No. _____

IN THE

Supreme Court of the United States

TERENCE VALENTINE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

DEATH PENALTY CASE

MARIE-LOUISE SAMUELS PARMER
COUNSEL OF RECORD
FLORIDA BAR NUMBER 0005584
MARIE@PARMERDELIBERATO.COM

MARIA DELIBERATO
FLORIDA BAR NUMBER 664251
MARIA@PARMERDELIBERATO.COM

PARMER DELIBERATO, P.A.
P.O. BOX 18988
TAMPA, FLORIDA 33679
(813) 732-3321

Counsel for Petitioner

INDEX TO APPENDICES

APPENDIX A

296 So.3d 375 (Mem)
Supreme Court of Florida.

Terance VALENTINE, Appellant,

v.

STATE of Florida, Appellee.

No. SC18-1102
|
June 4, 2020

An Appeal from the Circuit Court in and for Hillsborough County, Michelle Sisco, Judge - Case No. 291988CF012996000AHC

Attorneys and Law Firms

Marie-Louise Samuels Parmer and Maria DeLiberato of Parmer DeLiberato. P.A., Tampa, Florida, for Appellant

Ashley Moody, Attorney General, Tallahassee, Florida, and Rick A. Buchwalter, Assistant Attorney General, Tampa, Florida, for Appellee

Opinion

PER CURIAM.

This case is before the Court on appeal from an order denying a successive motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.851.[1] We affirm the denial of relief.

First, Valentine's claim relating to the legal name of one of his victims, to whom he had been married, is untimely and procedurally barred. *See* Fla. R. Crim. P. 3.851(d)(1) ("Any motion to vacate judgment of conviction and sentence of death shall be filed by the defendant within 1 ***376** year after the judgment and sentence become final."); *Hendrix v. State*, 136 So. 3d 1122, 1125 (Fla. 2014) ("Claims raised and rejected in prior postconviction proceedings are procedurally barred from being litigated in a successive motion."). This information was known to Valentine and raised during his initial postconviction proceedings. *See Valentine v. State*, 98 So. 3d 44, 50 n.8, 51 (Fla. 2012).

Second, the trial court properly denied Valentine *Hurst*[2] relief because he waived his right to a penalty phase jury. *See Twilegar v. State*, 228 So. 3d 550, 551 (Fla. 2017) ("[T]he *Hurst* decisions do not apply to defendants like Twilegar who waived a penalty phase jury.").

Accordingly, we affirm the denial of Valentine's successive motion for postconviction relief.

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ., concur.

COURIEL, J., did not participate.

All Citations

296 So.3d 375 (Mem), 45 Fla. L. Weekly S174

Footnotes

1 We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const.

2 *Hurst v. Florida*, —— U.S. ——, 136 S. Ct. 616, 193 L.Ed.2d 504 (2016); *Hurst v. State*, 202 So. 3d 40 (Fla. 2016).

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APPENDIX B

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA **CASE NO.: 88-CF-012996**

v.

TERANCE G. VALENTINE, **DIVISION: J**
Defendant.
_____/

ORDER DENYING SUCCESSIVE 3.851 MOTION TO VACATE AND SET ASIDE THE JUDGMENT OF CONVICTIONS AND SENTENCE OF DEATH

THIS MATTER is before the Court on Defendant's Successive 3.851 Motion to Vacate and Set Aside the Judgment of Convictions and Sentence of Death, filed on December 21, 2017, pursuant to Florida Rule of Criminal Procedure 3.851. On January 10, 2018, the State filed its response. On February 8, 2018, the Court held a case management conference. After considering Defendant's motion, the State's response, the arguments of counsels presented during the February 8, 2018, case management conference, as well as the court file and record, the Court finds as follows.

CASE HISTORY

A jury convicted Defendant of armed burglary (count one), kidnapping (counts two and three), second degree grand theft (count four), first degree murder (count five) and attempted first degree murder (count six). Defendant waived the penalty phase jury recommendation and, on September 30, 1994, the trial court sentenced Defendant to death on count five. The Florida Supreme Court vacated Defendant's conviction and sentence on count six, but otherwise affirmed Defendant's convictions and sentences. *Valentine v. State*, 688 So. 2d 313 (Fla. 1996). The Supreme Court of the United States denied certiorari on October 6, 1997. *See Valentine v. Forida*, 522 U.S. 830 (1997).

Defendant filed his initial motion for postconviction relief on May 28, 1998; after various amendments and an evidentiary hearing on certain claims, the postconviction court ultimately rendered an order denying relief. Defendant appealed the denial of his postconviction motion, and the Florida Supreme Court affirmed. *Valentine v. State*, 98 So. 3d 44 (Fla. 2012). Defendant now files the instant motion.

INSTANT SUCCESSIVE MOTION

In his successive motion, Defendant asserts his motion is timely under rule 3.851(d)(2)(B) "[o]n the basis of new Florida law arising from *Mosley v. State*, *Bevel v. State*, *Hurst v. State*, and the enactment of Chapter 2017-1."[1] Defendant asserts his successive motion is filed within one year of the aforementioned statutory amendment and case law, therefore, his motion is timely. Defendant further alleges that as to his first claim, his motion is timely filed under rule 3.851(2)(C), as previous postconviction counsel failed to file such a claim. Defendant further alleges a manifest injustice would result if he could not file such a claim now because the State failed to establish the essential elements of the offenses for which he was convicted. Defendant raises the following claims:

CLAIM I

MR. VALENTINE'S CONVICTION FOR GRAND THEFT AUTO, BURGLARY AND KIDNAPPING CANNOT STAND AS THE STATE FAILED TO PROVE THE CORPUS DELECTI DUE TO DEFECTS IN THE INDICTMENT. AS FUNDAMENTAL ERROR THIS CLAIM MAY BE RAISED AT ANY TIME UNDER FLORIDA LAW.

In claim I, Defendant asserts his convictions should be vacated where the indictment identified the victim as "Livia Porche" but the proof at trial only identified the victim as "Livia

[1] *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016), *Bevel v. State*, 221 So. 3d 1168 (Fla. 2017); *Hurst v. State*, 202 So. 3d 40 (Fla. 2016); Chapter 2017-1, Laws of Florida.

Maria Romero." Defendant alleges "the name of the person, as alleged in the indictment, is an essential element in the legal description of the offense, and the failure to provide it is fatal to a conviction." Defendant alleges his convictions for grand theft auto, burglary and kidnapping must be set aside. Defendant alleges counsel failed to challenge this name defect in the indictment, but such a defect is fundamental error.

Defendant further alleges the conviction for grand theft auto must be set aside where the indictment alleged the vehicle was the property of "Livia and Ferdinand Porche" but the proof, i.e., the vehicle application form, reflected the car was bought and registered in New Orleans, Louisiana by "L.M. Romero." Defendant contends that because Louisiana is a communal property state, each spouse owns one half interest in any property purchased or owned by the other spouse, therefore, Defendant "legally owned and/or had a one half interest in the car he was alleged to have stolen."

In its response, the State asserts Defendant's motion is untimely, successive and procedurally barred, and requests that the Court summarily deny Defendant's motion. As to claim I, the State asserts that in his initial postconviction proceedings, Defendant already raised allegations that his convictions could not stand where the victim was identified as "Livia Porche" and the vehicle he allegedly stole was marital property. The State asserts this claim is "barred by a waiver, time bar, subject bar, law-of-the-case doctrine, and doctrine of res judicata." The State asserts this claim does not fall within any of the exceptions to the time limitations set forth in rule 3.851(d), this claim should have been raised on direct appeal, this claim was already raised and denied and barred by the law of the case, and finally, because Defendant did not object in the trial court, any defect in the indictment has been waived.

The Court agrees with the State's response, and finds the instant claim is untimely, successive and procedurally barred. Defendant's sentence became final when the Supreme Court

denied certiorari on October 6, 1997. *See* Fla. R. Crim. P. 3.851(d)(1)(B) ("For purposes of this rule, a judgment is final . . . on disposition of the petition for writ of certiorari by the United States Supreme Court, if filed."). Despite Defendant's assertion to the contrary, the instant claim does not fall within any of the time limitation exceptions set forth in rule 3.851. *See* Fla. R. Crim. P. 3.851(d)(2).

As the State notes, Defendant does not cite to or rely on any information that was not already known to him at the time of trial, direct appeal or previous postconviction proceedings. Additionally, Defendant previously raised the same issues regarding the victim's name in the indictment and the grand theft auto conviction in his prior motion for postconviction relief, the postconviction court denied his claims as procedurally barred, and the Florida Supreme Court affirmed the denial of his postconviction motion. *See Valentine*, 98 So. 3d at 50, n.8, 58. Defendant's allegations are still procedurally barred. *See Johnson v. State*, 104 So. 3d 1010, 1027 (Fla. 2012) ("Claims that should have been raised on direct appeal are procedurally barred from being raised in collateral proceedings.").

Additionally, Defendant has not demonstrated that a manifest injustice will occur if he cannot raise the instant claim. As the State argues, Defendant waived any objection to the defects in the indictment, and the indictment here was not "so vague, indistinct, and indefinite as to mislead the accused and embarrass him or her in the preparation of a defense or expose the accused after conviction or acquittal to substantial danger of a new prosecution for the same offense." Fla. R. Crim. P. 3.140(o). The Court also finds Defendant's allegations do not rise to a fundamental error that can be raised at any time as he alleges. *See e.g.*, *Deparvine v. State*, 995 So. 2d 351 (Fla 2008) ("Generally, if an indictment or information fails to completely charge a crime under the laws of the state, the defect can be raised at any time."), citing *State v. Gray*, 435 So.2d 816, 818 (Fla.1983). **No relief is warranted on claim I.**

CLAIM II[2]

MR. VALENTINE COULD NOT KNOWINGLY HAVE WAIVED HIS RIGHTS TO A UNANIMOUS JURY VERDICT BECAUSE THAT RIGHT DID NOT YET EXIST. THEREFORE, HIS JURY WAIVER WAS NOT KNOWING AND VOLUNTARY AND WAS OBTAINED IN VIOLATION OF MR. VALENTINE'S FIFTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND HIS CORRESPONDING RIGHTS UNDER THE DECLARATION OF RIGHTS OF THE FLORIDA CONSTITUTION.

CLAIM III

MR. VALENTINE'S DEATH SENTENCE VIOLATES THE EIGHTH AMENDMENT UNDER *HURST V. STATE*, AND IT WOULD BE FUNDAMENTALLY UNFAIR TO DEPRIVE HIM OF ITS BENEFIT.

CLAIM IV

THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION REQUIRED THE RETROACTIVE APPLICATION OF THE SUBSTANTIVE RULE ESTABLISHED BY CHAPTER 2017-1.

In claim II of his motion, Defendant alleges pre-*Hurst*, a defendant could only waive his right to a jury recommendation of life or death. Defendant asserts he "waived only the right to a jury recommendation, not his then-unrecognized Eighth Amendment constitutional right to a unanimous jury fact-finding prior to imposition of death." Defendant asserts he could not validly waive a right that did not yet exist and was not yet recognized by the courts, and cites to *Halbert v. Michigan*, 545 U.S. 605 (2005). Defendant posits that even if the Court finds "a pre-*Hurst* defendant could waive *Hurst* relief, Defendant's waiver was not knowing, voluntary . . . because it did not consider the possibility that Florida's death-sentencing scheme would be found

[2] As claims II, III and IV each involve *Hurst*-related relief, the Court will address them together.

unconstitutional." Defendant claims he waived only his right to a non-unanimous jury recommendation.

Defendant acknowledges that in *Mullens v. State*, 197 So. 3d 745 (Fla. 2016), *cert. denied*, 137 S. Ct. 672 (2017), the Florida Supreme Court held that capital defendants who waived their right to a penalty phase jury are not entitled to *Hurst* relief, but contends his current arguments are different than those addressed in *Mullens*, and that the holding in *Mullens* is contrary to *Halbert*. Defendant argues the Court should not deny him relief based on *Mullens*.

Defendant also contends *Hurst* should apply retroactively to his case, and sets forth various reasons. Defendant contends the *Hurst* error here is not harmless. Defendant requests that the Court vacate his death sentence and order a new penalty phase proceeding.

In claim III, Defendant asserts his sentence stands in violation of the Eight Amendment and again argues *Hurst* should apply retroactively to his case.

In claim IV, Defendant argues the Legislature's passage of Chapter 2017-1 created a substantive right to a life sentence unless a jury unanimously recommended a death sentence. Defendant further contends due process and the Eighth Amendment require that this new substantive right apply retrospectively.

The Court finds the Florida Supreme Court has repeatedly held *Hurst v. Florida* and *Hurst v. State* simply do not apply retroactively to cases that were final before *Ring* was decided.[3] *See Hitchcock v. State*, 226 So. 3d 216 (Fla. 2017) (rejecting the defendant's claims relying on *Hurst v. Florida* and *Hurst v. State* to argue that his death sentence is unconstitutional under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, the corresponding provisions of the Florida Constitution, and article I, sections 15 and 16, of the Florida Constitution, and noting, "We have consistently applied our decision in *Asay V*, denying

the retroactive application of *Hurst v. Florida* as interpreted in *Hurst v. State* to defendants whose death sentences were final when the Supreme Court decided *Ring*..."); *Asay v. State*, 224 So. 3d 695, 703 (Fla. 2017) (rejecting defendant's claims regarding the retroactive application of *Hurst v. State*, and Chapter 2017–1, Laws of Florida, and citing its decision in *Hitchcock*); *Asay v. State,* 210 So. 3d 1, 10-22 (Fla. 2016) (conducting a retroactivity analysis and concluding that *Hurst* should not be applied to defendant's case, which became final before *Ring*); *Lambrix v. State*, 227 So. 3d 112, 113 (Fla. 2017) (citing *Hitchcock* and *Asay* and rejecting defendant's claims for relief based on *Hurst* and *Perry*, the Eighth Amendment to the United States Constitution, denial of due process and equal protection based on the arbitrariness of the retroactivity decisions *Asay* and *Mosley*, and a substantive right based on the legislative passage of chapter 2017–1); *Mosley*, 209 So. 3d at 1274 ("[W]e have now held in *Asay v. State*, that *Hurst* does not apply retroactively to capital defendants whose sentences were final before the United States Supreme Court issued its opinion in *Ring.*"); *Hannon v. State*, 228 So. 3d 505, 513 (Fla. 2017) ("We have consistently held that *Hurst* is not retroactive prior to June 24, 2002, the date that *Ring* . . . was released."). This Court is bound by the decisions of the Florida Supreme Court.

Here, Defendant's sentence became final when the United State Supreme Court denied certiorari on October 6, 1997. *See* Fla. R. Crim. P. 3.851(d)(1)(B) ("For purposes of this rule, a judgment is final . . . on disposition of the petition for writ of certiorari by the United States Supreme Court, if filed."). Because Defendant's sentence was final before *Ring* was decided, the Court finds *Hurst v. Florida* and *Hurst v. State*, and Chapter 2017-1, do not retroactively apply to the instant case. Consequently, Defendant's *Hurst* issues are time-barred. *See Hamilton v. State*,

[3] *Ring* was decided on June 24, 2002. *See Ring*, 536 U.S. at 584.

236 So. 3d 276 (Fla. 2018) (finding trial court properly denied defendant's *Hurst* claim as untimely where his convictions and sentences became final in 1998).

The Court further notes that even if Defendant's sentence became final after *Ring* issued, he would not be entitled to relief because he waived his penalty phase jury and advisory recommendation. Although Defendant asserts his waiver was not knowingly and voluntarily entered, the only basis for his claim is that the right to jury fact-finding did not yet exist, essentially seeking *Hurst*-based relief. However, in *Mullens*, the Florida Supreme Court held that a defendant "cannot subvert the right to jury factfinding by waiving that right and then suggesting that a subsequent development in the law has fundamentally undermined his sentence." *Mullens*, 197 So. 3d at 40. The Florida Supreme Court has consistently applied *Mullens* and denied any *Hurst* relief to capital defendants who waived the right to a penalty phase jury. *See Brant v. State*, 197 So. 3d 1051, 1079 (Fla. 2016) (rejecting Defendant's postconviction *Hurst* claim, citing *Mullens*); *Allred v. State*, 230 So. 3d 412 (Fla. 2017) ("This Court has consistently relied on *Mullens* to deny *Hurst* relief to defendants that have waived the right to a penalty phase jury."); *Twilegar v. State*, 228 So. 3d 550 (Fla. 2017) ("As the circuit court correctly recognized, the *Hurst* decisions do not apply to defendants like Twilegar who waived a penalty phase jury."); *Knight v. State*, 211 So. 3d 1, 5 n. 2 (Fla. 2016) (rejecting Defendant's *Hurst* claim and noting "Knight waived his penalty phase jury and, thus, is not entitled to relief."); *Covington v. State*, 228 So. 3d 49, 69 (Fla. 2017) ("A defendant like Covington who has waived the right to a penalty phase jury is not entitled to relief under *Hurst*."); *Quince v. State*, 233 So. 3d 1017 (Fla. 2018) ("We have since consistently relied on *Mullens* to deny *Hurst* relief to defendants who waived a penalty phase jury.").

Defendant is not entitled to relief on claims II, III and IV.

It is therefore **ORDERED AND ADJUDGED** that Defendant's Successive 3.851 Motion to Vacate and Set Aside the Judgment of Convictions and Sentence of Death is hereby **DENIED**.

This is a final, appealable order. Defendant has thirty (30) days from the date of rendition to appeal this order. A timely filed motion for rehearing will toll rendition of this order.

DONE AND ORDERED in chambers, at Tampa, Hillsborough County, State of Florida this 20th day of April, 2018.

MICHELLE SISCO
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this order has been furnished to Marie-Louise Samuels Parmer, Esquire, Samuels Parmer Law Firm, P.A., P.O. Box 18988, Tampa, FL 33679; Lisa Martin, Esquire, Office of the Attorney General, 3507 E. Frontage Road, Suite 200, Tampa, FL 33607, by U.S. mail; and to Christopher Moody, Esquire, Office of the State Attorney, 419 Pierce Street, Tampa, FL 33602, by inter-office mail, by inter-office mail, on this 20th day of April, 2018.

Deputy Clerk

APPENDIX C

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. **CASE NO. 88-CF-012996**

TERENCE G. VALENTINE,

Defendant.

_____/

MOTION FOR REHEARING ON ORDER DENYING SUCCESSIVE MOTION TO VACATE AND SET ASIDE JUDGMENT OF CONVICTIONS AND SENTENCE OF DEATH

TERENCE G. VELENTINE, Defendant in the above-captioned action, respectfully moves this Court for rehearing, pursuant to Fla. R. Crim. P. 3.851, of this Court's Order, entered April 20, 2018, denying his Successive Motion to vacate and set aside his judgments of conviction and sentence of death. Mr. Valentine respectfully alleges that this Court misapprehended important facts and/or points of law. In support thereof, Mr. Valentine, through counsel, submits as follows:

1. On December 21, 2017, Mr. Valentine timely filed a Successive Motion Pursuant to Fla. R. Crim. Pro. 3.851 to vacate his judgments of conviction and sentence of death. The State filed its Answer on January 10, 2018.
2. This Court conducted a Case Management Conference on February 8, 2018 and heard argument from the Parties.
3. On April 20, 2018, this Court entered an Order denying Mr. Brant's Motion.

4. This timely Motion for Rehearing follows.

5. As to his Claim I, Mr. Valentine asserts that this court has misapprehended facts and the record in determining that this claim is procedurally barred as alleged by the State due to "'waiver, time bar, subject bar, law-of-the-case doctrine, and doctrine of res judicata.' The State asserts that . . . this claim should have been raised on direct appeal, this claim was already raised and denied and barred by the law of the case, and, finally, because Defendant did not object in the trial court, any defect in the Indictment has been waived." (Order, p. 3.)

6. The State merely provided a laundry-list of reasons to deny Mr. Valentine's claim, without factual or legal support.

7. This Court's stated reason for denying Mr. Valentine's claim was because the Court "agrees with the State's response, and finds the instant claim is untimely, successive and procedurally barred." (Order, p. 3).

8. This Court also stated that, "Additionally, Defendant previously raised the *same* issues regarding the victim's name in the indictment and the grand theft auto conviction in his prior motion for postconviction relief, the postconviction court denied his claims as procedurally barred, and the Florida Supreme Court affirmed the denial of his postconviction motion." (Order, p. 4).

9. Notably, this Court failed to attach portions of the record that support this finding and Mr. Valentine urges this Court to determine that the record demonstrates Mr. Valentine has not previously raised the same issue. Further, Mr. valentine respectfully asserts that

this Court misapprehends whether res judicata, collateral estoppel and issue preclusion apply in the instant case.

10. First, Mr. Valentine did not previously raise this claim. While he raised claims that dealt with the Indictment and the Grand Theft Auto charge, Mr. Valentine respectfully argues that this Court misapprehends his claim in finding that he has previously raised the claim.

11. Mr. Valentine has alleged that the State has failed to prove the corpus delecti because the allegata did not meet the probata as to the identified claims. This failure, and the State's misconduct and concealment of evidence in this case supporting Mr. Valentine's claims that the burglary, grand theft auto and kidnapping counts must be set aside due to the failure of the allegata and probate. This failure rises to the level of manifest injustice, excusing any time bar.

12. Further, while Mr. Valentine has challenged the grand theft auto count and issues arising out of the State naming "Livia Porche" in the indictment, he has not previously raised the claims in the instant motion.

13. Mr. Valentine argued in Claim XI(7) of his initial postconviction motion that trial counsel rendered *ineffective assistance* by failing to file a motion to dismiss Count Four of the Indictment (Theft of the Chevy Blazer). The initial postconviction court improperly summarily denied this claim without a hearing, but postconviction counsel failed to raise the issue on direct appeal so it was never addressed by the Florida Supreme Court. *Valentine v. State*, 98 So. 3d 44, 51 (Fla. 2012).

14. Mr. Valentine argued in Claim I of his initial postconviction motion that where the Indictment alleged that Livia Porche was the victim, the evidence was insufficient to sustain a conviction of murder. The postconviction court summarily denied this claim as procedurally barred as well and postconviction counsel failed to raise the claim on appeal. *Id*.

15. Mr. Valentine raised a similar argument in Claim XI(1) that *counsel was ineffective* for failing to argue that there was a defect in the Indictment. The postconviction court improperly summarily denied this claim without a hearing, addressing the claim in a piecemeal fashion and determining that there was no prejudice. And, again, postconviction counsel failed to arise this claim on direct appeal. *Id*.

16. Because Mr. Valentine did not raise any of these claims on direct appeal, the law of the case doctrine cannot apply:

> The Florida Supreme Court has explained that law of the case doctrine requires that questions of law *actually decided on appeal* must govern the case in the same court and the trial court, through all subsequent stages of the proceedings." *Florida Dep't of Transp. v. Juliano,* 801 So.2d 101, 105 (Fla.2001) (emphasis added). Law-of-the-case principles do not apply unless the issues are decided *on appeal. Id.; see also Kelly v. State,* 739 So.2d 1164, 1164 (Fla. 5th DCA 1999) (holding that "[s]uccessive 3.800(a) motions re-addressing issues previously considered and rejected on the merits and reviewed on appeal are barred by the doctrine of law of the case"). Because McBride did not appeal the previous order denying his rule 3.800 motion, the district court correctly held that the law of the case doctrine does not apply.

State v. McBride, 848 So. 2d 287, 289–90 (Fla. 2003)

17. The same is true here, because Mr. Valentine did not raise the argument on appeal, the law of the case doctrine cannot apply.

18. The Florida Supreme Court has defined the principle of res judicata, as,

> A judgment on the merits rendered in a former suit between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction, is conclusive not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action.

Kimbrell v. Paige, 448 So. 2d 1009, 1012 (Fla. 1984).

19. Res judicata does generally not apply to postconviction proceedings under 3.800, although its companion, collateral estoppel does apply.

> Under Florida law, collateral estoppel, or issue preclusion, applies when 'the identical issue has been litigated between the same parties or their privies.' *Gentile v. Bauder,* 718 So.2d 781, 783 (Fla.1998). In addition, the particular matter must be fully litigated and determined in a contest that results in a final decision of a court of competent jurisdiction. *See B.J.M.,* 656 So.2d at 910. *City of Oldsmar v. State,* 790 So.2d 1042, 1046 n. 4 (Fla.2001). Although collateral estoppel generally precludes relitigation of an issue in a subsequent but separate cause of action, its intent, which is to prevent parties from rearguing the same issues that have been decided between them, applies in the postconviction context. As explained above, under the principles of *res judicata* a defendant would be prohibited from filing *any* successive 3.800 motion on any issue that was or could have been raised. Collateral estoppel, on the other hand, only precludes a defendant from rearguing in a successive rule 3.800 motion the same issue argued in a prior motion.

State v. McBride, 848 So. 2d 287, 290–91 (Fla. 2003)

20. Neither of these principles, res judicate or collateral estoppel, apply here, however, because, as is apparent from reading the pleadings and the record, Mr. Valentine is not

rearguing the same issues. Further, neither of these principles apply if they defeat the ends of justice or result in a manifest injustice. *McBride* at 291.

21. Mr. Valentine raised in the instant motion that the allegata and probata did not meet as to the grand theft, burglary and kidnapping counts because the Indictment it was obtained through the fraud of Livia Romero that was then advanced by the State at trial which rendered the grand theft auto, burglary and kidnapping charges invalid and lacking in proof. Mr. Valentine has never previously raised such an argument and this Court's finding otherwise is clear error.
22. Mr. Valentine respectfully requests that this Court readdress Mr. Valentine's arguments applying the above stated principles of law.
23. As to his Claim II, III and IV, Mr. Valentine argued that he could not have waived his right to a unanimous jury verdict under the Eighth Amendment, and that *Mullens v. State*, 197 So. 3d 16 (Fla. 2016) did not preclude relief because that case involved a claim of ineffective assistance of counsel and a violation of the Sixth Amendment. "We need not extensively consider the implications of *Hurst* to determine that Mullens cannot avail himself of relief pursuant to *Hurst. Hurst* said nothing about whether a defendant could waive the Sixth Amendment right to jury factfinding in sentencing procedures as recognized by *Ring* . ." *Id*. at 38.
24. The *Mullens* court was dismissive of the Defendant's argument as to jury waiver in the sentencing phase and engaged in a cursory analysis of a Sixth Amendment argument and thus does not preclude Mr. Valentine from relief.

25. Mr. Valentine has alleged in his Successive Motion that his waiver was invalid because he could not knowingly waive a right that did not yet exist, and thus, the Florida Supreme Court's holding in *Hutchison* notwithstanding, he is entitled to set aside his unconstitutionally obtained sentence of death under principles of federal law.

26. Lastly, Mr. Valentine has argued that the Florida Supreme Court's arbitrary retroactivity cut-off is unconstitutional under federal law. This Court did not squarely address this argument.

WHEREFORE, Mr. Valentine respectfully requests that this Court reconsider its ruling, grant rehearing, address all of his arguments and set aside his convictions and sentence of death.

Respectfully Submitted,

/s/ Marie-Louise Samuels Parmer
Marie-Louise Samuels Parmer
Florida Bar Number 0005584
Email: marie@samuelsparmerlaw.com
Samuels Parmer Law Firm, P.A.
P.O. Box 18988
Tampa, Florida 33679
Tel: (813) 732-3321
Fax: (813) 831-0061

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed using the Florida Courts efiling Portal which has electronically served the Office of the Attorney General, capapp@myfloridalegal.com; Assistant Attorney General Lisa Martin, lisa.martin@myfloridalegal.com :Ron Gale, Assistant State Attorney,

mailprocessingstaff@sao13th.com , and the Honorable Michelle Sisco, Circuit Court Judge, siscodm@fljud13.org, on this 7th day of May, 2018.

/s/Marie-Louise Samuels-Parmer
MARIE-LOUISE SAMUELS-PARMER
Fla. Bar No. 0005584

Copies provided by U.S. Mail to:

Terence G. Valentine
DOC#119682
Union Correctional Institution
P. O. Box 1000
Raiford, FL 32083

APPENDIX D

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA **CASE NO.: 88-CF-012996**

v.

TERANCE G. VALENTINE, **DIVISION: J**
Defendant.
_____/

ORDER DENYING MOTION FOR REHEARING ON ORDER DENYING SUCCESSIVE MOTION TO VACATE AND SET ASIDE JUDGMENT OF CONVICTIONS AND SENTENCE OF DEATH

THIS MATTER is before the Court on Defendant's "Motion for Rehearing on Order Denying Successive Motion to Vacate and Set Aside Judgment of Convictions and Sentence of Death," filed on May 7, 2018, pursuant to Florida Rule of Criminal Procedure 3.851.

In his motion, Defendant seeks reconsideration of the Court's "Order Denying Successive 3.851 Motion to Vacate and Set Aside the Judgment of Convictions and Sentence of Death," rendered on April 20, 2018, wherein the Court summarily denied Defendant's "Successive 3.851 Motion to Vacate and Set Aside the Judgment of Convictions and Sentence of Death," filed on December 21, 2017.

However, the Court finds its April 20, 2018, order adequately addressed the issues raised in Defendant's successive motion. **No relief is warranted on Defendant's motion for rehearing.**

It is therefore **ORDERED AND ADJUDGED** that Defendant's motion for rehearing is hereby **DENIED**.

This is a final, appealable order. Defendant has thirty (30) days from the date of rendition to appeal.

DONE AND ORDERED in chambers, at Tampa, Hillsborough County, State of Florida this 1st day of June, 2018.

MICHELLE SISCO
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this order has been furnished to Marie-Louise Samuels Parmer, Esquire, Samuels Parmer Law Firm, P.A., P.O. Box 18988, Tampa, FL 33679; Lisa Martin, Esquire, Office of the Attorney General, 3507 E. Frontage Road, Suite 200, Tampa, FL 33607, by U.S. mail; and to Ron Gale, Esquire, Office of the State Attorney, 419 Pierce Street, Tampa, FL 33602, by inter-office mail, by inter-office mail, on this 14th day of June, 2018.

Deputy Clerk

APPENDIX E

IN THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STATE OF FLORIDA **CASE NUMBER: 88-12996**

v. **DIVISION C**

TERENCE VALENTINE

Defendant

_____/

SUCCESSIVE 3.851 MOTION TO VACATE AND SET ASIDE THE JUDGMENT OF CONVICTIONS AND SENTENCE OF DEATH

The Defendant, **TERENCE VALENTINE**, by and through his undersigned counsel respectfully moves this Honorable Court for an Order vacating and setting aside the judgment of conviction and sentence, including his sentence of death, pursuant to Fla. R. Crim. Pro. 3.851. In support thereof, the Defendant submits the following:

JUDGMENT AND SENTENCE UNDER ATTACK

Mr. Valentine attacks the judgment of conviction and sentence entered on September 30, 1994, by the Honorable Diana M. Allen, Circuit Court Judge, Thirteenth Judicial Circuit, in and for Hillsborough County, Florida, including his sentence of death. A copy of the Judgment and Sentence is attached.

STATEMENT OF EACH ISSUE RAISED ON APPEAL AND IN PRIOR POST CONVICTION PROCEEDINGS

The State of Florida charged Mr. Valentine by indictment on September 21, 1988 with Count One, Burglary-Armed, F.S. 810.02, a first degree felony; Count Two, Kidnapping, F.S. 787.01 (1)(A)(3), a first degree felony; Count Three, Kidnapping, F.S. 787.01 (1)(A)(3), a first degree felony; Count Four, Grand theft-Second Degree, F.S. 812.014 (2)(B), a second degree

felony; Count Five, First Degree Murder, F.S. 782.04, a capital felony; and Count Six, Attempted Murder-First Degree, F.S. 782.04 and F.S. 777.04, a first degree felony.

Mr. Valentine's first trial resulted in a mistrial where the jury was unable to reach a verdict. After a second trial, Mr. Valentine, who has consistently maintained his innocence of these crimes and presented evidence that he was in Costa Rica at the time of the crimes, was convicted on all counts. The jury recommended death on the first-degree murder charge and the judge imposed a sentence of death. The Florida Supreme Court reversed the conviction and vacated the sentence due to the State's improper use of peremptory challenges pursuant to *State v. Neil,* 457 So.2d 481 (Fla. 1984). *Valentine v. State*, 616 So.2d 971 (Fla. 1993).

On retrial, Mr. Valentine was again convicted on all counts. Mr. Valentine waived his right to a non-unanimous, advisory jury sentence and presented mitigating evidence directly to the judge. The trial court sentenced Mr. Valentine to death on September 30, 1994.

Mr. Valentine timely appealed. Mr. Valentine raised the following claims on direct appeal arguing that the trial court erred by (1) finding that the husband and wife privilege did not bar Romero's testimony about Porche's murder; (2) denying Valentine's motion to suppress post-arrest statements that Valentine had made to the police; (3) denying Valentine's motion to strike testimony by the state's footprint expert on the ground that the testimony was too speculative; (4) declining Valentine's motion to appoint a jury selection expert; (5) not allowing Valentine to have the concluding argument before the jury even though Valentine had presented alibi witnesses during his defense; (6) giving the jury the standard jury instruction on reasonable doubt; (7) convicting Valentine of attempted first-degree murder because the conviction could rest on attempted felony murder, which is a nonexistent offense; (8) finding the murder to have been cold, calculated, and premeditated; and (9) failing to find several mitigators. The Florida Supreme Court

denied all of his claims. The Florida Supreme Court reversed the conviction for attempted first-degree murder and vacated the sentence, however, the court affirmed the remaining convictions and sentences, including the sentence of death. *Valentine v. State*, 688 So.2d 313 (Fla. 1996), cert. denied, 522 U.S. 830, 118 S.Ct. 95, 139 L. Ed. 2d 51 (1997). Mr. Valentine's case became final in 1997 upon the denial of certiorari.

Mr. Valentine timely pursued his rights to collaterally challenge his convictions and sentence of death. Mr. Valentine filed a motion for post-conviction relief. The motion was amended a number of times. In his final amended motion, Mr. Valentine raised the following claims: (1) his conviction could not be sustained because the alleged name of the victim was "Livia Porche" and the only proof offered showed that the victim's name was "Livia Maria Romero"; (2) the trial court erred by denying his motion to sever all counts in the indictment relating to Ferdinand Porche; (3) the trial court erred in allowing the introduction of inculpatory recorded communications that were deliberately elicited from Valentine after he had been indicted; (4) "fruit of the poisonous tree" should not have been introduced at trial because it resulted from Valentine's illegal arrest; (5) law enforcement failed to advise the Costa Rican consulate of Valentine's arrest and also failed to advise Valentine of his rights to contact the consulate under the Vienna Convention on Consular Relations; (6) he was denied a fair trial due to prosecutorial misconduct during closing argument which rendered the guilty verdicts fundamentally unfair and unreliable; (7) he was improperly convicted of grand theft because the property that was allegedly stolen was a marital asset acquired during Valentine's marriage to Romero; (8) he was improperly sentenced to death because his vacated conviction for attempted murder was the sole support for the prior

violent felony aggravator found by the sentencing court; (9) the trial court erred in failing to file written reasons for its departure from the sentencing guidelines; (10) the prosecutor directed an illegal search of Valentine's jail cell and improperly seized Valentine's personal papers; (11) that, as explained in fifteen subclaims, he was denied effective assistance of counsel; (12) he was denied effective assistance of counsel by penalty phase counsel's failure to investigate and uncover mental health mitigation and by penalty phase counsel's failure to otherwise prepare for the penalty phase of the trial; (13) he was deprived of a fair trial due to cumulative procedural and substantive error; (14) his right to be free from cruel and unusual punishment will be violated because he may not be competent at the time of his execution. *Valentine v. State,* 98 So. 3d 44, 50 (Fla. 2012). Mr. Valentine timely filed a petition for writ of certiorari which was denied on October 6, 1997. *Valentine v. Florida,* 522 U.S. 830 (1997).

On appeal from the denial of his post-conviction motion, Valentine raised the following claims: (A) counsel was ineffective for failing to object or otherwise prevent Livia Romero from being referred to or portrayed as divorced from Valentine and married to Ferdinand Porche; (B) counsel was ineffective for failing to adequately investigate and uncover mental health mitigation; and (C) the postconviction court erred in summarily denying three ineffective assistance of counsel claims. *Valentine v. State*, 98 So. 3d 44, 51 (Fla. 2012). The Florida Supreme Court denied all of his claims.

Mr. Valentine timely filed a petition for writ of habeas corpus with the federal district court. That case is stayed pending exhaustion of Mr. Valentine's *Hurst* remedies. *Valentine v. Secretary*, Dept. of Corr., 8:13-cv-30-T-23TBM.

Reasons Claims Listed Below were not Previously Raised

On the basis of the new Florida law arising from *Mosley v. State, Bevel v. State,* and the enactment of Chapter 2017-1, Valentine files this successive motion to vacate and presents his claims for relief arising from the resulting new Florida law. On January 12, 2016, *Hurst v. Florida*, 136 S. Ct. 616 (2016), issued. The decision declared Florida's capital sentencing scheme unconstitutional. On March 7, 2016, Chapter 2016-13 was enacted. It was the legislature's first effort to rewrite Fla. Stat. § 921.141 in attempt to cure the constitutional deficiencies.

On October 14, 2016, the Florida Supreme Court ("FSC") issued its decision in *Perry v. State*, 210 So. 3d 630 (Fla. 2016), and declared the 10-2 provision contained in Chapter 2016-13 to be unconstitutional under *Hurst v. Florida*. In *Perry*, the FSC concluded that the Sixth **and the Eighth Amendments** required a unanimous jury verdict recommending a death sentence before one could be imposed. As the FSC explained in *Hurst*, "Not only does jury unanimity further the goal that a defendant will receive a fair trial and help to guard against arbitrariness in the ultimate decision of whether a defendant lives or dies, jury unanimity in the jury's final recommendation of death also ensures that Florida conforms to 'the evolving standards of decency that mark the progress of a maturing society,' which inform Eighth Amendment analyses." *Hurst v. State*, 202 So. 3d 40, 72 (Fla. 2016) (internal citations omitted). Accordingly, the jury must unanimously find that sufficient aggravators exist to justify a death sentence and that the aggravators outweigh the mitigating factors present in the case. Finally, if a unanimous death recommendation is not returned, a death sentence cannot be imposed. Thus, a life sentence is mandated if one or more

jurors vote in favor of a life sentence due to a desire to be merciful, even if the jury unanimously determined that sufficient aggravators existed and that they outweighed the mitigators that were present. *Perry v. State*, 210 So. 3d 630, 640 (Fla. 2016), quoting *Hurst*, 202 So. 3d at 59 ("'the penalty phase jury must be unanimous in making the critical findings and recommendation that are necessary before a sentence of death may be considered by the judge or imposed.'") *See also Hurst*, 202 So.3d at 62, n. 18.

On December 22, 2016, the Florida Supreme Court decided *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016). After conducting a *Witt*[1] and *James*[2] analysis, the court decided that Mosley was entitled to the retroactive effect of *Hurst* and the error was not harmless. Therefore, Mosley's death sentence was vacated and he was entitled to a new penalty phase. *Id.* at 1284.

On March 13, 2017, Chapter 2017-1 was enacted, which finally created a constitutional capital sentencing scheme in Florida. Florida law further evolved on June 15, 2017 when the Florida Supreme Court decided *Bevel v. State*, 221 So. 3d 1168 (Fla. 2017). Bevel's conviction became final after *Ring*[3], therefore Bevel was entitled to retroactive *Hurst* relief. *Id.* at 1175. Further, *Bevel* acknowledges that *Hurst* has affected the prejudice analysis of *Strickland*[4] claims. *See id.* at 1179. Although Bevel's jury recommendation was unanimous, his death sentence was vacated because the "unpresented evidence of substantial mitigation" could have swayed one juror, which "would have made a critical difference." *Id*.

[1] *Witt v. State*, 387 So.2d 922 (Fla. 1980).
[2] *James v. State*, 615 So.2d 668 (Fla. 1993).
[3] *Ring v. Arizona*, 536 U.S. 584 (2002).
[4] *Strickland v. Washington*, 466 U.S. 668 (1984).

This successive motion is filed within one year of the issuance of *Mosley v. State, Bevel v. State,* and the enactment of Chapter 2017-1, all of which have established new Florida law. The claims below could not have been raised previously because these claims arise from changes in Florida law caused by these opinions and the statutory amendment. These claims were not ripe until now because their basis did not exist before these changes in Florida law. Further, Fla. R./ Crim. Pro. 3.851(2)(C) provides for the filing of a motion when the Defendant alleges that prior "post-conviction counsel, through neglect, failed to file the motion." As to Mr. Valentine's claim alleging a violation of the *corpus delecti* rule, prior counsel failed to file a motion on Mr. Valentine's behalf alleging such a claim and, further, because the State has failed to establish the essential elements of the crimes of which Mr. Valentine was convicted, a manifest injustice would occur should he not be able to file this Motion. Accordingly, this motion is timely.

(C) NATURE OF RELIEF SOUGHT

Mr Valentine respectfully asks that his judgments of conviction and sentence of death be vacated.

(D) CLAIMS FOR WHICH AN EVIDENTIARY HEARING IS SOUGHT.

CLAIM I
MR. VALENTINE'S CONVICTIONS FOR GRAND THEFT AUTO, BURGLARY AND KIDNAPPING CANNOT STAND AS THE STATE FAILED TO PROVE THE CORPUS DELECTI DUE TO DEFECTS IN THE INDICTMENT. AS FUNDAMENTAL ERROR THIS CLAIM MAY BE RAISED AT ANY TIME UNDER FLORIDA LAW

In order to sustain a conviction, it is axiomatic that the State must prove each and every element in the indictment, including the identity of the victim. The Due Process Clause protects a

defendant "against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In Re Winship*, 397 U.S. 358 (1970). It is the State, and the State alone who bears this burden of proof. *Mullaney v. Weber*, 421 U.S. 684 (1975). Elements must be charged in the indictment and proven by the State beyond and to the exclusion of a reasonable doubt. *Jones v. United States,* 526 U.S. 227 (1999). *Franki v. State,* 699 So. 2d 1312 (Fla. 1997). The allegata shall fulfill the probata in order to sustain a lawful conviction. "Regardless of whether evidence is direct or circumstantial, proof of elements of corpus delecti must be established beyond a reasonable doubt." *Freeman v. State* 101 So. 2d 887 (Fla. 2d DCA 1958). "The term 'corpus delicti' connotes the body of the offense, or, otherwise stated, the substance of the crime. 26 Am.Jur. section 6, p. 159. As applied to homicide cases in the Florida jurisdiction, the corpus delicti consists of three essential ingredients: (1) the fact of death, (2) the existence of the criminal agency of another person as the cause of death, and (3) the *identity of* the deceased." *Id*. at 888 (emphasis added).

Where the indictment in this case alleged the name of the victim to have been "Livia Porche", and the only proof offered to sustain such allegation showed that her name was "Livia Maria Romero," a conviction cannot be sustained. "A material variance between the name alleged, and that proved, is fatal. Primarily, it is a question of identity and the essential thing in the requirement of correspondence between the allegation of the name in the indictment and the proof is that the record must be such as to inform the defendant of the charge against him and to protect him against another prosecution for the same offense." *Raulerson v. State*, 358 So. 2d 826, 830 (Fla. 1978). Defendant submits that the name of the person, as alleged in the indictment, is an

essential element in the legal description of the offense, and the failure to prove it is fatal to a conviction. *Jacobs v. State,* 35 So. 65 (Fla. 1903).

In Mr. Valentine's case, there exists a material variance between the name alleged – Livia Porche - and the fact proved, such that Mr. Valentine was not protected against another prosecution for the same offense. "[C]onviction for an offense for which he was never charged or tried by the State is fundamental reversible error." *Rose v. State,* 507 So.2d 630 (Fla. 5th DCA 1987). As the *Rose* court observed:

> It is elementary that the conviction of a crime not charged violates constitutional due process as well as the constitutional right of the accused in all criminal cases to be informed of the nature and cause of the accusation against him. The violation of such constitutional rights constitutes fundamental error and is presumptively prejudicial and most certainly not within the discretion of any judge to permit.

Id. at 631-632. See also *Brennan v. State*, 651 So. 2d 244, 245–46 (Fla. 3d DCA 1995). His convictions must be set aside.

The State charged Mr. Valentine with burglary, kidnaping, grand theft auto, and attempted murder. After Mr. Valentine was sentenced, the Florida Supreme Court held that the crime of attempted first-degree felony murder does not exist in Florida. *State v. Gray,* 654 So.2d 552 (Fla.1995). The Florida Supreme Court held in Mr. Valentine's case that because "the jury may have relied on this legally unsupportable theory, the conviction for attempted first-degree murder must be reversed. *See Griffin v. United States,* 502 U.S. 46, 112 S.Ct. 466, 116 L.Ed.2d 371 (1991)." *Valentine v. State,* 688 So. 2d at 317. The court, however, upheld the convictions for burglary, kidnapping and grand theft auto. Those convictions cannot be sustained.

The Conviction for Grand Theft Auto Must be Set Aside

The conviction for grand theft auto must fail. Count Four of the Indictment charged that Defendant did knowingly and unlawfully obtain or use, or endeavor to obtain or use, certain, property of another, to-wit: a Chevy blazer, the property of Livia and Ferdinand Porche. *Salerno v. State* 347 So.2d 659 (Fla. 4th DCA 1977). However, the vehicle in question belonged to "Livia Romero" as evidenced by the vehicle application form and the State failed to amend the Indictment to reflect the true ownership of the vehicle. Defendant submits that the Chevy Blazer in question was not the property of Livia and Ferdinand Porche as stated in the Indictment. Therefore, the conviction for theft of that vehicle cannot be sustained.

The car alleged to have been stolen in the Indictment was bought and registered in New Orleans, Louisiana (a communal property state) by L.M. Romero. [5] The Louisiana Civil Code, Art. 2340, Presumption of community, provides: "Things in the possession of a spouse during the existence of a regime of community of acquets and gains are presumed to be community, but either spouse may prove that they are separate property. The presumption is strong and a spouse who would rebut it must do so by clear and convincing evidence. *Succ. of Lyons,* 452 So.2d 1161 (La.1984); *Dance v. Dance,* 552 So.2d 658 (La.App. 2d Cir.1989). " *Johnson v. Johnson*, 582 So. 2d 926, 928 (La. Ct. App. 1991).

Because Louisiana is a community property state, each spouse under La. State Constitution, Art. 2336, Ownership of community property- has a one half interest in any property purchased or owned by their spouse. La. Const. Art 2369.1 "After termination of community property regime,

[5] The VIN (1G8CS18R8(or G0R6)8117864) of the car was registered to Livia Maria Romero Gutierrez. Counsel is seeking a copy of the VIN and registration of the car and seeks to amend the pleading upon receipt of the documents.

the provisions governing co-owner apply to former community property, unless otherwise provided by law or judicial act. La. Const Art 2369.2. Thus, each spouse owns one-half interest in former community property and its fruits and products. Mr. Valentine legally owned and/or had a one half interest in the car he was alleged to have stolen.

Because Mr. Valentine maintained a legally recognized ownership interest in the Blazer, he cannot be guilty of theft of the car. *Jenkins v. State*, 898 So. 2d 1134 (Fla. 1st DCA 2005); *Brennan v. State*, 651 So. 2d 244, 246 (Fla. 3d DCA 1995), *Hinkle v State,* 355 So. 2d 465, 467 (Fla. 3d DCA 1978). "It is the established law of this state that a co-owner of property cannot be held guilty of larceny of said property. This is true because the co-owner is in lawful possession of the joint property and cannot be guilty of (1) taking the property (2) of another, two of the essential elements of larceny. The only exception to his rule is in the very unique situation where an owner takes his own goods from one who has a special property right in them and a legal right to withhold them from the owner. As a general rule, however, one cannot steal his own goods." *Hinkle,* 355 So. 2d at 467. The State showed no such proof that the purported "owner" of the car had the right to withhold the use of the car from Mr. Valentine.

This court must set aside Mr. Valentine's conviction for Grand Theft Auto in Count Four of the Indictment.

The Conviction for Burglary Must be Set Aside

To support a conviction of burglary the State must prove elements of ownership. Ownership of the building or structure is a material element of the crime of burglary. *In re M.E.,* 370 So.2d 795, 796 (Fla.1979). The purposes of the ownership element are to prove the accused

does not own the property and to sufficiently identify the offense to protect the accused from a second prosecution for the same offense. *In re M.E.,* 370 So.2d at 796–97.

The Florida Supreme Court has held that the ownership element in burglary is not the same as ownership in property law but, rather, means "any possession which is rightful as against the burglar and is satisfied by proof of special or temporary ownership, possession, or control." *Id.* at 797. *D.S.S. v. State*, 850 So. 2d 459, 461–62 (Fla. 2003). Thus, ownership is a material element of the crime of burglary and the State must prove the ownership consistent with the allegations in the Indictment. To support a conviction for burglary, The State must prove that the victim is the same person as alleged in the Indictment. *Miller v State*, 233 So. 2d 448 (Fla. 1st DCA 1970).

During the course of the trial, Livia was allowed to falsely testify that she divorced Valentine in Jefferson Parish, Louisiana, started dating Ferdinand Porche and married Porche in 1986. (FSC ROA Vol. VII p. 484-485). Although Livia admitted that she was still married to Valentine, (FSC ROA Vol. IX p. 805), during the trial, she also testified falsely that she filed for divorce from Valentine and that she married Porche on December 2, 1986 in Jefferson Parish, Louisiana. (FSC ROA Vol. X p. 956-958). Defense counsel obtained a "Certification" from the deputy Clerk in Jefferson Parish, Louisiana and provided that document to the State prior to trial. The Certificate stated in pertinent part that a diligent search of the records failed to disclose any record, report, statement, data compilation or entry reflecting the commencement or initiation of an action or law suit to terminate or dissolve the marriage of Valentine and Livia Romero. Additionally, the certificate stated in pertinent part that in searching the marriage indices, the clerk did not find a marriage license recorded for Livia and Ferdinand Porche. (FSC ROA Vol. X p.

967-968).

The Kidnapping Conviction Cannot Stand

Count Two of the Indictment charged that Defendant did forcibly, secretly or by threat, confine, abduct or imprison Livia Porche. (FSC ROA Vol. 1 p.32-35). While the Indictment alleged the individual kidnapped was "Livia Porche," Livia Porche does not exist. The indictment charged the offenses to have been committed on Livia Porche, but the testimony at trial was that the victim was Livia Maria Romero. (FSC ROA Vol. VII p. 464-467). There was no valid proof that Livia Romero was known by the surname of Porche as alleged in the indictment.

The name of the person assaulted, as alleged in the indictment, is an essential element in the legal description of the offense, and the failure to prove it is fatal to the conviction. *McFarland v. State,* 154 Ind. 442, 56 N.E. 910; *Regina v. Dent*, 2 Cox, Cr. Cas. 354; *Regina v. Frost,* Dearsly's Crown Cas. 474*; Jackson v. State,* 55 Wis 589, 13 N.W. 448; *English v. State,* 30 Tex. App. 470, 18 S. W. 94; *Perry v. State,* 4 Tex. App. 566; *Davis v. People*, 19 III. 74; *Penrod v. People*, 89 III. 150; *Hensley v. Commonwealth,* 1 bush (Ky.) 11, 89 Am. Dec. 604. Because of the failure to prove the surname Porche, as charged in the indictment, the proof fails to sustain the charge as made by such indictment. *Burroughs v. States,*17 Fla 643 (Fla. 1880).

In a prosecution for kidnaping, a material variance between the allegations and proof as to the name of the person allegedly kidnaped is fatal. "Insufficiency of proof, in other words, is legal error." *Jackson v. Virginia,* 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed.2d 560 (1979). A variance between the allegations and proof as to the name of the person assaulted raises questions of identity. The name of the person assaulted as alleged in the indictment is an essential element

in the legal description of the offense, and the failure to prove it is fatal to a conviction.

In an indictment, the true legal name of the alleged victim is a part of the description of the offense and is required to be correctly given so that the alleged victim may be identified by the charge in the indictment. The indictment in this case did not otherwise identify the alleged victim except by the name of Livia Porche. *Snipes v. States*, 733 So.2d 1000 (Fla. 1999). There having been no other description of the alleged victim in the indictment , the failure to prove the name as stated in the information is fatal to the conviction. *Wharton's Criminal Procedure*, § 158, p. 212; *Wharton's Criminal Evidence*, § 94, p. 285;31 *Corpus Juris*, 848, § 465; *State v. Dudley*, 7 Wis. 664; *Luttrell v. State*, 65 Tex Cr. R. 102, 143 S.W. 628; *Gandy v. State*, 27 Neb. 707, 43 N.W. 747, 44 N.W. 108; *State v. English*, 67 Mo. 136; *Irwin v. State*, 117 Ga. 722, 45 S. E. 59; *People v. Hughes,* 41 Cal 234; *United States v. Howard*, 26 Fed. Cas. 388, No. 15103; *State v. Sherrill*, 81 N.C. 550; *Jacob v. State*, 651 So.2d 147 (Fla. 2d DCA 1995). Trial counsel did not challenge this defect in the indictment. Although no objection was made at trial this constitutes fundamental error.

Here, the conviction must be reversed upon the authority of *Jacobs v. State,* 35 So. 65 (1903) and its progeny. There is no evidence in the record to identify Livia Maria Romero as the person alleged to have been the victim. *See Rose v. State,* 507 So.2d 630 (Fla. 5th DCA 1987) ("An attempted robbery of ...any person is a distinctly different factual event and crime from an attempted robbery of...any person other."). See also *Lattimore v. State,* 202 So.2d 3 (Fla. 3d DCA 1967). Therefore, the conviction cannot be sustained.

Defendant contends that the testimony and evidence presented during his trial clearly

indicated that the person allegedly confined, abducted or imprisoned was not Livia Porche as stated in the Indictment. Therefore, the conviction for kidnaping cannot be sustained.

Accordingly, Defendant's judgment of conviction and sentence for grand theft auto, burglary and kidnapping must be vacated and set aside.

CLAIM II

MR. VALENTINE COULD NOT KNOWINGLY HAVE WAIVED HIS RIGHTS TO A UNANIMOUS JURY VERDICT BECAUSE THAT RIGHT DID NOT YET EXIST. THEREFORE, HIS JURY WAIVER WAS NOT KNOWING AND VOLUNTARY AND WAS OBTAINED IN VIOLATION OF MR. VALENTINE'S FIFTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATE'S CONSTITUTION AND HIS CORRESPONDING RIGHTS UNDER THE DECLARATION OF RIGHTS OF THE FLORIDA CONSTITUTION, .

This claim is evidenced by the following:

1. All other allegations and factual matters contained elsewhere in this motion are fully incorporated herein by specified reference.

2. This Court should not deny Mr. Valentine's motion based on *Mullens v. State*, 197 So. 3d 16 (Fla. 2016), because Defendant has substantial arguments not previously raised or considered in *Mullens*.

Defendant Cannot Knowingly Waive a Right Which Does Not Yet Exist

3. A defendant cannot waive a right not yet recognized by the courts. *Halbert v. Michigan*, 545 U.S. 605, 623 (2005); *see also Management Health Systems, Inc. v. Access Therapies, Inc.*, No. 10-61792-CIV, 2010 WL 5572832 (S.D. Fla. Dec. 8, 2010) ("It is axiomatic that a party cannot waive a right that it does not yet have.") *Cruz v. Lowe's Home Centers, Inc.*, No. 8:09-cv-1030-T-30MAP, 2009 WL 2180489, at *3 (M.D. Fla. Jul. 21, 2009) (same); *cf. Menna v. New York*, 423

U.S. 61 (1975) (guilty pleas do not "inevitably waive all antecedent constitutional violations" and a defendant can still raise claims that "stand in the way of conviction [even] if factual guilt is validly established").

4. In *Halbert*, the United States Supreme Court held that where the appellate court considers the merits of the claim in ruling a motion for leave to appeal, a defendant has a constitutional right to appointed counsel in filing the motion for leave to appeal. 545 U.S. at 618-19. Michigan argued that even if the defendant had a constitutional right to appointed counsel he had waived that right when he pled *nolo contendere*. *Id.* at 623. The Supreme Court found, however, that the defendant did not waive his right to counsel because he "had no recognized right to appointed appellate counsel he could elect to forgo." *Id.*

5. The holding of *Mullens* is contrary to *Halbert*. *Mullens* holds that there is no *Hurst* error where the defendant waived a jury recommendation at sentencing. *Mullens*, 197 So. 3d at 39. Prior to *Hurst*, however, a Florida defendant could not have waived *Hurst*-required jury factfinding because that right was not yet recognized by the courts. The pre-*Hurst* defendant could only waive the right to a jury recommendation of life or death.

6. At the time of Defendant's death sentencing, before *Hurst*, Florida's unconstitutional capital-sentencing scheme permitted only the judge, not the jury, to find facts that would expose a defendant to a death sentence. Defendant, therefore, waived only the right to a jury recommendation, not to his then-unrecognized Eighth Amendment constitutional right to a unanimous jury fact-finding prior to the imposition of a sentence of death. Under *Halbert*, Defendant could not have waived his right to jury fact-finding or a unanimous jury verdict.

7. Even if this Court concludes that a pre-*Hurst* defendant could waive *Hurst* relief, Defendant's waiver was not knowing, voluntary, and intelligent, *Mullens*, 197 So. 3d at 39(waiver of jury sentencing must be "knowingly, voluntarily, and intelligently made"); *Trease v. State*, 41 So. 3d 119, 123 (Fla. 2010) (waiver of post-conviction counsel and post-conviction proceedings must be "knowing, intelligent, and voluntary"), because it did not consider the possibility that Florida's death-sentencing scheme would be found unconstitutional, *see Rodgers v. Jones*, 3:15-cv-507-RH, ECF No. 15 (N.D. Fla. Aug. 24, 2016) (federal district court order noting Defendant's waiver was pre-*Hurst* and did not address "the possibility that the entire Florida sentencing scheme would be held unconstitutional").

7. Mr. Valentine only waived his right to a non-unanimous jury recommendation.

8. *Hurst v. Florida* was a decision of fundamental significance that has resulted in substantive and substantial upheaval in Florida's capital sentencing jurisprudence. The Sixth Amendment right enunciated in *Hurst v. Florida*, and found applicable to Florida's capital sentencing scheme, guarantees that all facts that are statutorily necessary before a judge is authorized to impose a death sentence must be found by a jury beyond a reasonable doubt, pursuant to the capital defendant's constitutional right to a jury trial. *Hurst*, 136 S. Ct. at 621. *Hurst v. Florida* held that "Florida's capital sentencing scheme violates the Sixth Amendment . . . ." It invalidated Fla. Stat. §§ 921.141(2) and (3) as unconstitutional. Under those provisions, a defendant who had been convicted of a capital felony could be sentenced to death only after the sentencing judge entered written fact findings that: 1) sufficient aggravating circumstances existed that justify the imposition of a death sentence, and 2) insufficient mitigating circumstances existed

to outweigh the aggravating circumstances. *Hurst*, 136 S. Ct. at 620-21. *Hurst v. Florida* found Florida's sentencing scheme unconstitutional because "Florida does not require the jury to make critical findings necessary to impose the death penalty," but rather, "requires a judge to find these facts." *Id*. at 622. On remand, the FSC held in *Hurst v. State* that *Hurst v. Florida* means "that before the trial judge may consider imposing a sentence of death, the jury in a capital case must unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that the aggravating factors are sufficient to impose death, unanimously find that the aggravating factors outweigh the mitigating circumstances, and unanimously recommend a sentence of death." *Hurst*, 202 So. 3d at 57.

Hurst Should Apply Retroactively to Mr. Valentine

"*Hurst* applies retroactively to defendants whose sentences became final after the United States Supreme Court issued its decision in *Ring*." *Peterson v. State*, 221 So. 3d 571, 585 (Fla. 2017). Valentine's sentence became final on October 6, 1997. Therefore, Valentine falls outside of the category of defendants the Florida Supreme Court has identified as eligible for the retroactive effect of *Hurst*. Valentine, however, is entitled to the retroactive application of *Hurst* under federal law. Where a constitutional rule is substantive, the Supremacy Clause of the United States Constitution requires a state postconviction court to apply it retroactively. *See Montgomery v. Louisiana*, 136 S. Ct. 718, 731-32 (2016).

In *Hurst v. State*, the Florida Supreme Court announced not one, but two substantive constitutional rules. *First*, the FSC held that the Sixth Amendment requires that a jury decide whether aggravating factors that have been proven beyond a reasonable doubt are sufficient in themselves to

warrant the death penalty and, if so, whether those factors outweigh the mitigating circumstances. *Hurst*, 202 So. 3d at 53. *Second*, the FSC determined that the Eighth Amendment required that a jury unanimously determine that the evidence presented at the penalty phase warrants imposition of a death sentence. *Id.* at 62.

In *Hurst v. State*, the FSC stated that error under *Hurst v. Florida* "is harmless only if there is no reasonable possibility that the error contributed to the sentence." *Hurst*, 202 So. 3d at 68. Moreover, '"the harmless error test is to be rigorously applied,'" and "the State bears an extremely heavy burden in cases involving constitutional error." *Id.* (quoting *State v. DiGuilio*, 491 So. 2d 1129, 1137 (Fla. 1986)). Therefore, as to *Hurst* error, "the burden is on the State, as beneficiary of the error, to prove *beyond a reasonable doubt* that the jury's failure to unanimously find all the facts necessary for imposition of the death penalty did not contribute to [the defendant]'s death sentence in this case." *Id.* at 68 (emphasis added).

Valentine asserts unequivocally that the *Hurst* error is not harmless in his case and any decision to the contrary is a violation of his rights. Valentine recognizes that *Mullens v. State*, 17 So. 3d 745 (Fla. 2016), suggests defendants who waived a jury are not entitled to *Hurst* relief under the Sixth Amendment. However, no court has yet addressed Valentine's argument that he could not have knowingly waived his Eighth Amendment right to a unanimous fact—finding jury, since that right did not yet exist.

Specifically, any waiver of a fundamental right must be knowing and voluntary. *Johnson v. Zerbst*, 304 U.S., at 464-465, 58 S.Ct., at 1023. *Cf. Von Moltke v. Gillies*, 332 U.S. 708, 723-724, 68 S.Ct. 316, 323, 92 L.Ed. 309 (plurality opinion of Black, J.). See also *Adams v. United*

States ex rel. McCann, 317 U.S., at 279, 63 S.Ct., at 242.

Further, anything less than *Hurst* relief for all post-*Ring* defendants leads to disparate treatment among Florida capital defendants in violation of the Equal Protection Clause and the Eighth Amendment. Ensuring uniformity and fairness in circumstances in Florida's application of the death penalty requires full retroactive application of *Hurst* and the resulting new Florida law. After all, "death is a different kind of punishment from any other that may be imposed in this country," and "[i]t is of vital importance . . . that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice . . . " *Gardner v. Florida*, 430 U.S. 349, 357-58 (1977).

The Florida Supreme Court has granted *Hurst* relief in many cases that were more egregious than Mr. Valentine's. *See e.g., Cole v. State*, 221 So. 3d 534 (Fla. 2017) (two victims buried alive and seven aggravating factors found); *Calloway v. State,* 210 So. 3d 1160 (Fla. 2017) (five men were shot in the head execution style and six aggravating factors found); *Johnson v. State*, 205 So. 3d 1285 (Fla. 2016) (three counts of first-degree murder where one of the victims was a law enforcement officer and five aggravating factors found); *Bradley v. State*, 214 So. 3d 648 (Fla. 2017) (murder of Brevard County Sheriff's Deputy, Barbara Pill, and five aggravating factors found); *Pasha v. State,* 42 Fla. L. Weekly S569 (Fla. May 11, 2017) (defendant murdered his wife and another victim by cutting their throats and four aggravating factors found); *Williams v. State*, 209 So. 3d 543 (Fla. 2017) (defendant was convicted of the kidnapping, robbery, and first degree murder of an 81 year old woman and the jury unanimously found four out of five aggravating factors on a special verdict form); *Davis v. State*, 217 So. 3d 1006 (Fla. 2017) (two

counts of first-degree murder, five aggravating factors found for one murder and three for the other); *Snelgrove v. State*, 217 So. 3d 992 (Fla. 2017) (elderly couple brutally beaten and stabbed to death and five aggravating factors found); and *Hertz v. Jones,* 218 So. 3d 428 (Fla. 2017) (two counts of first-degree murder and six aggravating factors found). As all of these cases were more aggravated and exhibit facts that are more heinous, the only way to distinguish Valentine's case is that he waived his right to a jury.

However, Valentine's situation is unique and an individualized harmless error review will show that the *Hurst* error was not harmless. There is no doubt that a properly instructed jury would not have unanimously returned a death recommendation. In the wake of *Hurst v. Florida* and the resulting new Florida law, the jury under *Caldwell v. Mississippi*, 472 U.S. 320 (1985) must be correctly instructed as to its sentencing responsibility. Individual jurors must know that they each will bear the responsibility for a death sentence resulting in a defendant's execution since each juror possesses the power to require the imposition of a life sentence simply by voting against a death recommendation. *See Perry*, 210 So. 3d 630. As was explained in *Caldwell*, jurors must feel the weight of their sentencing responsibility if the defendant is ultimately executed after no juror exercised his or her power to preclude a death sentence. Indeed because the jury's sense of responsibility was inaccurately diminished in *Caldwell,* the USSC held that the jury's unanimous verdict imposing a death sentence in that case violated the Eighth Amendment and required the resulting death sentence to be vacated. *See Caldwell*, 472 U.S. at 341.

It is likely that at least one juror would not join a death recommendation if Valentine was granted a resentencing in front of a jury because the proper *Caldwell* instructions would be

required. The probability of one or more jurors voting for a life sentence increases when a jury is told a death sentence could only be authorized if the jury returned a unanimous death recommendation, and that each juror had the ability to preclude a death sentence simply by refusing to agree to a death recommendation. *See Caldwell*, 472 U.S. at 330 ("In the capital sentencing context there are specific reasons to fear substantial unreliability as well as bias in favor of death sentences when there are state-induced suggestions that the sentencing jury may shift its sense of responsibility to an appellate court."). Where the jurors' sense of responsibility for a death sentence is not explained or is diminished, a jury's verdict in favor of a death sentence violates the Eighth Amendment and the death sentence cannot stand. *Caldwell*, 472 U.S. at 341 ("Because we cannot say that this effort had no effect on the sentencing decision, that decision does not meet the standard of reliability that the Eighth Amendment requires.").

Furthermore, society's evolving standards of decency demand that Valentine be granted *Hurst* relief, as the jury vote has evolved from a bare majority, to ten-to-two, to unanimous. In *Hurst*, the Florida Supreme Court ruled that on the basis of the Eighth Amendment and on the basis of the Florida Constitution, the evolving standards of decency now require jury "unanimity in a recommendation of death in order for death to be considered and imposed." 202 So. 3d at 61. Quoting the USSC, the Court in *Hurst* noted "that the 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'" 202 So. 3d at 61 (quoting *Atkins v. Virginia,* 536 U.S. 304, 312, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002) (quoting *Penry v. Lynaugh,* 492 U.S. 302, 331, 109 S. Ct. 2934, 106 L. Ed. 2d 256 (1989)). Then from a review of the capital sentencing laws throughout the United States, the FSC in *Hurst*

found that a national consensus reflecting society's evolving standards of decency was apparent:

> The vast majority of capital sentencing laws enacted in this country provide the clearest and most reliable evidence that contemporary values demand a defendant not be put to death except upon the unanimous consent of the jurors who have deliberated upon all the evidence of aggravating factors and mitigating circumstances.

202 So. 3d at 61. Accordingly, the Court in *Hurst* concluded:

> the United States and Florida Constitutions, as well as the administration of justice, are implemented by requiring unanimity in jury verdicts recommending death as a penalty before such a penalty may be imposed.

202 So. 3d at 63. *See Hurst*, 202 So. 3d at 73 (Pariente, J., concurring); *see also Powell v. Delaware*, 153 A.3d 69 (Del. 2016).

A capital defendant's life no longer lies in the hands of a judge or a bare majority; it lies in the hands of twelve individuals. What constitutes cruel and unusual punishment under the Eighth Amendment turns upon considerations of the "evolving standards of decency that mark the progress of a maturing society." *Atkins v. Virginia*, 536 U.S. 304, 312 (2002). "This is because '[t]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.'" *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (quoting *Furman v. Georgia*, 408 U.S. 238, 382 (1972)). According to *Hurst v. State*, the evolving standards of decency are reflected in a national consensus that a defendant can only be given a death sentence when a penalty-phase jury has voted unanimously in favor of the imposition of death. The USSC has explained that the "near-uniform judgment of the Nation provides a useful guide in delimiting the line between those jury practices that are constitutionally permissible and those that are not." *Burch v. Louisiana*, 441 U.S. 130, 138 (1979). The near-uniform judgment of the states is that

only a defendant who a jury unanimously concluded should be sentenced to death, can receive a death sentence. As a result, those defendants who have had one or more jurors vote in favor of a life sentence are not eligible to receive a death sentence. This class of defendants, those who have had jurors formally vote in favor a life sentence, cannot be executed under the Eighth Amendment. Therefore, Valentine must be granted relief and the opportunity to make a constitutional decision regarding his waiver of a constitutional jury sentencing. It is arbitrary that a defendant who was convicted of triple murders with an eleven-to-one vote receives relief, while Valentine is denied the same opportunity. *See Franklin v. State*, 209 So. 3d 1241, 1248 (Fla. 2016) ("In light of the non-unanimous jury recommendation to impose a death sentence, we reject the State's contention that any *Ring*- or *Hurst v. Florida*-related error is harmless." *Id*. "We also reject the State's contention that Franklin's prior convictions for other violent felonies insulate Franklin's death sentence from *Ring* and *Hurst v. Florida*." *Id*.). To find that the *Hurst* error was harmless and deny this right to Valentine would be manifest injustice and a violation of his equal protection rights. *See* U.S. Const. amend. XIV.

I. Conclusion

Notwithstanding the insufficient colloquy, Valentine cannot waive a constitutional right that did not yet exist under Florida law but that should have been afforded to him and every capital defendant. Now that a unanimous jury is required under the Eighth Amendment to sentence a defendant to death, the conversations and assessments between counsel and capital defendants change dramatically. Moreover, the colloquy required by a court in cases of waivers will also evolve. *Hurst* impacts an attorney's strategy and decision-making throughout the trial, including

the decision whether to waive a penalty phase jury. No longer will the jury's role in determining death-eligibility be advisory; the jury will make the ultimate decision of whether the defendant's life will be spared. The new constitutional statute changes the harmlessness analysis because the landscape of *voir dire* and death qualification, pre-trial motions, opening and closing arguments, investigation and presentation of evidence in mitigation of a death sentence, challenging and arguing against evidence in aggravation, and jury instructions have to change so that a capital defendant is afforded a constitutional trial in accordance with the Sixth and Fourteenth Amendments.

Mr. Valentine never had the constitutional benefit of the option of a penalty phase jury returning a verdict making findings of fact. There is no way of knowing what aggravators, if any, a jury unanimously could have found proven beyond a reasonable doubt, if the jurors unanimously found the aggravators sufficient for death, or if the jurors unanimously found that the aggravating circumstances outweighed the mitigating circumstances. Further, each individual juror would be instructed that they individually carried the immense responsibility of whether a death sentence was authorized or a life sentence was mandated. The jurors would be told that they each were authorized to preclude a death sentence simply to be merciful. These are all important considerations for a conversation regarding waiving a jury. Reviewing courts cannot speculate as to what the findings or vote would be if Valentine was allowed a constitutional jury sentencing.

Valentine requests that this Court vacate his sentences of death and order a new penalty phase proceeding.

III. MR. VALENTINE'S DEATH SENTENCE VIOLATES THE EIGHTH AMENDMENT UNDER *HURST V. STATE* AND IT WOULD BE FUNDAMENTALLY UNFAIR TO DEPRIVE HIM OF ITS BENEFIT.

A. Mr. Valentine's death sentence violates the Eighth Amendment and Hurst v. State should be applied retroactively.

The Florida Supreme Court held in *Hurst v. State* that enhanced reliability required by the Eighth Amendment in capital cases requires a jury to unanimously find all facts before a death sentence is permissible. *Hurst v. State*, 202 So. 3d at 59 ("we conclude that juror unanimity in any recommended verdict resulting in a death sentence is required under the Eighth Amendment."). The right to a unanimous jury recommendation of death requires full retroactivity and anything less is unreliable and violates the Eighth Amendment. In the wake of *Hurst v. Florida,* the resulting new Florida statute, and the principle set out many years ago in *Caldwell v. Mississippi,* a death sentence is constitutionally invalid when individual jurors are not told that they each bear the responsibility for a death sentence, since each juror possesses the power to require the imposition of a life sentence simply by voting against a death recommendation. *Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985).

Hurst v. State established an Eighth Amendment rule that requires the three beyond-a-reasonable-doubt findings: (1) each aggravating circumstance; (2) that those particular aggravating circumstances together are "sufficient" to justify imposition of the death penalty; and (3) that those particular aggravating circumstances together outweigh the mitigation in the case, to be made unanimously by the jury. The substantive nature of the unanimity rule is apparent from the court's explanation in *Hurst v. State* that unanimity (1) is necessary to ensure compliance with the constitutional requirement that the death penalty be applied narrowly to the worst offenders, and

(2) ensures that the sentencing determination "expresses the values of the community as they currently relate to the imposition of the death penalty." *Hurst v. State*, 202 So. 3d at 60-61. The function of the unanimity rule is to ensure that Florida's death-sentencing scheme complies with the Eighth Amendment and "achieve[s] the important goal of bringing [Florida's] capital sentencing laws into harmony with the direction of the society reflected in [the majority of death penalty] states and with federal law." *Id.* As a matter of federal retroactivity law, the rule is therefore substantive. *See Welch v. United States*, 136 S. Ct. 1257, 1265 (2016) ("[T]his Court has determined whether a new rule is substantive or procedural by considering the function of the rule"). This is true even though the rule's subject concerns the method by which a jury makes its decision. *See Montgomery*, 136 S. Ct. at 735 (noting that state's ability to determine method of enforcing constitutional rule does not convert rule from substantive to procedural).

Mr. Valentine also has a federal right to retroactivity under *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). Where a constitutional rule is substantive, the Supremacy Clause of the United States Constitution requires a state post-conviction court to apply it retroactively. *See Montgomery*, 136 S. Ct. at 731-32 ("Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.").

As was explained in *Caldwell*, jurors must feel the full weight of their responsibility of sentencing an individual to death. *Caldwell*, 472 U.S. at 341 ("Because we cannot say that this effort had no effect on the sentencing decision, that decision does not meet the standard of

reliability that the Eighth Amendment requires."). In Mr. Valentine's case, had he had a jury, and had it been instructed properly, he would have received a life sentence.

The likelihood of one or more jurors voting for a life sentence increases when a jury is told that it must unanimously recommend death, that the judge cannot override the jury's recommendation for life, and that each juror has the ability to preclude a death sentence simply by refusing to agree to a death recommendation. *Caldwell*, 472 U.S. at 330 ("In the capital sentencing context there are specific reasons to fear substantial unreliability as well as bias in favor of death sentences when there are state-induced suggestions that the sentencing jury may shift its sense of responsibility to an appellate court.").

IV. THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION REQUIRE THE RETROACTIVE APPLICATION OF THE SUBSTANTIVE RULE ESTABLISHED BY CHAPTER 2017-1.

a. Florida created a substantive right in enacting Chapter 2017-1.

In Chapter 2017-1, the Florida Legislature expanded the substantive right created in Chapter 2016-13 and rewrote the statute to provide that a defendant convicted of first degree murder was to receive a life sentence unless a jury returned a unanimous death recommendation. The right was extended to defendants in all homicide prosecutions regardless of the date of the underlying homicide or the date that a conviction became final.

With the enactment of Chapter 2016-13 and Chapter 2017-1, the Florida Legislature created a substantive right. For the first time, a capital defendant in Florida had a right to a life sentence unless a jury unanimously voted to recommend a death sentence. Chapter 2017-1

provides that a defendant convicted of first degree murder has a right to be sentenced to life imprisonment unless the State convinces a jury to unanimously return a death recommendation. This right is a substantive right. It is not merely a procedural rule. If it were, it would violate the separation of powers doctrine for the Legislature to enact it.

While *Hurst v. State* and *Perry* were premised upon the Florida Constitution, Chapter 2016-13 and Chapter 2017-1 were both crafted by the Florida Legislature and signed into law by the Governor. The Florida Supreme Court has stated: "Generally, the Legislature has the power to enact substantive law, while the Court has the power to enact procedural law." *Allen v. Butterworth*, 756 So. 2d 52, 59 (Fla. 2000). The Court has also written: "Substantive law has been defined as that part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer." *State v. Garcia*, 229 So. 2d 236, 238 (Fla. 1969). The Court further explained that substantive law "includes those rules and principles which fix and declare the primary rights of individuals with respect towards their persons and property. *Adams v. Wright*, 403 So.2d 391 (Fla.1981)." *Haven Federal Savings & Loan Ass'n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991). In *Benyard v. Wainwright*, 322 So. 2d 473, 475 (Fla. 1975), the Court reiterated, "Substantive law prescribes the duties and rights under our system of government. The responsibility to make substantive law is in the legislature within the limits of the state and federal constitutions."

Under the doctrine of separation of powers, procedural matters are a judicial function, not a legislative one. *See State v. Raymond*, 906 So. 2d 1045, 1049 (Fla. 2005) ("where there is no substantive right conveyed by the statute, the procedural aspects are not incidental; accordingly,

such a statute is unconstitutional."); *Massey v. David*, 979 So. 2d 931, 937 (Fla. 2008) ("We have held that where a statute contains some procedural aspects, but those provisions are so intimately intertwined with the substantive rights created by the statute, that statute will not impermissibly intrude on the practice and procedure of the courts in a constitutional sense, causing a constitutional challenge to fail."). If Chapter 2016-13 had been purely procedural, it would have violated the separation of powers doctrine enshrined in the Florida Constitution. Moreover, when the Court determined in *Perry* that the 10-2 provision was unconstitutional, it could have fixed the defect and rewritten the governing law if the offending provision was procedural. The Court did not do that because it recognized that what was at issue was substantive law, or "that part of the law which creates, defines, and regulates rights." *Garcia v. State*, 229 So. 2d at 238.

If Chapter 2017-1 were merely procedural, besides being enacted in violated of the separation of powers doctrine, it would be proper for it to attach to any capital sentencing proceeding conducted after its effective date because it only sets out the manner by which the parties should seek to litigate. *State v. Raymond*, 906 So. 2d at 1048 ("practice and procedure is the method of conducting litigation involving rights and corresponding defenses."). However, Chapter 2017-1 is clearly substantive because it gives a defendant convicted of first degree murder something that he or she did not have before: a right to a life sentence unless the jury returns a unanimous death recommendation.

Chapter 2017-1 sets forth a substantive right that is personal. For example, the Sixth Amendment right to representation by counsel attaches to a defendant who is criminally charged. A substantive right must attach to a person, not a proceeding. Clearly, the right to a life sentence

unless the jury unanimously returns a death recommendation attaches to a defendant who is convicted of first degree murder. It is a right that springs to life when the first degree murder conviction is returned. It is a presumption of a life sentence, akin to the presumption of innocence. Certainly, the Legislature could have provided that the right set forth in Chapter 2017-1 only attached to defendants convicted of first degree murder after March 13, 2017, when Chapter 2017-1 became effective. The Legislature chose not to do it that way. Chapter 2017-1 established s substantive right that was meant to apply retrospectively.

b. A substantive right cannot be extended arbitrarily without offending due process.

In *Evitts v. Lucey*, 469 U.S. 387, 400 (1985), the U.S. Supreme Court recognized that "a State need not provide a system of appellate review as of right at all." States have the option to not provide appellate review of criminal convictions. *See McKane v. Durston,* 153 U.S. 684 (1894). But "when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause." *Evitts v. Lucey*, 469 U.S. at 401. *See Jones v. Barnes,* 463 U.S. 745, 751 (1983) ("There is, of course, no constitutional right to an appeal, but in *Griffin v. Illinois*, 351 U.S. 12, 18 (1955), and *Douglas v. California*, 372 U.S. 353 (1963), the Court held that if an appeal is open to those who can pay for it, an appeal must be provided for an indigent."). "Once a State has granted prisoners a liberty interest, [the U.S. Supreme Court has] held that due process protections are necessary 'to insure that the state-created right is not arbitrarily abrogated.'" *Vitek v. Jones*, 445 U.S. at 488-89.

When a state creates a right that carries a liberty or life interest, that right is protected by the Due Process Clause of the Fourteenth Amendment. The U.S. Supreme Court has recognized that states "may create liberty interests that are entitled to the procedural protections of the Due Process Clause of the Fourteenth Amendment." *Vitek v. Jones*, 445 U.S. 480, 488 (1980). A state cannot establish a substantive right that provides a life and/or liberty interest which it arbitrarily extends to some, but not others. To give some the benefit of Chapter 2017-1 while depriving Mr. Valentine of the same benefit can only be described as arbitrary and a violation of due process. *See Griffith v. Kentucky*, 479 U.S. 314, 323 (1987); *Smith v. State*, 598 So. 2d 1063, 1066 (Fla. 1992. Due process requires that the substantive right set forth in Chapter 2017-1—which has been extended retrospectively to others—must also be extended to Mr. Thompson.

c. In addition to violating the Due Process Clause, depriving Mr. Valentine of the benefit of Chapter 2017-1 also violates the Eighth Amendment.

The Eighth Amendment is violated if substantive rights are doled out arbitrarily in capital cases. In *Johnson v. Mississippi*, 486 U.S. 578 (1988), the U.S. Supreme Court discussed the Eighth Amendment's requirement that death sentences be reliable and free from arbitrary factors:

> The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special "'need for reliability in the determination that death is the appropriate punishment'" in any capital case. . . . Although we have acknowledged that "there can be 'no perfect procedure for deciding in which cases governmental authority should be used to impose death,' " we have also made it clear that such decisions cannot be predicated on mere "caprice" or on "factors that are constitutionally impermissible or totally irrelevant to the sentencing process."

*Id.*at 584-85 (internal citations omitted).

Mr. Valentine remains sentenced to death even though many others whose crimes, like Mr. Valentine's, predated *Ring* will receive the benefit of the *Hurst* decisions and the new statute at their resentencing proceedings. There is only one word to describe the distinction between their circumstances and Mr. Valentine's and that word is "arbitrary." To allow this arbitrary distinction and leave Mr. Valentine's death sentences intact while others receive the right to a life sentence unless the jury returns a unanimous death recommendation violates *Furman v. Georgia*, 408 U.S. 238 (1972). This claim is not about retroactivity of a court ruling. It is about a statutorily created, substantive right that was intended to be retrospective. Rule 3.851 relief is required. Mr. Valentine's death sentence must be vacated and at a minimum, a resentencing ordered.

CONCLUSION

Based on the foregoing, Mr. Valentine requests the following relief: (1) setting aside his convictions for grand theft auto, burglary and kidnapping due to a failure to establish the corpus delecti and essential elements of proof as set out supra; 2) a fair opportunity to demonstrate that his death sentence stands in violation of the Sixth and Eighth Amendments and *Hurst v. Florida*, *Perry v. State*, and *Hurst v. State*; (3) an opportunity for further evidentiary development to the extent necessary; (4) leave to supplement this motion should new claims, facts, or law arise; and (4) Rule 3.851 relief vacating his death sentence.

Respectfully submitted,

/s/Marie-Louise Samuels-Parmer
MARIE-LOUISE SAMUELS-PARMER
Fla. Bar No. 0005584
Samuels Parmer Law Firm, P.A.
P.O. Box 18988
Tampa, FL 33679

Ph:813-732-3321
Fax: 813-831-0061
marie@samuelsparmerlaw.com
COUNSEL FOR MR. VALENTINE

CERTIFICATION PURSUANT TO FLA. R. CRIM. PRO. 3.851(e)

Pursuant to Fla. R. Crim. P. 3.851(e)(2)(A) and (e)(1)(F), undersigned counsel hereby certifies that discussions with Mr. Valentine of this motion and its contents has occurred over a period time as relevant new Florida law has unfolded during the past year. Counsel has endeavored to fully discuss and explain the contents of this motion with Mr. Valentine, and that counsel to the best of her ability has complied with Rule 4-1.4 of the Rules of Professional Conduct, and that this motion is filed in good faith.

/s/Marie-Louise Samuels-Parmer
MARIE-LOUISE SAMUELS-PARMER
Fla. Bar No. 0005584
Court-Appointed Counsel for Mr. Valentine

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed using the Florida Courts efiling Portal which has electronically served the Office of the Attorney General, capapp@myfloridalegal.com; Ron Gale, Assistant State Attorney, mailprocessingstaff@sao13th.com, and the Honorable Michelle Sisco, Circuit Court Judge, siscodm@fljud13.org, on this 21st day of December, 2017.

/s/Marie-Louise Samuels-Parmer
MARIE-LOUISE SAMUELS-PARMER
Fla. Bar No. 0005584

Copies provided by U.S. Mail to:

Terence Valentine
DOC#119682
Union Correctional Institution
P. O. Box 1000
Raiford, FL 32083

STATE OF FLORIDA

UNIFORM COMMITMENT TO CUSTODY
OF DEPARTMENT OF CORRECTIONS

THE CIRCUIT COURT OF ___HILLSBOROUGH___ COUNTY IN THE ___SPRING____ TERM, 19_94_, IN THE CASE OF

AMENDED

STATE OF FLORIDA
VS ** MANDATE HEARING **
DEFENDANT: _IERANCE_GERALAND_VALENTINE_____88-12996-C_____

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE SHERIFF OF SAID COUNTY AND THE DEPARTMENT OF CORRECTIONS OF SAID STATE, GREETING:

THE ABOVE NAMED DEFENDANT HAVING BEEN DULY CHARGED WITH THE OFFENSE SPECIFIED HEREIN IN THE ABOVE STYLED COURT, AND HE HAVING BEEN DULY CONVICTED AND ADJUDGED GUILTY OF AND SENTENCED FOR SAID OFFENSE BY SAID COURT, AS APPEARS FROM THE ATTACHED CERTIFIED COPIES OF _INDICTMENT_, JUDGEMENT AND SENTENCE, AND FELONY DISPOSITION AND SENTENCE DATA FORM WHICH ARE HEREBY MADE PARTS HEREOF;

NOW THEREFORE, THIS IS TO COMMAND YOU, THE SAID SHERIFF, TO TAKE AND KEEP AND, WITHIN A REASONABLE TIME AFTER RECEIVING THIS COMMITMENT, SAFELY DELIVER THE SAID DEFENDANT, TOGETHER WITH ANY PERTINENT INVESTIGATION REPORT PREPARED IN THIS CASE, INTO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS OF THE STATE OF FLORIDA: AND THIS IS TO COMMAND YOU, THE SAID DEPARTMENT OF CORRECTIONS, BY AND THROUGH YOUR SECRETARY, REGIONAL DIRECTORS, SUPERINTENDENTS, AND OTHER OFFICIALS, TO KEEP AND SAFELY IMPRISON THE SAID DEFENDANT FOR THE TERM OF SAID SENTENCE IN THE INSTITUTION IN THE STATE CORRECTIONAL SYSTEM TO WHICH YOU, THE SAID DEPARTMENT OF CORRECTIONS, MAY CAUSE THE SAID DEFENDANT TO BE CONVEYED OR THEREAFTER TRANSFERRED. AND THESE PRESENTS SHALL BE YOUR AUTHORITY FOR THE SAME. HEREIN FAIL NOT.

WITNESS THE HONORABLE _DIANA_M._ALLEN_____
JUDGE OF SAID COURT, AS ALSO _RICHARD_AKE_____
CLERK, AND THE SEAL THEREOF, THIS THE 12TH DAY
OF ___OCTOBER, 19_94_.

_RICHARD_AKE_____, CLERK

BY: Lynda Morgan
DEPUTY CLERK

472

__ PROBATION VIOLATOR
__ COMMUNITY CONTROL VIOLATOR
__ RETRIAL
__ RESENTENCE

IN THE CIRCUIT COURT, 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
DIVISION C
CASE NUMBER 88-12996
OBTS NUMBER

STATE OF FLORIDA
V.
VALENTINE,TERANCE GERALAINO
DEFENDANT

AMENDED

MANDATE HEARING

---------- JUDGMENT ----------

THE DEFENDANT, VALENTINE,TERANCE GERALAINO, BEING PERSONALLY BEFORE THIS COURT REPRESENTED WITH COUNSEL: SIMSON UNTERBERGER, THE ATTORNEY OF RECORD AND THE STATE REPRESENTED BY ASSI STATE ATTY: KAREN COX AND CHRISTOPHER WATSON, AND HAVING

XX BEEN TRIED AND FOUND GUILTY BY JURY/~~BY COURT~~ OF THE FOLLOWING CRIME(S):
__ ENTERED A PLEA OF GUILTY TO THE FOLLOWING CRIME(S):
__ ENTERED A PLEA OF NOLO CONTENDERE TO THE FOLLOWING CRIME(S):

COUNT	CRIME	OFFENSE STATUTE NUMBER			DEGREE OF CRIME	COURT ACTION
01	BURGLARY ARMED	81002			1 F	ADJG
02	KIDNAPPING	78701	1A3		1 F	ADJG
03	KIDNAPPING	78701	1A3		1 F	ADJG
04	GRAND THEFT SECOND DEG	812014	28		2 F	ADJG
05	FIRST DEGREE MURDER	78204			CF	ADJG
06	ATTEMPTED MURDER-FIRST DEGREE	78204		77704	1 F	ADJG

XX AND NO CAUSE BEING SHOWN WHY THE DEFENDANT SHOULD NOT BE ADJUDICATED GUILTY, IT IS ORDERED THAT THE DEFENDANT IS HEREBY ADJUDICATED GUILTY OF THE ABOVE CRIME(S).

__ AND PURSUANT TO SECTION 943.325, FLORIDA STATUTES, HAVING BEEN CONVICTED OF ATTEMPTS OR OFFENSES RELATING TO SEXUAL BATTERY (CH. 794) OR LEWD AND LASCIVIOUS CONDUCT (CH. 800) THE DEFENDANT SHALL BE REQUIRED TO SUBMIT BLOOD SPECIMENS.

__ AND GOOD CAUSE BEING SHOWN; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

__ THE FOLLOWING COUNT(S) NOLLE PROSSED:

__ THE FOLLOWING COUNT(S) DISMISSED:

__ THE FOLLOWING COUNT(S) NOT GUILTY:

__ THE FOLLOWING COUNT(S) ACQUITTED:

__ THE FOLLOWING COUNT(S) SENTENCED TO TIME SERVED:

473

STATE OF FLORIDA

VS.

TERANCE VALENTINE
DEFENDANT

FILED

SEP 30 1994

RICHARD AKE, CLERK

CASE NUMBER: 88-12996 - C

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	**7. Left Index**	**8. Left Middle**	**9. Left Ring**	**10. Left Little**
				

Fingerprints taken by: Robert L. Mance 399 (NAME) BAILIFF (TITLE)

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, TERANCE VALENTINE, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Hillsborough County, Florida, this 30th 30th day of SEPTEMBER, 19 94.

JUDGE

AMENDED

MANDATE HEARING

STATE OF FLORIDA

V.

VALENTINE,TERANCE GERALAIND
DEFENDANT

IN THE CIRCUIT COURT, 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
DIVISION C
CASE NUMBER 88-12996
OBTS NUMBER

---------- CHARGES/COSTS/FEES ----------

THE DEFENDANT IS HEREBY ORDERED TO PAY THE FOLLOWING SUMS IF CHECKED:

__ $50.00 PURSUANT TO SECTION 960.20, FLORIDA STATUTES (CRIMES COMPENSATION TRUST FUND).

__ $3.00 AS A COURT COST PURSUANT TO SECTION 943.25(3), FLORIDA STATUTES (CRIMINAL JUSTICE TRUST FUND).

__ $2.00 AS A COURT COST PURSUANT TO SECTION 943.25(13), FLORIDA STATUTES (CRIMINAL JUSTICE EDUCATION BY MUNICIPALITIES AND COUNTIES).

__ A FINE IN THE SUM OF $_____ PURSUANT TO SECTION 775.0835, FLORIDA STATUTES. (THIS PROVISION REFERS TO THE OPTIONAL FINE FOR THE CRIMES COMPENSATION TRUST FUND AND IS NOT APPLICABLE UNLESS CHECKED AND COMPLETED. FINES IMPOSED AS A PART OF A SENTENCE TO SECTION 775.083, FLORIDA STATUTES ARE TO BE RECORDED ON THE SENTENCE PAGE(S).).

__ $20.00 PURSUANT TO SECTION 939.015, FLORIDA STATUTES (HANDICAPPED AND ELDERLY SECURITY ASSISTANCE TRUST FUND).

__ A 10% SURCHARGE IN THE SUM OF $_____ PURSUANT TO SECTION 775.0836, FLORIDA STATUTES (HANDICAPPED AND ELDERLY SECURITY ASSISTANCE TRUST FUND).

__ A SUM OF $_____ PURSUANT TO SECTION 27.3455, FLORIDA STATUTES (LOCAL GOVERNMENT CRIMINAL JUSTICE TRUST FUND).

__ A SUM OF $_____ PURSUANT TO SECTION 939.01, FLORIDA STATUTES (PROSECUTION/INVESTIGATIVE COSTS).

__ A SUM OF $_____ PURSUANT TO SECTION 27.56, FLORIDA STATUTES (PUBLIC DEFENDER FEES).

__ RESTITUTION IN ACCORDANCE WITH ATTACHED ORDER.

__ OTHER ---------- NO COSTS IMPOSED ----------

DONE AND ORDERED IN OPEN COURT IN HILLSBOROUGH COUNTY, FLORIDA, THIS 30TH DAY OF SEPTEMBER, 1994.

FILED

SEP 30 1994

RICHARD AKE, CLERK

JUDGE

AMENDED

MANDATE HEARING

DEFENDANT VALENTINE,TERANCE GERALAIND

CASE NUMBER 88-12996 C
OBTS NUMBER

---------- SENTENCE ----------
(AS TO COUNT 01)

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCOMPANIED BY THE DEFENDANT'S ATTORNEY OF RECORD, WITH COUNSEL: SIMSON UNIESBERGER, AND HAVING BEEN ADJUDICATED GUILTY HEREIN, AND THE COURT HAVING GIVEN THE DEFENDANT AN OPPORTUNITY TO BE HEARD AND TO OFFER MATTERS IN MITIGATION OF SENTENCE, AND TO SHOW CAUSE WHY THE DEFENDANT SHOULD NOT BE SENTENCED AS PROVIDED BY LAW AND NO CAUSE BEING SHOWN

(CHECK ONE IF APPLICABLE)

__ AND THE COURT HAVING ON _____ DEFFERRED IMPOSITION OF SENTENCE UNTIL THIS DATE (DATE)

__ AND THE COURT HAVING PREVIOUSLY ENTERED A JUDGMENT IN THIS CASE ON _____ (DATE) NOW RESENTENCES THE DEFENDANT

__ AND THE COURT HAVING PLACED THE DEFENDANT ON _____ AND HAVING SUBSEQUENTLY REVOKED THE DEFENDANT'S _____

IT IS THE SENTENCE OF THE COURT THAT:

__ THE DEFENDANT PAY A FINE OF $_____, PURSUANT TO SECTION 775.083, FLORIDA STATUTES, PLUS $_____ AS THE 5% SURCHARGE REQUIRED BY SECTION 960.25, FLORIDA STATUTES.

XX THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS.

__ THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA.

__ THE DEFENDANT IS SENTENCED AS A YOUTHFUL OFFENDER IN ACCORDANCE WITH SECTION 958.04, FLORIDA STATUTES.

TO BE IMPRISONED (CHECK ONE; UNMARKED SECTIONS ARE INAPPLICABLE):

XX FOR A TERM OF NATURAL LIFE. ✓

__ FOR A TERM OF _____.

__ SAID SENTENCE SUSPENDED FOR A PERIOD OF _____ SUBJECT TO CONDITIONS SET FORTH IN THIS ORDER.

IF "SPLIT" SENTENCE, COMPLETE THE APPROPRIATE PARAGRAPH.

__ _____ _____ _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF SUPERVISION SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.

__ HOWEVER, AFTER SERVING A PERIOD OF _____ IMPRISONMENT IN _____, THE BALANCE OF THE SENTENCE SHALL BE SUSPENDED AND THE DEFENDANT SHALL BE PLACED ON _____ FOR A PERIOD OF _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF _____ SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.

IN THE EVENT THE DEFENDANT IS ORDERED TO SERVE ADDITIONAL SPLIT SENTENCES, ALL INCARCERATION PORTIONS SHALL BE SATISFIED BEFORE THE DEFENDANT BEGINS SERVICE OF THE SUPERVISION TERMS.

FILED

SEP 30 1994

RICHARD AKE CLERK

476

DEFENDANT VALENTINE, TERANCE GERALAIND * A M E N D E D * CASE NUMBER 88-12996
MANDATE HEARING S NUMBER

SPECIAL PROVISIONS
(AS TO COUNT 01)

BY APPROPRIATE NOTATION, THE FOLLOWING PROVISIONS APPLY TO THE SENTENCE IMPOSED:

MANDATORY/MINIMUM PROVISIONS:

FIREARM	XX	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 775.087(2), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
DRUG TRAFFICKING	__	IT IS FURTHER ORDERED THAT THE _____ MANDATORY MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.135(1), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTROLLED SUBSTANCE WITHIN 1000 FT OF SCHOOL	__	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.13(1)(E)1, FLORIDA STATUTES IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
HABITUAL FELONY OFFENDER	__	THE DEFENDANT IS ADJUDICATED A HABITUAL FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(A), FLORIDA STATUTES. THE REQUISITE FINDINGS BY THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
HABITUAL VIOLENT FELONY OFFENDER	__	THE DEFENDANT IS ADJUDICATED A HABITUAL VIOLENT FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(B), FLORIDA STATUTES. A MINIMUM TERM OF _____ MUST BE SERVED PRIOR TO RELEASE. THE REQUISITE FINDINGS OF THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
LAW ENFORCEMENT PROTECTION ACT	__	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE A MINIMUM OF _____ BEFORE RELEASE IN ACCORDANCE WITH SECTION 775.0823, FLORIDA STATUTES.
CAPITAL OFFENSE	__	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE NO LESS THAN 25 YEARS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.082(1), FLORIDA STATUTES.
SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN	__	IT IS FURTHER ORDERED THAT THE 5-YEAR MINIMUM PROVISIONS OF SECTION 790.221(2), FLORIDA STATUTES, ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTINUING CRIMINAL ENTERPRISE	__	IT IS FURTHER ORDERED THAT THE 25-YEAR MINIMUM SENTENCE PROVISIONS OF SECTION 893.20, FLORIDA STATUTES ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.

OTHER PROVISIONS:

RETENTION OF JURISDICTION	__	THE COURT RETAINS JURISDICTION OVER THE DEFENDANT PURSUANT TO SECTION 947.16(3), FLORIDA STATUTES(1983).
JAIL CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL BE ALLOWED A TOTAL OF _480_ DAYS AS CREDIT FOR TIME INCARCERATED BEFORE IMPOSITION OF THIS SENTENCE.
PRISON CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT BE ALLOWED CREDIT FOR ALL TIME PREVIOUSLY SERVED ON THIS COUNT IN THE DEPARTMENT OF CORRECTIONS PRIOR TO RESENTENCING.
CONSECUTIVE/ CONCURRENT AS TO OTHER COUNTS	XX	IT IS FURTHER ORDERED THAT THE SENTENCE FOR THIS COUNT COUNT SHALL RUN (CHECK ONE) XX CONSECUTIVE TO __ CONCURRENT WITH THE SENTENCE SET FORTH IN THE FOLLOWING COUNT(S): FIVE

AMENDED

MANDATE HEARING

DEFENDANT VALENTINE,TERANCE GERALAIND CASE NUMBER 88-12996 C
OBTS NUMBER

---------- SENTENCE ----------
(AS TO COUNT 02)

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCOMPANIED BY THE DEFENDANT'S ATTORNEY OF RECORD,
WITH COUNSEL: SIMSON UNIERBERGER, AND HAVING BEEN ADJUDICATED GUILTY HEREIN, AND THE COURT HAVING GIVEN THE DEFENDANT AN OPPORTUNITY TO BE HEARD AND TO OFFER MATTERS IN MITIGATION OF SENTENCE, AND TO SHOW CAUSE WHY THE DEFENDANT SHOULD NOT BE SENTENCED AS PROVIDED BY LAW AND NO CAUSE BEING SHOWN

(CHECK ONE IF APPLICABLE)
__ AND THE COURT HAVING ON _____ DEFFERRED IMPOSITION OF SENTENCE UNTIL THIS DATE (DATE)
__ AND THE COURT HAVING PREVIOUSLY ENTERED A JUDGMENT IN THIS CASE ON _____ (DATE) NOW RESENTENCES THE DEFENDANT
__ AND THE COURT HAVING PLACED THE DEFENDANT ON _____ AND HAVING SUBSEQUENTLY REVOKED THE DEFENDANT'S _____

IT IS THE SENTENCE OF THE COURT THAT:
__ THE DEFENDANT PAY A FINE OF $_____, PURSUANT TO SECTION 775.083, FLORIDA STATUTES, PLUS $_____ AS THE 5% SURCHARGE REQUIRED BY SECTION 960.25, FLORIDA STATUTES.
XX THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS.
__ THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA.
__ THE DEFENDANT IS SENTENCED AS A YOUTHFUL OFFENDER IN ACCORDANCE WITH SECTION 958.04, FLORIDA STATUTES.

TO BE IMPRISONED (CHECK ONE; UNMARKED SECTIONS ARE INAPPLICABLE):
XX FOR A TERM OF NATURAL LIFE. ✓
__ FOR A TERM OF _____.
__ SAID SENTENCE SUSPENDED FOR A PERIOD OF _____ SUBJECT TO CONDITIONS SET FORTH IN THIS ORDER.

IF "SPLIT" SENTENCE, COMPLETE THE APPROPRIATE PARAGRAPH.
__ _____ _____ _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF SUPERVISION SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.
__ HOWEVER, AFTER SERVING A PERIOD OF _____ IMPRISONMENT IN _____, THE BALANCE OF THE SENTENCE SHALL BE SUSPENDED AND THE DEFENDANT SHALL BE PLACED ON _____ FOR A PERIOD OF _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF _____ SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.

IN THE EVENT THE DEFENDANT IS ORDERED TO SERVE ADDITIONAL SPLIT SENTENCES, ALL INCARCERATION PORTIONS SHALL BE SATISFIED BEFORE THE DEFENDANT BEGINS SERVICE OF THE SUPERVISION TERMS.

FILED

SEP 30 1994

478

RICHARD AKE, CLERK

SPECIAL PROVISIONS
(AS TO COUNT 02)

BY APPROPRIATE NOTATION, THE FOLLOWING PROVISIONS APPLY TO THE SENTENCE IMPOSED:

MANDATORY/MINIMUM PROVISIONS:

FIREARM	--	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 775.087(2), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
DRUG TRAFFICKING	--	IT IS FURTHER ORDERED THAT THE _____ MANDATORY MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.135(1), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTROLLED SUBSTANCE WITHIN 1000 FT OF SCHOOL	--	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.13(1)(E)1, FLORIDA STATUTES IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
HABITUAL FELONY OFFENDER	--	THE DEFENDANT IS ADJUDICATED A HABITUAL FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(A), FLORIDA STATUTES. THE REQUISITE FINDINGS BY THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
HABITUAL VIOLENT FELONY OFFENDER	--	THE DEFENDANT IS ADJUDICATED A HABITUAL VIOLENT FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(B), FLORIDA STATUTES. A MINIMUM TERM OF _____ MUST BE SERVED PRIOR TO RELEASE. THE REQUISITE FINDINGS OF THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
LAW ENFORCEMENT PROTECTION ACT	--	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE A MINIMUM OF _____ BEFORE RELEASE IN ACCORDANCE WITH SECTION 775.0823, FLORIDA STATUTES.
CAPITAL OFFENSE	--	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE NO LESS THAN 25 YEARS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.082(1), FLORIDA STATUTES.
SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN	--	IT IS FURTHER ORDERED THAT THE 5-YEAR MINIMUM PROVISIONS OF SECTION 790.221(2), FLORIDA STATUTES, ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTINUING CRIMINAL ENTERPRISE	--	IT IS FURTHER ORDERED THAT THE 25-YEAR MINIMUM SENTENCE PROVISIONS OF SECTION 893.20, FLORIDA STATUTES ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.

OTHER PROVISIONS:

RETENTION OF JURISDICTION	--	THE COURT RETAINS JURISDICTION OVER THE DEFENDANT PURSUANT TO SECTION 947.16(3), FLORIDA STATUTES(1983).
JAIL CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL BE ALLOWED A TOTAL OF _480_ DAYS AS CREDIT FOR TIME INCARCERATED BEFORE IMPOSITION OF THIS SENTENCE.
PRISON CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT BE ALLOWED CREDIT FOR ALL TIME PREVIOUSLY SERVED ON THIS COUNT IN THE DEPARTMENT OF CORRECTIONS PRIOR TO RESENTENCING.
CONSECUTIVE/ CONCURRENT AS TO OTHER COUNTS	XX	IT IS FURTHER ORDERED THAT THE SENTENCE FOR THIS COUNT COUNT SHALL RUN (CHECK ONE) XX CONSECUTIVE TO __ CONCURRENT WITH THE SENTENCE SET FORTH IN THE FOLLOWING COUNT(S): ONE

AMENDED

MANDATE HEARING

DEFENDANT VALENTINE,TERANCE GERALAIND

CASE NUMBER 88-12996 C
OBTS NUMBER

---------- SENTENCE ----------
(AS TO COUNT 03)

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCOMPANIED BY THE DEFENDANT'S ATTORNEY OF RECORD, WITH COUNSEL: SIMSON UNIERBERGER, AND HAVING BEEN ADJUDICATED GUILTY HEREIN, AND THE COURT HAVING GIVEN THE DEFENDANT AN OPPORTUNITY TO BE HEARD AND TO OFFER MATTERS IN MITIGATION OF SENTENCE, AND TO SHOW CAUSE WHY THE DEFENDANT SHOULD NOT BE SENTENCED AS PROVIDED BY LAW AND NO CAUSE BEING SHOWN

(CHECK ONE IF APPLICABLE)
-- AND THE COURT HAVING ON _____ DEFFERRED IMPOSITION OF SENTENCE UNTIL THIS DATE (DATE)
-- AND THE COURT HAVING PREVIOUSLY ENTERED A JUDGMENT IN THIS CASE ON _____ NOW RESENTENCES THE DEFENDANT (DATE)
-- AND THE COURT HAVING PLACED THE DEFENDANT ON _____ AND HAVING SUBSEQUENTLY REVOKED THE DEFENDANT'S _____

IT IS THE SENTENCE OF THE COURT THAT:
-- THE DEFENDANT PAY A FINE OF $_____, PURSUANT TO SECTION 775.083, FLORIDA STATUTES, PLUS $_____ AS THE 5% SURCHARGE REQUIRED BY SECTION 960.25, FLORIDA STATUTES.
XX THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS.
-- THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA.
-- THE DEFENDANT IS SENTENCED AS A YOUTHFUL OFFENDER IN ACCORDANCE WITH SECTION 958.04, FLORIDA STATUTES.

TO BE IMPRISONED (CHECK ONE; UNMARKED SECTIONS ARE INAPPLICABLE):
XX FOR A TERM OF NATURAL LIFE. ✓
-- FOR A TERM OF _____.
-- SAID SENTENCE SUSPENDED FOR A PERIOD OF _____ SUBJECT TO CONDITIONS SET FORTH IN THIS ORDER.

IF "SPLIT" SENTENCE, COMPLETE THE APPROPRIATE PARAGRAPH.
-- _____ _____ _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF SUPERVISION SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.
-- HOWEVER, AFTER SERVING A PERIOD OF _____ IMPRISONMENT IN _____, THE BALANCE OF THE SENTENCE SHALL BE SUSPENDED AND THE DEFENDANT SHALL BE PLACED ON _____ FOR A PERIOD OF _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF _____ SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.

IN THE EVENT THE DEFENDANT IS ORDERED TO SERVE ADDITIONAL SPLIT SENTENCES, ALL INCARCERATION PORTIONS SHALL BE SATISFIED BEFORE THE DEFENDANT BEGINS SERVICE OF THE SUPERVISION TERMS.

FILED

SEP 30 1994

RICHARD AKE, CLERK

480

DEFENDANT VALENTINE,TERANCE GERALAIND* A M E N D E D * CASE NUMBER 88-12996
MANDATE HEARING S NUMBER

---------- SPECIAL PROVISIONS ----------
(AS TO COUNT 03)

BY APPROPRIATE NOTATION, THE FOLLOWING PROVISIONS APPLY TO THE SENTENCE IMPOSED:

MANDATORY/MINIMUM PROVISIONS:

FIREARM	__	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 775.087(2), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
DRUG TRAFFICKING	__	IT IS FURTHER ORDERED THAT THE _____ MANDATORY MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.135(1), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTROLLED SUBSTANCE WITHIN 1000 FT OF SCHOOL	__	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.13(1)(E)1, FLORIDA STATUTES IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
HABITUAL FELONY OFFENDER	__	THE DEFENDANT IS ADJUDICATED A HABITUAL FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(A), FLORIDA STATUTES. THE REQUISITE FINDINGS BY THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
HABITUAL VIOLENT FELONY OFFENDER	__	THE DEFENDANT IS ADJUDICATED A HABITUAL VIOLENT FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(B), FLORIDA STATUTES. A MINIMUM TERM OF _____ MUST BE SERVED PRIOR TO RELEASE. THE REQUISITE FINDINGS OF THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
LAW ENFORCEMENT PROTECTION ACT	__	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE A MINIMUM OF _____ BEFORE RELEASE IN ACCORDANCE WITH SECTION 775.0823, FLORIDA STATUTES.
CAPITAL OFFENSE	__	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE NO LESS THAN 25 YEARS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.082(1), FLORIDA STATUTES.
SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN	__	IT IS FURTHER ORDERED THAT THE 5-YEAR MINIMUM PROVISIONS OF SECTION 790.221(2), FLORIDA STATUTES, ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTINUING CRIMINAL ENTERPRISE	__	IT IS FURTHER ORDERED THAT THE 25-YEAR MINIMUM SENTENCE PROVISIONS OF SECTION 893.20, FLORIDA STATUTES ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.

OTHER PROVISIONS:

RETENTION OF JURISDICTION	__	THE COURT RETAINS JURISDICTION OVER THE DEFENDANT PURSUANT TO SECTION 947.16(3), FLORIDA STATUTES(1983).
JAIL CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL BE ALLOWED A TOTAL OF 480 DAYS AS CREDIT FOR TIME INCARCERATED BEFORE IMPOSITION OF THIS SENTENCE.
PRISON CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT BE ALLOWED CREDIT FOR ALL TIME PREVIOUSLY SERVED ON THIS COUNT IN THE DEPARTMENT OF CORRECTIONS PRIOR TO RESENTENCING.
CONSECUTIVE/ CONCURRENT AS TO OTHER COUNTS	XX	IT IS FURTHER ORDERED THAT THE SENTENCE FOR THIS COUNT COUNT SHALL RUN (CHECK ONE) XX CONSECUTIVE TO __ CONCURRENT WITH THE SENTENCE SET FORTH IN THE FOLLOWING COUNT(S): TWO

481

AMENDED

MANDATE HEARING

DEFENDANT VALENTINE,TERANCE GERALAIND CASE NUMBER 88-12996 C
OBTS NUMBER

---------- SENTENCE ----------
(AS TO COUNT 04)

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCOMPANIED BY THE DEFENDANT'S ATTORNEY OF RECORD,
WITH COUNSEL: SIMSON UNIERBERGER, AND HAVING BEEN ADJUDICATED GUILTY HEREIN, AND THE COURT HAVING GIVEN THE DEFENDANT AN OPPORTUNITY TO BE HEARD AND TO OFFER MATTERS IN MITIGATION OF SENTENCE, AND TO SHOW CAUSE WHY THE DEFENDANT SHOULD NOT BE SENTENCED AS PROVIDED BY LAW AND NO CAUSE BEING SHOWN

(CHECK ONE IF APPLICABLE)
__ AND THE COURT HAVING ON _____ DEFFERRED IMPOSITION OF SENTENCE UNTIL THIS DATE (DATE)
__ AND THE COURT HAVING PREVIOUSLY ENTERED A JUDGMENT IN THIS CASE ON _____ NOW RESENTENCES THE DEFENDANT (DATE)
__ AND THE COURT HAVING PLACED THE DEFENDANT ON _____ AND HAVING SUBSEQUENTLY REVOKED THE DEFENDANT'S _____

IT IS THE SENTENCE OF THE COURT THAT:
__ THE DEFENDANT PAY A FINE OF $_____, PURSUANT TO SECTION 775.083, FLORIDA STATUTES, PLUS $_____ AS THE 5% SURCHARGE REQUIRED BY SECTION 960.25, FLORIDA STATUTES.
XX THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS.
__ THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA.
__ THE DEFENDANT IS SENTENCED AS A YOUTHFUL OFFENDER IN ACCORDANCE WITH SECTION 958.04, FLORIDA STATUTES.

TO BE IMPRISONED (CHECK ONE; UNMARKED SECTIONS ARE INAPPLICABLE):
__ FOR A TERM OF NATURAL LIFE.
XX FOR A TERM OF 5 YEARS ✓.
__ SAID SENTENCE SUSPENDED FOR A PERIOD OF _____ SUBJECT TO CONDITIONS SET FORTH IN THIS ORDER.

IF "SPLIT" SENTENCE, COMPLETE THE APPROPRIATE PARAGRAPH.
__ _____ _____ _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF SUPERVISION SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.
__ HOWEVER, AFTER SERVING A PERIOD OF _____ IMPRISONMENT IN _____, THE BALANCE OF THE SENTENCE SHALL BE SUSPENDED AND THE DEFENDANT SHALL BE PLACED ON _____ FOR A PERIOD OF _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF _____ SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.

IN THE EVENT THE DEFENDANT IS ORDERED TO SERVE ADDITIONAL SPLIT SENTENCES, ALL INCARCERATION PORTIONS SHALL BE SATISFIED BEFORE THE DEFENDANT BEGINS SERVICE OF THE SUPERVISION TERMS.

FILED

SEP 30 1994

482

RICHARD AKE, CLERK

DEFENDANT VALENTINE, TERANCE GERALAIND * A M E N D E D * CASE NUMBER 88-12996
MANDATE HEARING 'S NUMBER

SPECIAL PROVISIONS
(AS TO COUNT 04)

BY APPROPRIATE NOTATION, THE FOLLOWING PROVISIONS APPLY TO THE SENTENCE IMPOSED:

MANDATORY/MINIMUM PROVISIONS:

FIREARM	__	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 775.087(2), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
DRUG TRAFFICKING	__	IT IS FURTHER ORDERED THAT THE _____ MANDATORY MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.135(1), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTROLLED SUBSTANCE WITHIN 1000 FT OF SCHOOL	__	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.13(1)(E)1, FLORIDA STATUTES IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
HABITUAL FELONY OFFENDER	__	THE DEFENDANT IS ADJUDICATED A HABITUAL FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(A), FLORIDA STATUTES. THE REQUISITE FINDINGS BY THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
HABITUAL VIOLENT FELONY OFFENDER	__	THE DEFENDANT IS ADJUDICATED A HABITUAL VIOLENT FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(B), FLORIDA STATUTES. A MINIMUM TERM OF _____ MUST BE SERVED PRIOR TO RELEASE. THE REQUISITE FINDINGS OF THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
LAW ENFORCEMENT PROTECTION ACT	__	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE A MINIMUM OF _____ BEFORE RELEASE IN ACCORDANCE WITH SECTION 775.0823, FLORIDA STATUTES.
CAPITAL OFFENSE	__	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE NO LESS THAN 25 YEARS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.082(1), FLORIDA STATUTES.
SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN	__	IT IS FURTHER ORDERED THAT THE 5-YEAR MINIMUM PROVISIONS OF SECTION 790.221(2), FLORIDA STATUTES, ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTINUING CRIMINAL ENTERPRISE	__	IT IS FURTHER ORDERED THAT THE 25-YEAR MINIMUM SENTENCE PROVISIONS OF SECTION 893.20, FLORIDA STATUTES ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.

OTHER PROVISIONS:

RETENTION OF JURISDICTION	__	THE COURT RETAINS JURISDICTION OVER THE DEFENDANT PURSUANT TO SECTION 947.16(3), FLORIDA STATUTES(1983).
JAIL CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL BE ALLOWED A TOTAL OF _480_ DAYS AS CREDIT FOR TIME INCARCERATED BEFORE IMPOSITION OF THIS SENTENCE.
PRISON CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT BE ALLOWED CREDIT FOR ALL TIME PREVIOUSLY SERVED ON THIS COUNT IN THE DEPARTMENT OF CORRECTIONS PRIOR TO RESENTENCING.
CONSECUTIVE/ CONCURRENT AS TO OTHER COUNTS	XX	IT IS FURTHER ORDERED THAT THE SENTENCE FOR THIS COUNT COUNT SHALL RUN (CHECK ONE) XX CONSECUTIVE TO __ CONCURRENT WITH THE SENTENCE SET FORTH IN THE FOLLOWING COUNT(S): THREE

AMENDED

MANDATE HEARING

DEFENDANT VALENTINE,TERANCE GERALAIND

CASE NUMBER 88-12996 C
OBTS NUMBER

---------- SENTENCE ----------
(AS TO COUNT 05)

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCOMPANIED BY THE DEFENDANT'S ATTORNEY OF RECORD, WITH COUNSEL: SIMSON UNIESBERGER, AND HAVING BEEN ADJUDICATED GUILTY HEREIN, AND THE COURT HAVING GIVEN THE DEFENDANT AN OPPORTUNITY TO BE HEARD AND TO OFFER MATTERS IN MITIGATION OF SENTENCE, AND TO SHOW CAUSE WHY THE DEFENDANT SHOULD NOT BE SENTENCED AS PROVIDED BY LAW AND NO CAUSE BEING SHOWN

(CHECK ONE IF APPLICABLE)
__ AND THE COURT HAVING ON _____ (DATE) DEFFERRED IMPOSITION OF SENTENCE UNTIL THIS DATE
__ AND THE COURT HAVING PREVIOUSLY ENTERED A JUDGMENT IN THIS CASE ON _____ (DATE) NOW RESENTENCES THE DEFENDANT
__ AND THE COURT HAVING PLACED THE DEFENDANT ON _____ AND HAVING SUBSEQUENTLY REVOKED THE DEFENDANT'S _____

IT IS THE SENTENCE OF THE COURT THAT:
__ THE DEFENDANT PAY A FINE OF $_____, PURSUANT TO SECTION 775.083, FLORIDA STATUTES, PLUS $_____ AS THE 5% SURCHARGE REQUIRED BY SECTION 960.25, FLORIDA STATUTES.
XX THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS.
__ THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA.
__ THE DEFENDANT IS SENTENCED AS A YOUTHFUL OFFENDER IN ACCORDANCE WITH SECTION 958.04, FLORIDA STATUTES.

TO BE IMPRISONED (CHECK ONE; UNMARKED SECTIONS ARE INAPPLICABLE):
__ FOR A TERM OF NATURAL LIFE.
XX FOR A TERM OF DEATH.
__ SAID SENTENCE SUSPENDED FOR A PERIOD OF _____ SUBJECT TO CONDITIONS SET FORTH IN THIS ORDER.

IF "SPLIT" SENTENCE, COMPLETE THE APPROPRIATE PARAGRAPH.
__ _____ _____ _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF SUPERVISION SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.
__ HOWEVER, AFTER SERVING A PERIOD OF _____ IMPRISONMENT IN _____, THE BALANCE OF THE SENTENCE SHALL BE SUSPENDED AND THE DEFENDANT SHALL BE PLACED ON _____ FOR A PERIOD OF _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF _____ SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.

IN THE EVENT THE DEFENDANT IS ORDERED TO SERVE ADDITIONAL SPLIT SENTENCES, ALL INCARCERATION PORTIONS SHALL BE SATISFIED BEFORE THE DEFENDANT BEGINS SERVICE OF THE SUPERVISION TERMS.

FILED

SEP 30 1994

RICHARD AKE, CLERK

DEFENDANT VALENTINE, TERANCE GERALAIND* A M E N D E D * CASE NUMBER 88-12996
MANDATE HEARING S NUMBER

SPECIAL PROVISIONS
(AS TO COUNT 05)

BY APPROPRIATE NOTATION, THE FOLLOWING PROVISIONS APPLY TO THE SENTENCE IMPOSED:

MANDATORY/MINIMUM PROVISIONS:

FIREARM	__	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 775.087(2), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
DRUG TRAFFICKING	__	IT IS FURTHER ORDERED THAT THE _____ MANDATORY MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.135(1), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTROLLED SUBSTANCE WITHIN 1000 FT OF SCHOOL	__	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.13(1)(E)1, FLORIDA STATUTES IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
HABITUAL FELONY OFFENDER	__	THE DEFENDANT IS ADJUDICATED A HABITUAL FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(A), FLORIDA STATUTES. THE REQUISITE FINDINGS BY THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
HABITUAL VIOLENT FELONY OFFENDER	__	THE DEFENDANT IS ADJUDICATED A HABITUAL VIOLENT FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(B), FLORIDA STATUTES. A MINIMUM TERM OF _____ MUST BE SERVED PRIOR TO RELEASE. THE REQUISITE FINDINGS OF THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
LAW ENFORCEMENT PROTECTION ACT	__	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE A MINIMUM OF _____ BEFORE RELEASE IN ACCORDANCE WITH SECTION 775.0823, FLORIDA STATUTES.
CAPITAL OFFENSE	__	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE NO LESS THAN 25 YEARS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.082(1), FLORIDA STATUTES.
SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN	__	IT IS FURTHER ORDERED THAT THE 5-YEAR MINIMUM PROVISIONS OF SECTION 790.221(2), FLORIDA STATUTES, ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTINUING CRIMINAL ENTERPRISE	__	IT IS FURTHER ORDERED THAT THE 25-YEAR MINIMUM SENTENCE PROVISIONS OF SECTION 893.20, FLORIDA STATUTES ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.

OTHER PROVISIONS:

RETENTION OF JURISDICTION	__	THE COURT RETAINS JURISDICTION OVER THE DEFENDANT PURSUANT TO SECTION 947.16(3), FLORIDA STATUTES(1983).
JAIL CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL BE ALLOWED A TOTAL OF _480_ DAYS AS CREDIT FOR TIME INCARCERATED BEFORE IMPOSITION OF THIS SENTENCE.
PRISON CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT BE ALLOWED CREDIT FOR ALL TIME PREVIOUSLY SERVED ON THIS COUNT IN THE DEPARTMENT OF CORRECTIONS PRIOR TO RESENTENCING.
CONSECUTIVE/ CONCURRENT AS TO OTHER COUNTS	__	IT IS FURTHER ORDERED THAT THE SENTENCE FOR THIS COUNT COUNT SHALL RUN (CHECK ONE) __ CONSECUTIVE TO __ CONCURRENT WITH THE SENTENCE SET FORTH IN THE FOLLOWING COUNT(S): _____

* * A M E N D E D * *

MANDATE HEARING

DEFENDANT VALENTINE,TERANCE GERALAIND

CASE NUMBER 88-12996 C
OBTS NUMBER

---------- SENTENCE ----------
(AS TO COUNT 06)

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCOMPANIED BY THE DEFENDANT'S ATTORNEY OF RECORD, WITH COUNSEL: SIMSON UNIERBERGER, AND HAVING BEEN ADJUDICATED GUILTY HEREIN, AND THE COURT HAVING GIVEN THE DEFENDANT AN OPPORTUNITY TO BE HEARD AND TO OFFER MATTERS IN MITIGATION OF SENTENCE, AND TO SHOW CAUSE WHY THE DEFENDANT SHOULD NOT BE SENTENCED AS PROVIDED BY LAW AND NO CAUSE BEING SHOWN

(CHECK ONE IF APPLICABLE)
__ AND THE COURT HAVING ON _____ DEFFERRED IMPOSITION OF SENTENCE UNTIL THIS DATE (DATE)
__ AND THE COURT HAVING PREVIOUSLY ENTERED A JUDGMENT IN THIS CASE ON _____ NOW RESENTENCES THE DEFENDANT (DATE)
__ AND THE COURT HAVING PLACED THE DEFENDANT ON _____ AND HAVING SUBSEQUENTLY REVOKED THE DEFENDANT'S _____

IT IS THE SENTENCE OF THE COURT THAT:
__ THE DEFENDANT PAY A FINE OF $_____, PURSUANT TO SECTION 775.083, FLORIDA STATUTES, PLUS $_____ AS THE 5% SURCHARGE REQUIRED BY SECTION 960.25, FLORIDA STATUTES.
XX THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS.
__ THE DEFENDANT IS HEREBY COMMITTED TO THE CUSTODY OF THE SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA.
__ THE DEFENDANT IS SENTENCED AS A YOUTHFUL OFFENDER IN ACCORDANCE WITH SECTION 958.04, FLORIDA STATUTES.

TO BE IMPRISONED (CHECK ONE; UNMARKED SECTIONS ARE INAPPLICABLE):
__ FOR A TERM OF NATURAL LIFE.
XX FOR A TERM OF 30 YEARS.
__ SAID SENTENCE SUSPENDED FOR A PERIOD OF _____ SUBJECT TO CONDITIONS SET FORTH IN THIS ORDER.

IF "SPLIT" SENTENCE, COMPLETE THE APPROPRIATE PARAGRAPH.
__ _____ _____ _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF SUPERVISION SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.
__ HOWEVER, AFTER SERVING A PERIOD OF _____ IMPRISONMENT IN _____, THE BALANCE OF THE SENTENCE SHALL BE SUSPENDED AND THE DEFENDANT SHALL BE PLACED ON _____ FOR A PERIOD OF _____ UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS ACCORDING TO THE TERMS AND CONDITIONS OF _____ SET FORTH IN A SEPARATE ORDER ENTERED HEREIN.

IN THE EVENT THE DEFENDANT IS ORDERED TO SERVE ADDITIONAL SPLIT SENTENCES, ALL INCARCERATION PORTIONS SHALL BE SATISFIED BEFORE THE DEFENDANT BEGINS SERVICE OF THE SUPERVISION TERMS.

FILED

SEP 30 1994

RICHARD AKE, CLERK

486

SPECIAL PROVISIONS
(AS TO COUNT 06)

BY APPROPRIATE NOTATION, THE FOLLOWING PROVISIONS APPLY TO THE SENTENCE IMPOSED:

MANDATORY/MINIMUM PROVISIONS:

FIREARM	__	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 775.087(2), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
DRUG TRAFFICKING	__	IT IS FURTHER ORDERED THAT THE _____ MANDATORY MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.135(1), FLORIDA STATUTES, IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTROLLED SUBSTANCE WITHIN 1000 FT OF SCHOOL	__	IT IS FURTHER ORDERED THAT THE 3-YEAR MINIMUM IMPRISONMENT PROVISIONS OF SECTION 893.13(1)(E)1, FLORIDA STATUTES IS HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
HABITUAL FELONY OFFENDER	__	THE DEFENDANT IS ADJUDICATED A HABITUAL FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(A), FLORIDA STATUTES. THE REQUISITE FINDINGS BY THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
HABITUAL VIOLENT FELONY OFFENDER	__	THE DEFENDANT IS ADJUDICATED A HABITUAL VIOLENT FELONY OFFENDER AND HAS BEEN SENTENCED TO AN EXTENDED TERM IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.084(4)(B), FLORIDA STATUTES. A MINIMUM TERM OF _____ MUST BE SERVED PRIOR TO RELEASE. THE REQUISITE FINDINGS OF THE COURT ARE SET FORTH IN A SEPARATE ORDER OR STATED ON THE RECORD IN OPEN COURT.
LAW ENFORCEMENT PROTECTION ACT	__	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE A MINIMUM OF _____ BEFORE RELEASE IN ACCORDANCE WITH SECTION 775.0823, FLORIDA STATUTES.
CAPITAL OFFENSE	__	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL SERVE NO LESS THAN 25 YEARS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 775.082(1), FLORIDA STATUTES.
SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN	__	IT IS FURTHER ORDERED THAT THE 5-YEAR MINIMUM PROVISIONS OF SECTION 790.221(2), FLORIDA STATUTES, ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.
CONTINUING CRIMINAL ENTERPRISE	__	IT IS FURTHER ORDERED THAT THE 25-YEAR MINIMUM SENTENCE PROVISIONS OF SECTION 893.20, FLORIDA STATUTES ARE HEREBY IMPOSED FOR THE SENTENCE SPECIFIED IN THIS COUNT.

OTHER PROVISIONS:

RETENTION OF JURISDICTION	__	THE COURT RETAINS JURISDICTION OVER THE DEFENDANT PURSUANT TO SECTION 947.16(3), FLORIDA STATUTES(1983).
JAIL CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL BE ALLOWED A TOTAL OF 480 DAYS AS CREDIT FOR TIME INCARCERATED BEFORE IMPOSITION OF THIS SENTENCE.
PRISON CREDIT	XX	IT IS FURTHER ORDERED THAT THE DEFENDANT BE ALLOWED CREDIT FOR ALL TIME PREVIOUSLY SERVED ON THIS COUNT IN THE DEPARTMENT OF CORRECTIONS PRIOR TO RESENTENCING.
CONSECUTIVE/ CONCURRENT AS TO OTHER COUNTS	XX	IT IS FURTHER ORDERED THAT THE SENTENCE FOR THIS COUNT COUNT SHALL RUN (CHECK ONE) XX CONSECUTIVE TO __ CONCURRENT WITH THE SENTENCE SET FORTH IN THE FOLLOWING COUNT(S): FOUR

AMENDED

MANDATE HEARING

DEFENDANT VALENTINE,TERANCE GERALAIND

CASE NUMBER 88-12996
OBTS NUMBER

OTHER PROVISION, CONTINUED:

CONSECUTIVE/ CONCURRENT AS TO OTHER CONVICTIONS

-- IT IS FURTHER ORDERED THAT THE COMPOSITE TERM OF ALL SENTENCES IMPOSED FOR THE COUNTS SPECIFIED IN THIS ORDER SHALL RUN (CHECK ONE) -- CONSECUTIVE TO -- CONCURRENT WITH THE FOLLOWING:
(CHECK ONE)
-- ANY ACTIVE SENTENCE BEING SERVED.
-- SPECIFIC SENTENCES: _____
_____
_____
_____

IN THE EVENT THE ABOVE SENTENCE IS TO THE DEPARTMENT OF CORRECTIONS, THE SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA, IS HEREBY ORDERED AND DIRECTED TO DELIVER THE DEFENDANT TO THE DEPARTMENT OF CORRECTIONS AT THE FACILITY DESIGNATED BY THE DEPARTMENT TOGETHER WITH A COPY OF THIS JUDGMENT AND SENTENCE AND ANY OTHER DOCUMENTS SPECIFIED BY FLORIDA STATUTE.

THE DEFENDANT IN OPEN COURT WAS ADVISED OF THE RIGHT TO APPEAL FROM THIS SENTENCE BY FILING NOTICE OF APPEAL WITHIN 30 DAYS FROM THIS DATE WITH THE CLERK OF THIS COURT AND THE DEFENDANT'S RIGHT TO THE ASSISTANCE OF COUNSEL IN TAKING THE APPEAL AT THE EXPENSE OF THE STATE ON SHOWING OF INDIGENCY.

IN IMPOSING THE ABOVE SENTENCE, THE COURT FURTHER RECOMMENDS:
_____
_____
_____

SENTENCING GUIDELINES FILED 9-29-94

DONE AND ORDERED IN OPEN COURT AT HILLSBOROUGH COUNTY, FLORIDA, THIS 30TH DAY OF SEPTEMBER, 1994.

_____
JUDGE

FILED

SEP 30 1994

RICHARD AKE, CLERK

Rule 3.988(j)

SENTENCING GUIDELINES SCORESHEET

1. Primary Docket Number	2. Additional Docket Numbers	3. OBTS Number	4. Category:
88- 12996			☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9

5. Name (Last, Name First)	6. Date of Birth	7. Sex:	8. Race:	9. Violation	10. County
Valentine, Terance G.	1.21.49	☒ M ☐ F	☒ B ☐ W ☐ Other	☐ Prob ☐ CC	Hillsborough

11. Judge at Sentencing	12. Date of Offense	13. Date of Sentence	14.	15. DOC Number
D. Allen	9.9.88	9.30.94	☐ Plea ☒ Trial	

[redacted]

POINTS

I. PRIMARY OFFENSE AT CONVICTION

Counts	Degree	Statute	Description	
1	1	782.04	Attempted First Degree Murder	I. 165

II. ADDITIONAL OFFENSES AT CONVICTION

Counts	Fel/Misd	Degree	Statute	Description
2	F	1PBL	787.01	Kidnapping
1	F	1PBL	810.02	Armed Burglary
1	F	3	812.014	Grand Theft Motor Vehicle
				II. 68

(Continue on Reverse)

III. A. PRIOR RECORD

Counts	Fel/Misd	Degree	Statute	Description	
					III. A.

(Continue on Reverse)

FILED
SEP 30 1994
RICHARD AKE, CLERK

III. B. SAME CATEGORY PRIORS (categories 3, 5 and 6 only) III. B.

III. C. PRIOR DUI CONVICTIONS (category 1 only) III. C.

IV. LEGAL STATUS AT TIME OF OFFENSE

✓ (1) no restrictions ____ (2) legal constraint IV.

V. VICTIM INJURY

Number of Scoreable Victim Injuries	Degree of Injury	
		1C
	none or no contact	
	slight or contact but no penetration	
	moderate or penetration	
2 X	severe or death	V. 42

TOTAL POINTS 275

RECOMMENDED SENTENCE 17-22 PERMITTED SENTENCE 12-27

TOTAL SENTENCE IMPOSED

REASONS FOR DEPARTURE

JUDGE Diana Allen PREPARER

489

[redacted]

Effective Date June 1, 1991

Distribution	Court File	Sentencing Guidelines Commission	Department of Corrections	Defendant
	Original	First Copy	Second Copy	Third Copy

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY
-CRIMINAL JUSTICE DIVISION

FILED

SEP 30 1994

RICHARD AKE, CLERK

STATE OF FLORIDA

vs.

TERANCE G. VALENTINE

CASE NO. 88-12996

DIVISION "C"

SENTENCING ORDER

The Defendant, **TERANCE G. VALENTINE**, is before this court for sentencing after a retrial for charges of Count I Armed Burglary, Count II Kidnapping of Livia Porche, Count III Kidnapping of Ferdinand Porche, Court IV Grand Theft Motor Vehicle, Court V First Degree Murder of Ferdinand Porche and Count VI Attempted First Degree Murder of Livia Porche. The Defendant was found guilty as charged on all counts on July 16, 1994. On July 19, 1994, the Defendant requested to waive the Jury Advisory Sentence on second phase, and after argument of counsel and personal waiver by the Defendant, that request was granted. The State presented no witnesses in second phase. The defense presented three witnesses on July 19, 1994. At the request of the Defendant, the evidentiary portion of second phase was continued until August 17, 1994. to consider additional evidence. A presentence investigation (PSI) was ordered by the court and Memoranda were requested from counsel for the State and counsel for the Defense. On August 17, 1994, additional evidence was presented by stipulation. Sentencing was scheduled for August 30, 1994. Upon request of the Defense the sentencing hearing was continued until September 29, 1994, with pronouncement of sentence set for today, September 30, 1994. The

Court received and considered Memoranda from counsel for the State and counsel for the Defense. The Court received and considered the presentence investigation (PSI), as amended, for purposes of sentencing on Count I-IV and Count VI only.

This Court, having heard the evidence presented in both the guilt phase and penalty phase, having had the benefit of legal Memoranda and further argument both for and against the death penalty finds as follows:

A. AGGRAVATING FACTORS

1. The Defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

Mr. Valentine was convicted contemporaneously by the jury of the Attempted First Degree Murder of Livia Porche by shooting her twice in the base of her skull.

This aggravating circumstance was proved beyond a reasonable doubt.

2. The capital felony was committed while the Defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or in flight after committing or attempting to commit any ... burglary, kidnapping ....

Mr. Valentine was convicted contemporaneously by the jury of Count I Armed Burglary, Count II Kidnapping of Livia Porche and Count III Kidnapping of Ferdinand Porche.

This aggravating circumstance was proved beyond a reasonable doubt.

3. The capital felony was committed for the purpose

of avoiding or preventing a lawful arrest or effecting an escape from custody.

On September 9, 1988, Mr. Valentine broke into the home of his ex-wife, Livia Porche. Mr. Valentine was accompanied by an accomplice who has never been identified. Mr. Valentine and the accomplice came equipped with a gym bag containing a firearm, knife, and wire, all of which items were used on the victims during the commission of these crimes. Livia Porche, at home with her small child, was beaten and tied up. Ferdinand Porche came home from work and was immediately shot in the spine causing him to be paralyzed. Mr. Porche was then forced to drag himself into the same room with his wife and child while being kicked by the Defendant. Upon the arrival ~~of the Defendant and~~ Mrs. Porche's adopted daughter, Mr. and Mrs. Porche were dragged from the home, placed into the back of their vehicle and driven to a remote area. Mr. Porche while lying next to his wife, was then shot in the face at point blank range by the Defendant. There was then conversation between Mr. Valentine and Mrs. Porche wherein he stated he could not trust her not to go to the police. He then shot her twice in the base of the skull. The evidence surrounding the killing of Ferdinand Porche does not clearly and unequivocally show that the dominant or only motive for the murder was to avoid or prevent arrest or effect an escape from custody.

This aggravating circumstance is not established beyond a reasonable doubt.

4. The capital felony was especially heinous, atrocious, or cruel.

On September 9, 1988, Ferdinand Porche returned to his home in mid-afternoon expecting to meet his pregnant wife and small child. Instead he was greeted by a bullet in the back which rendered him paralyzed from the waist down. Mr. Porche was then confronted by Mr. Valentine who announced "this is my revenge." Mr. Porche was forced to crawl into a bedroom where he found his wife nude, bound, and gagged and his baby crying and covered in blood. Mr. Valentine then pistol whipped Mr. Porche. Mr. Porche's face was lacerated, his jaw was broken, and several teeth were knocked out. According to the medical examiner there were at least three separate blows to Mr. Porche's face. After administering this beating Mr. Valentine made his purpose clear, announcing, "I'm gonna kill you, but you're gonna suffer. This is not going to be easy." Further torturous acts included stabbing Mr. Porche in the buttocks - the knife stopping only because it struck bone, kicking Mr. Porche in the chest, and dragging him after he was bound hand and foot with wire. The medical examiner testified that all of the above injuries occurred while Mr. Porche was alive, that none was immediately life threatening, and none would immediately result in a loss of consciousness. Mrs. Porche testified that Mr. Porche told her he was in so much pain that he did not know why he did not lose consciousness. Mrs. Porche testified she could feel him touch her as if to reassure her while they were in the back of the Blazer being transported.

While the fatal gunshot resulted in near instantaneous loss of consciousness and death, the ordeal leading up to his death was quite lengthy. Mr. Porche was beaten and

degraded in him home. Trussed like an animal he was kidnapped and taken on a nine-mile trip to his slaughter. Either due to the gun shot wound to his spine or through the stress of the ordeal Mr. Porche lost control of his bowels and was covered with his own excrement.

Paralyzed and bound hand and foot with wire there was nothing Mr. Porche could do to save himself. Nor was there anything he could do to protect his wife, who he knew was the ultimate object of Mr. Valentine's barbarous intent. Nor could he know what would happen to his ten-month-old daughter or what would become of Mrs. Porche's adopted child. The horror, terror and helplessness that Ferdinand Porche experienced prior to being shot in the eye at point blank range are evident.

This aggravating circumstance has been proved beyond a reasonable doubt.

5. The capital felony was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.

The shooting of Ferdinand Porche who was paralyzed, his hands and feet bound with wire, stuffed in the back of a vehicle and shot in the eye at contact range was an execution and the stated purpose was revenge.

The killing of Mr. Porche was carefully planned and prearranged with a design to commit murder. Mr. Valentine has never resided in Tampa. His sole reason to come to Tampa on September 9, 1988, was to hunt the victims down and harm them as he had promised to do. Mr. Valentine brought the gun, knife, and wire

that he would use to carry out his plan to the scene. The accomplice knew to wear gloves (apparel not common in Florida in mid-September). The death of Ferdinand Porche did not result from a confrontation between two people that got out of control. Mr. Porche was shot in the back as he entered his residence rendering him incapacitated before he ever had a chance to confront Mr. Valentine.

Heightened premeditation is exhibited by the above-stated facts and by the length of time involved. Mr. Valentine was at the Porches' residence for a significant period of time. Then he drove the victims approximately nine miles - even stopping for gas and beer along the way - to a remote area where gunshots would not be immediately heard or reported. Mr. Valentine had ample time to reflect on his actions.

The coldness of Mr. Valentine's acts can be found in his preparation, his planning, his statements, and the ruthless carrying out of his goal. His acts were not prompted by "emotional frenzy, panic, or a fit of rage." These were the actions of a man who had a goal, prepared for it, enlisted the aid of an accomplice, and accomplished the goal - failing only in actually killing his ex-wife despite his best efforts.

This aggravating circumstance was proved beyond a reasonable doubt.

Nothing except as indicated above was considered in aggravation. No other aggravating factors enumerated by statute are applicable to this case, and none other were considered by this Court.

B. MITIGATING FACTORS

Statutory Mitigating Factors

1. The Defendant has no significant history of prior criminal activity.

There was evidence at trial that Mr. Valentine had been incarcerated in Costa Rica for a drug offense for a period of time. There is evidence that Mr. Valentine was in a U.S. Federal Prison for an immigration violation. The pre sentence investigation reports a DUI arrest in 1978 in New Orleans; an arrest in New Orleans in 1979 for public drunk, criminal trespass, resisting an officer and threats on an officer; an auto theft in 1985 out of Ft. Worth, Texas, where the Defendant was arrested in Dixie County, Florida in the stolen vehicle and was arrested for DUI at the same time

This statutory mitigating factor is not established by the evidence. Mr. Valentine claims to have been involved in other illegal activities.

2. The capital felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance. There is no evidence to support any mental or emotional disturbance.

This statutory mitigating factor was not established by the evidence.

3. The age of the Defendant at the time of the crime.

Mr. Valentine's date of birth is reported as 1-21-49. On September 9, 1988, Mr. Valentine was 39 years old.

Counsel for the defense argued that age 39 is mitigating when taken in conjunction with no significant history of prior criminal activity. However, Mr. Valentine's adult life is punctuated with criminal activity.

This statutory mitigating factor was not established by the evidence.

Non-Statutory Mitigating Factors

The defense has argued a number of non-statutory mitigating factors relating to the Defendant's character, record, background and any other circumstance of the offense.

1. The Defendant has exhibited good character in that he has never been addicted to or chronically abused alcohol or narcotics. The evidence does not support this mitigating factor, but rather points to a history of alcohol use.

2. The Defendant is rehabilitable. There is no evidence to support this mitigating factor.

3. The Defendant has demonstrated before and after the crime good moral character. There is no evidence to support this mitigating factor.

4. The crimes committed by the Defendant were out of character for him and indicates a single period of aberrant behavior. The only evidence of this is the lack of any other arrests or conviction for violent crimes nor does the Defendant's prior record show a pattern of increasingly serious conduct. The Court gives this mitigating factor slight weight.

5. Before the date of this offense, the Defendant had not engaged in a pattern of assaultive behavior. This factor

is not supported by the evidence.

6. The Defendant is a skilled worker who can be expected to make a contribution in the prison system. The Defendant has been gainfully employed prior to his incarceration and is a trained diesel mechanic. The Court gives this factor slight weight.

7. The Defendant, if sentenced to life would be removed from society for a minimum of twenty-five (25) years or longer. The Court does not find this to be a mitigating factor.

8. A death sentence would deprive his adopted daughter of a father. There is no evidence that the daughter cares. The Court does not find this to be a mitigating factor.

9. The Defendant has a large family who will provide love and support while in prison. The evidence does support the fact that the Defendant has a large family some of whom traveled to Hillsborough County from Costa Rica for the trial and who would continue to provide love and emotional support to the Defendant if incarcerated. The Court gives this slight weight.

10. The Defendant is a good and caring parent and is his daughter's sole means of support. While the evidence does show that rental income from property owned by Mr. Valentine goes to the support of his daughter, there is no evidence to suggest that she would be deprived of that income in the event of Mr. Valentine's death nor does the evidence show that Mr. Valentine has had a good or caring relationship with his daughter. This mitigating circumstance is not established by the evidence.

11. The Defendant offered no resistance at the time

of his arrest, had adapted well to incarceration, is likely to function well in prison, has been a model inmate, without any disciplinary problems and has exhibited appropriate behavior in jail and in all court proceedings. The evidence supports the Defendant's appropriate adjustment and behavior. The Court gives this factor slight weight.

12. The defense submitted argument that circumstances of the offense should be considered in mitigation, i.e. the credibility of the surviving witness, **LIVIA PORCHE**, and the inconsistency or lack of certain physical evidence. The Court finds nothing mitigating about the circumstances of this offense.

The Court has very carefully considered and weighed the aggravating and mitigating circumstances found to exist in this case, being ever mindful that human life is at stake. The Court finds that the aggravating circumstances present in this case outweigh the mitigating circumstances present. The Court further finds that the contemporaneous conviction of a capital felony is a valid, sufficient reason to depart upward on the sentencing guideline for the non-capital crimes.

Accordingly, it is

ORDERED AND ADJUDGED that the Defendant, **TERANCE G. VALENTINE**, is hereby sentenced to death for the murder of **FERDINAND PORCHE**.

It is further

ORDERED AND ADJUDGED that the Defendant, **TERANCE G. VALENTINE**, is sentenced to life imprisonment with a three-year minimum mandatory sentence for the use of a firearm for

Count I, Armed Burglary; to life imprisonment for Count II, Kidnapping of **LIVIA PORCHE**; to life imprisonment for Count III, Kidnapping of **FERDINAND PORCHE**; to five years imprisonment for Count IV, Grand Theft Motor Vehicle; to thirty (30) years imprisonment for Count VI, Attempted Murder in the First Degree; each count consecutive to the sentence in Count V and consecutive to each other with credit for all time served, including all county jail time, all Department of Corrections time and all unforfeited gain time.

The Defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of these sentences as provided by law.

MAY GOD HAVE MERCY ON YOUR SOUL.

DONE AND ORDERED in Tampa, Hillsborough County, Florida, this 30th day of September, 1994.

DIANA M. ALLEN
CIRCUIT JUDGE

Copies to

The Honorable Harry Lee Coe, State Attorney
Walter Lopez, Esquire, Counsel for the Defendant
Simson Unterberger, Esquire, Counsel for the Defendant
Mr. Terance G. Valentine, Defendant

500

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY
STATE OF FLORIDA

TERENCE G. VALENTINE,
Petitioner,

v.

Case No. 88-12996
DEATH PENALTY CASE

STATE OF FLORIDA,
Respondent.
_____/

APPENDIX INDEX

EXHIBIT 1

REF. MEO Case # MEA-734-88

DECEDENT: PORSCH, Ferdinand

CASE INFORMATION (Continuation of MEO Investigative Form):

Sept. 12, 1988 at 12:44PM - Per Cpl. Rainey, HCSO it is ok to release decedent to a funeral home, per Capt. Terry, HCSO DO NOT GIVE OUT ANY INFORMATION TO ANYONE REGARDING THIS CASE. Ex-husband of wife(that is in protective custody at this time)is the suspect.(STROUSE)

Sept. 12, 1988 at 1:11PM - Per Dr. Miller, it is ok to release decedent to a funeral home. Per FI Loy, she gained NOK (Brother) and he will be making arrangements.(STROUSE)

September 13, 1988 - 10:35 AM - F.I. Loy received a call from the decedent's brother in California. The brother states that the decedent is not legally married to the mother (the decedent's) of their ten month old daughter. The brother would like to make arrangements for burial in California. F.I. Loy called the HCSO and spoke with Cpl. Baker - who will check this out. If they are not legally married - then the brother can go ahead and make the arrangements.

September 13, 1988 11:35 AM - F.I. Loy received a call froma Debbie Johnston - friend of the decedent's wife/girlfriend who stated that the wife is three months pregnant - will be discharged from the hospital (T.G.H.) today - and would like to arrange services for the decedent's burial. Placed another call to the HCSO to find out if the decedent was legally married. Ms. Johnston's numbers are:- Work - 920-7461 - HOME - 677-5471.

September 13, 1988 - 1:45 PM - F.I. Loy received another call from Debbie Johnston who state that she talked to the decedent's wife and that the wife would like to come down to the MEO and see the decedent. I explained to her that if the brother in California makes the arrangements for cremation - then she would be allowed to view the body for the last time. The HCSO still has not called back with the marriage information and the friend does not know even if they are legally married. In addition, the friend stated that she saw on T.V. that Terrance Valentine has been picked up - (the decedent's assailant). The wife's first name is Livia and will be discharged within a few hours.

677-5471

Sept 14, 88 - 9:25 AM - Rec'd a call from Livia ROMERO - the girlfriend who was also shot - she related that she was not legally married to decedent - she has been in contact with the brother and they will make arrangements. Had also rec'd a call from the brother a few minutes before wanting to know the status - at that time told him we were still waiting to hear if the lady was or was not decedent's legal wife. Called the brother but there was no answer . Ms ROMERO stated it would possibly be a county burial. (HALL)

Sept 14, 88 - 9:45 AM - called the brother - family is making arrangements to have the body sent to Calif - mother will send a telegram. Called and talked to the girlfriend explained what is going on - no need to contact public assistance. (HALL)

EXHIBIT 2

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY
STATE OF FLORIDA

THE 21ST DAY OF SEPTEMBER, 1988.

THE STATE OF FLORIDA	CASE NUMBER 88-12996
v.	DIVISION ϕ
TERANCE VALENTINE	

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

The Grand Jurors of the County of Hillsborough, State of Florida, charge that TERANCE VALENTINE, on the 9th day of September, 1988, in the County and State aforesaid, did unlawfully enter a certain dwelling located at 2226 Lauren Circle, State and County aforesaid, the property of LIVIA and FERDINAND PORCHE, with intent to commit an offense therein, and while in the aforesaid dwelling the said TERANCE VALENTINE was armed with a dangerous weapon, to-wit: a firearm, contrary to the form of the statute in such cases made and provided, to-wit: Florida Statute 810.02, and

COUNT TWO

The Grand Jurors of the County of Hillsborough, State of Florida, charge that TERANCE VALENTINE, on the 9th day of September, 1988, in the County and State aforesaid, did forcibly, secretly or by threat, confine, abduct or imprison LIVIA PORCHE, with the intent to inflict bodily harm or terrorize LIVIA PORCHE, contrary to the form of the statute in such cases made and provided, to-wit: Florida Statute 787.01(1)(a)3, and

with a firearm, contrary to the form of the statute in such cases made and provided, to-wit: Florida Statute 782.04, and

COUNT SIX

The Grand Jurors of the County of Hillsborough, State of Florida, charge that TERANCE VALENTINE, on the 9th day of September, 1988, in the County and State aforesaid, did unlawfully and feloniously attempt to commit a felony upon LIVIA PORCHE, a human being, to-wit: Murder in the First Degree, that is to say the unlawful killing of a human being when perpetrated from a premeditated design to effect the death of any human being, by shooting the said LIVIA PORCHE, contrary to the form of the statute in such cases made and provided, to-wit: Florida Statutes 777.04 and 782.04.

* * * * * * * * * * * * * * * * * * * *
INDICTMENT FOR ARMED BURGLARY
[First Count]
* * * * * * * * * * * * * * * * * * * *
INDICTMENT FOR KIDNAPPING
[Second Count]
* * * * * * * * * * * * * * * * * * * *
INDICTMENT FOR KIDNAPPING
[Third Count]
* * * * * * * * * * * * * * * * * * * *
INDICTMENT FOR GRAND THEFT SECOND DEGREE MOTOR VEHICLE
[Fourth Count]
* * * * * * * * * * * * * * * * * * * *
INDICTMENT FOR FIRST DEGREE MURDER
[Fifth Count]
* * * * * * * * * * * * * * * * * * * *
NOLLE PROSEQUI ⇒ INDICTMENT FOR ATTEMPTED FIRST DEGREE MURDER
[Sixth Count]
* * * * * * * * * * * * * * * * * * * *

A TRUE BILL:

Foreman of the Grand Jury

EXHIBIT 3

JULIANNE M. HOLT
Public Defender

Thirteenth Judicial Circuit of Florida
Courthouse Annex
Fifth Floor - North Tower
801 East Twiggs Street
Tampa, Florida 33602-3548
Telephone
813/272-5980

JULIANNE M. HOLT
Public Defender

JOSEPH J. REGISTRATO
Chief Assistant

May 27, 1997

Mr. Terence Valentine, DOC No. 119682
Union Correctional Institution
P. O. Box 221
Raiford, FL 32083

RE: State of Florida v. Terence Valentine
Circuit Court Case No. 88-12996

Dear Mr. Valentine:

This will acknowledge receipt of your letter dated April 23, 1997, in which you state that you would like our office to begin working on your file as soon as possible.

However, I am happy to inform you that in light of the fact that the conviction for First Degree Murder, Burglary, Kidnaping, and Battery and the sentences imposed on each of those Counts are affirmed, the State determined not to proceed in a re-trial of the Attempted First Degree Murder Count, the only Count for which the conviction was reversed. Therefore, on Wednesday, May 21, 1997, the State did enter a *nolle prosequi* to the Attempted First Degree Murder Count. Consequently, there will not be a re-trial on that Count and you will not be returned to Hillsborough County at this time.

Now that the convictions and sentences on the other Counts mentioned above have been affirmed, I would urge you to contact the Capital Collateral Representative's office as soon as possible if you desire to pursue the matter further through a Motion for Post-Conviction Relief. With kindest regards, I remain,

Most cordially,

JULIANNE M. HOLT
PUBLIC DEFENDER
THIRTEENTH JUDICIAL CIRCUIT

BY: JOHN J. SKYE
Assistant Public Defender

JMH:JJS:avz

ATTORNEY-CLIENT Privilege Applies

EXHIBIT 4

Bill Jennings, Capital Collateral Regional Counsel, Ali Andrew Shakoor, Richard Edward Kiley, and James Viggiano, Jr., Assistant CCR Counsel, Middle Region, Tampa, FL, for Appellant/Petitioner.

Pamela Jo Bondi, Attorney General, Tallahassee, FL, and Carol Marie Dittmar, Assistant Attorney General, Tampa, FL, for Appellee/Respondent.

PER CURIAM.

Terance Valentine appeals an order of the circuit court denying his motion to vacate his conviction for first-degree murder and sentence of death filed under Florida Rule of Criminal Procedure 3.850. He also petitions this Court for a writ of habeas corpus.[1] For the reasons that follow, we affirm the denial of his motion and deny his habeas petition.

I. BACKGROUND

Terance Valentine met and married Livia Romero prior to emigrating with her to the United States from their native Costa Rica. *Valentine v. State*, 616 So.2d 971, 972 (1993) (Valentine I). In New Orleans, the couple adopted a child, but eventually divorced in 1986.[2] *Id.* Romero later "married" Ferdinand Porche and moved with him to Tampa to start a family.[3] *Id.* After learning of the couple's "marriage" and relocation, Valentine began placing telephone threats to the couple's home. *Id.* In September of 1988, Valentine brutally attacked Romero and Porche in their home, drove the couple to a remote location, and shot them both in the head. *Id.* The trial court's sentencing order describes Valentine's attack as follows:

> On September 9, 1988, Ferdinand Porche returned to his home in mid-afternoon expecting to meet his pregnant wife and small child. Instead he was greeted by a bullet in the back which [severed his spinal cord and] rendered him paralyzed from the waist down. Mr. Porche was then confronted by Mr. Valentine who announced "this is my revenge." Mr. Porche was forced to crawl into a bedroom where he found his wife nude, bound, and gagged and his baby crying and covered in blood. Mr. Valentine then pistol whipped Mr. Porche. Mr. Porche's face was lacerated, his jaw was broken, and several teeth were knocked out. According to the medical examiner there were at least three separate blows to Mr. Porche's face. After administering this beating Mr. Valentine made his purpose clear, announcing, "I'm gonna kill you, but you're gonna suffer. This is not going to be easy." Further tortuous acts included stabbing Mr. Porche in the buttocks—the knife stopping only because it struck bone, kicking Mr. Porche in the chest, and dragging him after he was bound hand and foot with [baling] wire. The medical examiner testified that all of the above injuries occurred while Mr. Porche was alive, that none was immediately life threatening, and none would immediately result in a loss of consciousness. Mrs. Porche testified that Mr. Porche told her he was in so much pain that he did not know why he did not lose consciousness. Mrs. Porche testified she could feel him touch her as if to reassure her while they were in the back of the Blazer being transported [to an isolated area].

1. We have jurisdiction. *See* art. V, § 3(b)(1), (9), Fla. Const.

2. As will be discussed below, this divorce never legally took place.

3. As will be discussed below, Romero never legally married Porche.

> While the fatal gunshot resulted in near instantaneous loss of consciousness and death, the ordeal leading up to his death was quite lengthy. Mr. Porche was beaten and degraded in his home. Trussed like an animal he was kidnapped and taken on a nine-mile trip to his slaughter. Either due to the gunshot wound to his spine or through the stress of the ordeal Mr. Porche lost control of this bowels and was covered with his own excrement.
>
> Paralyzed and bound hand and foot with wire there was nothing Mr. Porche could do to save himself. Nor was there anything he could do to protect his wife, who he knew was the ultimate object of Mr. Valentine's barbarous intent. Nor could he know what would happen to his ten-month-old daughter or what would become of Mrs. Porche's adopted child. The horror, terror and helplessness that Ferdinand Porche experienced prior to being shot in the eye at point blank range are evident.

Valentine v. State, 688 So.2d 313, 314–16 (Fla.1996) (Valentine II).

Somehow, Romero survived the attack and identified Valentine as her attacker. *Valentine I*, 616 So.2d at 972. After being released from the hospital, Romero received another series of threatening phone calls from Valentine, which she recorded with a telephone and recorder supplied by the police. *Id.* Valentine was later apprehended and was charged with armed burglary, two counts of kidnapping, grand theft, first-degree murder for the death of Porche, and attempted first-degree murder for the shooting of Romero. *Id.*

"Valentine was convicted on all counts, the jury recommended death on the first-degree murder charge by a ten-to-two vote, and the judge imposed a sentence of death, finding three aggravating circumstances and three mitigating circumstance[s]. This Court reversed the conviction and vacated the sentence due to a jury selection error under *State v. Neil*, 457 So.2d 481 (Fla.1984). On retrial, Valentine was again convicted on all counts but this time he waived the jury advisory sentence and presented mitigating evidence directly to the judge." *Valentine II*, 688 So.2d at 315.

During the penalty phase, Valentine presented the testimony of three lay witnesses, one of whom was his older sister, and a joint stipulation that Dr. Gamache, a forensic psychologist, found Valentine to be able to adjust well to prison life and make a positive contribution if he were to receive a life sentence. The sentencing court found four aggravators[4] and four mitigators[5] and sentenced Valentine to death. After Valentine was again convicted on all charges and resentenced to

4. In aggravation, the sentencing court found: (1) Valentine was convicted of a prior violent felony; (2) Valentine committed murder in the course of a burglary and kidnapping; (3) the murder of Ferdinand Porche was heinous, atrocious, or cruel; and (4) the murder of Ferdinand Porche was committed in a manner that was cold, calculated and premeditated. *Valentine*, 688 So.2d at 316 n. 4. The trial court's sentencing order stated, without specifying what weight was given to which aggravators, that "the aggravating circumstances present in this case *outweigh* the mitigating circumstances present."

5. In mitigation, the sentencing court found and gave slight weight to each of the following: (1) the crime was out of character for Valentine and occurred in the course of a single period of aberrant behavior; (2) Valentine is a skilled worker who can be expected to contribute to the prison system; (3) Valentine has a large family that will love and support him while he is in prison; (4) Valentine did not resist arrest, has adapted well to incarceration, is likely to function well in prison, has been a model inmate without disciplinary problems, and has behaved appropriately in court and in jail. *Valentine*, 688 So.2d at 316 n. 5.

* * *

Criminal law—Felony battery—Identity of victim—Trial court erred in allowing hearsay evidence alone to establish victim's identity—Testimony of police officer identifying victim based on a Florida ID displayed to him by victim was inadmissible hearsay where state did not show that officer had personal knowledge of victim's identity apart from her display of a Florida ID—Even if ID qualified as a public record for the purpose of the exception to the hearsay rule for public records, officer's in-court testimony about what the ID said was hearsay falling under no exception—Because the identity of the victim is an essential element of a crime against a person, new trial is required

CHARLIE HOLBOROUGH, Appellant, v. STATE OF FLORIDA, Appellee. 4th District. Case No. 4D11-3552. November 28, 2012. Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Geoffrey Cohen, Judge; L.T. Case No. 10-10429CF10A. Counsel: Carey Haughwout, Public Defender, and Jeffrey L. Anderson, Assistant Public Defender, West Palm Beach, for appellant. Pamela Jo Bondi, Attorney General, Tallahassee, and Joseph A. Tringali, Assistant Attorney General, West Palm Beach, for appellee.

(GROSS, J.) At the trial of this crime against a person, the trial court erred in allowing hearsay evidence alone to establish the victim's identity.[1] Because there was not competent evidence of the victim's identity, we reverse and remand for a new trial.

Appellant was charged with felony battery, which involves a defendant's commission of a misdemeanor battery under section 784.03(1)(a), Florida Statutes (2010), where the defendant has a prior battery conviction. *See* § 784.03(2) Fla. Stat. (2010). The information charged that Holborough did

> actually and intentionally touch or strike Andrea Berube against her will or intentionally caused bodily harm to Andrea Berube, and had been previously convicted of Battery in Broward County.

At trial, Andrea Berube did not testify. A neighbor said he saw appellant striking a female as she was seated on the ground. A police officer who responded to the scene saw appellant straddling a woman who was face down and covering her face; appellant was repeatedly hitting the woman. The officer arrested appellant for domestic battery.

At trial, the prosecutor asked the arresting officer if he was able "to find out the identity of that female that [he] saw beaten." The defense raised a hearsay objection, which the court overruled. After twice "refreshing his recollection" with the police report, the officer identified the victim as "Andrea Berube." Questioning by the court revealed that the officer based his identification on "a Florida ID" that the woman displayed to him.

The identification of the victim in this case was based on inadmissible hearsay. First, the State did not show that the officer had "personal knowledge" of the victim's identity apart from her display of a "Florida ID" to him. *See* § 90.604, Fla. Stat. (2010). Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." § 90.801(1)(c), Fla. Stat. (2010). The victim's "Florida ID" was an out-of-court statement. Even if the ID qualified as a public record for the purpose of the section 90.803(8) exception to the hearsay rule for public records, the officer's in-court testimony about what the ID said was hearsay falling under no exception. *See* § 90.805, Fla. Stat. (2010). The officer's testimony was offered for the truth of the matter asserted on the ID—that the photograph of the victim depicted on the license was Andrea Berube.

The State cannot avoid the application of the hearsay rule because the officer testified indirectly about what he learned from the woman and her ID. "[E]ven if the actual statement made by the non-testifying witness is not repeated, references to the statement are inadmissible if the 'inescapable inference . . . is that a non-testifying witness has furnished the police with evidence of the defendant's guilt.' " *Florence v. State*, 905 So. 2d 989, 990 (Fla. 4th DCA 2005) (quoting *Schaffer v. State*, 769 So. 2d 496, 499 (Fla. 4th DCA 2000)); *accord Cedillo v. State*, 949 So. 2d 339, 341 (Fla. 4th DCA 2007); *Torres v. State*, 870 So. 2d 149, 150 (Fla. 2d DCA 2004); *Diaz v. State*, 62 So. 3d 1216, 1217 (Fla. 5th DCA 2011).

The statement of one person to another as to his identity is hearsay that does not fall under the section 90.801(2)(c) exclusion from hearsay for statements of "identification of a person made after perceiving the person." *See* Charles W. Ehrhardt, *Florida Evidence* § 801.9, at 836 n.1 (2012 ed.). Thus, *Weinstein v. LPI-The Shoppes, Inc.*, 482 So. 2d 520 (Fla. 3d DCA 1986), a process server attempted service on a person as a roommate of the defendant. *Id.* at 521. At a hearing concerning the sufficiency of service, the process server testified about how the person served both identified himself and described his relationship to the defendant. *Id.* The Third District held that "all of the process server's testimony regarding what [the served person] had told him was hearsay" that did not qualify as non-hearsay under section 90.801(2)(c). *Id.*; *see Zimmerman v. Greate Bay Hotel & Casino, Inc.*, 683 So. 2d 1160 (Fla. 3d DCA 1996).

Another issue in this case is whether the identity of the victim was an essential element of the crime charged that the State was required to prove beyond a reasonable doubt. We conclude that it was.

It is well established in Florida law that for crimes against persons, the name of the person victimized is an essential element of the crime that the State must prove beyond a reasonable doubt in a criminal

EXHIBIT 5

272 LIES

KNOWINGLY TOLD BY KNAREN COX

MRS. LIVIA PORCHE	177 TIMES
WIFE OF FERDINAND PORCHE AND HUSBAND OF LIVIA	44 TIMES
EX WIFE HER EX HUSBAND	33 TIMES
LIVIA AND FERDINAND PORCHE	17 TIMES
LIVIA PORCHE VALENTINE	1 TIME
MRS. LIVIA ROMERO	38 TIMES
LIVIA VALENTINE	8 TIMES

CASE; 88-12996 C

Terence G. Valentine

EXHIBIT 6

DOCUMENTS FROM
LOUISIANA.

1- DRIVERS LICENSE
2- COLLEGE TRANSCRIPTS
3- WORK HISTORY

ALL IN THE NAME: LIVIA M. VALENTINE

STATE OF FLORIDA

OFFICE of VITAL STATISTICS

CERTIFIED COPY

VOID IF ALTERED OR ERASED

REPORT OF (Check one)

AMENDED

[XX] DISSOLUTION OF MARRIAGE

[ ] ANNULMENT OF MARRIAGE

96-066271

FLORIDA

1 COUNTY: UNION			2 DATE OF FINAL JUDGMENT: 12/19/00
3 DOCKET: L2001 65	VOL.: O.R. BOOK 164	PAGE: 609	4 DATE FILED AND RECORDED: 01/12/01

HUSBAND

5 HUSBAND—NAME (First / Middle / Last): TERENCE G. VALENTINE		
6a RESIDENCE—STATE: FLORIDA	6b COUNTY: UNION	6c CITY, TOWN, OR LOCATION: RAIFORD
6d STREET AND NUMBER: P.O. BOX 221 P3-124-S UNION CORRECTIONAL INSTITUTION		

WIFE

7a WIFE—NAME (First / Middle / Last): LIVIA MARIA VALENTINE		7b MAIDEN NAME: ROMERO-GUTIERREZ
8a RESIDENCE—STATE: FLORIDA	8b COUNTY: HILLSBOROUGH	8c CITY, TOWN, OR LOCATION: BRANDON
8d STREET AND NUMBER: 2226 LAUREN CIRCLE		

9a PLACE OF THIS MARRIAGE—COUNTY: SAN JOSE'	9b STATE (If not in U.S.A., name country): COSTA RICA	9c DATE OF THIS MARRIAGE (Month, Day, Year): 09/22/73	
10a LIVING CHILDREN—TOTAL NUMBER: 0	10b UNDER 18 YEARS OF AGE: 0	11 PETITIONER (Husband, Wife, Other (Specify)): HUSBAND	
12a ATTORNEY FOR PETITIONER—NAME: NONE		12b ADDRESS (Street or R.F.D. No., City or Town, State, Zip): NONE	
13 CLERK OF CIRCUIT COURT: REGINA H. PARRISH		BY: Kimberli Riggs	

DH 513, 10/96 (Replaces HRS Form 513 which may be used)

State of Florida
Department of Health
Vital Statistics

THIS IS A CERTIFIED TRUE AND CORRECT COPY OF THE OFFICIAL RECORD ON FILE IN THIS OFFICE

BY JUL 10 2001

C Meade Briggs
State Registrar

WARNING: THIS DOCUMENT IS PRINTED OR PHOTOCOPIED ON SECURITY PAPER WITH A WATERMARK OF THE GREAT SEAL OF THE STATE OF FLORIDA. DO NOT ACCEPT WITHOUT VERIFYING THE PRESENCE OF THE WATERMARK.

THE DOCUMENT FACE CONTAINS A MULTI-COLORED BACKGROUND AND GOLD EMBOSSED SEAL. THE BACK CONTAINS SPECIAL LINES WITH TEXT AND SEALS IN THERMOCHROMIC INK.

12719789

FLORIDA DEPARTMENT OF HEALTH

DOH FORM 1564 (10/96)

CERTIFICATION OF VITAL RECORD

STATE OF LOUISIANA
OFFICE OF MOTOR VEHICLES
P.O. BOX 64886, BATON ROUGE, LOUISIANA 70896

8 6 0 6 2 5 0 2 0 4

APPLICATION FORM

THIS REGISTRATION CERTIFICATE MUST BE CARRIED IN THE VEHICLE AT ALL TIMES

1GBCS18R868217854 (VEHICLE IDENTIFICATION NUMBER)

CHEVY (MAKE) 2500 (BODY) PU (COLOR) GLD (YR) 86 (ODOMETER) 000004 (DRIVERS LICENSE) 3385656

HARVEY LA 70058 (CITY) 0201 (CLASS) TRUCK (TYPE)

PRIV TRUCK (USE)

2 (ECO) 14969.00 (TAX VALUE)

121985 (EFFECTIVE DATE) 121385 (TAX DATE)

N (LIC CODE) 2600 (GVW/CLS)

GMAC 0719

121385 (DATE) 1 (MONTHS)

PO BOX 62958

18286.92 (AMOUNT)

NEW ORLEANS LA 70162 NONE

757

3L 377

121385 229

37.1 TOTAL P.02