcohol problems, awoke and struggled with defendant. V [redacted] hit defendant with his artificial arm, causing defendant to drop his gun. After picking it up, defendant threatened to "pop" V [redacted], who responded, "I ain't scared of no punk niggers." As V [redacted] tried to swing at him again, defendant said "I'm tired of you old man," and shot him in the left chest, collapsing the left lung and penetrating the diaphragm, stomach, bowels, kidney and pancreas. Surgery was performed to repair the wounds, but V [redacted] died 17 days later from

[redacted]

D was indicted and charged with Murder, Felony Murder, Burglary, Robbery, Unlawful Possession of a Weapon, and Possession of a Weapon for an Unlawful Purpose. In a jury trial, D was convicted of all charges. On the Murder charge, D was sentenced to 30 years without parole. On the Robbery conviction, D was sentenced to a consecutive 15 year term, with 7½ years of parole ineligibility. For Unlawful Possession of a Weapon, D was given a concurrent 4 year term, and he also received a concurrent 7 year term for the other weapons offense. D appealed his convictions.

Revised 8/7/91

#2723

STATE V. WILSON (LESTER)

D (40 yr., M) resided in same hotel as V's (14 yr., F) family. D's sexual interest, V's sister, rejected. D strangled and sexually assaulted V. [redacted] Jury verdict: murder 6/26/86. Life. No penalty trial. Aggravating factors: 4f, 4g. Mitigating factors: 5d, 5f, 5h.

On the morning of August 6, 1985, victim (V), age 14, was found dead in her hotel room. V, who was 5'2" tall and weighed about 100 pounds, was found with a pillow covering her face. An autopsy later revealed that V had been sexually assaulted and that her death had been caused by strangulation.

On August 18, 1985, police questioned Lester Wilson, defendant (D), age 39, who was a resident of the hotel where V had been found dead. D, who was 6'4" tall and weighed 320 pounds, knew V and had been in her room on several occasions. D was questioned at the police station; and he agreed to take a polygraph test, provided that he first be allowed to use the bathroom. D went into the bathroom, where he tried to escape by jumping through a glass window. D was immediately apprehended, and while waiting for an ambulance, he confessed to killing V. It was later found that D's blood type matched that of blood found on V. At trial, D denied killing V.

At the time of the offense, D was employed as a baker's assistant. D is a high school drop out [redacted]

8-6-91
#4032 (new)

STATE V. WORTHINGTON

D went into W1's store to rob V. D shot V in the neck, D then robbed W1. Jury Verdict: Murder 5/11/87. No Penalty Trial. [redacted] Aggravating Factor 4g. Mitigating Factor 5h. 30 years.

The following quotation is excerpted from the unpublished Appellate Division opinion. 5/3/89. A-6036-86T4.

"The salient facts giving rise to his convictions are substantially as follows: Elizabeth Myers owned the Rosebrook Deli located on Arlington Avenue in East Orange, and was working there at 9:15 p.m. on February 25, 1986. The victim (V) [redacted], a man in his late 60's, also worked there assisting Myers, who was getting ready to close at 10:00 p.m. Myers was in the kitchen area in the back while [redacted] was working at the counter at one of the cash registers near the front door.

"At approximately 9:30, Myers saw a man enter the store, speak to [redacted] and leave. After he left, [redacted] told her the man had asked if he could use the men's room. As Myers began to sweep in the rear room she heard someone at the front door yell "give it up" and almost simultaneously heard a shot. She then observed [redacted] lying on the floor behind the counter and at the same time, the same man who had asked to use the bathroom a few minutes earlier, pointed a gun at her, and demanded money. After she gave him the money and food stamps that were in the registers, the gunman forced her into the kitchen area and then left. However, Myers looked out and observed him cross the street and go into the library parking

out from the back room. I told her, give me the money. She gave me the money and I ran." He further stated that he fled through the library parking lot, down another street, and boarded a bus. He described the gun which he used as a small automatic which he had purchased on the street a few years prior to the robbery which he put in a paper bag and threw in a sewer as he fled. After the robbery, he went to a bar in Newark. According to defendant, prior to the robbery, he had "smoked four or five bottles of crack, drank two pints of wine, and smoked two or three joints." The police testified that during the confession defendant appeared calm and did not exhibit any reluctance in making the statement.

"Dr. Karari Sinha, the medical examiner and pathologist who had performed the autopsy on V's [redacted] body, testified that the bullet had entered the right side of V's [redacted] neck, damaging the right internal jugular vein and the spinal cord, and had lodged in the left side of the neck leaving him a paraplegic. Dr. Sinha opined that V's [redacted] death was caused by a massive blood clot which had travelled to the lung and which resulted from the gunshot wound to his neck. Thus he said, V's [redacted] death was a direct result of the gunshot wound. At trial defense counsel indicated he did not wish to cross-examine Dr. Sinha.

"Beverly Tubbs testified that she lived near the Rosebrook Deli and was friendly with Myers. At the time of the incident defendant was living at her friend's mother's apartment. The evening of the robbery Tubbs saw defendant entering her apartment through the kitchen window and asked him what he was doing.

On the present offense D was charged:

- Count 1 - Murder
- Count 2 - 1st degree Robbery
- Count 3 - 3rd degree Unlawful Possession Weapon
- Count 4 - 2nd degree Possession Weapon Unlawful Purpose

D was found guilty on all counts and sentenced as follows:

- Count 1 - 30 years
- Count 3 - 5 years to run concurrent w/count 1