

IN THE
Supreme Court of the United States

PATRICK KENNEDY,
Petitioner,

v.

LOUISIANA,
Respondent.

On Writ of Certiorari
To The Louisiana Supreme Court

JOINT APPENDIX

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IN THE SUPREME COURT OF LOUISIANA

Case No. 2005-KA-1981

Patrick Kennedy,

APPELLANT,

v.

State of Louisiana,

APPELLEE.

RELEVANT DOCKET ENTRIES

<u>Date Filed</u>	<u>Docket Text</u>
12/09/2004	Motion for Appeal
12/21/2004	Order GRANTING Appeal
11/28/2007	Oral Argument
5/22/2007	Opinion Issued AFFIRMING
6/29/2007	Petition for Rehearing DENIED

**IN THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT FOR THE PARISH OF JEFFERSON**

Case No. 98-1425

State of Louisiana,

v.

Patrick Kennedy,

DEFENDANT.

RELEVANT DOCKET ENTRIES

<u>Date Filed</u>	<u>Docket Text</u>
05/07/1998	Indictment
10/30/1998	Motion to Quash Indictment Filed
11/10/1998	Hearing on Motion to Quash Indictment
02/03/1999	Motion to Quash DENIED
08/08/2003	Jury Selection
08/15/2003	Trial Begins
08/25/2003	Guilty Verdict
08/26/2003	Penalty Phase Begins
08/26/2003	Penalty Phase Verdict
10/02/2003	Motion for New Trial, for Arrest of Judgment and/or for Other Relief – FILED
10/02/2003	Motion for New Trial, for Arrest of Judgment and/or for Other Relief – DENIED
10/02/2003	Formal Imposition of Sentence

Twenty-Fourth Judicial District Court of Louisiana

**THE STATE OF
LOUISIANA**

Parish of Jefferson SS.

**Twenty-Fourth Judicial
District**

**Twenty-Fourth Judicial
District Court**

The Grand Jurors of the State of Louisiana, duly empaneled and sworn, in and for the body of the Parish of JEFFERSON, in the name and by the authority of the said State, upon their Oath, present: That one

PATRICK KENNEDY, b/m 12/13/64

late of the Parish of JEFFERSON, on or about the 2nd day of March in the year of our Lord, One Thousand Nine Hundred and Ninety-Eight (1998), with force and arms, in the Parish of JEFFERSON aforesaid, and within the jurisdiction of the Twenty-Fourth Judicial District Court of Louisiana, in and for the Parish of JEFFERSON aforesaid, then and their being violated R.S. 14:42 in that he did commit aggravated rape upon a female juvenile under the age of 12 years,

**IMAGED
May 8 1998**

contrary to the form of the Statute of the State of Louisiana, in such case made and provided, and against the peace and dignity of the State.

/s/ _____
Asst. District Attorney of the Twenty-Fourth Judicial District

ITEM # C-1086-98
Class I

In the Supreme Court of Louisiana

No. 05 KA 1981

State of Louisiana,

Plaintiff-Appellee

v.

Patrick Kennedy,

Defendant-Appellant.

Appeal from Conviction and Death Sentence Imposed
In the 24th Judicial District Court for the
Parish of Jefferson
Hon. Ross LaDart, Judge, Presiding.

THIS IS A DEATH PENALTY CASE

SENTENCE REVIEW MEMORANDUM

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In the Supreme Court of Louisiana

No. 05 KA 1981

State of Louisiana,

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Patrick Kennedy,

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Appeal from Conviction and Death Sentence Imposed
In the 24th Judicial District
Court for the Parish of Jefferson
Hon. Ross LaDart, Judge, Presiding.

SENTENCE REVIEW MEMORANDUM

COMES NOW APPELLANT, Patrick Kennedy, through counsel and pursuant to Rule 28 of the Rules of the Supreme Court of Louisiana, Article 905.9 of the Louisiana Code of Criminal Procedure, the Eighth and Fourteenth Amendments to the United States Constitution, and Article I, sections 13, 16, 19, 20, 21, 22, 23 and 24 of the Louisiana Constitution of 1974, who respectfully files this sentence review memorandum.

INTRODUCTION

Mr. Kennedy is on death row for a non-homicide offense. No person in the United States has been put to death for rape since Missouri executed Ronald Wolfe in

1964. The State of Louisiana has not executed a person for rape since 1957. Of the three thousand three hundred and sixty six (3,366) inmates who are presently on Death Row in the United States, Patrick Kennedy is the only one awaiting execution for a non-homicide rape.

John Michel, in 1957, was the last person put to death for rape in Louisiana. Mr. Michel was a twenty-three-year-old black male convicted of raping a white female. In the entire history of Louisiana, there have been five hundred and ninety nine (599) executions. Although only a small percentage of these executions in total were for non-homicide offenses, all of those executions occurred before our modern capital jurisprudence, and a significant number of them included the hangings of slaves.

Mr. Kennedy would be the first executed for rape since 1957, but would extend the long and lonely string of African-American men executed for rape. The death sentence imposed upon Mr. Kennedy is disproportionate and excessive, given the large number of instances in which defendants have received lesser punishments for greater, or equal offenses.

The State filed a Sentence Review Memorandum on April 21, 2006. The State's Sentence Review Memorandum first details the seventy-seven cases that are *mistakenly* claimed to be all of the "first degree murder indictments" in which sentence was imposed after January 1, 1976. Of those seventy-seven cases, three defendants were executed, and twelve defendants remain on death row with appeals or other challenges to their convictions and sentences pending. The State's Sentence Review Memorandum includes discussion of sixty-two defendants charged with first degree murder who have not been sentenced to death. A number of these defendants who were not sentenced to death committed offenses far worse than the offense committed in this case.¹ The State's Sentence Review Memorandum also

¹ As discussed in more detail below, the State's Sentence Review Memorandum details a number of cases in which defendants received a life sentence for actions that were incontrovertibly worse than those

fails to detail a number of murders, including some of children, that are worse than the offense in this case.²

The State's Sentence Review Memorandum next details a list of capital aggravated rape cases in which sentence was imposed "after August 15, 1995." The Memorandum details twelve aggravated rape cases, and indicates that this is the only case in which a defendant has been sentenced to death. The State's Sentence Review Memorandum does not detail other comparable cases throughout the State of Louisiana that resulted in a sentence less than death. *See e.g. State v. Clark*, 2002-1463 (La. 06/27/03); 851 So. 2d 1055, 1089 ("Given the lack of comparable cases in Richland Parish, it is appropriate for this court to look beyond the judicial district in which the sentence was imposed and to conduct the proportionality review on a state-wide basis.") *citing, inter alia, State v. Carmouche*, 2001-0405 (La. 05/14/02); 872 So. 2d 1020; *State v. Deal*, 00-0434, p. 17 (La. 11/28/01), 802 So. 2d 1254, 1268; *State v. Duncan*, 99-2615, p. 38 (La. 10/16/01), 802 So. 2d 533, 559; *State v. Howard*, 98-0064, (La.4/23/99), 751 So. 2d 783, 820; *State v. Ortiz*, 96-1609, (La.10/21/97), 701 So. 2d 922, 936. Nor does the State address the particular mitigating circumstances at issue in this case that render the imposition of the death penalty excessive, arbitrary, wanton, and freakish.

Appellant counsel's effort to provide such a review ensues.

presented to the jury in this case. For instance, the State's Memorandum details the case of Brian Bibb who was sentenced to life for stabbing to death two children ages 5 and 3, and attempting to kill the children's mother.

² As discussed below the State's Sentence Review Memorandum does not detail a number of cases involving charges of first degree murder, including – for instance – the case of Whitney Spencer, who was charged with four counts of first degree murder for intentionally killing 14-month-old Keitwon Ester, six-year old Ranneisha Kent, seven-year old Deaunta Kent, and four-year old Branika Murph. See *State v. Spencer*, 00-2084, Division A, 24th JDC, Jefferson Parish.

ARGUMENT

In addition to the arguments put forth in Mr. Kennedy's Original and Supplemental Briefs, the sentence of death imposed in this case is disproportionate and excessive given the vast number of instances in which a lesser sentence has been imposed for equal or greater offense. Moreover, the existence of critical mitigating circumstances renders the imposition of the death penalty in this case arbitrary.

Mr. Kennedy is the only person to be sentenced to death in the United States for rape in over forty years, and the only person to be sentenced to death for rape in Louisiana in over fifty years. Louisiana juries' recalcitrance to sentence aggravated rapists to death, and the fact that every other convicted aggravated rapist in Louisiana is serving life or less – independently and together – make clear the excessive and disproportionate nature of the sentence.

As discussed more fully below, in the vast majority of prosecutions for capital rape, the charges are usually dropped to lesser charges, or the case proceeds without the possibility of capital punishment.³ When the cases proceed to a jury, juries in Louisiana routinely return life sentences to those defendants who are convicted of aggravated rape of a child under twelve.

Moreover, the death penalty is an unusual punishment for defendants convicted even of killing children, and a significant number of defendants have received lesser sentences for the offense of intentionally murdering a child during the course of a rape.

Undersigned counsel has attempted to secure information concerning comparable cases from a variety of sources to establish that the death sentence in this case is disproportionate. Counsel sent public records requests to

³ See Angela D. West, *Death as Deterrent of Prosecutorial Tool? Examining the Impact of Louisiana's Child Rape Law*, 13 Crim. Just. Pol. Rev. 156 (2002).

Clerk of Court in every parish in Louisiana. See *Exhibit A*. Thirty-four (34) parishes - including Orleans⁴ - did not respond to those requests. Eleven (11) responded to that request indicating that they could not provide the information. See *Exhibit B*. Nine (9) responded that no capital rapes prosecutions had occurred in their districts.⁵ See *Exhibit C*. One (1) other parish responded that it was unable to segregate capital rape from other non-capital aggravated rape, but provided information concerning these offenses. See *Exhibit D*. Finally, a mere nine (9) parishes provided information responsive to the request. See *Exhibit E*. This information led to the disclosure of eighty-eight (88) additional cases involving indictments for aggravated rape.

After securing the information discussed above, counsel also sought to review all of the published and unpublished appeals involving the charge of aggravated rape of a child. These additional cases are discussed below. Appellant counsel also reviewed the information concerning one hundred additional cases that were introduced as Exhibit B at the Motion for New Trial. See R. 6053.⁶ At that

⁴ Angela West, in assessing the different charging practices prior to the amendment to the aggravated rape statute reviewed the case-files for thirty-two indictments for aggravated rape that occurred in Orleans between 1995 and 1998, roughly ten a year. See Angela D. West, *Death as Deterrent of Prosecutorial Tool? Examining the Impact of Louisiana's Child Rape Law*, 13 Crim. Just. Pol. Rev. 156, at 160 (2002). Undersigned counsel has not been able to review the case-files on these cases or the ones that have occurred since. It would be sufficiently conservative to approximate that there have been at least an additional one hundred and ten (110) such indictments in Orleans alone since 1995.

⁵ This information received from the districts is not necessarily deemed accurate. Indeed, Jerry Jones of the 4th Judicial District indicated that no such capital rape indictments had issued in his jurisdiction, even though the case of *State v. Bethley* arose from that district. See *State v. Wilson*, 685 So.2d 1063, 1073 (La. 1996).

⁶ Where counsel has secured a citation to a court record for any of the cases identified in MNT Exhibit B, counsel has referred to the case

proceeding, the State stipulated to the authenticity and accuracy of the research prepared by researcher Emily Maw, who had endeavored to identify every single pending capital rape indictment within four different parishes.

Finally, undersigned counsel attempted to review news media and other public reports concerning charges of aggravated rape of a child. Substantiation of the data discussed below is attached to this Brief in Reply to the State's Sentence Review Memorandum. Undersigned counsel wholeheartedly concurs that the documentation and citation identified herein does not establish the entire universe of capital rape charges but notes that it vastly expands the universe of eleven (11) cases provided by the state to a total of more than one hundred and eighty (180) cases.

I. THE SENTENCE OF DEATH IMPOSED ON MR. KENNEDY IS EXCESSIVE AND DISPROPORTIONATE WHEN COMPARED TO SIMILAR OR WORSE OFFENSES.

The sentence of death imposed on Mr. Kennedy is excessive and disproportionate when compared to the sentence imposed in similar or worse offenses. The State lists twelve (12) defendants in its Sentence Review Memorandum who were convicted since the aggravated rape statute's enactment; from these twelve cases, only the Appellant in this case has been sentenced to death.

To the extent that the State's Sentence Review Memorandum does not have sufficient data to demonstrate the disproportionality of the sentence in this case, "it is appropriate for this court to look beyond the judicial district in which the sentence was imposed and to conduct the proportionality review on a state-wide basis." *State v. Clark*, 2002-1463 (La. 06/27/03); 851 So. 2d 1055, 1089.

citation. Where undersigned counsel could find no record citation, counsel has cited to Exhibit B, MNT (10/2/2003).

As discussed more fully below, over one hundred and eighty (180) defendants have been charged with capital rape since 1995. Mr. Kennedy is the only person sentenced to death. Moreover, over forty (40) defendants have been sentenced to a lesser penalty for a greater offense.

Assuming, arguendo, the constitutionality of the death penalty for aggravated rape, a comparison of this case and other instances in which death was not imposed suggests that the imposition of the death penalty is being applied in an unconstitutional manner. See *State v. Sonnier*, 380 So. 2d 1 (La. 1979). In *Sonnier*, this Court observed:

. . . A review of [. . .] other prosecutions shows that the jury's recommendation of the death penalty in the instant case does not conform with sentences meted out in other [. . .] cases. . . . Imposition of the death penalty in this case but not in the other cases suggests that the penalty is being applied in the "freakish" and "wanton" manner reprobated by the United States Supreme Court in *Furman v. Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972). Therefore, under this test, the penalty is excessive within the meaning of Article 905.9 of the Code of Criminal Procedure.

State v. Sonnier, 380 So. 2d 1, 7-8 (La. 1979). A review of other cases located by appellant counsel is warranted.

A. Since The Adoption Of The Statute, Defendants Have Not Received The Death Penalty In All of the One Hundred And Eighty (180) Comparable Cases Identified By Appellant.

Appellant counsel has attempted to identify all of the comparable cases. In the one hundred eighty (180) comparable cases identified by appellant counsel, no other defendant has been sentenced to death.

1. Daniel E. Dickerson was convicted of raping his four year-old granddaughter anally and vaginally. Though the state sought death, the jury in his case found life

imprisonment to be the more appropriate sentence. *State v. Dickerson*, 01-KA-1287 (La App. 5 Cir. 6/26/02) 822 So.2d 849; *writ denied* 02-K-2108 (La. 2/21/03) 837 So.2d 627.

2. Fred J. Leblanc was convicted of repeatedly raping (vaginally, anally and orally) the four-year-old child he was babysitting. He also made the child perform oral sex on him while watching pornographic films with him. Despite the extensive nature of the rapes, the jury declined to sentence Fred Leblanc to death and imposed life without parole. *State v. Leblanc*, 00-1322 (La. App. 5 Cir. 5/31/01) 788 So.2d 1255; *writ denied* 01-K-1920 (La. 5/24/02) 816 So.2d 299.

3. Keith Bell Breland was convicted of raping and attempting to kill his fellow church congregant's eleven-year-old daughter. As she screamed during the rape he stabbed her multiple times. He also tried to smother the child by putting his hand over her nose and mouth causing the child to lose consciousness. When the girl regained consciousness, Mr. Breland slashed her throat. Despite sustaining life-threatening injuries, the little girl survived. Keith Bell Breland was sentenced to fifty (50) years for attempted murder and twenty-five (25) for rape. *State v. Breland*, 722 So.2d 51 (La. App. 1 Cir. 1998).

4. Bryan Cole was convicted of raping a five-year-old girl. Before sexual intercourse, he made the little girl masturbate him. The victim was diagnosed with gonorrhea when examined after the rape. Mr. Cole's older daughter and her eleven year-old friend witnessed the rape. His daughter's friend was also anally raped by Mr. Cole on another occasion when she was spending the night with his daughters. Bryan Cole was given a life sentence on November 14, 2003. *State v. State ex rel. Bryan Cole*, 05-1348 (La. 2/10/06), 924 So.2d 157.

5. Tracy Albert was found guilty of impregnating his ten year-old step-daughter. Soon after the pregnancy was discovered, the little girl was forced to undergo an abortion. The jury sentenced Albert to life without parole on

9/8/2004. *State v. Albert*, (La.App. 4 Cir. 7/27/05) 914 So.2d 574.

6. Patrick Dewayne Bethley was convicted of repeatedly raping three girls, one of whom was his daughter. The ages of the little girls at the time of the rape were five, seven, and nine. Mr. Bethley knew he was HIV positive when he committed the rapes. He received a life sentence. Cf *State v. Bethley*, No. 96-KA-1392 consol. with No. 96-KA-2076, 96-1392 (La. 12/13/96); 685 So. 2d 1063; *State v. Wilson*, 685 So.2d 1063, 1073 (La. 1996); see also Rhonda Bell, *Rape Suspect OT Ready for Trial Mentally Retarded Man Faces Death if Convicted of Rape of Six-Year-Old*, NEW ORLEANS TIMES PICAYUNE, December 16, 1999, Section: Metro.

7. Michael Chad Lowe was found guilty of repeatedly raping (orally) his stepdaughter from the time she was eight until she was ten. He was sentenced to twenty-five (25) years imprisonment, two of which without benefits. *State v. Lowe*, 39,181 (La. App. 2 Cir. 12/22/04), 890 So.2d 745.

8. Robert Bourgeois was found guilty of raping his great-granddaughter from the time she was nine until she turned twelve. He performed oral sex on the child and made the victim perform oral sex on him. Robert Bourgeois received a life sentence on November 20, 1999. *State v. Bourgeois*, 00-KA-1353 (La. App. 5 Cir. 4/11/01) 786 So.2d 771.

9. Jimmy J. Bergeron was found guilty of raping his eleven-year-old daughter and sentenced to life imprisonment. *State v. Bergeron*, 01- 2400 (La. App. 1 Cir. 5/10/02), 826 So.2d 658, writ denied 2002-KA-1735 (La. 5/30/03), 845 So.2d 1070.

10. Jerry Zornes was convicted of raping his six-year-old step-daughter and was sentenced to life imprisonment. *State v. Zornes*, 34,070 (La. App. 2 Cir. 4/3/02), 814 So.2d 113, writ denied 02- 1280 (La. 11/27/02), 831 So.2d 269.

11. Isaac Singleton, III was convicted of raping his eleven-year-old niece on March 3, 2001. Isaac Singleton was sentenced to life imprisonment. *State v. Singleton*, 05-KA-622 (La. App. 5 Cir. 1/31/06), 922 So.2d 647.

12. Donald Sims was found guilty of raping a seven-year-old girl. The victim was diagnosed first with vaginitis and vaginal pin worms, gonorrhea and chlamydia in her vagina and in her anus from the rape. Donald Sims received a life sentence on September 9, 1999. *State v. Sims*, 00-KA-1728 (La. App. 5 Cir. 5/30/01), 796 So.2d 941.

13. Donald Washington was convicted of raping his girlfriend's seven-year-old daughter multiple times. Mr. Washington also raped the victim's fourteen-year-old sister and another fourteen-year-old while armed with a deadly weapon. He was sentenced to ten (10) years imprisonment for sexual battery and forty (40) years imprisonment for each forcible rape conviction. There were two in all. *State v. Washington*, 99-KA-1330 c/w 99-KA-1331 (La. App. 5 Cir. 5/17/00), 793 So.2d 574, *writ denied* 00-KO-1943 (La. 9/21/00), 797 So.2d 59.

14. David Earl Roberts was convicted of raping a seven-year-old girl. He received a sentence of life imprisonment. *State v. Roberts*, 33,814 KA (La. App. 2 Cir. 9/27/00), 769 So.2d 162, *writ denied*, 2000-3027 (La. 10/26/01) 799 So.2d 1149.

15. John Clyde Allen, Jr. was found guilty of raping an eleven-year-old girl three times in one night. Mr. Allen woke the victim up in the middle of the night and took her into the bathroom. He then disrobed himself and the little girl and proceeded to penetrate her vagina with his penis. Mr. Allen was given a life sentence on January 9, 2002. *State v. Allen*, KA 02-593 (La. App. 3 Cir. 11/6/02), 830 So.2d 606.

16. Ronald Knightshed was found guilty of raping a six year-old girl. He fondled the victim's genitalia with his hands and then his penis. He also performed oral sex on her. After the rape, the child was diagnosed with

gonorrhoea. Ronald Knightshed was sentenced to twenty (20) years. *State v. Knightshed*, 00-KA- 1410 (La.App. 5 Cir. 3/28/01), 783 So.2d 501.

17. Lester Gomez was found guilty of raping two eight-year-old boys (anally and orally) over a series of months. At the time, Mr. Gomez believed he was HIV positive. On February 2, 2001, Mr. Gomez was sentenced to life imprisonment. *State v. Gomez*, 2000-KK-0677 (La. 1/17/01), 778 So.2d 549.

18. Jearl Ramsey Plunkett was found guilty of raping a four-year-old girl. While babysitting the victim, Mr. Plunkett penetrated her with his penis and ejaculated into her vagina. Joel Ramsey Plunkett was sentenced to life imprisonment on November 18, 2002. *State v. Plunkett*, 37,306 (La. App. 2 Cir. 9/12/03), 855 So.2d 831, *writ denied* 03- 2943 (La. 2/13/04), 867 So.2d 688.

19. Jimmy Level was convicted of raping his eight-year-old niece and received a life sentence on October 23, 1996. *State v. Level*, 99-2266 (La. 12/17/99), 751 So.2d 869, *writ denied* 01- 0953 (La. 2/1/02), 807 So.2d 855.

20. Elbert Taylor was convicted of raping his six-year-old niece and was sentenced to life imprisonment. *State v. Taylor*, 36,066 KA (La. App. 2 Cir. 6/12/02), 821 So.2d 633, *writ denied* 02- 2068 (La. 6/20/03), 847 So.2d 1222.

21. Bernard Williams was convicted of repeatedly raping (vaginally, anally and orally) a five-year-old girl. On one occurrence, Mr. Williams had sex with the five-year-old victim's babysitter and then proceeded to rape the victim vaginally. Bernard Williams was sentenced to life on July 16, 2004. *State v. Williams*, 05-KA-318 (La. App. 5 Cir. 1/17/06), 921 So.2d 1033, *writ denied* 04-KO-0051 (La. 5/21/04), 874 So.2d 171.

22. Latroy Oates was convicted of repeatedly raping an eight-year-old girl in her aunt and uncle's home. Mr. Oates would enter the home at night while the child was sleeping and take her downstairs where he would rape her. If she

cried out in pain, Mr. Oates would cover her mouth with his hand. Latroy Oates was sentenced to life imprisonment. *State v. Oates*, 01-KA-63 (La. App. 5 Cir. 5/30/01) 796 So.2d 941, *writ denied* 01-K-1827 (La. 6/14/02), 817 So.2d 1150.

23. Jason Marcantel was convicted of kidnapping and raping a ten-year-old girl in a wooded area near the victim's grandparent's home. When police found the victim she was filthy and disoriented. Her clothing revealed blood and fecal matter in her underwear and shorts. Mr. Marcantel was sentenced to life. *State v. Marcantel*, CR-98-825 (La. App. 3 Cir. 12/22/99), 756 So.2d 366.

24. John Kinsel was found guilty of raping a little girl repeatedly over a three year period. The abuse began when she was six years old. The victim told the jury that Mr. Kinsel threatened to kill her and her family if she ever told anyone about the abuse. He was sentenced to life imprisonment. *State v. Kinsel*, 00- KA-1610 (La. App. 5 Cir. 3/28/01), 783 So.2d 532, *writ denied* 01-K-1230 (La. 3/28/02), 812 So.2d 641.

25. Ricky E. Chatman was convicted of raping a ten-year-old girl. He first took the victim to an overgrown, deserted area. He then proceeded to take off her blue jeans, pull her underwear down and penetrate her vagina with his finger and penis. Mr. Chatman was sentenced to life imprisonment. *State v. Chatman*, 37,523 KA (La. App. 2 Cir. 9/24/03), 855 So.2d 875.

26. Ricky E. Adkins raped two girls under the age of twelve, one of whom was mentally retarded. The physician who examined the children after the rapes reported that their hymens were torn and there was substantial scarring in their genital areas. Ricky Adkins received concurrent sentences of forty (40) years. *State v. Adkins*, 31300-KA (La. App. 2 Cir. 11/9/98) 721 So.2d 1090.

27. Christopher Ross was found guilty of raping a seven-year-old girl and received a life sentence. The physician testified that the victim's genital area was very red and had

extensive abrasions and excoriations. The victim's hymen was ruptured and torn. *State v. Ross*, 03-0564 (La. App. 3 Cir. 12/17/03), 861 So.2d 888, *writ denied* 04-0376 (La. 6/25/04) 876 So.2d 829.

28. Adrian McKinnie was convicted of raping a four-year-old girl and was sentenced to life imprisonment. He penetrated the victim's vagina with his fingers and then his penis. *State v. McKinnie*, 36,997 (La. App. 2 Cir. 6/25/03), 850 So.2d 959.

29. Charles Latroy was convicted of raping an eight-year-old girl and sentenced to twenty (20) years on October 28, 1999. *State v. Oates*, 01-KA-63 (La. App. 5 Cir. 5/30/01) 796 So.2d 941, *writ denied* 01-K-1827 (La. 6/14/02), 817 So.2d 1150.

30. Levar Doughty was convicted of raping an eleven-year-old and sentenced to seven (7) years imprisonment. Mr. Doughty was fifteen years old at the time of the offense. *State v. Doughty*, 02-0496 (La. 1/10/03), 834 So.2d 435.

31. Bobby Knox was found guilty of raping a six-year-old and received a life sentence. *State v. Knox*, 02-2426 (La. 9/19/03), 853 So.2d 629.

32. Allen Maise was found guilty of raping a six-year-old and was sentenced to life imprisonment. *State v. Maise*, 805 So.2d 1141 (La. 2002).

33. Leon Simmons was found guilty of raping a five-year-old and received a life sentence. *State v. Simmons*, 03-20 (La. App. 5 Cir. 4/29/03), 845 So.2d 1249.

34. Elvis Singleton was found guilty of raping an eight-year-old and received a life sentence. *State v. Singleton*, 96-1127 (La. App. 1 Cir. 5/9/97), 698 So.2d 1070.

35. Michael Smith was convicted of raping an eight-year-old and was sentenced to life imprisonment. *State v. Smith*, 98-1193 (La. App. 5 Cir. 4/14/99), 734 So.2d 103.

36. Ralph Tate was convicted of raping a five-year-old and was sentenced to thirteen (13) years imprisonment. *State v. Tate*, 97-1242 (La. 6/30/97), 696 So.2d 1010.

37. Eddie Orange was charged with aggravated rape of child under twelve on June 2, 2006. He impregnated his eleven-year-old daughter, who subsequently gave birth to the child. Mr. Orange was also charged with raping his older daughter. AP Alert, *Man Accused of Raping Sisters, One of Whom Gave Birth*, THE ASSOCIATED PRESS, June 2, 2006.

38. Keith Raymond Fremin was convicted of raping two sisters, who were eleven and thirteen at the time of the attacks. Fremin was sentenced to twenty-five (25) years imprisonment and castrated. *Man who Pleaded Guilty to Rape Agrees to Castration*, THE BATON ROUGE ADVOCATE, July 14, 2005, Section: National.

39. Quincy Vidal Williams was convicted raping an eleven-year-old girl and received a life sentence. AP Alert, *Man to Spend Life in Prison Following Child Rape Conviction*, THE ASSOCIATED PRESS, May 14, 2006.

40. Herbert J. Prejean has been charged with raping a young girl at a motel where he had taken her to swim. Richard Burgess, *Death Ruled Out For Two Murder Suspects *** Prosecutor Undecided on Third Man*, THE BATON ROUGE ADVOCATE, April 11, 2006, Section: B.

41. Rodney Mingo has been charged with raping a three-year-old little boy. *Meet Your Neighbor*, CBS 10 KLFY-LA, April 5, 2006.

42. Richard Lee Davis has been charged with raping the five-year-old girl he was babysitting. AP Alert, *DA To Decide Whether to Seek Death in Caddo Child Rape Case*, THE ASSOCIATED PRESS, August 25, 2005.

43. Melissa Ticer has been charged with raping the five-year-old girl she was babysitting. AP Alert, *DA To Decide*

Whether to Seek Death in Caddo Child Rape Case, THE ASSOCIATED PRESS, August 25, 2005.

44. Allen Pierson has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

45. Patricia Pierson has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

46. Paul Fentenot has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

47. Christopher Labat has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

48. Robin Lamonica has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

49. Louis Lamonica has been charged with aggravated rape of a child under twelve. *Grand Jury Indicts 7 in Tangipahoa*, THE BATON ROUGE ADVOCATE, June 25, 2005.

50. Dexter Troy Pounds was convicted of raping an eight-year-old girl. *State v. Pounds*, 2002-0064 (La. App. 1 Cir. 6/21/02), 826 So.2d 1202, *writ denied*, 2002-2766 (La. 9/5/03) 852 So.2d 1022.

51. Dustin McLelland was convicted of raping a five-year-old girl. *State v. McLelland*, 03-498 (La. App. 5 Cir. 10/15/03), 860 So.2d 31, *writ denied*, 2003-3372, (La. 3/26/04), 871 So.2d 347.

52. Charles Perry was convicted of raping a ten-year-old girl and sentenced to life imprisonment. *State v. Perry*, 2002-2489 (La. 9/26/03) 854 So.2d 355.

53. Rhashiedi Mohamed was convicted of raping a child under twelve. *State v. Mohamed*, 96-845 (La. App. 5 Cir. 9/17/97) 700 So.2d 881.

54. Andrew Mitchell, Sr. was convicted of raping a child under twelve. *State v. Mitchell*, 2001-1414 (La. App. 1 Cir. 2/15/02) 812 So.2d 149.

55. Charlie Finley was convicted of raping a ten-year-old child. *State v. Finley*, 2001-2506 (La. App. 1 Cir. 5/10/02), 826 So.2d 655.

56. Johnnie L. Smith was convicted of raping a nine-year-old. *State v. Smith*, 01-02-0058.

57. James Scott was convicted of raping an eleven-year-old child. *State v. Scott*, 96-1905 (La. App. 4 Cir. 3/12/97), 690 So.2d 1129.

58. Shawn Lacour was convicted of raping a child under the age of twelve. *State v. Lacour*, 01-602 (La. App. 5 Cir. 1/15/02), 810 So.2d 588, *writ denied*, 2002-0642 (La. 1/31/03), 836 So.2d 60.

59. Austin Bernard, III was charged with aggravated rape of a child under the age of twelve. Debra Lemoine, *Four Sex Counts Filed in Case Alleged Church Cult Suspect Booked with Aggravated Rape*, THE BATON ROUGE ADVOCATE, June 14, 2005, Section B.

60. David Constance was charged with aggravated rape of a child under the age of twelve. *Late Local News*, CBS 9 WAFB – Baton Rouge, March 17, 2006.

61. Patrick Brown was convicted of raping a six-year-old girl. He received a life sentence. *State v. Brown*, 1997-2260 (La. App. 4 Cir. 10/6/99), 746 So.2d 643.

62. Frazen Chesson was convicted of raping a child under the age of twelve. *State v. Chesson*, 1999-0173 (La. 2/5/99) 737 So.2d 736.

63. Stephen Titzer was convicted of raping a child under the age of twelve and sentenced to life imprisonment. *State v. Titzer*, 2001-2868 (La. App. 1 Cir. 6/21/02), 826 So.2d 1201.

64. Joseph Thibodeaux was convicted of raping a child under the age of twelve. *State v. Thibodeaux*, 1999-0857 (La. 8/25/99), 746 So.2d 1287.

65. Ryan Watson was convicted of raping a child under the age of twelve. *State v. Watson*, 02-1154 (La. App. 5 Cir. 3/25/03), 844 So.2d 198.

66. Aaron Wilford was convicted of raping a child under the age of twelve. *State v. Wilford*, 01-513 (La. App. 5 Cir. 11/14/01), 800 So.2d 453, *writ denied*, 2004-1269 (La. 3/24/05), 896 So.2d 1025.

67. Allen Vicks was convicted of raping a child under the age of twelve. *State v. Vicks*, 2000-1700 (La. App. 4 Cir. 9/26/01) 798 So.2d 308.

68. Cesar Roca was convicted of raping two children under the age of twelve and received two consecutive life terms. *State v. Roca*, 03-1076 (La. App. 5 Cir. 1/13/04) 866 So.2d 867, *writ denied*, 2004-0583 (La. 7/2/04), 877 So.2d 143.

69. Darrel McDuffey was convicted of raping a ten-year-old girl and sentenced to forty (40) years imprisonment. TV 8, *Convicted Child Rapist Sentenced to 40 yrs*, April 11, 2006.

70. Gary Sanchez was convicted of raping a five-year-old boy and sentenced to thirty (30) years imprisonment. Joe Darby, *Child Molester Sentenced in Attempted Rape Case Man Pleads Guilty, Gets 30 years in Jail*, NEW ORLEANS TIMES PICAYUNE, August 9, 2003, Section: Metro.

71. Brandon Billiot was charged with two counts of aggravated rape of a child under the age of twelve. Joe Darby, *Metairie Man is Indicted in April Shooting Witnesses Said Man Argued With Victim*, NEW ORLEANS TIMES PICAYUNE, December 6, 2003, Section: Metro.

72. Gregory Brown was charged with aggravated rape of a ten-year-old girl. Mark Waller, *Jeff Jury Indicts 6 in 2 Separate Killings Suspects in the Two Cases Face Life In Jail*, NEW ORLEANS TIMES PICAYUNE, September 24, 2004, Section: Metro.

73. Shawn Esteve was charged with two counts of aggravated rape of a five-year-old girl and received a sentence of forty-nine-and-a-half (49 ½) years. Joe Darby, *Child's Rapist Pleads Guilty Terrytown Man Get Forty Nine*, NEW ORLEANS TIME PICAYUNE, August 16, 1997, Section: Metro.

74. Hector J. Perez was charged with two counts of aggravated rape of a child under twelve. Kenner Bureau, *Kenner Man Booked with Raping 8-Year-Old*, NEW ORLEANS TIME PICAYUNE, May 28, 1997, Section: Metro.

75. Ed R. Littleton was charged with aggravated rape of a child under twelve-years-old. Steve Cannizaro, *Buras Couple Booked In Rape of 11-Year-Old*, NEW ORLEANS TIME PICAYUNE, November 18, 1997, Section: Metro.

76. Sarah May was charged with being a principal to aggravated rape of a child under twelve. Steve Cannizaro, *Buras Couple Booked In Rape of 11-Year-Old*, NEW ORLEANS TIME PICAYUNE, November 18, 1997, Section: Metro.

77. Anthony Wilson was charged with raping a six-year-old girl. *State v. Wilson*, 685 So.2d 1063, 1073 (La. 1996); see also Rhonda Bell, *Rape Suspect OT Ready for Trial Mentally Retarded Man Faces Death if Convicted of Rape of Six-Year-Old*, NEW ORLEANS TIMES PICAYUNE, December 16, 1999, Section: Metro.

78. Danny Davis, Jr. was charged with raping three children in St. Bernard Parish. Steve Cannizaro, *Man, 18, Wanted in Sex Abuse of Minors 1 Girl, 2 Boys Say Attack Occurred in January*, NEW ORLEANS TIMES PICAYUNE, March 23, 2000, Section: Metro.

79. Ithona Nation was charged with raping a ten-year-old girl. Kenner Bureau, *Kenner Man Booked in Rape of Child*, NEW ORLEANS TIMES PICAYUNE, May 12, 2000, Section: Metro.

80. Ferdinand D. Arcourt was charged with aggravated rape of a five-year-old boy. Stephanie A. Stanley, *Abita Man Raped Boy, 5, Police Say 2 Other Men Charged In Deadly Crashes*, NEW ORLEANS TIMES PICAYUNE, March 23, 2002, Section: Metro.

81. Greg Laffavillere was charged with aggravated rape of a child. Steve Cannizaro, *Child Rape Suspect Worked Outside Jail*, NEW ORLEANS TIMES PICAYUNE, February 20, 2003, Section: Metro.

82. Brian J. Sapia was convicted of raping a six-year-old girl and was sentenced to twelve (12) years. Gwen Filosa, *Man Gets 12 Years for Raping 6-Year-Old*, NEW ORLEANS TIMES PICAYUNE, August 6, 2003, Section: Metro.

83. Thomas Farve was charged with raping a seven-year-old girl. Joe Darby, *Man Charged in Sex Crimes Against Foster Child*, NEW ORLEANS TIMES PICAYUNE, December 20, 2003, Section: Metro.

84. Ceaser Harper was charged with raping an eight-year-old girl. Staff Reports, *Man Is Arrested in Child Rape Case, Suspect Faces Death if Convicted of Crime*, NEW ORLEANS TIMES PICAYUNE, January 7, 2004, Section: Metro.

85. Roderick Riggins was convicted of aggravated rape of a child and was sentenced to forty (40) years in prison. West Bank Bureau, *Man Plead Guilty in Girl Rape*, NEW

ORLEANS TIMES PICAYUNE, January 23, 2004, Section: Metro.

86. Daniel Joseph Moore was charged with three counts of aggravated rape of a child under twelve. Meghan Gordan, *Janitor Charged In Child Sex Case Babysitter Accused of Raping Three Boys*, NEW ORLEANS TIMES PICAYUNE, July 21, 2004, Section: Metro.

87. Randy Conner was charged with aggravated rape of a four-year-old girl. Joe Darby, *Step-dad charged in Harvey Stabbing Cops Say Teen Victim May Have Been Raped*, NEW ORLEANS TIMES PICAYUNE, August 6, 2004, Section: Metro.

88. Christopher S. Shank was convicted of raping a five-year-old girl. Paul Purpura, *Jeff Man To Get Life In Rape of Child Unanimous Jury Spurns Lesser Charge*, NEW ORLEANS TIMES PICAYUNE, October 30, 2004, Section: Metro.

89. Roy A. Vanderhoff was charged with aggravated rape of a child under twelve. Amy Blakely, *1 Indicted, 1 Sought In Rape of Child, Boy Found to Have Contracted an STD*, NEW ORLEANS TIMES PICAYUNE, May 6, 2005, Section: Metro.

90. Irvin Rousell was indicted on capital rape charges for orally sodomizing a six-year old girl. Rousell told police, relatives and then the jury how he orally sodomized the girl after a night of hard drinking. Rousell even wrote a letter to Marullo admitting the crime. The jury found Rousell guilty of sexual battery, which carries a sentence of up to 10 years in prison. Gwen Filosa, *Indigent board to have day in court – New Orleans*, THE TIMES-PICAYUNE, September 23, 2006, B1.

91. Keith Raymin Fremin was sentenced to 25 years in prison, and agreed to castration, after having been charged with multiple counts of aggravated rape of two girls in Mandeville, Louisiana. Bruce Hamilton, *Child rapist*

undergoes castration, THE TIMES-PICAYUNE, November 7, 2006, B1.

92. Eric Donald Hayes was found guilty of raping an eleven-year-old and sentenced to ten (10) years imprisonment. See Exhibit B, MNT (10/2/2003).

93. Celestine Livingston was convicted of raping a six-year-old and sentenced to two (2) years on March 21, 1996. Exhibit B, MNT (10/2/2003).

94. Jason Robardi was found guilty of raping a nine-year-old girl and received a life sentence. The child lost a substantial amount of blood from the vaginal tears she sustained from the rape. See Exhibit B, MNT (10/2/2003).

95. Don Tran was found guilty of raping an eight-year-old girl and was sentenced to twenty-five (25) years imprisonment. See Exhibit B, MNT (10/2/2003).

96. Nazareth Harrison was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (Oct. 26, 2000).

97. Cedric Jamison was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (Sept. 21, 2001).

98. Ferdinand D'Arcourt was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (Mar. 22, 2002).

99. Christina Vanrycke was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (May 24, 2002).

100. Richard Carrier was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (Sept. 19, 2002).

101. Danny Thomas Davis was indicted for aggravated rape of a child under twelve. Aggravated Rape

Indictment, State of Louisiana, Parish of St. Tammany (June 30, 2000).

102. Gary Rush was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (April 25, 2001).

103. John Pratt, III was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (Oct. 24, 2002).

104. Michelle Littlefield was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (May 3, 2004).

105. Burt S. Stockstill was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Parish of St. Tammany (May 3, 2004).

106. Frazen "Pookie" Chesson was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 9, 1996).

107. Donnell Colquitt was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Mar. 16, 2000).

108. Eddie Tom Cannon was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Nov. 19, 1998).

109. Teresa Gail Cannon was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Nov. 29, 1998).

110. Stanley R. Elpers was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 23, 1999).

111. Gary Wayne Mood was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Nov. 11, 2000).

112. John Edward Hess was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Dec. 14, 2000).

113. Joseph Herbert Bargeman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (July 19, 2001).

114. Chester Lee Marcantel was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 15, 2002).

115. Russell E. Fuselier was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 21, 2002).

116. Jimmy Dorris was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (June 13, 2002).

117. Luther Deel was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 19, 2002).

118. Timothy Benoit was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Feb. 10, 2006).

119. Brent A. Repponde was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 13, 2005).

120. James Brooks was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 25, 2005).

121. Neal P. Broussard was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 18, 2005).

122. Keith L. London was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (July 18, 2005).

123. Floyd Tillman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (June 8, 2005).

124. Harvey T. Simons was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 5, 2005).

125. Dennis McGehee was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (April 18, 2006).

126. Joseph Albert Ripley was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Nov. 18, 2004).

127. James A. Fontenot was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Nov. 10, 2004).

128. Johnny London was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 30, 2004).

129. Dwayne A. Colston was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 23, 2004).

130. Joseph Molitor was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 12, 2004).

131. Ernest Chapman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 12, 2004).

132. Carl Ledet was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 12, 2004).

133. Decator Crochet was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 6, 2004).

134. Carmen L. Oregeron was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 6, 2004).

135. John Nunez was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Mar. 3, 2004).

136. Marvin William Welsh was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Feb. 26, 2004).

137. Robert Thomas was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Feb. 26, 2004).

138. Arnold Mercado was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Feb. 26, 2004).

139. Michael W. Granger was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 14, 2003).

140. Stephen Lanphier was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 14, 2001).

141. John Mark was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 10, 2003).

142. James Wimberly, Jr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 10, 2003).

143. Jude Wimberly was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 10, 2003).

144. James Wimberly, Sr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 10, 2003).

145. Michael W. Granger was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 14, 2003).

146. Marcus Jacobs was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug. 14, 2003).

147. John Molitor was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (July 10, 2003).

148. Michael Wayne Guillory was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (July 10, 2003)

149. Kenneth Tittle was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (June 17, 2003).

150. Joseph Thibodeaux was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (May 22, 2003).

151. Robin LeBlanc was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (March 6, 2003).

152. Glenn Allan Duhon was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Jan. 1, 2003).

153. Mark Allen Dittmer was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 10, 2002).

154. Dustin Chad Ducote was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 12, 2002).

155. Daniel Holland was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 12, 2003).

156. Zavier Lewis was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (June 6, 2002).

157. Rock A. Doucet was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Feb. 2, 2002).

158. Brian Saltzman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Oct. 25, 2001).

159. Emery Marcantel, Jr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (March 1, 2001).

160. Ellis Bartie was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Sept. 7, 2000).

161. Troy L. Williams was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Calcasieu Parish (Aug 28, 1998).

162. Donus Demon Edwards was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry Parish (2001).

163. Alton Romar, Jr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry Parish (1997).

164. Erick D. Mitchell was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry District Parish (1987).

165. Fabian L. Mitchell was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry Parish (1998).

166. Thomas E. Biledeaux was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry Parish (1995).

167. Albert Jones, Jr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, St. Landry Parish (1998).

168. Clarence Edwards Rogers was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Grant Parish.

169. John Alden Vallery Sr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Grant Parish.

170. Robert Wayne Warren was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Grant Parish.

171. Barry Keith Chelette was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Grant Parish.

172. Alcide Boudoin was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Assumption Parish (2006).

173. Grady L. Rushing, Sr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Assumption Parish (2004).

174. Carroll C. David, Sr. was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Pointe Coupee Parish.

175. Isiah Van Buren was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Pointe Coupee Parish (Aug. 22, 2000).

176. Marcus Guidry was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Pointe Coupee Parish (April 29, 2003).

177. Michael Young was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Pointe Coupee Parish (April 29, 2003).

178. Ricky Chatman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (Sept. 13, 2001).

179. James Watts was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (Feb 9, 2006).

180. John Freeman was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Pointe Coupee Parish (April 29, 2003).

181. Christopher Williams was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (Aug. 17, 2004).

182. David Marshall was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (April. 26, 2004).

183. Damien Lebrun was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (Aug. 15, 2003).

184. Jason P. Rebaridi was indicted for aggravated rape of a child under twelve. Aggravated Rape Indictment, State of Louisiana, Morehouse Parish (Aug. 23, 2003).

B. A Significant Number Of Defendants Have Received A Sentence Less Than Death For A Worse Offense.

In *Coker v. Georgia*, the United States Supreme Court noted that murder was without doubt a more severe offense than rape:

Rape is without doubt deserving of serious punishment; but in terms of moral depravity and of the injury to the person and to the public, it does not compare with murder, which does involve the unjustified taking of human life. Although it may be accompanied by another crime, rape by definition does not include the death of or even the serious injury to another person. The murderer kills; the rapist, if no more than that, does not. Life is over for the victim of the murderer; for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair.

Coker v. Georgia, 433 U.S. 584, 598 (1977).⁷ While this Court has suggested that there is an open question

⁷ In Appellant's Brief on Appeal and Supplemental Brief on Appeal, Appellant notes that the decision in *Coker* (finding the death penalty unconstitutional for the rape of a sixteen (16) year old girl) supports the

concerning whether the rape of a child is equivalent to the murder of an adult, it is unquestionable that the murder (let alone the rape and murder) of a child remains, from a constitutional perspective, a worse offense than a rape.

In the following cases, a defendant actually killed the child-victim or child-victims, but received a lesser sentence than the Appellant in this case:

185. Ralph Stogner kidnapped, raped and killed an eleven year-old girl and received a sentence of life imprisonment in the same year Mr. Kennedy was sentenced to death. Mr. Stogner's victim disappeared from her neighborhood in Slidell, Louisiana. Her badly mutilated body was found two days later in an Industrial Canal in New Orleans. Stephanie A. Stanley, *Killer Is Sentenced for Attack on Child*, NEW ORLEANS TIMES PICAYUNE, January 5, 2002, at Section: National.

186. Darren Hooks was convicted of raping and murdering his girlfriend's two-year-old daughter. The child had lacerations and contusions, both internally and externally, all over her body. She ultimately died when her brain swelled from head injuries and a tear in her kidneys. Darren Hooks received a life sentence. *State v. Hooks*, 421 So.2d 880 (La. 1983).

187. Nathan Johnson was convicted of raping and killing his two-year-old daughter. The child died from head wounds she sustained from the attack. Her vagina and rectum indicated that she had been penetrated anally and

claim that the execution of a defendant for a non-homicide offense is unconstitutional. Since *Coker*, this Court ruled that the rape of a child is sufficiently more severe than the rape of an adult woman to justify the imposition of the death penalty for rape made aggravated by the youth of the victim. See *State v. Wilson*, 685 So.2d 1063, 1073 (La. 1996). That decision cannot stand for the proposition that the rape of a child is worse than the murder of a child. Indeed, it is beyond purview that the position of the Court in *Coker* – that murder is a worse offense than rape – remains, regardless of whether the Court can extend the constitutionality of capital punishment to the present charge.

vaginally. Mr. Johnson was sentenced to life imprisonment. *State v. Johnson*, 96-1834 (La. App. 1 Cir. 6/20/97), 697 So.2d 288.

188. Delia Nelson was found guilty of killing her two-year-old daughter. Medical examinations revealed older and fresh bruises, and abrasions on both sides of the forehead and face; bruises on the chest, back, shoulder, genital area and legs. The child ultimately died of severe bruising of the brain. Ms. Nelson was sentenced to forty (40) years imprisonment. *State v. Nelson*, 98-1907 (La. App. 1 Cir. 6/25/99), 744 So.2d 226.

189. Ricky Langley was convicted of killing a six-year-old and received a life sentence. He strangled the little boy, carried him up the stairs and hid him under blankets. There is evidence indicating that Mr. Langley sexually molested the child before and after the murder. *State v. Langley*, 94-00326 (La.App. 3 Cir. 4/14/94), 639 So.2d 211.

190. Alvin Scott Loyd was convicted of kidnapping, raping and killing a three-year-old girl. *State v. Loyd*, 96-1805 (La. 2/13/97) 689 So.2d 1321.

191. James Koon was found guilty of beating an eight-month-old girl to death, breaking the baby's skull, forearms, right tibia, right fibula. He was sentenced to life imprisonment. *State v. Koon*, 31177 (La. App. 2 Cir. 2/24/99), 730 So.2d 503.

192. Christopher McCants was found guilty of killing a two-year-old girl and sentenced to life imprisonment. The little girl died from blunt trauma to her head which caused brain hemorrhaging. The child was also covered in lacerations caused by belt wounds. *State v. McCants*, 93-1703 (La. App. 1 Cir. 10/7/94), 644 So.2d 752.

193. William Simpson was found guilty of killing his two-year-old daughter and received a life sentence. Mr. Simpson confessed to strangling his daughter with a belt and then stabbing her with a butcher knife. *State v. Simpson*, 629 So. 2d 468 (La. App. 3 Cir. 1993).

194. Willie Lee Douglas was convicted of killing a two-year-old girl. The child's injuries indicated that she was beaten to death. Mr. Douglas was sentenced to life in prison without parole. *State v. Douglas*, 37-721 (La. App. 2 Cir. 12/10/03), 862 So.2d 390.

195. Melvin Dewayne Pugh was found guilty of killing his six-week-old daughter and sentenced to forty (40) years in prison. The baby died when Mr. Pugh struck her multiple times and threw her on the floor. *State v. Pugh*, 40,287-KA (La. App. 2 Cir. 11/02/05), 914 So.2d 1183.

196. Joseph Glenn, IV was convicted of killing a two-month-old girl and sentenced to life imprisonment on April 10, 2003. The cause of death was brain hemorrhaging brought on by Mr. Glenn shaking the baby. *State v. Glenn*, 04-KA-526 (La. App. 5 Cir. 03/01/05), 900 So.2d 26.

197. Burnell Hart was found guilty of killing an eleven-month-old girl and was sentenced to life imprisonment. The child sustained injuries all over her entire body, including brain and stomach hemorrhaging, fractured ribs and one of her lungs was filled with blood. Her liver had also been torn. *State v. Hart*, 2004-KA-0121 (La. App. 4 Cir. 08/18/04), 881 So. 2d 1237.

198. Kortney T. Smith was convicted of killing his seven-month-old infant and sentenced to life imprisonment. The child died from a skull fracture and brain hemorrhaging. *State v. Smith*, 04-KA-199 (La.App. 5 Cir. 06/29/04), 877 So.2d 1123.

199. Frank Guillory was found guilty of killing his wife and her nine-year-old son. Mr. Guillory shot to death both victims. Mr. Guillory received a life sentence on January 31, 1996. *State v. Guillory*, 95-383 (La. App. 1 Cir. 02/14/03), 839 So.2d 455.

200. Timothy Booker was convicted of killing his girlfriend's four-year-old daughter and received a life sentence. The child, found in sleeveless shirts and shorts on

December 18, 2000, was not breathing, did not have a pulse and was cold to the touch. After efforts to revive her failed, the coroner listed hypothermia, battered child syndrome, and malnourishment as the causes of the child's death. *State v. Booker*, 2002 KA 1269 (La. App. 1 Cir. 02/14/03), 839 So. 2d 455.

201. Raynell Bright was convicted of killing his six-month-old daughter and received a life sentence on June 1, 1998. Mr. Bright opened fire on his former girlfriend's mother and his daughter. The baby was shot in the heart. *State v. Bright*, 809 So.2d 1112 (La. 2002).

202. James Thomas Porter was convicted of killing his female roommate's three-year-old daughter and sentenced to life imprisonment on September 1, 1999. The child's body had burn marks on her chest and back from a steam iron, bruising about the head, face, shoulders and legs, and the skin on the buttocks had been burned severely. Ultimately, the cause of death was hemorrhaging in the brain brought on by a blow to the back of the head. *State v. Porter*, 99-1722 (La. App. 3 Cir. 5/3/00), 761 So.2d 115.

203. Loris Houston was convicted of beating to death her two-year-old son and sentenced to life imprisonment. Ms. Houston admitted to repeatedly beating her son with a broom, handle, hanger, slipper and hand. The cause of death was subdural blood clots and a skull fracture. *State v. Houston*, 95-656 (La. App.5 Cir. 2/14/96), 671 So.2d 19.

204. Esther Penns was found guilty of murdering her four-year-old and sentenced to life imprisonment. While being questioned by authorities regarding the shooting of her ten-year-old son, the defendant admitted to the attempted murder of her daughter and the drowning of her four-year-old. The four-year-old's decomposed body was found the next day found hidden in the bushes. *State v. Penns*, 407 So.2d 678 (La. 1981).

205. James Felo was found guilty of killing his neighbor's four-year-old daughter. The little girl died from head injuries caused by a severe blow. Her left wrist and

right arm were also broken. *State v. Felo*, 454 So.2d 1150 (La. App. 4 Cir. 1984), *writ denied*, 488 So.2d 686 (La. 1986).

206. Yvonne Sepulvado was convicted of killing a six-year-old boy and received a sentence of twenty (20) years imprisonment. *State v. Sepulvado*, 26,948 (La. App.2 Cir. 5/10/95), 655 So.2d. 623, *writ denied*, 95-1437 (La. 11/13/95), 662 So.2d 465.

207. Larry Williams was found guilty of murdering a two-year-old girl. The child died from a blow to the head that caused a skull fracture at the base of the neck. Mr. Williams received a twenty-one (21) year sentence. *State v. Williams*, 609 So.2d 878 (La. App. 4 Cir. 1992).

208. Eugene Davis was charged and convicted of killing a six-month-old child. The cause of death was a fracture in the skull and a brain hemorrhage. The coroner concluded that the baby's head had been slammed on something very hard. Mr. Davis was sentenced to twenty-one (21) years in prison. *State v. Davis*, 562 So.2d 1173 (La. App. 4 Cir. 1990).

209. Charles Kenneth LaFleur was convicted of killing a two-year-old handicapped boy. He left the little boy's body in a box by the side of a road. The child had been severely abused before he was murdered. Mr. LaFleur received a life sentence. *State v. LaFleur*, 398 So.2d 1074 (La. 1981).

210. Gloria Aucoin was found guilty of killing an eight-year-old girl and was sentenced to life imprisonment. She strangled, stabbed, beat and drove the car over the little girl. *State v. Aucoin*, 362 So.2d 503 (La. 1978).

211. Selina Anderson was convicted of killing her eighteen-month-old daughter and given a life sentence. The dead child was found in the back of the house; the cause of death was asphyxia due to suffocation. *State v. Anderson*, 99-456 (La. App. 5 Cir. 10/26/99), 750 So.2d 1008. The state did not introduce evidence concerning the deaths of two of

her other children. Martha Carr, *Laplace Mom Convicted In Child's Death*, THE TIMES-PICAYUNE, December 4, 1998, B1.

212. Jack R. Obney was convicted of killings a three-year-old boy and sentenced to life imprisonment. The child died from a rupture in his abdominal region which was caused from being violently hit in the stomach. *State v. Obney*, 505 So.2d 211 (La. App. 3 Cir. 1987); *writ denied*, 508 So.2d 818 (La. 1987).

213. Anita Mosley was found guilty of killing her boyfriend's eighteenth-month-old son and sentenced to life imprisonment. The child's liver was also torn down the middle causing him to go into heart failure. The state's medical examiner concluded that the death resulted from multiple blows from a broad, flat object, most probably a fist. *State v. Moseley*, 475 So.2d 76 (La. App. 2 Cir. 1985).

214. Victor Johnson was convicted of killing his girlfriend's sixteen-month-old child. The child sustained a fractured skull, tear in the liver, and abdominal injuries. Mr. Johnson received a life sentence. *State v. Johnson*, 469 So.2d 1099 (La. App. 2 Cir. 1985).

215. Helen Beck was found guilty of killing her son by slamming the window on his head twice. Ms. Beck was sentenced to life. *State v. Beck*, 455 So.2d 470 (La App. 2 Cir. 1984), *writ denied*, 446 So.2d 315 (La. 1984).

216. Larry M. Archer was convicted of killing his girlfriend's twenty-two-month-old daughter. Mr. Archer kicked the child in the abdomen which ruptured her bowels and led to peritonitis. He received a sentence of forty (40) years imprisonment. *State v. Archer*, 96-2750 (La. App. 1 Cir. 11/7/97); 709 So.2d 1093; *writ denied*, 97-3047 (La. 4/2/98), 717 So.2d 646.

217. Monica Lynn Guzman was found guilty of killing his seven-month-old daughter and sentenced to forty (40) years in prison. Both of the baby's legs were broken, her spine was separated, fluid in the chest and her kidneys

were in shock. *State v. Guzman*, 95-444 (La. App. 5 Cir. 11/15/95), 665 So.2d 512, *writ denied*, 95-2853 (La. 2/28/96), 668 So.2d 366.

218. Larry A. Cushman was found guilty of killing his seventeen-month-old stepson and sentenced to thirty (30) years in prison. The child died from intracranial injuries caused by head trauma and an autopsy revealed physical abuse. *State v. Cushman*, 94-336 (La. App. 3 Cir. 11/2/94), 649 So.2d 639, *writ denied*, 95-2045 (La. 3/7/97), 689 So.2d 1370.

219. Richard Hubmer was found guilty of killing a two-year-old boy and received a twelve (12) year sentence. The child died from a blow to the head that caused a skull fracture. *State v. Hubmer*, 553 So.2d 1056 (La. App. 3 Cir. 1989); *writ denied*, 560 So.2d 11(La. 1990).

220. Belverly White was convicted of killing her adopted four-year-old daughter. The evidence established that Ms. White beat the child with objects such as combs, knives and brushes. The child also sustained third-degree burns over her body. The ultimate cause of death was a massive infection brought on by the abuse to the child's body. *State v. White*, 543 So. 611 (La. App. 2 Cir. 1989).

221. Carolyn Bolden was convicted of killing a two-year-old child left in her care during the mother's incarceration. The child died from brain injuries sustained from severe, intentional shakings. Ms. Bolden was sentenced to twenty (20) years imprisonment. *State v. Bolden*, 501 So.2d 942 (La. App. 2 Cir. 1987).

222. Roger Addison was convicted of killing his girlfriend's sixteen-month-old child and received a ten (10) year sentence. The child's body had a lacerated liver, bruises on the face, head, back and buttocks and broken ribs. *State v. Addison*, 464 So.2d 887 (La. App. 4 Cir. 1985).

223. Bernard Hayes was found guilty of killing his two-year-old son and received a fifteen (15) year sentence. The little boy died from trauma caused by multiple blows to

the head. *State v. Hayes*, 446 So.2d 1233 (La. App. 4 Cir. 1985).

224. James Lois Humphrey was convicted of killing his two infant daughters. One daughter died from head injuries and the other from a neurogenic shock from the brain stem and spinal cord injuries resulting from a fracture of twisting of one of the neck vertebrae. Mr. Humphrey received consecutive fifteen (15) year sentences. *State v. Humphrey*, 445 So.2d 1155 (La. 1984).

225. Curtis Germain was convicted of killing his three-year-old daughter. The child's body had bruises of all colors over the entire body. The cause of death was hemorrhaging in the left part of the brain. Testimony established that the Mr. Germain beat the child with a belt regularly and threatened to kill the entire family. He received a twenty-one (21) year sentence. *State v. Germain*, 433 So.2d 110 (La. 1983).

226. Renee Morris was found guilty of killing her infant son. The degree of bruising all over the child's body made it a classic case of battered child syndrome. The child ultimately died from a skull fracture caused by massive trauma to the head. Ms. Morris was sentenced to forty-two (42) years. *State v. Morris*, 429 So.2d 111 (La. 1983).

227. Deborah Crawford was found guilty of murdering her nine-month-old daughter. The child died from head trauma inflicted by multiple blows. Ms. Crawford received a twenty-one (21) year sentence. *State v. Crawford*, 410 So.2d 1076 (La. 1982).

228. Delia Nelson was found guilty of killing her two-year-old daughter. Medical examinations revealed older and fresh bruises, and abrasions on both sides of the forehead and face; bruises on the chest, back, shoulder, genital area and legs. The child ultimately died of severe bruising of the brain. Ms. Nelson was sentenced to forty (40) years imprisonment. *State v. Nelson*, 98-1907 (La. App. 1 Cir. 6/25/99), 744 So.2d 226.

229. Whitney Spenser was sentenced to life for four counts of first degree murder arising from the intentional burning to death of 14-month-old Keitwon Ester, six-year-old Ranneisha Kent, seven-year-old Deaunta Kent, and four-year-old Branika Murph. See *State v. Spencer*, 00-2084, Division A, 24th JDC, Jefferson Parish.

230. Eric Matthews was sentenced to life imprisonment for two counts of first degree murder and one count of second degree murder, including the murder of a one-year-old child. *State v. Matthews*, 1997-1757 (La. 1/16/98) 706 So.2d 972.

231. Perry Pooler and Simon Hutchinson were indicted for the murders of Joseph Curry age 17, Daytoria Curry age 16, and Jacorey Marshall age 16 months. Joseph Curry was shot execution style. Daytoria Curry was raped and then shot execution style. Both were ultimately sentenced to life imprisonment. Marshall was burned in the trailer fire. See e.g. *State v. Hutchinson*, 2001--0704 (La.App. 1 Cir. 12/28/01); 803 So. 2d 1120; *State v. Pooler*, 96 1794 (La.App. 1 Cir. 05/09/97); , 696 So. 2d 22.

232. Lawrence Robertson, Dameion Tillman and Corey Richardson were indicted for the first degree murder of Chastity Calhoun, age 2. They were also charged with the murder of the girl's father Kevin Calhoun. Robertson pled guilty to the killing of Chastity Calhoun and received a ten (10) year sentence. See *State v. Robertson*, 409-923 "E" (Orleans Parish Criminal District Court). Each of the other co-defendants pled guilty to a lesser offense and received a term of years.

233. James Davis was indicted for the first degree murder of Terica Toledano, age 2. He ultimately pled guilty to manslaughter and received a sentence under ten years. See *State v. Davis*, 387-332 "A" (Orleans Parish Criminal District Court).

II. THE CIRCUMSTANCES OF THIS CASE MAKE THE DEATH PENALTY AN EXCESSIVE AND DISPROPORTIONATE SENTENCE

Assuming, *arguendo*, the constitutionality of the death penalty for aggravated rape, the circumstances of this case render the sentence excessive and disproportionate. See *State v. Sonnier*, 380 So. 2d 1 (La. 1979). In *Sonnier*, this Court observed:

The mere existence of a three step process indicates that a death sentence may be excessive even if sufficient ground exists for each aggravating circumstance found by the jury. . . . Certainly an inference of arbitrariness would arise if a jury's recommendation of death was inconsistent with sentences imposed in similar cases from the same jurisdiction. Rule 28, § 1(c). Another indication of arbitrariness would be a jury's recommendation of death in disregard of numerous and persuasive mitigating circumstances which clearly outweigh any aggravating circumstances found to be present. In the instant case, our review demonstrates that the sentence is excessive under either standard.

State v. Sonnier, 380 So. 2d 1, 7-8 (La. 1979).

A. The Circumstances of Patrick Kennedy's Mental limitation and Cognitive Deficits Makes the Death Sentence Excessive and Disproportionate.

Patrick Kennedy has an I.Q. of 70. It is also unlikely that Mr. Kennedy has ever had a higher I.Q. Mr. Kennedy was diagnosed with learning problems when he was child and assigned to special education classes. Despite being put in special education, he continued to perform poorly in school and on standardized tests. Mr. Kennedy's formal education ended in the ninth grade.

At the beginning of Mr. Kennedy's trial, defense counsel moved to bar the State from seeking the death

penalty based on the United States Supreme Court's prohibition on the execution of mentally retarded defendants in *Atkins v. Virginia*, 536 U.S. 304 (2002). However, at the time this case went to trial, Article 905.5, which codified the *Atkins* decision in Louisiana law, was not yet enacted. The trial court thus decided it could not be applied and went on to appoint a sanity commission to assess Mr. Kennedy's retardation per this Court's decision in *State v. Williams*, 2001 1650 (La. 11/01/02); 831 So. 2d 835.

The examining doctors from the sanity commission reported that throughout their interviews with Mr. Kennedy, he remained adamant that he was not mentally retarded and instructed the doctors to diagnose him as "normal" – even though a finding of mental retardation would ameliorate greatly to his benefit. Eventually, they were able to conduct their evaluations to determine that Mr. Kennedy's I.Q. score and to find out about his developmental history. The commissioners determined that Mr. Kennedy was not mentally retarded asserting: 1) that an IQ score of 70 was not below two standard deviations of the norm; 2) that evidence of adaptive deficits in two or more life-skills areas did not exist; and 3) that despite evidence that Mr. Kennedy was in special education, did not pass ninth grade, and did poorly on standardized testing, there was insufficient evidence that onset of low-IQ occurred prior to the age of 18. The trial court adopted the committee's conclusion and held that Mr. Kennedy was not mentally retarded and therefore competent to stand trial for capital rape.

Contemporaneously to these proceedings, the State moved to bar defense counsel from asserting that Mr. Kennedy's mental retardation constituted a bar to the imposition of the death penalty. The State based its motion on prospective application of the Article 905.5 which would – when enacted – require full cooperation as a prerequisite to litigating this matter before the jury; Mr. Kennedy, the state alleged, was not initially cooperative with the sanity commission doctors. After learning of the sanity commission's results, the trial court reversed itself and ruled

that Article 905.5 applied retroactively and barred the defense counsel from litigating Mr. Kennedy's mental retardation in front of the jury. Thus, having at first held that Article 905.5 did not apply, thereby depriving Mr. Kennedy of the benefit of the Supreme Court's holding in *Atkins v. Virginia*, 536 U.S. 304 (2002), codified in this article, the trial court later reversed itself to hold that Article 905.5 did apply, and held on this basis that because Mr. Kennedy did not provide the "full" cooperation required by the article, he could not rely on mental retardation as a grounds to oppose the death penalty, the very holding of *Atkins* in the first place.

The trial court's approach is reminiscent of Tweedledee's statement to Alice in *Through the Looking Glass*, "Contrariwise, if it was so, it might be; and if it were so, it would be; but as it isn't, it ain't." It would be laughable – if its purpose wasn't to sentence a man to death.

B. The Circumstances Of The Injuries Inflicted On The Victim Make The Death Penalty Excessive.

At trial, and on appeal, the defense has not contested that [L.H.] was not raped. Nor has the defense contested that the rape – whoever committed it – was a vicious attack on the humanity of [L.H.]. The record on appeal, nevertheless, respectfully details the healing powers exhibited by [L.H.] and the significant difference between a murder and a rape.

To explain why the death penalty for a rapist was a disproportionate sentence, Justice Stewart wrote, "for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair." *Coker*, 433 U.S. at 597. This proved true for the rape victim in this case, [L.H.], whose life certainly "was not over and not beyond repair."

[L.H.] underwent surgery to repair a tear in her vaginal cavity after she was raped. Dr. Scott Benton testified that "after two days the swelling is gone" and that the genital area came "back to normal in two weeks." Referencing

photographs of the injuries displayed at trial, Dr. Benton testified:

After two days, the swelling is gone, and you see the stitches kind of holding the skin together.

Children heal incredibly rapidly, one of the remarkable values of youth. This is a two week follow up, which is typical for what we do, and it shows you what, what some evidence of repair, normal, really should look like. . . . And almost without a scar, again, fairly traumatic healing, you can still see some of the, what we call absorbable sutures, are still kind of poking in and visible, and there's, you know, obviously, an injury to the hymen there, that may never heal, but it's functional, these things have come back to normal in two weeks.

In addition to her physical injuries, [L.H.] also appeared to recover quickly from the emotional trauma. Office of Career Services records lodged with the appellate record show that [L.H.] indicated no fear or psychological disturbance in the weeks and months following the rape, “[L.H.] appeared to be a very active and friendly 8 year old. She did not appear distraught, depressed or in any way saddened by the event of the rape.”

To execute Patrick Kennedy for a crime in which the victim was physically “back to normal” and “emotionally stable” after only a few weeks would be a shameful use of the death penalty.

C. The Death Penalty is Disproportionate and Excessive Given the Heightened Chance of Wrongful Convictions in this Case.

There has been heightened concern in the lacunae between the decision in *State v. Wilson*, and this date, concerning the chance of error in capital cases. In *Atkins v. Virginia*, one of the grounds on which the Court based its decision to invalidate the death penalty was its observation that mentally retarded defendants face a special risk of

wrongful conviction. See *Atkins*, 536 U.S. 304, 321 (2002) (holding death penalty unconstitutional for defendants with mental retardation because of heightened risk of wrongful conviction)⁸

Rendering the risk of wrongful conviction a relevant factor in assessing the excessiveness of the death penalty, counsel must observe that defendants charged with aggravated rape of a child similarly face a special risk of wrongful execution. The rate of wrongful convictions for rape exceeds that for any other crime. ROB HALL, *RAPE IN AMERICA* 105 (1995). A study of exonerations during 1989-2003 revealed that 90% of non-homicidal exonerations involved rape cases. *Gross, Innocence In Capital Sentencing: Exonerations in the United States 1989 through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 530 (2005). This high level of unfounded allegations among rape cases can likely be attributed to the prosecution's heavy reliance on testimony from the child-rape victims. *State v. Wright*, 598 So. 2d 561, 564-65 (La. App. 4th Cir. 1992) (well-settled that testimony of child-victim in rape case, without more, is sufficient to prove elements of the offense). Because courts afford great deference to a rape victim's testimony, many of

⁸ In *Atkins*, the Court observed that the death penalty was unconstitutional in that instance because "Mentally retarded defendants in the aggregate face a special risk of wrongful execution." *Id.* The Court went on to observe:

. . . Despite the heavy burden that the prosecution must shoulder in capital cases, we cannot ignore the fact that in recent years a disturbing number of inmates on death row have been exonerated. As two recent high-profile cases demonstrate, these exonerations include mentally retarded persons who unwittingly confessed to crimes that they did not commit.

Id. at 321, n.25 citing See Baker, *Death-Row Inmate Gets Clemency; Agreement Ends Days of Suspense*, Washington Post, Jan. 15, 1994, p. A1; Holt & McRoberts, *Porter Fully Savors First Taste of Freedom; Judge Releases Man Once Set for Execution*, Chicago Tribune, Feb. 6, 1999, p. N1.

these exonerations occurred only because of DNA evidence. Innocence In Capital Sentencing: Article, 95 J. CRIM. L. & CRIMINOLOGY 531 (finding that 87% of rape exonerations occurred because of DNA evidence).

The risk of wrongful conviction is especially great when the conviction, as in this case, results primarily from a child-witness's testimony. Studies suggest that child-witness testimony is more likely to be inaccurate than adult testimony. See James O'Brien Jr., Television Trials and Fundamental Fairness: The Constitutionality of Louisiana's Child Shield Law, 61 TUL. L. REV. 141, 150 (1986) (citing BERLINER & STEVENS, ADVOCATING FOR SEXUALLY ABUSED CHILDREN IN THE CRIMINAL JUSTICE SYSTEM 13 (Nov. 1976)). Children have inaccurate memories, an inability to communicate effectively the events they recall, and a subjective sense of time. *Id.* They are also subject to "memory-fade," meaning adults have better capacity to "remember" retained information. Loftus & Davies, *Distortions in the Memory of Children*, 40 J. SOC. ISSUES 51, 54 (1984) (in general, children have greater difficulty than adults in retrieving information from long-term memory). Other studies indicate that child-witnesses can be subject to an increased level of suggestibility by opposing counsel. Douglas P. Peters, *The Influence of Stress and Arousal on the Child Witness*, in *The Suggestibility Of Children's Recollections*, 75 (John Doris ed. 1991).

The reliance on a child-witness, combined with above problems, indicates a higher rate of false child-rape allegations and convictions. See John Johnson, "*Kids Don't Lie*": Faith in this Assumption Led to Dozens of Unjust Molestation Convictions in Bakersfield; Today One Man Remains in Prison Even After Four of his Original Accusers Said he Never Touched Them, L.A. TIMES, Aug. 10, 2003, § 9 at 16; see also Child Protection: Balancing Diverging Interests: Hearing Before the Senate Comm. on Labor and Human Resources and the Subcomm. on Children and Families, 104th Cong. (1995) (statement of father wrongly convicted of raping daughter, based primarily on daughter's testimony coerced by therapist). Consequently, allowing child-rape to

be punished by death increases the likelihood of wrongful executions.⁹

Regardless of the general propriety or constitutionality of imposing a death sentence for aggravated rape, the facts in this case suggest that the imposition of an irrevocable punishment is excessive. There is no DNA evidence establishing that Mr. Kennedy committed the rape of [L.H.]. The only evidence directly connecting Mr. Kennedy to the offense is the testimony of [L.H.], which came some five years after the offense. During the first three years after the offense, [L.H.] steadfastly insisted that Mr. Kennedy was not responsible, claiming that two neighborhood teenagers were responsible. Indeed, the only way the State secured a conviction at all was through the delayed disclosure of exculpatory evidence (an exculpatory videotape and test results indicating that the blood on the mattress pad did not belong to the victim or the defendant in this case) until such time as the victim in this case changed her testimony and identified the defendant as the perpetrator. That the victim made a variety of inconsistent statements throughout the proceeding does nothing to further confidence in the outcome of this extraordinary case.

⁹ Louisiana's death row is currently the twelfth largest in the country, with eighty-seven inmates immured there. See BUREAU OF JUSTICE STATISTICS, CAPITAL PUNISHMENT 1 (2004), <http://www.ojp.usdoj.gov/bjs/pub/pdf/cp04.pdf>. Since 1976, Louisiana has executed twenty-seven people, ranking it tenth among the states that authorize imposing the death penalty. *Id.* at 9. But Louisiana ranks third (behind only Florida and Illinois) in the number of exonerations during that same time period, with eight. Death Penalty Information Center, State by State Information: Louisiana, <http://www.deathpenaltyinfo.org/state/> (last visited Nov. 2, 2006). That is, for every four executions in Louisiana there has been at least one wrongfully convicted inmate on death row. Given its population, per capita, Louisiana leads the nation in wrongful convictions. Because of the high level of wrongful convictions in rape cases, and the inability to rely fully on a child-victim's testimony, imposition of the death penalty based solely on the testimony of a child-witness renders the death sentence excessive.

CONCLUSION

Mr. Kennedy would be the first person executed for a non-homicide rape in Louisiana for over fifty years. Assuming, *arguendo*, the constitutionality of the capital rape statute, the imposition of the death penalty on Mr. Kennedy is excessive, wanton, arbitrary and freakish.

Given the circumstances of the evidence in this case – no D.N.A., the late disclosure of exculpatory evidence, and the contradictory statements made by the State’s only witness – the imposition of the death penalty creates an unnecessary risk of wrongful conviction. Given the fact that there have been hundreds of other defendants indicted for capital rape who have not received the death penalty, it plainly appears that the sentence in this case – where the victim recovered in days or weeks after the offense – is wanton or freakish. Moreover, given the fact that dozens of defendants have received lesser sentences for far worse offenses, the imposition of the death penalty in this case appears excessive and unnecessary.

Accordingly, if Kennedy’s conviction is not reversed or this case remanded for other errors in the penalty phase to be corrected, then, for the reasons set forth herein, Defendant-Appellant Patrick Kennedy prays that his death sentence be vacated.

Respectfully submitted,

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IN THE
SUPREME COURT
FOR THE
STATE OF LOUISIANA

NO. 2005-KA-1981

STATE OF LOUISIANA,
APPELLEE

VERSUS

PATRICK KENNEDY,
APPELLANT

APPEAL FROM THE TWENTY-FOURTH JUDICIAL
DISTRICT COURT IN AND FOR THE PARISH OF
JEFFERSON, STATE OF LOUISIANA, NO. 98-1425
DIVISION "0," THE HONORABLE ROSS LADART,
JUDGE PRESIDING.

RULE 28 CAPITAL SENTENCE REVIEW
MEMORANDUM

MAY IT PLEASE THE COURT:

The Office of the District Attorney submits the following in compliance with Louisiana Rule 28, Section 4: 1) a list of each first degree murder case in the Twenty-Fourth Judicial District in which sentence was imposed after January 1, 1976 as required by Rule 28, Section 4(b)(I); and 2) a list of

each capital rape case¹ in which sentence was imposed after August 15, 1995.

1) The following is a list of each Degree Murder case in the Twenty-Fourth Judicial District in which sentence was imposed after January 1, 1976.

- (1) **State of Louisiana vs. Willie J. Marse, Jr.**
Docket No. 77-1689 Division "A"
Crime Convicted: Manslaughter
Sentence: 21 years
State v. Marse, 365 So.2d 1319 (La. 1978)

Ola Mayeux, Willie Marse's former girlfriend, was approaching the door of her home when Willie Marse pulled up in front of her house. Fearing Marse, Ola Mayeux left her home and called the police. The police went to Marse's residence in order to talk with him. Marse, refusing to cooperate, locked himself in his house and began to curse and threaten the officers. When Marse opened the door slightly, an officer saw him with a rifle in his hand. In an effort to knock the weapon from Marse's hand, the officer hit the door. As Marse forced the door closed, the officer's fist went through the door, knocking a hole in the door. Marse stuck the rifle barrel through the hole in the door, opened fire, and mortally wounded an officer.

On August 2, 1977, Willie I. Marse was indicted for the crime of first degree murder of Merlin Brume. On October 29, 1977, the jury returned a verdict of guilty of manslaughter. His conviction and sentence were affirmed.

¹ Included in the listing are those cases which were instituted or initially prosecuted as capital cases, where the State subsequently noticed its intention not to seek a capital verdict, and which resulted in a plea of guilty to the charge of aggravated rape of a juvenile under twelve, or trial on the charge of aggravated rape of a juvenile under twelve.

- (2) **State of Louisiana vs. James A. Andrews**
Docket No. 77-1834 Division "G"
Crime Convicted: First Degree Murder
Sentence: Life
State v. Andrews. 369 So.2d 1049 (La. 1979)

On the evening of August 8, 1977, defendant was playing football with Herbert Harris and other neighborhood teenagers in Marrero. At some point, defendant and Hams began to argue, apparently over who was the better football player, but no physical fight took place. However, defendant announced that he was going home to retrieve his tennis shoes. A short while later, defendant returned, armed with a knife, walked up to Harris and stabbed him fatally in the in the heart. Defendant then left the scene, but was later arrested.

Andrews was tried and found guilty of first degree murder. Andrews was sentenced to life imprisonment without benefit of parole, probation or suspension of sentence. On March 5, 1979, Andrews' conviction and sentence were affirmed.

- (3) **State of Louisiana vs. Kevin Manieri and Sheldon Manieri**
Docket No. 77-2253 Division "C"
Crime Convicted: First Degree Murder
Sentence: Life
State v. Manieri, 378 So.2d 931 (La. 1979)

The defendants Kevin and Sheldon Manieri and Tim Mosely went to the residence of Cheryl Black for the purpose of purchasing marijuana. The eleven year old victim, Chris Black, admitted the defendants into his house where they learned that the victim's mother was at work. Kevin Manieri, having smoked marijuana at the house on a previous occasion, telephoned the victim's mother to inquire about a purchase, but the phone call ended with a request by Ms. Black that they leave the house. Defendants left the house and went to a neighborhood park where Timothy Mosely overheard them discussing "something about killing something or someone." Mosely testified that

the three returned to the Black residence, where they were again admitted by the victim, on the pretense of needing to use the bathroom: Mosely further testified that after gaining entrance, Kevin Manieri came out of the bathroom with a rubber hose which he used to strangle Chris Black. The other boys ransacked the house in search of marijuana. In order to appear as though a robbery had occurred Kevin Manieri broke the back door upon leaving the house.

On October 14, 1977, Kevin and Sheldon Manieri were indicted for first degree murder. The jury returned a unanimous verdict of guilty as charged against both defendants. The jury recommended that the defendants be sentenced to life imprisonment without the benefit of parole, probation or suspension of sentence. On December 13, 1979, both defendants' convictions and sentences were affirmed.

- (4) State of Louisiana vs. Anthony Riggins**
Docket No. 77-1342 Division "K"
Crime Convicted: First Degree Murder
Sentence: Life
***State v. Riggins*, 388 So.2d 1164 (La. 1980)**

Anthony Riggins murdered Peter M. Davenhauer, an unarmed 68 year old man, while he was in the process of closing his place of business located in Gretna, Louisiana. A witness testified that Davenhauer never carried any type of weapon on his person. Riggins shot the victim approximately four times with a .38 caliber handgun. Davenhauer fell to the ground after the first shot. Riggins then stood over Davenhauer and shot him in the face and head until the gun was empty. There was an eye-witness who testified to the shooting at the trial. Riggins later told Karl Lewis about the shooting and left the gun with Lewis. Lewis concealed the gun at his home. The gun was found and used as evidence. Riggins was arrested while under his house.

Anthony Riggins was indicted for first degree murder, tried and found guilty as charged. On November 23, 1977, defendant was sentenced to life imprisonment. On

September 10, 1980, defendant's sentence and conviction were affirmed.

- (5) **State of Louisiana vs. Winston Love**
Docket No. 78-774 Division "G"
Crime Convicted: First Degree Murder
Sentence: Life
Remanded, New Conviction: Manslaughter
Remanded, New Sentence: 21 Years
***State v. Love*, 410 So.2d 1045 (La. 1982)**

At approximately 6:00 a.m. on December 10, 1977, the body of the victim was found lying in front of an apartment on Warren Street in Kenner, Louisiana. The victim, who had been shot once in the head, was identified as David Epperson. Investigation by the police led them to the Who Cares Lounge, where interviews with lounge employees and patrons revealed that the victim had left the bar earlier that morning, at about the same time as defendant. A lounge employee, Bonnie Lamkin, recalled being introduced to Love that morning by a longtime customer named Steve Henthorne. Henthorne had asked Lamkin to place Love's pistol behind the bar and was given permission to do so himself. On the afternoon after Epperson's murder, Lamkin checked the cabinet where Henthorne had placed the pistol and it was no longer there. Defendant's former girlfriend testified that Love had blood on his clothing when he came home on the morning of December 10, 1977. Another of defendant's girlfriends testified that in February of 1978 Love told her that he had once killed a man.

Winston Love was found guilty of first degree murder and sentenced to life imprisonment without benefit of parole, probation or suspension of sentence. On March 1, 1982, the Supreme Court reversed and remanded Love's conviction and sentence. Subsequently, Love pled guilty to manslaughter.

- (6) **State of Louisiana vs. Richard E. Butler**
Docket No. 78-1329 Division "C"
Crime Convicted: Manslaughter
Sentence: Five Years
***State v. Butler*, 388 So.2d 1164 (La. 1980)**

On the evening of May 26, 1978, the defendant Richard Butler was at Aaron's Lounge in Harvey. Present that evening was also the defendant brother-in-law, Joseph Tate. Three eye-witnesses testified at trial that they observed the defendant engage in a scuffle with Tate, and shoot him in the head at close range, killing him. The defendant was arrested on May 27, 1978, after having been advised of his Miranda warnings. A search of defendant's car pursuant to a search warrant produced the weapon used in the shooting. After arriving at the Jefferson Parish Sheriff's Office, defendant was again advised of his rights, and after he signed the standard rights form, the defendant made an oral statement to the police admitting the shooting, but denying that it was intentional.

On September 29, 1978, a bill of indictment was filed charging the defendant with first degree murder. At trial the defendant took the stand in his own defense admitting there was an argument between himself and the victim, but denying the shooting.

On November 9, 1978, a jury of twelve returned a verdict of guilty of manslaughter after approximately three hours of deliberations. Butler's conviction and sentence were affirmed September 10, 1980.

- (7) **State of Louisiana vs. Benjamin Berry**
Docket No. 78-2151 Division "B"
Crime Convicted: First Degree Murder
Sentence: Death
***State v. Berry*, 430 So.2d 1005 (La. 1983)**

On January 30, 1978, at approximately 11:15 a.m., Benjamin Berry walked into a Metairie Bank and Trust Company, drawing a gun. The defendant shot at the policeman on security guard duty, Robert Cochran. Shots

were fired: one hit the policeman in the arm, causing him to fall to the floor, and a subsequent shot was fired into the back of his head. At the time of the shooting, there were approximately twelve people in the bank. Deputy Cochran did fire one shot with his service revolver, which struck defendant. The defendant was seen running out the bank after the shooting. After an investigation, a warrant was obtained to search the body of the defendant. The search revealed one spent pellet taken from the defendant's back. Deputy Cochran subsequently died from a bullet wound to the head.

On September 5, 1978, a grand jury indictment was filed charging the defendant with first degree murder. The three aggravating circumstances returned under La. C.Cr.P. art. 905.4 were: offender engaged in the perpetration of armed robbery; the victim was a policeman engaged in lawful duties; more than one person's life was in danger. The defendant took the stand in his own defense, alleging that he did in fact plan an aimed robbery, but that the police officer was not intentionally shot.

Benjamin Berry's conviction and sentence were affirmed on appeal and on June 7, 1987, he was executed.

- (8) State of Louisiana vs. Henry Moses and Joseph Wilson**
Docket No. 78-2490 Division "F"
Crime Convicted: First Degree Murder
Sentence: Life
Remanded, New Conviction: Manslaughter
Remanded, New Sentence: 37 Years
State v. Wilson, 404 So.2d 968 (La. 1981)

The incident took place on Sunday, September 17, 1978, at the Oakwood Shopping Center in Gretna. The victim and approximately eighteen other males had gathered in the shopping center. Most of these individuals belonged to a group known as the King of Kegs. The group was drinking beer and generally conversing among themselves. Wilson and Moses were also in the parking lot when a confrontation took place between them and the group of

white men, in the course of which defendants pulled out their guns and fired several shots. One of the bullets struck the victim, fatally wounding him. Immediately thereafter, some of the men in the group severely beat Moses, and ran over Wilson with a van for the ostensible purpose of self-defense, or arrest, or both.

Wilson and Moses were indicted, tried and convicted of first degree murder and sentenced to life imprisonment. On September 28, 1981, the Supreme Court reversed and remanded the convictions and sentences of both defendants. After remand, both defendants entered pleas of guilty and were sentenced as multiple offenders.

- (9) State of Louisiana vs. Reginald Smith**
Docket No. 78-2600 Division "A"
Crime Convicted: First Degree Murder
Sentence: Death
***State v. Smith*, 391 So.2d 1182 (La. 1980)**

The victim, Conrad Saluto, and three companions had driven into the crowded parking lot of the Courtyard Lounge in Marrero near Barataria Boulevard on the service road which runs parallel to the West Bank Expressway. According to testimony adduced at trial, one of the victim's companions was parking his car in the parking lot, and the victim and his two other friends were standing near a parked car at the corner of the parking lot. As they were talking, they heard what sounded like gunshots coming from the service road area. They immediately began running away from the direction in which the shots were fired. The victim was shot once in the back and died en route to the hospital. None of the victim's friends saw the assailant.

There was one eyewitness to the shooting, Mark Alley, who was driving on the West Bank Expressway, and was stopped for a red light when he heard a gunshot. He looked toward the source of the sound and saw a man with a gun standing in the service road area facing the lounge parking lot. A second man was running toward Barataria on the service road. The man with the gun fired two additional

shots in the direction of the parking lot, and the man running stopped and looked back toward the parking lot. The pair began running down Baratavia across the West Bank Expressway directly in front of Alley's truck. At first Alley followed the pair to a food store parking lot. He abandoned his pursuit when he saw a sheriff's unit, which he followed to the hospital.

Smith was indicted, tried and found guilty of first degree murder and sentenced to death. The knowing creation of risk of death or great bodily harm to more than one person was indicated as the aggravating circumstance. Smith died of natural causes in January of 1983.

- (10) State of Louisiana vs. Paul C. Hartman**
Docket No. 78-2928 Division "I"
Crime Convicted: First Degree Murder
Sentence: Life
***State v. Hartman*, 388 So.2d 688 (La. 1980)**

On December 4, 1978, the defendant stopped at the Tiki Lounge in Jefferson Parish to talk to his ex-girlfriend, Linda Creppel. When he entered the lounge, he saw Ms. Creppel dancing with Johnny Schwartz. The defendant, angered by his observation, started an argument with Ms. Creppel and Schwartz. After hostile words were exchanged, the defendant went to get his knife from his truck and returned to the bar. The argument continued and an altercation ensued between the defendant and Schwartz. During the struggle, the defendant fatally stabbed Schwartz. Hartman was convicted of first degree murder and sentenced to life imprisonment without benefit of parole, probation or suspension of sentence. His conviction and sentence were affirmed on September 3, 1980.

- (11) **State of Louisiana vs. William Barnes**
Docket No. 79-1376 Division "B"
Crime Convicted: First Degree Murder
Sentence: Life
***State v. Barnes*, 414 So.2d 711 (La. 1982)**

The victim was sitting in his car in a parking lot when all of a sudden another car, with the defendant William Barnes and codefendant Junior Bazile in it, pulled beside him. Barnes walked to the victim's car, pulled out a revolver and "executed" him. The first shot smashed the car window and the second shot was fired as the defendant placed the gun on the man's chest. A cab driver happened to be passing the scene, heard a shot and as he looked up, he saw defendant thrust his arm into the driver's side of the vehicle and fire a second shot. The victim died of a bullet through the heart. The eyewitness radioed a description of the killers to the police and followed the fleeing defendants until the police actually stopped the getaway car. The cab driver never lost sight of the defendants in the chase. The arrest was made by the police in hot pursuit of the defendant. The crime occurred on May 20, 1979, requiring prosecution under the statute which was in effect prior to the repeal of the first degree murder statute by Acts 1979, no. 74, effective June 29, 1979. The eyewitness specifically testified he witnessed the incident from about 100-125 feet from the scene. He also positively identified defendant as the killer.

Barnes was found guilty of first degree murder and after two hours of deliberations without any indication of deadlock, was sentenced to serve life imprisonment without benefit of parole, probation or suspension of sentence. On November 21, 1981, Barnes' conviction and sentence were affirmed.

- (12) **State of Louisiana vs. David Raymond**
Docket No. 79-233 6 Division "B"
Crime Convicted: First Degree Murder
Sentence: Life
State v. Raymond, 412 So.2d 107 (La 1982)

Melvin Guidry, a clerk at Coulon's Hardware Store, testified that David C. Raymond entered the store and asked Donald Coulon, the owner of the store, for an 18-shot pistol. The defendant pulled out a .38 special, pointed the gun at Donald Coulon's face, and demanded bullets for a .45 Browning automatic. Melvin Guidry testified that the defendant said, "If you don't give it to me, I'll shoot you," when Donald Coulon did not surrender the ammunition. Donald Coulon then rushed the defendant, Melvin Guidry attempted to grab the gun, and the gun went off. Donald Coulon was mortally wounded. Melvin Guidry, who was also shot, fled and sought help across the street. Melvin Guidry positively identified the defendant as the assailant. Raymond was indicted, tried and found guilty as charged. Killing while engaged in a felony and intent to kill more than one person were the two aggravating circumstances.

He was sentenced to life imprisonment without benefit of parole, probation or suspension of sentence. On April 14, 1982, Raymond's conviction and sentence were affirmed by per curiam.

- (13) **State of Louisiana vs. Charles Lane**
Docket No. 79-2841 Division "G"
Crime Convicted: First Degree Murder
Sentence: Life
State v. Lane, 414 So.2d 1223 (La. 1982)

On September 28, 1979, the Gretna Police Department responded to a request to proceed to 928 Porter Street, Gretna, in reference to an aggravated battery. Upon arrival at the residence they found Frances Arwood badly beaten, extremely burned, mutilated and, for all intents and purposes, clinically dead. She was immediately transferred to West Jefferson Hospital in a comatose state. Shortly thereafter she was transferred to Charity Hospital's burn

unit where she remained for approximately two months before she died.

The evidence revealed that Robert Sawyer and Charles Lane returned to the above stated residence on the morning of September 28, 1979, after they had been drinking the night before. At the residence they met Cynthia Shano, who was Robert Sawyer's common law wife, and the victim, who was a friend of Shano's and also the babysitter of Shano's two children: Wayne, age four and Troy, age two.

Sometime that morning an argument ensued between Sawyer and Arwood and Arwood was administered a beating by Sawyer. Tempers cooled for a short period of time, but Sawyer, for whatever reason, began punching and kicking the victim over all parts of her body. At this point Lane also began to participate in the attack. Ms. Arwood, after having been severely beaten by both defendants, was ordered into the bathroom to clean up. When she refused to get into the tub, Sawyer gave her a karate kick to the chest whereupon she was knocked against the side wall of the tub and she fell into the tub. Lane then lifted her from the bathtub and undressed her. Sawyer went into the kitchen with Shano after he told Lane to watch the woman in order that she might not escape. Lane did so, closed the door and raped Arwood as she was lying semiconscious in the tub. About fifteen minutes later, after Sawyer became impatient as to what was taking Arwood so long to clean up, he proceeded into the bathroom with a coffee pot of scalding hot water and poured the same over the victim's head with some Tide detergent. Lane began dunking the woman's head under the water that was drawn into the tub and he also began punching her in the face. Sawyer yanked Ms. Arwood out of the tub by her hair, when she resisted Sawyer again gave her a karate kick into the chest causing the victim to smash her head on the wall next to the bathtub, never to regain consciousness.

She was then moved from the bathtub by Sawyer, who grabbed her by the scalp and Lane, who held her feet, and dropped her face down on the floor in the hallway. At this point, Sawyer began beating Ms. Arwood's nude body with

a thick belt while he was walking on her back; and Lane had begun kicking Ms. Arwood in the ribs. Finally, after repeated requests of Ms. Shano to leave Ms. Arwood alone, Ms. Arwood was dragged into the living room and placed on a sofa bed. While on the sofa bed, Ms. Arwood was once again raped by Charles Lane and subsequently set on fire by Sawyer during the course of Lane's act. The police arrived on the scene shortly thereafter upon the request of Mrs. Champagne, Shano's sister, who had arrived on the scene to relay a message to Ms. Shano about their mother.

Charles Lane was tried and found guilty of first degree murder and sentenced to life imprisonment without benefit of parole, probation or suspension of sentence. On May 17, 1982, the Supreme Court affirmed the conviction and sentence of Charles Lane.

(14) State of Louisiana vs. Robert Sawyer
Docket No. 79-2841 Division "G"
Crime Convicted: First Degree Murder
Sentence: Death
Sawyer v. Louisiana, 104 S. Ct. 1719
Sawyer v. Louisiana, 103 S. Ct. 1223
State v. Sawyer, 422 So.2d 95

Robert W. Sawyer was charged with the first degree murder of Frances Arwood, this crime occurring on September 28, 1979. After trial by jury, he was sentenced to death on September 19, 1980.

On October 18, 1982, the Supreme Court affirmed the conviction and sentence of Robert Sawyer. Defendant's conviction and sentence were affirmed by the U.S. Supreme Court, and in March of 1993, defendant was executed by lethal injection.

For a complete factual recitation of the case, please refer to the facts of the immediate preceding case of Charles Lane, No. (13).

In addition, the State would respectfully submit that three aggravating circumstances were found by the jury, to wit:

1. the defendant was engaged in the perpetration of aggravated arson;
2. the defendant had a prior conviction for an unrelated murder;
3. the offense was committed in an especially cruel manner.

(15) State of Louisiana vs. Tyronne Lindsey
Docket No. 80-200 Division "I"
Crime Convicted: First Degree Murder
Sentence: Death
State v. Lindsey, 428 So.2d 420 (La. 1983), 543 So.2d 886 (La. 1989);
Lindsey v King, 769 F.2d 1034 (5th Cir. 1985)

On the evening of December 19, 1979, at approximately 7:30 p.m., John Knoph and Steven Birks were preparing to exit the Oakwood Shopping Center located in Jefferson Parish. The two men had just exited the mall and were walking in the parking lot toward their car when they heard muffled screams behind them. Sensing that something was wrong, the men began walking back toward the mall. They isolated the direction of the scream to a narrow space between two parked cars. The passenger door on one of the cars was opened and facing them. As they watched, the head of a man, later identified as that of Tyronne Lindsey, popped up and was visible through the passenger door window. Suddenly, the man ducked down and ran toward the back of the car and then began running down the parking aisle. Then a woman, later identified as the victim, stood and ran from the same spot. Knoph, assuming the woman was not seriously injured, began running down the next aisle parallel to the man and Birks ran between parked cars to get into the same aisle as the man. The man then turned and pointed a pistol at Knoph. Knoph and Birks retired from the chase and the man escaped. When they returned to examine the woman, they discovered that she had been shot in the back.

The woman, Earline Kidner, died of a gunshot wound to the back on December 29, 1979. Based on a photographic lineup identification by Knoph, Lindsey was

arrested for murder. Edward Beckeridorf of the Jefferson Parish Sheriffs Office obtained a statement from Tyrone Lindsey in which he admitted his complicity in a scheme to rob Oakwood Shopping Center patrons but claimed that someone named "Sidney" shot Earline Kidner.

At trial, defendant presented an alibi defense, attempting to show that he was at his girlfriend's apartment on the evening of the murder.

On September 8, 1981, defendant's conviction was affirmed but the sentence was vacated and remanded for resentencing. On remand to the Twenty-Fourth Judicial District Court, Lindsey was again sentenced to death. On February 23, 1983, that sentence was affirmed. The Supreme Court recently denied writs on defendant's state application for post-conviction relief. His federal habeas corpus petition has recently been stayed pending exhaustion of new claims in state court.

On August 13, 1985, the United States Court of Appeals for the Fifth Circuit reversed and remanded and ordered Lindsey a new trial. Lindsey was retried, found guilty as charged and sentenced to death. This sentence was affirmed by the Louisiana Supreme Court on May 1, 1989. On April 7, 2004, he was resentenced to life pursuant to *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242 (2002).

(16) State of Louisiana vs. Kenneth Sharp
Docket No. 80-566 Division "H"
Crime Convicted: First Degree Murder
Sentence: Life
***State v. Sharp*, 418 So.2d 1344 (La. 1982)**

Kenneth Sharp, Jr., left his residence to watch the residence of Joseph G. Bobinger and Bernadine Bobinger, although he carefully parked quite a distance away. Because of a marital breakup, Betty Sharp and her children had taken up residence with her brother and sister-in law, the victims.

Eventually Sharp's surveillance led him to the bushes outside the victims' home. When Betty Sharp opened the door to allow her children to exit for a Mardi Gras parade, she spotted the defendant hiding in the bushes; he came to the door and then literally forced his way in. Like so many times in the past, the discussion turned to argument over the marital situation and the defendant became hostile and was asked to leave. Seeing the defendant's mounting rage and his refusal to leave, Betty Sharp went to summon the Bobingers who were resting in their den. Upon struggling with the defendant, Betty Sharp had spotted a knife lying where the defendant had previously sat.

The Bobingers' attempt to get the defendant to leave resulted in the defendant stabbing them to death; Bernadine Bobinger first then Joseph Bobinger.

Police and emergency units arrived shortly thereafter. Betty Sharp named her husband Kenneth J. Sharp as the assailant and he was arrested outside a Time Saver store a short while later.

Kenneth Sharp was convicted of first degree murder and subsequently sentenced to life imprisonment. On July 2, 1982, the Supreme Court affirmed the conviction and sentence of Kenneth Sharp.

(17) State of Louisiana vs. William Tuckson
Docket No. 80-2132 Division "K"
Crime Convicted: First Degree Murder
Sentence: Life
***State v. Tuckson*, 414 So.2d 360 (La. 1982)**

In the early morning hours of July 13, 1980, defendant broke into a truck parked about two blocks from the apartment of his girlfriend's mother. He popped a small side window with a screwdriver to unlock the door. He then reached under the seat of the truck and found a pistol but did not check whether it was loaded or not. Defendant stole a ring, an eight track tape and a C.B. radio which he loosened with pliers. While still in the truck, he heard someone holler. Defendant then jumped from the truck as

James Johnson entered the truck. He ran around the front of the truck to scare Johnson. He saw Johnson leaning over as if reaching under the seat at which time defendant fired into the front driver's window of the truck. After shooting the gun, defendant picked up the goods which he had removed from the truck and ran to his girlfriend's mother's apartment. Once there, he undressed and fell asleep on the couch.

The police learned that William Tuckson had been seen running from the area shortly after the gunshot was heard. The police were led to the girlfriend's mother's apartment where they knocked on the door with a normal rap. They were freely admitted to the apartment where they found defendant sleeping on the couch. Defendant was advised that he was under investigation for the murder of Johnson and orally recited his rights. After defendant was handcuffed, he was taken to police headquarters, where he signed a waiver of rights form, declined the presence of a lawyer, and gave a taped inculpatory statement.

After defendant was removed from the apartment, the police obtained permission from the lessee, Gwendolyn Walker, to search. They retrieved the .38 caliber pistol, the screw driver, the pliers, and a man's ring. Defendant's clothing, which he put on to go to the police station, was later obtained as evidence.

On December 9, 1980, William Tuckson was found guilty of first degree murder and sentenced to life imprisonment. On May 17, 1982, the Supreme Court set aside the conviction of first degree murder and remanded for the entry of guilty of second degree murder. The sentence was affirmed.

- (18) **State of Louisiana vs. Jimmy Robinson**
Docket No. 80-2360 Division "C"
Crime Convicted: First Degree Murder
Sentence: Death
Remanded, New Conviction: First Degree Murder
Remanded, New Sentence: Life without benefit of
parole, probation or suspension of sentence
***State v. Robinson*, 421 So.2d 229 (La. 1982)**

On August 5, 1980, defendant and Keith Stewart knocked at the door of the apartment of Mrs. Joyce Waites, who managed an apartment complex. They told Mrs. Waites that they wanted to apply for a job, but they left when she advised that there were no positions available. Approximately thirty minutes later, Mrs. Waites answered another knock at the door and was confronted by the same two men, who drew guns and demanded money. When Mrs. Waites pointed to her purse, defendant placed a gun against her head and told her to lie on the floor.

Defendant held the gun to Mrs. Waites' head, while Stewart search [*sic*] the house for valuables. Mrs. Waites warned that her husband was coming home for lunch soon and begged them to leave, but they did not do so. When her husband arrived, defendant and Stewart used the gun to require him to lie on the floor next to Mrs. Waites. Defendant then made Mrs. Waites accompany him upstairs to search for more money. When they came back downstairs, defendant again told her to lie on the floor next to her husband.

Mrs. Waites told defendant that she could not stop shaking and asked for a cigarette, which defendant gave her. At defendant's instruction, she place [*sic*] her head on the floor and closed her eyes. When she heard a shot, she looked up and started screaming when she saw that her husband had been shot. Defendant placed the gun against her head and told her to shut up or she would be next. Shortly thereafter, defendant and Stewart left the apartment. They took the stolen money and fled in the Waites' car.

Mr. Waites died of a gunshot wound to the head. Later the same day, defendant was arrested and confessed to the shooting, but claimed that the gun went off accidentally. Defendant admitted, however, that the hammer of the gun was cocked prior to the shooting.

On August 22, 1980, a grand jury indictment was filed against defendants Jimmy Robinson and Keith Stewart for the first degree murder of Garland Waites, Jr.

On January 5, 1981, Jimmy Robinson was tried separately before a jury and found guilty as charged. On January 8, 1981, the jury recommended that the defendant be sentenced to death, finding the following aggravating circumstances:

1. the offender was engaged in the perpetration of aggravated burglary;
2. the offender has a significant prior history of criminal activity;
3. the offender knowingly created a risk of death or great bodily harm to more than one person;
4. the offense was committed in an especially heinous, atrocious or cruel manner;
5. the victim was an eyewitness to a crime alleged to have been committed by defendant.

On October 18 1982, the Supreme Court affirmed the conviction, but set aside the sentence, remanding the matter for the trial court to conduct a new sentencing hearing.

On remand the defendant was sentenced to life.

- (19) State of Louisiana vs. Keith Stewart**
Docket No. 80-2360 Division "C"
Crime Convicted: Second Degree murder
Sentence: Life
State v. Stewart, 437 So.2d 872 (La. 1983)

Keith Stewart was indicted for first degree murder of Garland Waites. Stewart was tried separately before a jury and found guilty of second degree murder and sentenced to life imprisonment without benefit of parole, probation or suspension of sentence.

On September 2, 1983, Stewart's conviction and sentence were affirmed in a per curium opinion.

For a full detailed description, please see the facts recited immediately above in No. (18).

- (20) State of Louisiana vs. Johnny Taylor**
Docket No. 80-2388 Division "D"
Crime Convicted: First Degree Murder
Sentence: Death
State v. Taylor, 422 So.2d 109 (La. 1982)

The victim, David Vogler, received a telephone call around 8:45 p.m. from a black male about an automobile which Vogler had placed for sale in the parking lot of Barker's in Kenner, Louisiana. Vogler left his home in his Cadillac to show the red 1976 Buick Regal to the inquirer. Around 12:45 a.m., Mrs. Vogler went to the parking lot in search of her husband along with her sister and her sister's boyfriend. The red Buick was missing; the Cadillac was parked in the lot. Mrs. Vogler looked in the Cadillac window and saw her husband's coat on the front seat. She saw two police cars stopped in the lot and asked the officers if they had seen the Buick. They assured her that they would be on the lookout for it. Mrs. Vogler then returned to her mother's house where she spent the night. At 9:00 o'clock the next morning she returned to the parking lot with her brother-in-law, Larry Huesman. Huesman looked inside the Cadillac and saw blood on the upholstery. Fearing foul play, Huesman dropped Mrs. Vogler off and called the

police. He met Officer Averett back at the parking lot and gave the officer Mrs. Vogler's extra set of keys. When Officer Averett opened the trunk, he saw the body of David Vogler. An autopsy revealed that David Vogler died from multiple stab wounds.

Defendant was subsequently arrested for an unrelated auto theft and incarcerated in Butler, Alabama. Two statements were given by Taylor; neither statement satisfactorily explained how the accused came into possession of the Buick Regal. The defendant's finger and palm prints were taken. These prints, along with those taken from the Cadillac, were sent to the FBI. The two sets of prints matched the partial palm print from the outside trunk lid based on forty points of identification. Sample of hair taken from defendant during the interview showed similar characteristics to the hair found in the Cadillac.

Johnny Taylor was charged with the first degree murder of David J. Vogler and was subsequently sentenced to death. On October 18, 1982, the Supreme Court affirmed the conviction and sentence of Johnny Taylor. Johnny Taylor was executed February 29, 1984.

(21) State of Louisiana vs. Glenn M. Moore
Docket No. 80-2561 Division "C"
Crime Convicted: Second Degree Murder
Sentence: Life
State v. Moore, 412 So.2d 108 (La. 1982)

The victim died as a result of a bullet wound in the left chest which severed the aorta of the heart causing Clarence Lanis to bleed to death in a matter of seconds. In addition, evidence was submitted indicating the defendant not only killed Clarence Lanis but he also shot Diane King, who was sitting in the car with Laths and who was wounded in the leg.

Diane King, the second target, testified that Moore was indeed the man who shot and killed the victim and also shot at her. She had known Moore prior to the shooting. She testified that Moore was standing by the passenger window

by the driver's side when he shot the deceased and then her in both legs. She further testified she had lived with the defendant from March until June, 1980.

Diane King also testified that Moore had telephoned prior to the trial and threatened her that he would kill her if she told the police that he did it. He offered her \$1400.00. She described how Moore had laid in wait for the victim.

Glenn Moore was charged by grand jury indictment on September 19, 1980, for the first degree murder of Clarence R. Lanis. On January 21, 1981, Moore was found guilty of second degree murder and sentenced to serve life imprisonment without benefit of parole, probation, or suspension of sentence. Glenn Moore's conviction and sentence were affirmed by the Louisiana Supreme Court without opinion.

(22) State of Louisiana vs. James Smith
Docket No. 80-2995 Division "H"
Crime Convicted: Second Degree Murder
Sentence: Life
***State v. Smith*, 416 So.2d 1301 (La. 1982)**

On February 8, 1980, Mr. Kenneth Dabog was at home at approximately 11:20p.m. when a neighbor, Mr. Roger Allemand, telephoned him to say that someone was breaking into the home of another neighbor, Mr. Herman Hunter. Mr. Allemand instructed Mr. Dabog to meet Mr. Allemand at the neighboring house. Upon arriving, Mr. Dabog then heard Mr. Allemand yelling, "He ran out. He is coming out the back door." Mr. Dabog overheard a body fall against the Herman house. He also heard six to eight gunshots fired. Roger Allemand fell to the ground. Mr. Dabog shouted "come out," while holding a gun. The defendant, Henry James Smith, then came out, carrying a gun. The police were subsequently called and the defendant was arrested pursuant to a search warrant of his residence. Once the defendant was in custody and had been given his *Miranda* warnings, he gave a voluntary statement to police after having conferred with his step-father. This statement said that he shot at random during the breaking and

entering of Herman's home, after he himself had been shot. The defendant gave a voluntary statement to police after repeated *Miranda* warnings as well as opportunity to confer with his step-father, implicating himself in the breaking and entering of the home of Mr. Herman, as well as the shooting itself. There was ample testimony both at the Motion To Suppress as well as at trial that there was no coercion, threats or promises made to the defendant during questioning. Mr. Allemand subsequently died of a gunshot wound to the lung.

On October 31, 1980, Henry James Smith, 16, was charged with the first degree murder of Roger Allemand. On March 12, 1981, the defendant was found guilty of second degree murder and was sentenced to life imprisonment on April 16, 1981. On May 26, 1982, the Supreme Court affirmed his conviction and sentence.

(23) State of Louisiana vs. Sabrina Parks
Docket No. 80-3493 Division "C"
Crime Convicted: Second Degree Murder
Sentence: Life
***State v. Parks*, 422 So.2d 1164 (La. 1982)**

The facts reveal that defendant's husband, Jimmy Parks, had been working for Stone Oil Company. On December 25, 1980, he returned to Gretna and was paid. On the same day, defendant's lover, David Carbo, executed Jimmy Parks, took his paychecks from him and gave the checks to defendant, who cashed them the next day. Defendant and Carbo had an agreement that they would split the proceeds of any insurance policy on the victim. Testimony revealed that defendant fully assisted Carbo in the scheme to kill her husband. Jimmy Parks died as a result of a gunshot wound to the back of the head.

Following a three day trial by jury, defendant Sabrina Parks was convicted of second degree murder and, on June 5, 1981, defendant was sentenced to life imprisonment without benefit of parole, probation or suspension of sentence. On December 10, 1982, the Supreme Court affirmed the conviction and sentence of Sabrina Parks.

(24) State of Louisiana vs. David B. Carbo
Docket No. 80-3493 Division "C"
Crime Plead: Second Degree Murder
Sentence: Life

On October 26, David Carbo was charged with the first degree murder of Jimmy Parks. On June 5, 1981, defendant plead guilty to second degree murder and was sentenced to life imprisonment without benefit of parole, probation or suspension of sentence. He was a co-defendant with Sabrina Parks, above.

For a full detailed description, please see the facts recited immediately above in No. (23).

(25) State of Louisiana vs. Juan A. Dupiere
Docket No. 81-573 Division "M"
Crime Convicted: Second Degree Murder
Sentence: Life

Testimony reveals that defendant was at a party at the home of Joseph Mangerchine (who was indicted on first degree murder charges along with defendant), where a substantial quantity of alcohol and drugs were consumed. During the course of the evening, Juan Dupiere asked Joseph Mangerchine if he would assist him in committing an armed robbery, Mangerchine agreed, and even secured a gun for the purpose. Eventually the two ended up in Mangerchine's car on Jefferson Highway, and pulled into the Model Motel. At that point, defendant exited the car and went inside. Within seconds, according to the testimony of Mangerchine, Dupiere came running out, jumped into the car, and told Mangerchine that he had to shoot the manager inside the motel.

Testimony also revealed that the two left the scene, but returned a little later in a different car to see what was going on. Mangerchine went into the motel and found the victim dead on the floor. He then stole money from the cash register, picked up the gun, and went outside to make a phone call. Seeing a policeman across the street, he and defendant

went to tell him about the victim, alleging that they had come to get a room at the motel. Mangerchine and Dupiere gave statements to police at this time (December 22, 1980) each using the same story.

Later, on February 5, 1981, after further investigation, defendant was arrested by police. Defendant signed a waiver of rights form and gave a statement to police blaming the whole incident on Mangerchine.

Under indictment for first degree murder, the defendant was tried and convicted unanimously of second degree murder on October 20, 1981. On September 9, 1982, the Supreme Court affirmed the conviction and sentence of defendant Juan Dupiere.

(26) State of Louisiana vs. Joseph Mangerchine
Docket No. 81-573 Division "M"
Crime Convicted: Manslaughter
Sentence: 21 Years

An indictment was filed against Joseph Mangerchine and co-defendant on February 20, 1981, charging them with the first degree murder of Theodore Martson. As a result of a plea bargain arrangement, Mangerchine pled guilty to manslaughter and armed robbery, and testified that the defendant Juan Dupiere actually was the person who shot the victim. On October 19, 1981, Joseph Mangerchine entered a plea to manslaughter and was sentenced to 21 years at hard labor.

For a full detailed description, please see the facts recited immediately above in No. (25).

(27) State of Louisiana vs. Herman Billiot
Docket No. 82-665 Division "H"
Crime Convicted: Second Degree Murder
Sentence: Life
State v. Billiot, 421 So.2d 864 (La. 1982)

A homicide was committed by defendant Herman Billiot and his codefendant John O. Shilling. Through the

testimony of two female eyewitnesses, it was proven that Billiot, Shilling and another unidentified male were out on the town visiting various Gretna and Marrero nightspots. Late in the evening they met with Pamela LeBlanc at one of these nightspots and still later met with Stephanie (Penny) Plaisance at another nightspot. This group went to yet another bar where Ms. LeBlanc met the victim, James Stache. After they had all consumed some unknown quantity of beer, the party of six left in Shilling's automobile traveling towards Lafitte. The unidentified male passed out in the car and remained unconscious for the remainder of the night.

On the way to Lafitte, in the early predawn hours, Shilling stopped his automobile twice, presumably so he and the others could answer the call of nature. The first place he stopped was too well lit and there were too many people nearby watching another car on fire. Shilling then drove down the road a little further and stopped a second time. The victim, with the help of the defendants, got out of the car and walked about ten feet from the side of the vehicle. Billiot and Shilling began to beat and kick the victim, both pulling knives to cut and stab him. The defendants beat the victim senseless and robbed him of \$30.00. Billiot and Shilling then returned to the others and drove away to Shilling's residence in Lafitte, leaving the victim for dead on the side of the road. Soon after arriving at this residence, Shilling and Billiot left the two women and returned to the scene of the initial attack to find Shilling's lost knife. When they arrived, they found the missing knife and the victim, still alive, trying to hitchhike.

The defendants put the victim into their automobile and drove a little further down the road to a more secluded spot. There they dragged the victim from the back seat and out to the edge of a bayou; each of them punching the victim in the throat, Billiot first, then Shilling, whereupon Shilling then slit the victim's throat with his knife; pushed his head under water and stood on him until the victim eventually drowned. The defendants returned to Shilling's residence to pick up the two women and take them home, telling them how they had finished off the victim. Shilling also

threatened the women with death if they told anyone about the killing.

Herman Billiot was tried by a jury for the first degree murder of James Stache. Billiot was convicted of second degree murder and sentenced to life imprisonment. The Supreme Court affirmed Billiot's conviction and sentence on October 18, 1982.

(28) State of Louisiana vs. John O. Shilling
Docket No. 81-665 Division "II"
Crime Convicted: First Degree Murder
Sentence: Life
State v. Shilling, 440 So.2d 110 (La. 1983)

On July 27 and 28, 1981, John Shilling was tried for the first degree murder of James Stache. On July 29, 1981, he was convicted of first degree murder and on September 4, 1981, sentenced to life imprisonment. On October 17, 1983, the Louisiana Supreme Court affirmed defendant's conviction and sentence.

For a complete factual recitation, please see the facts related under No. (27) immediately above.

(29) State of Louisiana vs. Lane C. Nelson
Docket No. 81-3248 Division "A"
Crime Convicted: First Degree Murder
Sentence: Death
Remanded, New Conviction: Second Degree Murder
Remanded, New Sentence: Life without benefit of parole, probation or suspension of sentence
State v. Nelson, 459 So.2d 510 (La. 1984)

A traffic accident occurred on Interstate 10 in Madison County, Florida. Lane C. Nelson was arrested for operating a motor vehicle under the influence of alcoholic beverages and taken to jail. In the course of doing his paperwork on the accident report, Trooper Melgaard engaged Nelson in general conversation and inquired about the ownership of the vehicle. Nelson said he had borrowed the rented

automobile from a friend in Louisiana to go to the store, and Trooper Melgaard suspected that the car might be stolen. During the course of the conversation Nelson volunteered: "Looking at me, you do not think I would kill anybody?" At this point, Trooper Melgaard broke off the conversation and summoned Officer William Pheil, who gave Nelson his *Miranda* rights. After those rights were fully explained and Nelson signed a waiver, the officer began to question him about his startling statement.

Nelson had been hitchhiking to New Orleans, when he was picked up by Beauvais Randall in Bankine, Louisiana. Randall, apparently a transvestite, was dressed like a woman. After Nelson told Randall that he had no money, Randall offered to pay Nelson for a photography session at Randall's apartment in New Orleans. Following an early morning arrival at Randall's apartment, the two men took a nap, and Randall showed Nelson magazine illustrations of women in bondage positions which he wished duplicated. Randall was trussed in ropes and Nelson took Polaroid photographs. During a break, Nelson received twenty dollars from Randall and purchased cigarettes, a pint of vodka, and two six packs of beer. Before Nelson left for the store, he retied Randall who performed oral sex on Nelson. Subsequently, there were approximately three hours of photography with Randall dressed in a woman's black slip and high heels. Randall then assumed men's clothes and the two went to a pizza parlor where Nelson drank beer. After they returned to Randall's apartment, Randall asked Nelson to tie him up again before Nelson left to do some laundry.

While doing the laundry, Nelson decided that he would leave in Randall's rented Mercury with Randall's money. When he announced his plan to Randall, the latter began to scream. Nelson then stabbed Randall repeatedly with an eight inch knife which had been in Randall's suitcase, took sixty-five or seventy dollars from Randall's jeans, and drove off in the Mercury. He intended to drive to Florida but went west instead of east and spent the night at a rest stop about one hundred miles from New Orleans, Nelson then retraced his steps to New Orleans and continued onto Florida where he picked up hitchhiker Wilhelm. Nelson told Wilhelm

about what had happened to Randall because he “had to tell someone.”

Lane C. Nelson was indicted, tried and found guilty of first degree murder and the jury recommended a sentence of death, finding as the aggravating circumstance that Nelson committed murder while engaged in the perpetration of an armed robbery. His conviction and sentence were affirmed on appeal on October 15, 1984. Defendant’s application in state court for post-conviction relief was denied. Prior to Nelson’s death sentence being carried out, his conviction was reversed and the matter remanded for retrial. He was subsequently convicted of second degree murder and given a sentence of life in prison without benefit of parole, probation or suspension of sentence.

(30) State of Louisiana vs. Louis J. Cruz
Docket No. 81-3523 Division “K”
Crime Convicted: First Degree Murder
Sentence: Life
State v. Cruz, 455 So.2d 1551 (La. 1984)

The badly decomposed body of twenty-two year old Susan Todorov was discovered floating in the Mississippi River in Jefferson Parish near Gretna. The body, clad only in a bra and blouse, was found about 30 feet from shore near a barge dock and other property owned by the J.W. Stone Oil Company. On the batture, between the levee and the water’s edge, were a pair of underpants, a shoe, a matchbook from Gatsby’s Lounge and a pack of Winston cigarettes, Cruz’s brand. On a wharf nearby, there was a woman’s silver chain minus its diamond pendant. Police observed footprints and drag marks, four to five feet down to the river. The clothing, shoe, and chain were identified as Todorov’s; a set of diamond earrings and a watch she was wearing when last seen were missing.

Todorov was last seen alive leaving Gatsby’s Lounge in Gretna with Louis Cruz, the defendant, on the evening of July 19. There was evidence that Todorov, Jo Alice Fitzhenry and Luis Cruz were smoking marijuana that evening. Jo Alice, Todorov and defendant went to

Todorov's fiancé's Trans Am together and Jo Alice put her brown purse, containing her wallet and house keys, under the passenger seat in the front of the car.

A Jefferson Parish detective, Officer Rees, saw Todorov, Jo Alice and Cruz standing by the Trans Am outside Gatsby's at about two in the morning. Later, Todorov left the lounge and Cruz walked out behind her. Officer Rees testified that Todorov and Cruz got into the orange Trans Am and drove away.

Cruz was next seen at 6:00 a.m. at the Sahara Lounge in Belle Chasse. A barmaid recognized him when she reported for work and also noticed an orange Trans Am parked nearby. Michael Bellamy testified that he saw Cruz about 9:00 a.m. in Belle Chasse when Cruz gave Bellamy a ride in an orange Trans Am, which he claimed was a "company" car. Sometime during the ride, Bellamy noticed an object under his feet which he found to be a brown lady's purse that had come from under the passenger's seat.

Later that day, credit card purchases were recorded in Gretna, Biloxi and Pascagoula on the accounts of both Susan Todorov and her fiancé. The manager of a shoe store in Biloxi recalled the sale. He picked out defendant's photograph from a line-up and made a positive in-court identification of Cruz as the man who had used the credit card.

Between 10.30 and 11 p.m. on the evening of Thursday, August 20, Jo Alice was at home putting her child to bed when she heard a noise. She looked up and saw Cruz standing outside at an opened unscreened window. He shook a set of keys, which she recognized as her own, and told her, "I'm going to kill you like I killed her." Jo Alice saw an orange Trans Am parked outside. She screamed and ran into the room where her sister and brother-in-law were sleeping. When Jo Alice returned with her brother-in-law to the window where she had seen Cruz, both he and the Trans Am were gone.

Officer Dunn and a New Orleans detective arrested Cruz and charge him with the murder of Susan Todorov. Cruz was tried and found guilty as charged. The jury was unable to reach a verdict at the sentencing hearing and Cruz was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The case was remanded to the trial court for consideration of Cruz's Motion for New Trial based on alleged new evidence. A hearing on the new trial was heard and denied in district court. Cruz's conviction and sentence were affirmed.

(31) State of Louisiana vs. James Flowers
Docket No. 81-3950 Division "J"
Crime Convicted: First Degree Murder
Sentence: Life
State v. Flowers, 509 So.2d 588
(La. App. 5 Cir. 1987)

A seventy year old widow who lived alone was brutally murdered in her home. The physical evidence indicated that she had been severely beaten, strangled and raped during a burglary. The assailant had broken a window and ransacked the house. Whether any of her property had been taken could not be determined immediately, however.

The next day an anonymous caller telephoned the Gretna Police Department and furnished information linking the defendant with the murder. According to the officer, the tip was to the effect that James Flowers, a black male, could be found in the area of Jefferson and Hamilton Streets driving a small white Chevette-type car containing one black male passenger and something taken from "that lady that was murdered on Jefferson Street yesterday."

At trial Flowers stated that he never entered the victim's home and that his participation in the crime was limited to helping the sixteen year old codefendant gain entrance into the home. The victim's screams caused the two defendants to seek shelter along a nearby railroad track, where approximately eighty dollars was divided. Flowers stated that he and his codefendant parted company with Flowers

returning to his home as the codefendant returned to the victim's house. Within thirty minutes the two were reunited along the railroad tracks and at this point, according to Flowers' statement, the jewelry which Officer Michel seized had been given to Flowers for safe-keeping.

The victim had extensive patterned abrasions and markings around her neck which matched the pattern in the soles of James Flowers' tennis shoes. The victim's jaw was broken, her teeth were knocked loose, and she had several broken ribs. The victim also suffered a massive hemorrhage to the neck. The autopsy report stated that death resulted from a subdural hematoma which in turn was a result of the severe trauma to her head.

Sherry Kirkland, a forensic biologist for the Jefferson Parish Sheriffs Office, stated that as a result of blood and vaginal swab tests, it was determined that Mrs. Malmstrom was raped by a person with type "0" blood. Furthermore, Flowers and Grant both had type "0" blood.

A true bill of indictment was returned against Flowers for the first degree murder of Madeline Malmstrom. Olin Grant's indictment was later amended to the charge of manslaughter. Flowers was found guilty of first degree murder with a recommendation for the death penalty by the jury. That conviction and sentence were affirmed on appeal.

On January 8, 1986, the United State Fifth Circuit Court of Appeal remanded the case for new trial. On August 1, 1986, defendant was found guilty of first degree murder and sentenced to life imprisonment without benefit of parole, probation or suspension of sentence. That sentence and conviction were affirmed on May 1, 1987.

- (32) **State of Louisiana vs. Robert Lee Butler**
Docket No. 82-2184 Division "C"
Crime Convicted: First Degree Murder
Sentence: Life
State v. Butler, 462 So.2d 1280
(La. App. 5 Cir. 1985)

During the early morning hours of May 29, 1982, both David Cruz, the man who was fatally shot that night, and Robert Butler, the accused in this case, happened to park their separate cars in the lot outside the Four Palms Lounge on David Drive in Metairie and to enter the nightclub. Cruz apparently went to the Four Palms Lounge to greet his friend Sal Soletto, who was playing in the band there. Robert Butler, it seems, just stopped by for a drink.

Robert Butler, who was prone to homicidal, irrational rages, became furious because the bartender of the Four Palms Lounge, Deborah Revere, was drinking with a customer and so failed to serve Butler his drink as promptly as he wanted. Butler cursed and verbally abused the bartender, threatening to have the lounge closed down that very night, and Ms. Revere referred him to the owner of the lounge, Mitchell Beard. When Beard heard Butler's enraged curses and threats he simply shrugged and told the accused to do whatever he thought was necessary. Madder than ever, Butler abruptly walked out of the lounge.

Mitchell Beard and Sal Soletto, who were curious as to what Butler would do when he left the lounge, followed the accused out and stood at the entrance to see what would happen. They watched Butler go to the trunk of his white car, take out a gun, and then get in his car. While this was happening David Cruz, having finished his chat with Sal Soletto, walked out of the lounge and across the parking lot to his own car. Keith Landry, who had just come to the lounge and was getting some cigarettes out of his vehicle, saw Butler say something to Cruz, whereupon Cruz turned and exclaimed to Landry, "This guy is going to shoot me." Then, while Beard, Soletto, and Landry watched in horror and disbelief, they heard a shot. Cruz staggered, called out, "He shot me," and fell to the ground mortally wounded.

Beard and Soletto got Butler's license number, and as he sped out of the parking lot the accused fired three more shots, one of which struck the maintenance man, Fred Jeffries, in the leg.

Defendant was found guilty of first degree murder and was sentenced to life imprisonment. Defendant Butler's conviction and sentence were affirmed on appeal January 14, 1985.

- (33) **State of Louisiana vs. Leslie Lowenfield**
Docket No. 82-3478 Division "N"
Crime Convicted: First Degree Murder (3 counts);
Manslaughter (2 counts)
Sentence: Death (3 sentences); two sentences of 21
years to run consecutively on manslaughter
convictions.
Lowenfield v. Louisiana, 107 S. Ct. 13
State v. Lowenfield, 495 So.2d 1245

On August 13, 1982, Sheila Thomas, her daughter, Thomas' parents and Thomas' boyfriend were shot to death in the kitchen of the home Thomas had been sharing with her parents. Several State witnesses testified that a romantic relationship between Thomas and defendant had come to an unhappy end some months before the crime. Several witnesses testified that defendant had continuously threatened and harassed Thomas after the breakup; one witness testified to threats made by defendant on the evening before the murders. Another witness testified that defendant had admitted to the killings in a telephone conversation. Certain physical evidence linking defendant to the crime was seized from defendant's apartment: among other items, the murder weapons were found in defendant's apartment.

Defendant himself testified and presented an alibi defense: defendant testified that he had been in Florida on the day the crime occurred.

At the sentencing hearing the State offered evidence that defendant had one previous conviction. The state also offered evidence that Thomas had filed criminal charges against defendant shortly before the crime occurred.

The three sentences of death imposed on defendant were supported by the aggravating circumstance that defendant intentionally created a risk of death or great bodily harm to more than one person.

Lowenfeld was indicted, tried and found guilty. On December 2, 1985, the Louisiana Supreme Court affirmed defendant's convictions and sentences. Lowenfeld's conviction and sentence were affirmed by the U.S. Supreme Court on January 13, 1988. Lowenfeld was subsequently executed in the electric chair.

(34) State of Louisiana vs. David M. Patterson
Docket No. 83-2502 Division "J"
Crime Convicted: Second Degree Murder
Sentence: Life
State v. Patterson, 464 So.2d 811
(La. App. 5 Cir. 1985)

The evidence at the trial revealed that the victim left her home in Texas on June 30, 1983, for the purpose of traveling to New Orleans to visit her son. Somewhere along the way, the victim picked up Patterson and McFall, who were hitchhiking to Florida. The trio drank beer en route to the victim's destination.

The victim exited Interstate Highway 10 to make a phone call. Upon completing the call, she agreed to drive the hitchhikers back to the Interstate. As the victim was driving back to the Interstate, one of the hitchhikers, later identified as Patterson, pulled out a knife, held it against the victim's throat and told her he was going to take her car. The victim stopped the car in the roadway and attempted to escape. However, she was prevented from doing so by Patterson who grabbed her arm as she got out of the car. As Patterson held her, McFall then stabbed the victim with a knife eight times. There is some medical evidence indicating

the victim may have been stabbed with two different knives. The victim was able to break free and run a short distance from the car before collapsing. Patterson and McFall then placed the victim back in the car.

David Patterson was indicted for first degree murder. On January 12, 1984, Patterson was found guilty of second degree murder and sentenced to life imprisonment without benefit of parole, probation or suspension of sentence. On February 11, 1985, Patterson's conviction and sentence were affirmed. Defendant's federal habeas corpus application was denied.

- (35) State of Louisiana vs. Roy McFall**
Docket No. 83-2502 Division "K"
Crime Convicted: First Degree Murder
Sentence: Life
State v. McFall, 464 So.2d 845 (La. App. 5 Cir. 1985)

Roy McFall was indicted for the first degree murder of Theresa Diane Power. He was tried by a twelve person jury and found guilty as charged to life imprisonment without benefit of parole, probation or suspension of sentence. On February 11, 1985, defendant's conviction and sentence were affirmed.

For a full description, please see the facts recited immediately above in No. (34).

- (36) State of Louisiana vs. Daniel Washington**
Docket No. 83-2867 Division "F"
Crime Convicted: Second Degree Murder
Sentence: Life

Daniel Washington, the defendant, Larry Stevenson, and two other men were gambling during the early morning of August 30, 1983. Wardell Elliot saw the dice game on his way to the grocery store. When Elliot returned from the store, he stopped to watch until the game broke up. Elliot returned to his apartment.

In the meantime, at approximately 9:45 or 10:00, Jacqueline Lackey, who lived with Elliot, heard an argument outside. Lackey looked out and observed Washington, Stevenson, another male, and Langella Benefield, Washington's girlfriend. Washington and Stevenson were arguing because Washington wanted the money that he had lost in the dice game returned. Lackey observed Washington threaten Stevenson with a gun and heard Benefield saying, "Shoot him, Danny. Shoot him." Lackey saw Washington shoot Stevenson, take money from Stevenson's pocket, and give the money to Benefield who then fled. Lackey woke Elliot who went to the window. Elliot observed Washington getting up from Stevenson's body with a gun in his right hand and an unidentifiable object in his left.

Washington testified and presented witnesses who stated that he left the dice game, argued with Benefield, and left for his sister's house. His sister verified that Washington was at her home shortly before 9:00 a.m. However, his sister left the house at approximately 9:30 or 9:45 and she could not verify whether or not Washington remained in the house.

Washington also testified that he only lost \$200.00 of his own money and \$110.00 which he borrowed from Benefield. Washington also denied shooting Stevenson. However, Elliot testified that Washington admitted losing \$1,100.00 or \$1,200.00 to Stevenson. Furthermore, Benefield testified that she did not loan Washington money, that he lost about \$1,500.00, and that she saw him shoot Stevenson. Benefield admitted going to the defense attorney's office two days after the crime and confessing to the murder and she also admitted to hiding the gun after Washington gave it to her.

On October 7, 1983, Washington was indicted for first degree murder. On May 16, 1984, the jury returned a verdict of guilty of second degree murder and defendant was sentenced to life imprisonment without benefit of parole, probation or suspension of sentence.

- (37) **State of Louisiana vs. Charles E. Dean, Jr.**
Docket No. 84-2151 Division "N"
Crime Convicted: First Degree Murder
Sentence: Life
State v. Dean, 487 So.2d 709 (La. App. 5 Cir. 1986)

On the night of July 10, 1984, Charles Dean had a few drinks, and sniffed a quantity of cocaine. Then, sometime after midnight, on July 11, 1984, he placed about a dozen guns, plenty of ammunition, some cocaine, and some clothes in his car and drove to the house at 509 Marguerite Drive, Metairie, where his mother, Harriet Dean, and his sister Janice Dean, were living. Dean shot his mother at close range between the eyes, execution style, and then shot his sister Janice in the back of the head, apparently as she was trying to flee. Dean then departed, leaving the kitchen, where his mother's body was found. Also found were cocaine paraphernalia consisting of plastic bags, straws, and funnels. He drove around the metropolitan area for a few hours. Around six o'clock that morning, coming out of a steep curve, he crashed his car into the front of the house of Ms. Linda Stinson, where he was found and subdued by Louisiana State Troopers and a New Orleans police officer, whom he startled when he exclaimed, "No one can help me now. I just killed my mother and sister."

Defendant was charged by grand jury indictment with two counts of first degree murder. Prior to trial, count two was severed by the State and defendant proceeded to trial by jury. He was found guilty as charged and the jury recommended a sentence of life imprisonment without benefit of parole, probation, or suspension of sentence. On April 14, 1986, defendant's conviction and sentence were affirmed.

- (38) **State of Louisiana vs. Samuel Rollins**
Docket No. 84-2702 Division "H"
Crime Convicted: Second Degree Murder
Sentence: Life

Paula Camardelle and Darren Beauregard, who were living in the same apartment with Fernando Arboleda and

others on the date of the slaying, testified that on the afternoon of August 29, 1984, two black men came to the apartment to ask Arboleda about marijuana. Although Paula, during the present trial, identified Samuel Rollins as the gunman, she was not positive of her identification of Rollins and admitted that at a photographic lineup. Following the present offense she had positively identified another person as the gunman. At the photographic lineup which the investigating officer later displayed to him, Beauregard was able to identify Stanley Veal's picture as representing the robber who was not armed and who went back to the kitchen, but was unable to identify Rollins' photograph. However, Beauregard made a positive in-court identification of Rollins as the person who fatally shot Arboleda.

Beverly Williams testified that she knew Fernando Arboleda. She was also acquainted with Stanley Veal and Samuel Rollins, known to her as Poppa. Ms. Williams saw Stanley Veal, who told her not to tell on her, and also saw Samuel Rollins, who called her while she was standing on her porch, came over, and said, "I know you're not going to tell." When the witness asked Rollins why he did it, the accused contended that Arboleda had pulled a gun on him first. Ms. Williams positively identified Samuel Rollins as the person about whom she had been speaking.

Stanley Veal testified that on the afternoon of August 29, 1984, he, James Sims, and Samuel Rollins drove to Fernando Arboleda's residence to get some weed. While Sims stayed in the car, Veal and Rollins went to Arboleda's apartment, knocked on the door, and when Arboleda opened it, pushed their way in. Rollins pulled out a gun, and Veal, as instructed by the accused, went back to the kitchen to look for weed, which he was unable to find. He saw Rollins and Arboleda arguing and wrestling. When Rollins started shooting, Veal ran out of the apartment, and as he fled he heard more shots. He got in the car with Sims, as did Rollins, and they drove off. Veal noticed that Rollins had blood all over his shirt and hands, and that he had a gun in his shirt. Rollins said, "I killed him, I had to shoot him, Bra. I had to shoot him. He got what the fuck he

deserved. I had to kill him.” Then Veal identified the accused as the man who shot Arboleda.

James Sims, known as Barry, had also originally been charged with the murder of Fernando Arboleda, but had, like Veal, cooperated with the State, and had been allowed to plead guilty to accessory [*sic*] after the fact to the present armed robbery.

Samuel Rollins was found guilty of second degree murder and sentenced to life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. His sentence was affirmed on appeal December 16, 1985.

(39) State of Louisiana vs. Thomas Medford
Docket No. 84-2705 Division “J”
Crime Convicted: First Degree Murder
Sentence: Life
***State v. Medford*, 489 So.2d 957**
(La. App. 5 Cir. 1986)

Thomas Medford and Kenneth McCullough forced their way at gunpoint into the home of George and Arlynn Plaisance and their two children. A neighbor, Albert Alonzo, and his son Marty came to the aid of the Plaisance family. During a struggle Medford fired three shots at Marty, missing, and shot Albert Alonzo in the forearm and hip. When Marty pinned Medford, McCullough came to Medford’s aid and shot Marty in the shoulder and Albert in the head. McCullough and Medford then fled the Plaisance home.

Albert Alonzo died as a result of the gunshot wound to the head. Without a doubt, Medford’s actions evidenced a specific intent to kill or inflict great bodily harm upon more than one person.

Medford was indicted for first degree murder and on June 28, 1985, the jury returned a verdict of guilty as charged. Defendant was sentenced to life imprisonment without benefit of parole, probation, or suspension of

sentence. On May 12, 1986, defendant's conviction and sentence were affirmed.

(40) State of Louisiana vs. Kenneth McCullough
Docket No. 84-2705 Division "S"
Crime Convicted: First Degree Murder
Sentence: Life

Kenneth McCullough was indicted along with his co-defendant Thomas Medford for first degree murder. On May 20, 1989, McCullough was found guilty as charged. He was sentenced to life without benefit of parole, probation, or suspension of sentence.

For a full description, please see the facts recited immediately above in No. (39).

(41) State of Louisiana vs. Carolyn Moore
Docket No. 85-1 47 Division "C"
Crime Convicted: Second Degree Murder (two counts)
Sentence: Life (two consecutive terms)
Slate v. Moor, 498 So.2d 82 (La. App. 5 Cir. 1986)

Mark Miller and Carolyn Moore had driven around the Westbank area searching for a place of business to rob when they decided on the Lapalco Boulevard Allstate office as a safe target. After the defendants had gained entrance to the office, both victims were robbed of cash and jewelry; it was defendant Miller who shot each victim twice as defendant Moore exited the Allstate office to start the couple's car.

Miller and Moore were arrested and charged by the Jefferson Parish Grand Jury with the first degree murders of Wilbert Laiche and Jack Couret during the course of an armed robbery. The cases were severed for trial and on November 14, 1985, Carolyn Moore was tried and found guilty on an amended indictment of two counts of second degree murder and sentenced to serve two life terms to run consecutively without benefit of probation, parole, or suspension of sentence. Moore's sentence was affirmed on appeal November 10, 1986.

- (42) State of Louisiana vs. Mark W. Miller**
Docket No. 85-147 Division "D"
Crime Plead: Second Degree Murder (2 counts)
Sentence: Life (two consecutive counts)

Mark Wayne Miller was indicted with two counts of first degree murder during the course of an armed robbery. On August 19, 1985, Miller pleaded guilty to both counts of first degree murder and was sentenced to two consecutive life terms.

For a full description, please see the facts recited immediately above in No. (41).

- (43) State of Louisiana vs. Glen Keith Weiland**
Docket No. 85-380 Division "L"
Crime Convicted: First Degree Murder
Sentence: Death
Remanded, New Conviction: Manslaughter
Remanded, New Sentence: 21 Years At Hard Labor
State v. Weiland, 562 So.2d 950

On October 28, 1985, Glen Weiland beat up one of the victims, Ida Boudoin, his girlfriend. On October 29, 1985, as Ida Boudoin and Paul Sahuque, Ida's former husband, were walking across a parking lot, the defendant jumped out and stabbed her seven times with a bayonet. He also stabbed Paul Sahuque at that time. Ida Boudoin died in the ambulance on the way to the hospital and Paul Sahuque was placed in intensive care.

On November 14, 1985, Glen Weiland was charged by grand jury indictment with first degree murder. The defendant was tried by jury and was found guilty as charged. On June 13, 1986, the jury sentenced the defendant to death. The jury found one aggravating circumstance under La. C.Cr.P. art. 905.4: that the offender knowingly created a risk of death or great bodily harm to more than one person. The mitigating circumstances presented at trial were as follows: no significant prior

history of criminal conduct, emotional distress from his girlfriend's infidelity, the intoxicated state of the defendant which led to increased emotional distress, and that the murder was neither cruel nor vicious.

On April 6, 1987, the Louisiana Supreme Court reversed Weiland's first degree murder conviction and on May 7, 1987, the State's rehearing was denied. On retrial, the State amended the indictment to second degree murder. After jury trial, the defendant was convicted of manslaughter and sentenced to twenty-one years at hard labor. The sentence and conviction were affirmed on May 16, 1990.

- (44) State of Louisiana vs. Ralph Deer, Jr.**
Docket No. 86-2005 Division "A"
Crime Convicted: First Degree Murder
Sentence: Life
State v. Deer, 519 So.2d 271 (La. App. 5 Cir. 1988)

Ralph Deer, Jr., on June 28, 1986, committed an armed robbery of a store clerk at a Time Saver Store "to get a little extra money." He committed the robbery [sic] with a twelve gauge shotgun. He entered the store with trigger cocked and pointed the gun at the clerk's head. The clerk was shot in the head and died. Deer, according to a friend who drove them away, said that Deer seemed upset that he shot the clerk for eleven dollars. Deer testified that he shot the clerk but that the gun discharged accidentally. He was tried on a plea of not guilty and not guilty by reason of insanity. He was convicted of first degree murder but the jury was unable to unanimously agree on a sentence. Thus, a life sentence was imposed.

- (45) State of Louisiana vs. Robert Tassin**
Docket No. 86-3579 Division "B"
Crime Convicted: First Degree Murder
Sentence: Death
State v. Tassin, 536 So.2d 402

Around five-thirty or six o'clock on the afternoon of November 5, 1986, tugboat captain Edward Martin and his friend and deckhand Alvia Wayne Stagner received their

paychecks at the Harmony Street Wharf in New Orleans, drove over the bridge to Schnell's restaurant and bar on the Westbank, and cashed their paychecks. They proceeded to the nearby Shady Lady Lounge, where for several hours they drank beer, played pool and quarters, and talked to a lady named Sheila Mills.

When Eddie Martin and Wayne Stagner were leaving the Shady Lady Lounge in Martin's Thunderbird, Sheila Mills came up and asked Martin if he wanted to buy some cocaine. Martin said yes, and let Sheila Mills get in the front seat between him and Stagner.

After stopping by a bar to look for drugs without success, Martin, at Sheila's direction, drove to the house of Robert and Georgina Tassin at 529 Larossini in Westwego. While the two men waited in Martin's car, Sheila went in the Tassin residence. After a while she came back with Robert and Georgina Tassin, whom she introduced to Martin and Stagner.

The Tassins did not have any cocaine, but would try to get some. They climbed in the back seat of the Thunderbird, Robert Tassin sitting directly behind Eddie Martin. Sheila said they should go to the TresVidas Apartments. When they arrived there, the Tassins and Sheila went in and came back to report that "the guy wasn't there, that he was back at the Tassin's house." As a matter of fact, Robert Tassin had gotten a gun from a friend of his, Darryl Macaluso, who lived there.

It was now around midnight. They started back to the Tassin's house. Right before the Lapalco bridge, Sheila asked Martin to pull over because she felt sick and wanted to get out of the car. She directed Martin off the road and under the bridge. Sheila, under a prearranged plan, then got out, ostensibly to be sick, leaving Martin and Stagner in the front seat of the car and the Tassins in the back.

Suddenly, as Stagner reached for his cigarettes on the dashboard, he saw a red flash and felt a sting as a bullet came through his back and lodged in his left lung. Stagner

turned, looked over his left shoulder, and saw Robert Tassin shoot Eddie Martin three times in the back of his head and neck.

Stagner immediately opened the car door and jumped out, and as he did so Robert Tassin shot Stagner in the left leg. Stagner, his leg bleeding badly, and blood on his shirt, managed to run by Sheila Mills, who was standing behind the car, and up to the end of the Lapalco bridge. The traffic light was red. Stagner made it to the center of the road, where he sat down. A car came by with a flat tire, and Stagner asked the occupants to call the police, saying that he had been shot, and that the captain of his tugboat had also been shot and might be dead. Then Stagner passed out.

He was taken to West Jefferson Hospital, placed in intensive care, and treated for his wounds, which, though very serious, were not fatal. A day or so later Stagner gave a statement to the police officers who were investigating the incident, and, riding in an ambulance, directed them to the Tassins' home.

Meanwhile, the Tassins and Sheila Mills pulled Eddie Martin's body out of the car. After checking it for money, they left the body in a ditch near the Lapalco bridge. They next ran Martin's Thunderbird into Bayou Signette, also known as the Westwego Canal, which was opposite the Tassins' house, and went into hiding. When Robert Tassin realized that Wayne Stagner was recovering from his wounds, Tassin turned himself in.

Robert Tassin, his wife Georgina, and Sheila Mills were indicted by the Jefferson Parish Grand Jury for the first degree murder of Edward Martin during the commission of an armed robbery. The indictment was later amended so as to charge only armed robbery in the case of Georgina Tassin and Sheila-Mills, and they were severed from this case.

Robert Tassin was tried, found guilty of first degree murder, and sentenced to death. His conviction and sentence were affirmed by the Supreme Court on December

12, 1988. Defendant has a writ application pending in this court.

- (46) State of Louisiana vs. Julius Martin**
Docket No. 87-1382 Division "D"
Crime Convicted: Manslaughter
Sentence: 21 Years
State v. Martin, 566 So.2d 987

Julius Martin was tried in the 24th Judicial District Court for first degree murder in April, 1988. The jury unanimously returned a lesser, responsive verdict: guilty of manslaughter. Martin was sentenced to 21 years.

The victim, Carl Williams, was tied up, doused with gasoline and set on fire on December 19, 1987. He died 10 days later of pneumonia.

- (47) State of Louisiana vs. Jerrald Wilson**
Docket No. 87-1286 Division "C"
Crime Convicted: First Degree Murder (two counts)
Sentence: Life (two counts)
State v. Wilson, 631 So.2d 1213

Sometime during the night and early morning hours of March 30 and 31, 1987, defendant Jerrald Wilson and Tom Gormin left the River Ridge Bar and returned to the home Gormin shared with his mother. On March 31, 1987, Wilson drove to Baton Rouge and New Iberia in Gormin's vehicle. About noon on March 31 the police found the bodies of Tom Gormin and his mother, Joan Gormin, in their home in River Ridge. Tom had been stabbed numerous times and was found in the kitchen. He was clad only in his briefs. A shirt containing spots of the defendant's blood covered Tom's face. Joan Gonnin had been strangled and stabbed. A "T"-shaped incision was carved in her abdomen. Her body was found clad in night clothes in a spare bedroom. Evidence showed that a footprint that matched the defendant's tennis shoe was found in some of the blood covering the floor of the house. Pubic hair matching the defendant's was found in two bedrooms,

including the one in which Mrs. Gormin's body was found. Large butcher knives were found in the kitchen sink.

Defendant testified that he was a dancer and a male prostitute. He stated that he had been hired by Tom Gormin to perform oral sex in exchange for \$20.00. Defendant testified that he and Gormin went back to Gormin's house and that he fell asleep after the sexual encounter. Wilson claimed to have been awakened by Tom Gormin standing over him with a butcher knife. Wilson claimed that he and Gormin wrestled over the knife and that he got the knife away from Gormin. Wilson testified that he stabbed Tom in the neck. Wilson further testified that he and Tom continued to fight, during which time Wilson stabbed Tom numerous times with several knives. The defendant denied any knowledge of how Mrs. Gormin died. He stated he found her body after killing Tom and checked to see if she was still alive. He then fled in Tom's vehicle and was arrested in New Iberia.

Defendant was convicted of two counts of first degree murder for the murders of Tom and Joan Gormin. Defendant was sentenced to two life sentences for these crimes. On November 4, 1994, the Supreme Court affirmed defendant's conviction and sentence.

(48) State of Louisiana vs. Richard Powell
Docket No. 89-1283 Division "M"
Crime Convicted: Manslaughter
Sentence: 21 years

On November 7, 1982, Edna Zalaya was raped and murdered in her Jefferson Parish apartment. On April 6, 1989, Vernon Williams was indicted for the first degree murder of Edna Zalaya. Also indicted was Richard Powell, who later pled guilty to manslaughter and testified for the State. At trial, Powell testified that he was in Williams' presence and watched Williams on the night of November 7, 1982, as Williams raped and murdered the victim. Powell, who had once been found incompetent to proceed, testified as to the medication he was taking during the trial.

Several doctors testified regarding Powell's mental condition.

Various pieces of evidence were taken from the crime scene, including sperm recovered from the victim's anus, pantyhose, and some towels. The sperm found in the victim's anus was found to have the same DNA as the defendant Williams. The sperm on the pantyhose and towels did not match Williams, Powell, or the victim's boyfriend. Several witnesses testified at trial that they remembered seeing Williams and Powell together during the fall of 1982. A neighbor of the victim testified that she heard a black male voice in the victim's apartment on the night of the murder. Another neighbor testified that she had seen a black man leaving the victim's apartment the night of the murder, although she could not identify Williams as that man.

On November 21, 1991, Williams was tried by jury and convicted of first degree murder. The jury recommended a life sentence. A motion for new trial was filed by the defense and granted by the trial judge. The State thereafter filed a motion to recuse the judge, which was denied by the court. A motion to reconsider was also denied.

The State sought writs from the Fifth Circuit Court of Appeal, which were granted. The Fifth Circuit remanded the case for a random allotment of the motion to recuse. The hearing on the motion to recuse was held and the motion was granted; on the same day, however, the Supreme Court granted defendant's writ, reversed the Fifth Circuit, and reinstated the trial court's denial of the motion to recuse. The State's application for rehearing was denied.

The State thereafter set the case for trial. Williams filed a motion to quash based on prescription, which the trial court granted. The State appealed that ruling and the Fifth Circuit affirmed. On June 3, 1994, the Supreme Court denied the State's application for supervisory writs. The case against Williams was subsequently thrown out.

Powell was indicted for the first degree murder of Edna Zalaya. The charges were later reduced to manslaughter and the defendant pled guilty.

- (49) State of Louisiana vs. Bernis Brown**
Docket No. 90-3893 Division "E"
Crime Convicted: First Degree Murder (2 counts)
Sentence: Life without benefit of parole, probation or suspension of sentence on each count to run concurrently.

On August 20, 1990, Bernis Brown shot and killed Isaac Edward Lilley and Danny Dugas while perpetrating an armed robbery of both men. The incident occurred outside Guy's Cue Club on Westbank Expressway.

Brown was drinking with friends and decided to steal a vehicle. He saw two men standing outside Guy's Cue Club leaning on a truck and approached them. He asked one for a ride and was told no. Brown then demanded the keys to the truck to which he was met with angry commands to leave. Brown then pulled out his .38 special and shot both men. He then removed the keys to the truck from one of the fallen men and took the truck.

Mr. Brown was later picked up by police, read his rights and gave a full confession. He pled guilty to two counts of first degree murder. He was properly Boykinized on the record. He received life without benefit of parole, probation, or suspension of sentence on each count to run concurrently. Mr. Brown has since filed a pro se appeal.

- (50) State of Louisiana vs. Brian Bibb**
Docket No. 91-2875 Division "D"
Crime Convicted: First Degree Murder (2 counts)
Attempted First Degree Murder
Sentence: Life (2 counts)
State v. Bibb, 626 So.2d 913

In the early morning hours of June 3, 1991, Sandra Bibb slept. She was awakened by the attempts of her husband to kill her by stabbing and cutting her with a knife. Just before

the attack began he woke Sandra up and told her that he was going upstairs to sleep with Christopher. She replied, "Okay." The defendant's speech and appearance were normal. He then asked Sandra if she was okay and she said yes. With his left hand he brushed her hair off of her forehead and put his hand over her mouth and nose. He clamped her nose shut so she could not breath [*sic*] and pushed down hard on her mouth with the palm of his hand so that she could not scream. He then shoved her face into the pillow. While he cut and stabbed her she fought momentarily and then went limp. When she did this he stopped and left her. Sandra struggled to get away. She fumbled with a key to unlock the door but dropped it in a puddle of her blood. She also pushed a security alarm system on her wall. She exited through a kitchen window, which set off an audible alarm, and to a neighbor's house. Getting no response she went to another neighbor's house where she remained until an ambulance and police arrived. She was taken to East Jefferson General Hospital. Brian Bibb was charged with the first degree murder of his two children Christopher, age 5, and Catherine, age 2.

Sandra testified at trial that she observed the defendant in the kitchen with a bottle of Dimetapp. She asked what he was doing and he replied that he was taking Dimetapp because he did not feel well. She asked if he needed anything and he replied that he did not. He looked and acted normally according to Sandra.

Dr. Susan Garcia performed the autopsies on the children. She observed numerous cuts on Christopher including cuts to the base of his neck, his hands and below his rib cage. One cut had completely severed his trachea. This caused the child to bleed to death. She also noted that all of the wounds were irregular, indicating that the child was obviously moving when the wounds were inflicted. She also opined that the wounds to Christopher's hands were defense wounds. That is, they were received while trying to protect himself. An examination of the child's lungs revealed what Dr. Garcia referred to as an aspiration pattern. Christopher inhaled blood because of the severed trachea.

Catherine also suffered wounds to the base of her neck, numerous wounds to her right hand, one to her left hand (defense wounds) and several wounds to her shoulder. Her trachea was also completely cut. Additionally, Catherine's jugular was severed. Like her brother, Catherine's lungs revealed that she had aspirated blood prior to dying. Dr. Garcia also noted what she described as hesitation marks on Catherine's neck.

The police officers who responded found the doors locked; they entered the house through the window left open by Mrs. Bibb when she exited. There was blood in the kitchen and in the master bedroom. The defendant did not respond to the police. After several attempts the police succeeded in forcing the door open. A large piece of furniture had been wedged against the door in an attempt to prevent it from being opened. The police found the bodies of Christopher and Catherine. The defendant, nude, was laying face down on the floor. His arms were against his body and his fists were clenched. A knife was found near the defendant's hand with the blade across Christopher's neck. The defendant kept his eyes closed and squinched them tight whenever the officers spoke. There were wounds on the defendant's body.

The defendant was transported to St. Jude Hospital for treatment. He was seen there by Dr. Jacqueline Kirby. She observed that his wounds included those to his neck, arms and a partially collapsed lung. He was in no distress and she saw no need to intubate him. His blood pressure was normal. She described him as being oriented and as responding appropriately to her requests. He made no response, however, when she asked him what had happened.

The defense presented their case, arguing that the defendant was insane at the time the crime was committed. Various doctors and other witnesses testified as to the defendant's mental condition. On rebuttal, the State presented several witnesses. The nurse who treated Bibb at the emergency room testified that Bibb showed no remorse

and did not cry. He did not ask for a Bible, priest, or minister. He did, however, state that he wanted to see a lawyer. Other witnesses also testified as to the defendant's competency. The final witness on rebuttal was Dr. Robert Davis, who testified that, based on his examination of the defendant, that Bibb was not psychotic. Davis opined that Bibb knew the difference between right and wrong when he murdered his children.

After hearing closing arguments and receiving the court's charges the jury deliberated and then returned with verdicts of guilty as charged. The next day the sentencing hearing was held. The jury was unable to arrive at a verdict and the court subsequently sentenced the defendant to two life sentences. On February 13, 1992, the defendant was sentenced, on each count, to life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. The sentences were ordered to be served consecutively.

On April 8, 1992, counsel for the parties were summoned before the court. The court advised them that the court had been made aware of allegations regarding possible misconduct between a juror and a deputy sheriff assigned to chaperon the jury while sequestered at a hotel. The court gave defense counsel a copy of the report prepared by the Sheriff's Office as a result of its investigation into the allegations. Counsel for defendant attached a copy of this report to his brief. The State provided the court with a copy of another report prepared relative to these allegations.

Defendant filed a Motion For A New Trial which the court, after securing jurisdiction, denied.

Defendant's sentences and conviction were conditionally affirmed by the Fifth Circuit on November 10, 1993, and the case was remanded to the trial court for an evidentiary hearing. Writs were denied by the Supreme Court on September 16, 1994. On July 24, 1997, on remand from the Fifth Circuit Court, the district court denied the defendant's motion for a new trial.

- (51) **State of Louisiana vs. Glen Seals**
Docket No. 91-4031 Division "E"
Crime Convicted: First Degree Murder
Sentence: Death
State v. Seals, 684 So.2d 368 (La. 1996)

Raymond Feeney, a cab driver, was working on the night of July 26, 1991. Earlier that evening, Feeney went to his house and spoke with his wife. At that time, Feeney had a large sum of cash in his possession for the purpose of paying the rent on his cab. Feeney left his house and subsequently stopped at a convenience store for dinner. The defendant, Glen Seals, was also at the convenience store, and he hired Feeney to drive him to an address. Upon arriving at the address, Feeney noted that it was in a high crime and crack house area. Seals then gave Feeney another address, also in a high crime and crack area. This happened several times. Each time, upon arrival, Seals gave Feeney another address. Eventually Seals gave Feeney an address in New Orleans.

When the cab arrived in New Orleans, Feeney told Seals to pay his fare and get out of the cab. Seals produced a gun and shot Feeney five times. Seals then drove the cab to Jefferson Parish on the Earhart Expressway. Seals stopped on the Earhart Expressway, robbed Feeney of his money, pushed Feeney onto the side of the road, and stole Feeney's cab. Seals then drove to his sister's house in New Orleans, parking the cab a short distance away from his sister's residence. At his sister's house, Seals cleaned up and changed clothes. He then called another cab and asked to be taken to a Jefferson Parish address along a similar route as the one he had instructed Feeney to take.

The Jefferson Parish Sheriff's Office found Feeney along the Earhart Expressway. Feeney, who was still alive, gave a statement in which he described his assailant. Feeney described a young black male in a red cap. This description, along with a description of Feeney's cab, was broadcast on the police radio. Ed Merida, an off-duty detective with the Sheriff's Office, heard the description on the radio but did not hear the name of the cab company. He saw a cab in

which a young black male wearing a red cap was a passenger, and stopped the cab. Seals, who was the passenger, was found to be in possession of bloody clothing and bloody money. After being advised of his Miranda rights, he admitted shooting Feeney, albeit accidentally. Seals denied robbing the victim.

At trial, the State relied on the following aggravating circumstance: the offender was engaged in the perpetration of an armed robbery.

The jury found the defendant guilty of first degree murder and recommended a sentence of death. His conviction and sentence were affirmed. On September 7, 2000, the district court vacated the sentence and granted Seals a new trial because although the court ordered a sanity hearing on Seal's competency one was never held. This court denied the state's writ application. He is currently awaiting retrial.

(52) State of Louisiana vs. Joel Durham
Docket No. 92-0960 Division "H"
Crime Convicted: First Degree Murder
Sentence: Life
State v. Durham, 673 So.2d 1103
(La. App. 5 Cir. 1996)

On the night of February 8, 1992, Joel Durham and Lester Ibesa went for a ride, taking along with them Ibesa's gun. The two discussed committing an armed robbery of a business in order to obtain money. Durham and Ibesa went to one business establishment, which was closed. The two men then went to a McDonald's on Severn Avenue in Metairie. Ibesa was supposed to go inside the McDonald's and commit an armed robbery, but refused when the two men arrived. Durham went inside the McDonald's and robbed Leo Kern, the manager of the restaurant. After surrendering the cash, Kern begged Durham not to shoot him. In front of Kern's fiancé and other patrons of the restaurant, Durham then shot Kern at point blank range. While leaving the restaurant, Durham pointed the gun at another restaurant employee but did not shoot. Durham and

Ibesa then went out drinking with two women, using the money taken from Kern.

Before trial, Ibesa pled guilty to a reduced charge and testified against Durham. Both Ibesa and Durham had given inculpatory statements to the police after having been given Miranda warnings. Durham was found guilty of first degree murder and sentenced to life imprisonment. The aggravating circumstance alleged by the State was: offender engaged in the perpetration of an armed robbery. His conviction and sentence were affirmed on appeal.

- (53) State of Louisiana vs. Lester Ibesa**
Docket No. 92-0960 Division "H"
Crime Convicted: One count Armed Robbery; One count accessory after the fact to first degree murder.
Sentence: Count one, ten years; Count two, five years;
The Sentences are to run consecutively.

Lester Ibesa was indicted with Joel Durham for the first degree murder of Leo Kern. For a complete recitation of the facts of this case, see Number (52) above. Prior to trial, Ibesa pled guilty to one count of armed robbery of Leo Kern and one count of accessory after the fact to the first degree murder of Leo Kern.

- (54) State of Louisiana vs. James W. Mysinger**
Docket No. 92-3600 Division "J"
Crime Convicted: First Degree Murder
Sentence: Life without benefit of parole, probation or suspension of sentence.

James Mysinger was a security guard assigned to work at the Comfort Inn in Kenner. On June 1, 1992, Mysinger left the Comfort Inn and traveled a short distance to the Holiday Inn in Kenner. He had been assigned to work at the Holiday Inn from time to time and knew the manager there. He also knew the manager would be alone that night and went to rob him. Upon seeing the manager and speaking to him, Mysinger shot him in the back and in the back of the

head. He then stole approximately \$1000.00 from the cash drawer.

After shooting the victim, Mysinger drove to Clarksville, Tennessee, where his mother lived. On the way, he used the money from the robbery to buy a Cobra CB radio.

Mysinger was picked up in Tennessee that day, was advised of his rights and gave a full confession. He was extradited to Louisiana and on January 28, 1993, plead guilty to one count of first degree murder.

- (55) State of Louisiana vs. Robert Bates**
Docket No. 94-5355 Division "F"
Crime Convicted: First degree murder
Sentence: Life without benefit of parole, probation or suspension of sentence.

Bates was employed by the Racetrack gas station in Harvey. Bates decided to rob another employee of Racetrack who was making a cash drop for Racetrack in the night depository at Whitney Bank on Lapalco. This drop occurred during business hours. As Bates attempted to rob the other employee, he fired several shots. Some of these shots entered the bank, one striking a customer who was waiting to speak to a bank officer. The customer died at the scene.

A plea agreement was struck, whereby several charges were dismissed and Bates pled guilty to first degree murder. He was sentenced to life.

- (56) State of Louisiana vs. Manuel Ortiz**
Docket No. 92-6496 Division "B"
Crime Convicted: First Degree Murder (two counts)
Sentence: Death (two counts)
State v. Ortiz, 96-1609 (La. 10/21/97)

On October 23, 1992, Cheryl Mallory and Tracie Williams Ortiz were murdered in the Kenner Apartment of Tracie Williams Ortiz. An investigation was conducted by

the Kenner Police Department, resulting in the arrest of Manuel Ortiz, the husband of one of the victims.

The evidence introduced at trial showed that Ms. Ortiz died as the result of being stabbed and Ms. Mallory had been shot. An attempt had been made to make the scene look as if a burglary had occurred. Manuel Ortiz was indicted on two counts of first degree murder.

The evidence at trial consisted of physical evidence obtained at the scene and of the testimony of various witnesses. Several weeks prior to the murders, Manuel Ortiz purchased a knife similar to the one used to murder his wife. The knife purchased by Ortiz was so rare as to be virtually unique. In addition, a witness testified that, several weeks prior to the murder, Ortiz asked him to murder a black female in Kenner in order that Ortiz could receive the insurance money. A few months prior to the murders, Ortiz had insured his wife for \$950,000.00.

The defendant took the stand in both the guilt and penalty phases of his trial. Ortiz denied hiring a hitman to kill his wife and presented an alibi defense, claiming to have been out of the country when the murders occurred. The actual gunman in the case has not been arrested. Ortiz was found guilty of two counts of first degree murder and was sentenced to death on both counts on January 31, 1995.

The aggravating circumstances relied on by the State in this case were:

1. the offender offered or has been offered or has given or received anything of value for the commission of the offense;
2. the offense was committed in an especially heinous, atrocious, or cruel manner;
3. the offender knowingly created a risk of death or great bodily to more than one person.

Defendant's conviction and sentence were affirmed.

- (57) State of Louisiana vs. Vernon K. Ledet**
Docket No. 97-0311 “G”
Crime Convicted: First degree murder
Sentence: Life imprisonment

On March 23, 1994, Gretna Police officers responded to a neighbor’s call for help in locating Thelma Herbert. Police officers entered Herbert’s house in Gretna, Louisiana, to find the house ransacked with clothes and furniture strewn about. The body of Thelma Herbert was found in her bedroom. She had been beaten about the head and throat. Police officers seized items from the scene and logged them in evidence.

Police interviewed the defendant, Vernon K. Ledet, in response to information obtained from Herbert’s neighbors that Ledet had been harassing Herbert. After the interview, Ledet turned over the clothes and shoes he had been wearing the day Herbert was murdered. DNA testing showed that a spot of his blood was found on Herbert’s bra and her blood was found on the bottom of his pants and shoes. Ledet was convicted of first degree murder and sentenced to life imprisonment. The court of appeal affirmed. This court denied writs. *State v. Ledet*, 01- 2451 (La. 9-30-02) 825 So.2d 1185.

- (58) State of Louisiana vs. Julius Lucky**
Docket No. 94-4525 Division “E”
Crime Convicted: First degree murder; Attempted first degree murder; Aggravated Battery
Sentence: Death
State v. Lucky, 96-1687 (La. 4113/99),
 750 So.2d 801, cert denied 120 S. Ct. 1429 (2000).

Julius Lucky and Vashon Kelly worked at a grill and daiquiri shop in Metairie. Two of their co-workers included Letitia Fageot and Bonnie Giambalvo. After closing the establishment at approximately 12.20 a.m. on August 6, 1994, all four workers remained in the establishment. Giambalvo was playing a video poker machine as the others

closed up. Lucky and Kelly remained at the shop that night, though they usually left upon its closing.

While playing poker, Ms. Giambalvo felt a sharp pain in the back of her head and collapsed. Lucky was standing immediately behind and to the right side of Miss Giambalvo just prior to the gunshot. She awoke several minutes later and found Miss Fageot dead in a pool of her own blood. Lucky and Kelly were no longer on the premises.

Lucky had been arrested previously for (3) felonies and (1) misdemeanor and was on parole for burglary and attempted first degree murder at the time of this incident. Kelly also had been previously arrested, though with no convictions.

Kelly was picked up and gave police an inculpatory statement naming Lucky as the one who shot the two girls. Kelly said Lucky chased Miss Fageot, then stood over her while he shot her in the head.

Lucky was picked up and also gave police an inculpatory statement. He stated he brought the weapon to work to kill Fageot, as she had reprimanded him earlier for trying to touch her buttocks and “clowning” around on the job. He further stated that he shot Giambalvo because he did not want her to see him shoot Fageot. After shooting Giambalvo, Lucky chased down Fageot; she dropped to her knees and begged for her life. Lucky then shot her once in the back of the head at point blank range.

Julius Lucky was found guilty of the crime of first degree murder, attempted first degree murder and aggravated battery and was sentenced to death. His conviction and sentence were affirmed. *State v. Lucky*, 96-1687 (La. 4-13-99), 750 So.2d 801, *cert denied* 120 S. Ct. 1429 (2000).

- (59) State of Louisiana vs. Edward Irvin Harris**
Docket No. 94-6147 Division "P"
Crime Convicted: First Degree Murder, (two counts)
Sentence: Death

On October 14, 1994, Edward Irvin Harris was a passenger in a brown Buick Regal when he spotted two people walking down Betty Street in Marrero, Louisiana with whom he had a prior history, Mister Gordon and Tymara Frazier. Harris drew his pistol and shot at the two pedestrians multiple times, striking each several times.

An officer on patrol in the area came upon the scene soon thereafter and spoke with several witnesses. Frazier was pronounced dead at the scene. Gordon was transported to West Jefferson Hospital where, in the presence of witnesses, made a dying declaration that "Irvin' shot him.

In a photographic line-up which included Harris' photo, several of the eyewitnesses picked Harris out as the one who shot Frazier and Gordon. Family and friends of Gordon also positively identified "Irvin" as Edward Harris.

Harris was found guilty of two counts of first degree murder and sentenced to death. On June 21, 2002, this court reversed his conviction and death sentence and remanded for a new trial.

- (60) State of Louisiana vs. Allen Snyder**
Docket No. 95-5114 Division "H"
Crime Convicted: First Degree Murder
Sentence: Death
State v. Snyder, 98-1 078 (La. 4114/99), 750 So.2d 832
State v. Snyder, 98-1078 (La. 4-14-04), 874 So.2d 739.

During the early morning hours of August 16, 1995, Howard Wilson and Mary Snyder were talking in Wilson's parked car in front of Snyder's mother's residence. Allen Snyder, Mary's estranged husband, was across the street,

hiding behind a vacant house trailer with a knife. Allen came out of hiding, walked up to the vehicle, opened the driver's door and began to cut and stab Wilson with the knife. As Wilson attempted to drive off, the car struck a fire hydrant, causing the street to flood. Wilson, who managed to escape from the car at that time, ran down the street and collapsed from his injuries. Allen remained in the car and began cutting and stabbing Mary. When a witness, Gwen Williams, approached the vehicle and asked Allen what he was doing, Allen ran down the street.

Wilson, suffering from stab wounds to the face, neck, shoulder and chest, died several hours later. Mary, suffering from lacerations to her neck, face and arm, was able to identify her estranged husband, Allen, as the attacker.

Allen Snyder gave an inculpatory statement to the police after he was given his Miranda warnings. On August 28, 1996, he was found guilty for first degree murder and the jury recommended the death penalty. On August 22, 1997, Allen Snyder was sentenced to death after the trial court denied defense counsel's motion for a new trial. On appeal this Court remanded for a hearing on the issue of his competency to be tried.

(61) State of Louisiana vs. Teddy Chester
Docket No. 96-2598 Division "K"
Crime Convicted: First Degree Murder
Sentence: Death
State v. Chester, 97-2790 (La. 12-1-98),
724 So.2d 1276 cert denied 528 U.S. 826, 120 S. Ct.
75, 145 L. Ed.2d 64 (1999)

In the early morning hours of December 27, 1995, John Adams, a cab driver for King Cab Co., responded to a passenger pickup in a low income area. A couple of hours later, the cab was found on the side of the road with its lights on and the driver's door open. Adams, slumped behind the steering wheel, had been robbed and shot in the back of the head.

Three months later, the police received information of Teddy Chester and Elbert Ratcliff's involvement in the robbery and murder of Adams. The sister of Chester's girlfriend informed police that she had overheard Chester telling his girlfriend that he had robbed and shot a cabdriver. When questioned by the police Chester admitted that he was at the scene of the crime, but stated that Ratcliff was responsible for the shooting of Adams. Ratcliff however pointed the finger at Chester. The police arrested Chester when they found Chester's baseball cap spattered with Adam's blood. Ratcliff was also arrested when his fingerprints were found on the business cards belonging to Adams.

At Chester's trial, it was determined that he was the gunman because of the blood spattered baseball cap. He was found guilty of first degree murder and sentenced to death. On appeal, his conviction and sentence were affirmed. [Note: The charges against Ratcliff were reduced to second degree murder; he was convicted of second degree murder and sentenced to life imprisonment. See *State v. Ratcliff*, 98-101 (La. App. 5 Cir. 2/23/99), 731 So.2d 357, denied 99-1112 (La. 9/3/99), 747 So.2d 541.

(62) State of Louisiana vs. Barry Pascual
Docket No. 96-1139 Division "F"
Crime Convicted: First Degree Murder
Sentence: Life without the benefits of Probation and parole
***State v. Pascual*, 98-1052 (La. App. 5 Cir. 3/30/99)**
735 So.2d 98.

On February 5, 1996, Kenner Police Department officers were summoned to the residence of Michael Mitchell concerning a shooting. Upon arrival the officer observed a young man, Brett Squatrito, lying face up on the front porch of the residence. Mr. Squatrito was bleeding profusely from the mouth. A blue vehicle was located in front of the residence with the driver side window shattered and a red blood-like substance on the steering column, the driver seat and door. The officers learned that Michael

Mitchell was a passenger in the vehicle along with Mr. Squatrito at the time of the incident.

Upon questioning Mr. Mitchell, the officers learned that Mr. Squatrito and Mr. Mitchell left the Chateau Supermarket after playing video games and headed home. While stopped at an intersection, they noticed a white Camaro with two young men in it. Mr. Squatrito pulled up behind the Camaro and revved his engine to see if the young men wanted to race. Mr. Squatrito followed the Camaro for a little while trying to get it to race. Midway down the street, the Camaro stopped and the passenger stuck a gun out of the window. Mr. Squatrito put his vehicle in reverse and began driving the wrong way down the one way street. The Camaro pursued, also going the wrong way down the one-way street.

As Mr. Squatrito reached Mr. Mitchell's house, he drove up onto the yard. The Camaro pulled up next to Mr. Squatrito's vehicle. The passenger reached over the hood of the Camaro and fired three shots at Mr. Squatrito's vehicle. The driver side window shattered and Mr. Squatrito and Mr. Mitchell got out of the vehicle and began running towards Mr. Mitchell's residence. Mr. Squatrito collapsed on the front porch. Mr. Squatrito died of a single gunshot wound to the left side of his back.

The officers observed a large amount of shattered glass in the street. A bullet fragment was located among the shattered glass. These facts indicated to the officers that Mr. Squatrito's vehicle was in the street at the time of the shooting. Several neighbors were able to give a description of the occupants in the white Camaro. Another officer on his way home from work heard the broadcast of the shooting over the Kenner Police Department frequency. The officer advised Kenner Police that a similar drive-by incident occurred earlier that evening involving the same vehicle. The victim in this earlier incident was able to positively identify the driver as Derrick Sonnier and was able to positively identify the passenger as Barry Pascual from photo lineups. The Kenner Police Department recovered the white Camaro. Mr. Mitchell positively

identified it as the one that Mr. Squatrito followed and from which the shots were fired.

An arrest warrant was obtained for Barry Pascual on February 6, 1996. On December 3, 1997, a jury found Barry Pascual guilty of first degree murder. On December 19, 1997, Barry Pascual was sentenced to life imprisonment without benefit of probation and parole.

(63) State of Louisiana v. Damon Thibodeaux
Docket No. 96-4522 Division "0"
Crime Convicted: First Degree Murder
Sentence: Death
State v. Thibodeaux, 98-1673 (La. 9/8/99),
750 So.2d 916 cert denied, 120 S. Ct. 1969 (2000)

On July 19, 1996, Jefferson Parish Sheriff officers were summoned to the Champagne residence concerning a missing juvenile. The officers met with Dawn Champagne, the mother of the missing person, Crystal Champagne (age 14). Mrs. Champagne reported that Crystal had last been seen on July, 19, 1996 around 5:15 p.m. near her apartment complex.

Officers began interviewing Crystal's friends and relatives. A friend said that she saw Crystal walking toward the shopping center alone and did not appear to be in any kind of distress. Family members suggested that the police officers talk to Damon Thibodeaux.

The family reported that Damon Thibodeaux was a friend and relative who had recently entered their lives after living in another state for several years. Damon reportedly spent the night in the family residence the night before Crystal's disappearance. The two were expected to go roller blading on the day in question.

While the defendant was being interviewed on July 20, 1996, the body of Crystal Champagne was discovered near the Huey P. Long Bridge in Bridge City, Louisiana. Her body was found laying on an asphalt surface with her shirt and bra pulled up around her neck and her shorts and

panties pulled down around her ankles. Contusions were visible in the right eye, nose and mouth areas. A red plastic ligature was wrapped and tied around her neck. The time of death was pronounced as twenty-four hours earlier.

A polygraph test given to the defendant showed deception regarding the death of Crystal Champagne. Upon questioning, the defendant admitted that he had picked up Crystal from the shopping center in his vehicle, and that he had traveled to Harvey before proceeding to the Mississippi River Bridge area where Crystal's body was found. The defendant claims to have gone to this area for consensual sex with Crystal. As they began to have sexual intercourse, Crystal began complaining about the pain and wanted to stop. The defendant became angry and struck her several times. The defendant continued to have intercourse with Crystal; she continued to resist. The defendant placed his hands around her throat in an attempt to calm her down. He squeezed her neck for fifteen to twenty minutes as he continued to rape her. As Crystal gasped for air, the defendant continued to squeeze her throat until he ejaculated.

At this point, the defendant obtained some wire from his vehicle, placed it around Crystal's neck and secured it tightly until she could not breathe. The defendant claimed to have snapped during this incident and returned to the Champagne residence to participate in the search for Crystal.

A jury unanimously found Damon Thibodeaux of first degree murder on October 3, 1997. On October 4, 1997, the jury returned a verdict of death. On October 24, 1997, Damon Thibodeaux was sentenced to death. This Court affirmed his conviction and sentence.

- (64) **State v. Ulysses Jones, Jr.**
Docket No. 96-6462 Division "G"
Crime Convicted: First Degree Murder
Sentence: Life Imprisonment
State v. Jones, 99-1185 (La. App. 5 Cir. 9-22-00)
769 So.2d 708.

After robbing an E-Z Serve convenience store at 3101 Veterans Boulevard in Jefferson Parish, at approximately 6:35 a.m. on October 5, 1996, the defendant, Ulysses Jones, Jr., drove away in a small, dark-colored car with cash and a bottle of Crazy Horse beer he stole. Convenience store employees called "911" with a description of the robber and the car he had been driving. Deputy James Clarius, who was patrolling nearby, stopped Jones in a small dark colored car. When the deputy attempted to put handcuffs on Jones, Jones started scuffling and obtained the deputy's gun. Jones shot Deputy Clarius with his own gun, ran to his car and drove away. A distinctive watch found at the scene linked Jones to the shooting.

Two convenience store employees picked Jones' picture from a photographic line-up as the E-Z Serve robber. Because he fit the broadcast description of the deputy's killer, Jones voluntarily appeared at the police station to give a statement. Jones told police that he had been with his girlfriend at the time of the shooting. He denied owning the distinctive watch although he admitted his father had a similar watch. He denied having anything to do with Deputy Clarius' murder.

Investigation uncovered the fact that early on the morning of the crime; Kenner Police Officer Keith Seals received a phone call from his girlfriend's brother, Ulysses Jones. He also talked to his girlfriend, who asked him about the murder of the deputy although she had never asked him about his work before. A search warrant was obtained and executed for the apartment where Jones lived. In a flower bed outside the apartment, police found a full, unopened bottle of Crazy Horse beer in an E-Z Serve plastic bag. In a search of the area by the canal bank next to the apartment, police found a plastic bag which contained Deputy Clarius'

handgun. Inside the apartment, \$338 in cash was found hidden. It was determined that approximately \$319 was stolen from the E-Z Serve.

Witnesses positively identified the watch found at the crime scene as one which had belonged to Jones' father and which Jones habitually wore. Witnesses testified that Jones and his family members were attempting to contact law enforcement personnel through their fiends immediately after the shooting. Jones' girlfriend denied that Jones had been with her at the time of the shooting. The jury unanimously found Jones guilty of first degree murder of Deputy Clarius. The jury deadlocked on sentencing and the trial judge imposed a sentence of life imprisonment. His conviction and sentence were affirmed.

(65) State v. Emmett Taylor
Docket No. 97-1142 Division "G"
Crime convicted: First Degree Murder
Sentence: Death
State v. Taylor, 99-1311 (La. 1/17/01),
781 So.2d 1205.

On February 18, 1997, Emmett Taylor entered the Rhodes Pharmacy in Harvey, La. at approximately 11:50 a.m. Inside the pharmacy was the 83 year old pharmacist, Joseph Sunseri, and the 69 year old clerk, Marie Toscano. Taylor asked Toscano for a certain product. When she was unable to find it, she asked Sunseri to help Taylor. When Sunseri attempted to help Taylor, Taylor placed a .38 caliber revolver at Sunseri's side and demanded money. Sunseri told Toscano to give Taylor the money out of the cash register. Instead, Marie Toscano tried to run to the back of the store. Taylor followed her and shot her in the back of the head before she could unlatch the door. In addition to eyewitness testimony, the state presented Taylor's confession. Although Taylor initially gave an alibi statement, he ultimately admitted to trying to rob the store. Taylor claimed the shooting was an accident. On May 21, 1998, he was found guilty of first degree murder. On May 22, 1998, the jury recommended the death penalty, finding as aggravating circumstances that the crime was committed

during the perpetration of an armed robbery, that the victim was sixty-five years old or older and that the defendant had previously been convicted of an unrelated armed robbery. On July 17, 1998, Taylor was formally sentenced to death after the trial judge denied defense counsel's motion for new trial.

(66) State v. Ryan Matthews
Docket No.97-3780 Division "M"
Crime Convicted: First Degree Murder
Sentence: Death

On April 5, 1997, Tommy Vanhooose was working in his convenience store in Bridge City, Louisiana. Late in the afternoon, an armed gunman wearing a ski mask entered the store and demanded money. Vanhooose was known for having large quantities of cash because he cashed paychecks for Avondale Shipyard workers. The victim refused to give the gunman any money and the gunman shot Vanhooose several times. As the gunman fled the store, he stopped at the cash register near the door, lifted his mask and tried to obtain money from the register. He then left the store, firing shots toward a witness, Candice Meza. The gunman fled to a waiting car at the corner and jumped in through the open passenger window. The car then sped down the street.

Two witnesses, cousins Bretit Cheramie and Dale Blanchard, were driving around the same corner. They saw the defendant dive into the car. Cheramie, who was driving, followed the car down the street. Both he and Blanchard saw that the defendant was the passenger and another young black man was the driver. Cheramie could not keep up with the speeding car but did see the defendant throw something from it. Cheramie dropped off Blanchard, went back, and retrieved the ski mask. Cheramie again attempted to follow the defendant by another route but was unsuccessful in catching up, although he did see the car gain. Both Cheramie and Blanchard described the car to police.

Later that night, police stopped a car that matched the description. Travis Hayes was driving; the defendant was

the passenger. Cherie and Blanchard were taken to the scene. Cherie positively identified the defendant, Ryan Mathews, as the gunman. He told police he saw the defendant take off the ski mask as he dove into the car. Neither witness identified Hayes. Both Hayes and Mathews were taken to the detective bureau and gave statements. Hayes initially denied any knowledge of the robbery and shooting but eventually admitted to driving the defendant to the scene and fleeing after the defendant ran out of the store. Hayes denied any knowledge of the robbery and shooting. The defendant gave several statements. Mathews denied any knowledge of the incident but admitted being in the area prior to the robbery.

Candice Meza made a tentative identification of Mathews as the person she saw flee from the store and shoot at her. Both Hayes and Mathews were indicted for first degree murder. The state reduced the charge against Hayes to second degree murder and he was convicted as charged.

Mathews was tried for first degree murder. Cherie repeated his identification of the defendant. Candice Meza positively identified the defendant at trial. She said that her previous tentative identification of the defendant was actually a positive identification but that she had been too afraid to tell the detective. The jury found Mathews guilty as charged. The jury found two aggravating circumstances: the defendant created the risk of death to more than one person and the killing occurred during the perpetration or attempted perpetration of an armed robbery. Mathews was sentenced to death. While his appeal was pending a motion for a new trial was granted.

(67) State of Louisiana vs. Douglas Shoemake
Docket No. 97-3840 Division "M"
Crime Convicted: First Degree Murder, guilty plea
Sentence: Life

On April 14, 1997, David Lamar Shoemake of 448 Genie Court, Avondale, La., made a 911 call when he arrived home from work and discovered his wife, Fay

Shoemake, dead on the kitchen floor and covered with blood. Jefferson Parish Sheriff's deputies responded to the call and were escorted by David Shoemake to the kitchen. EMS was immediately requested but the victim did not show any signs of life. Investigation revealed that the victim had been shot once by a shotgun in the left temple with an exit wound in the right rear of her head. The pellet continued out of the rear window and into the back yard. The scene showed that the victim had been involved in some type of physical altercation prior to the shooting because the kitchen furniture was in disarray. The victim's purse was missing, as well as the family's 1995 Ford pick-up truck.

Police later learned that the victim and David Shoemake had a son named Douglas, who had been residing with them for several years due to a drug habit and other problems. Through a neighborhood canvas and interviews, police learned that Douglas Shoemake argued with his mother at the residence about repaying money and then shot her. Douglas Shoemake fled the scene but was later apprehended at a Winn Dixie store in West La. while attempting to cash one of his mother's checks taken during the incident.

On May 11, 1998, Douglas Shoemake withdrew a plea of not guilty and tendered a plea of guilty as charged to first degree murder. On January 22, 1999, Douglas Shoemake was sentenced to life in prison without benefit of parole, probation or suspension of sentence.

(68) State of Louisiana vs. Elzie Ball
Docket No. 96-4222 Division "C"
Crime Convicted: First Degree Murder
Sentence: Death

Around ten in the morning on May 15, 1996, Elzie Ball entered The Pub Lounge. For a couple of hours, he sat at the bar socializing with the bar owner and a few others and having a few drinks. Around 12:45 p.m., after bar owner left, Ball produced a revolver and pointed to the head of a patron. After forcing the patron into the restroom, Ball

demanded money from the barmaid. While the robbery was in progress, Bernard Scorsone, a Budweiser deliveryman, entered the lounge. Seeing the robbery taking place, Scorsone, attempted to disarm Ball but was shot by Ball two times. Scorsone, with gun shot wounds to the back and arm, ran outside of the bar where he collapsed and died. Moments later, Ball ran out of the bar and drove off in his vehicle. A witness was parked across the street eating his lunch when he heard what sounded like gun shots. Seeing Ball hurriedly run out of the bar and get into his vehicle, the witness decided to follow him in his vehicle. A few minutes later, he lost him.

Days later, an anonymous source provided the police with Ball's name as the potential suspect in the homicide and robbery. The descriptions the source gave concerning Ball and his vehicle fit the descriptions given by the witnesses of the crime. With this information and the positive photo identification of Ball by the witnesses, the police apprehended and arrested Ball.

On May 23, 1997, Ball was convicted of first degree murder and was sentenced to death.

(69) State of Louisiana vs. Lawrence Jacobs and Roy Bridgewater
Docket No. 96-7161 Division "H"
Crime Convicted: First Degree Murder
Sentence: Death
***State v. Jacobs*, 99-1659 (La. 6/29/01),**
789 So.2d 1280
***State v. Bridgewater*, 00-1529 (La. 6-21-02),**
823 So.2d 877

On October 31, 1996 Jefferson Parish Sheriffs officers were summoned to Nelson Beaug's residence in Marrero, Louisiana to investigate a double homicide. Mr. Beaug and his mother, Della, had been found murdered by Mr. Nelson's mother-in-law, Marilyn Williams. Mrs. Williams had arrived at the Beaug's residence to perform some housekeeping tasks when she discovered the murdered bodies in the master bedroom.

As officers began to investigate, it became apparent that the Beaugh residence had been burglarized. Mr. Beaugh's minivan was missing from the driveway. One of the double car garage doors was opened. The door leading from the garage to the main house was open. The bathroom in the master bedroom had been ransacked. A large, multi-drawer, jewelry box had been emptied of its contents and the drawers were placed atop a wicker basket nearby.

Costume jewelry was found scattered throughout the residence. The kitchen cabinets were open; a bowl usually containing keys, hardware and coins was empty. Vertical blinds covering the rear door in the living room were partially torn down. Mr. Beaugh's younger son's room showed extensive activity. Articles were thrown onto the floor, small trinket boxes were opened and thrown onto the bed and the mattress had been partially removed from the box spring. During the investigation of the Beaugh's residence the officers learned that a neighbor, Ms. Brenda Menard, had called the police concerning two suspicious males in the neighborhood. Ms. Menard gave the police a statement and could positively identify the men. The officers received a call concerning a fire. Officers discovered a burning briefcase containing a deposit Mr. Beaugh's bank account. The minivan was found nearby. The officers were able to obtain several fingerprints from the minivan. The officers also learned at this time that another similar burglary had occurred on October 30, 1996. The suspect in this earlier case fit the description provided by Ms. Menard. The suspect was identified as Lawrence Jacob. The officers were able to match the fingerprints lifted from the minivan with Lawrence Jacobs.

On November 1, 1996, Kenneth Bridgewater was arrested on unrelated charges. Mr. Bridgewater advised the officers that his brother, Roy Bridgewater, and Lawrence Jacobs had spent the night at Mr. Bridgewater's residence on October 30, 1996, the night before the murders at the Beaugh's residence. The officer found that Roy Bridgewater closely fit the description of the second suspect Ms. Menard had identified.

On November 1, 1996, an arrest warrant was obtained for Lawrence Jacobs for two counts of first degree murder and one count of aggravated burglary. On November 2, 1996, Roy Bridgewater surrendered himself to Jefferson Parish Second District Officers. On November 3, 1996 Lawrence Jacobs surrendered to police.

A jury found Lawrence Jacobs guilty of first degree murder on April 18, 1998. On May 18, 1998, Lawrence Jacobs was sentenced to death. Roy Bridgewater was convicted in a separate trial on October 31, 1998. He was sentenced to death on November 11, 1998. On appeal, this Court reversed Jacobs' conviction and sentence due to reversible error in voir dire.

Bridgewater's conviction was reduced to second degree murder on January 15, 2002. Rehearing was granted his first degree conviction was reinstated and the death sentence reimposed.

(70) State v. Jarrell Neal
Docket No. 98-3238 Division "D"
Crime convicted: First Degree Murder
Sentence: Death
***State v. Neal*, 00-0674 (La. 6/29/01), 796 So.2d 649,**
2001 WL 74332

On March 31, 1998, at approximately 11:45 p.m., Zannie Neal and his brother Jarrell Neal forced their way into a side door at 1333 S. Wilson in Kenner, Louisiana. Zannie was armed with a revolver and land was armed with, an AK-47. Waiting outside in a black Toyota 4-Runner was Arthur Darby. Inside 1333 S. Wilson was Greg Vickers, who was there to purchase crack cocaine from Fergus Robinson. After entering the residence, Zannie hit Vickers with the revolver and the gun discharged. At that time, Jarrell opened fire with the AK-47. Vickers was shot numerous times in the torso and fell just inside the threshold of a door. Robinson and Claudette Hurst, a woman who was also in the residence, ran into a front room where Carl Duncan and Keinna Porter were located and closed the

door. Both Zannie and Jarrell tried to enter the room but the Robinson and Duncan were holding the door shut from inside. Jarrell fired several times through the door, killing Robinson and wounding Duncan in his right arm. Both Vickers and Robinson were pronounced dead on the scene with multiple gunshot wounds. The others who were present in the residence were not injured, including two women and three children. Zannie and Jarrell fled on foot through the side door.

As Zannie and Jarrell fled the scene, they approached a parked vehicle. Seneca Johnson and Larry Osborne were sitting outside in the vehicle. As he exited the residence, Jarrell continued to fire the AK-47, hitting Johnson in her buttock and leg.

Off-duty deputy Derrick McGee observed a black Toyota 4-Runner parked on Ivy near its intersection with S. Wilson. Shortly afterwards, Deputy McGee heard numerous gunshots coming from the 1300 block of S. Wilson. He saw the Toyota driving east on Ivy toward Little Farms Avenue. The vehicle ran a stop sign and turned west onto Park Avenue. The vehicle turned south again onto Tudor Avenue and proceeded to Jefferson Highway.

The Toyota turned west when it reached Jefferson Highway and ran the red light at Filmore Avenue. Deputy Harold Bourgeois pulled in back of the vehicle and activated his overhead emergency lights. The Toyota speeded up and turned north onto Taylor Avenue. As the Toyota headed north on Taylor Avenue towards Airline Highway, officers observed the passenger, later identified as Jarrell Neal, firing at both units that were in pursuit. Upon reaching Airline Highway, Jarrell either jumped or fell out of the Toyota onto Airline Highway with the AK-47 still in his hands. Officers McGee and Bourgeois apprehended him.

Meanwhile, the Toyota continued across Airline Highway on Taylor and struck a tow truck that was parked on the side of the road. The driver, later identified as Arthur Darby, exited the vehicle and fled on foot. He was subsequently arrested by K-9 officers. Another passenger,

Zannie Neal, remained in the rear seat of the vehicle and was apprehended at that time.

As a result of their actions, Arthur Derby, Zannie Neal and Jarrell Neal were arrested and each charged with two counts of first degree murder, two counts of attempted first degree murder of a police officer and five counts of attempted second degree murder. Derby testified for the state after pleading guilty to two counts of manslaughter and receiving a sentence of 20 years. Zannie Neal's trial is presently pending. The state brought Jarrell Neal to trial on two counts of first degree murder. On March 1, 1999, Jarrell Neal was convicted of both counts of first degree murder and sentenced to death. On June 4, 1999, Jarrell Neal was formally sentenced to death.

(71) State of Louisiana vs. Titrus Davis
Docket No. 99-5533 Division "E"
Crime Convicted: First Degree Murder
Sentence: Life

On June 20, 1999, the body of Jermain Cosse was found in Jefferson Parish. The post-mortem [*sic*] revealed that the victim had died as the result of manual strangulation. There was duct tape around the victim's hands and neck. The investigation led them to Ryan Lawrence who said that he and the victim got into a red car driven by Titrus Davis on June 18, 1999. Davis and Cosse were in the front seat and Lawrence and Michael Williams were in the back. After driving around to different clubs, Titrus Davis pulled a sawed off shotgun out and told the victim to "give it up" and took his shoes and wallet. Davis then bound and gagged the victim with duct tape. Williams then bound [*sic*] Lawrence's hands with duct tape while Lawrence was held at gunpoint.

Davis then drove to a canal at the end of Manhattan Blvd., at which time Davis strangled the victim to death with a shoestring. Williams aided in the process briefly, but the assault lasted for many minutes. Once they believed that the victim was dead, Davis and Williams dumped the body in the nearby canal. They then proceeded to another

location where Davis told Lawrence that if he was arrested that Lawrence and his family would be killed. After interviewing Lawrence, the detectives obtained a search warrant for Davis' home and he was arrested there on June 27, 1999. Davis gave a statement and advised that he killed the victim because he had slept with Davis' retarded cousin.

(72) State of Louisiana vs. Elton Cowart
Docket No. 99-5664 Division "C"
Crime Convicted: First Degree Murder
Sentence: Life

In July, 1999, Darian Burse was killed during the commission of an armed robbery at the Beechgrove Apartments on the Westbank of Jefferson Parish. The police investigation indicated that the victim was accosted by three men – one acted, as a lookout (never apprehended); one rifled through his pockets demanding money (Moses Beverly); and one shot him several times fatally wounding him (Elton Cowart).

The trials of Cowart and Beverly were severed. On November 29, 2000, Elton Cowart was tried on the charge of First Degree Murder. The jury found him guilty as charged but a life sentence was imposed when the jury could not unanimously agree on a verdict. Cowart was sentenced to life imprisonment on February 12, 2001.

(73) State of Louisiana vs. Larry Harris and Leon Williams
Docket No. 00-2434 Division "G"
Crime Convicted: First Degree Murder
Sentence: Life
***State v. Harris*, 03-1297 (La. App. 5th Cir. 30-04), 871 So.2d 599**

On February 22, 2000, the defendants ambushed Vanessa Mack, her cousin Melinda Wheeler James and a friend, Ronald Lewis, as they left the Sport Palace bar on Jefferson Highway in Jefferson Parish, Louisiana. Larry Harris had dated Vanessa Mack for a year and a half, but she had ended the relationship a few months before the

shooting. Larry Harris and Leon Williams were friends who worked together. Vanessa Mack, the intended target, was shot five times but recovered. Melinda Wheeler James was killed. Ronald Lewis, who was walling the women to their car, was finding that the killing of Melinda Wheeler James was committed when the offenders had the specific intent to kill or inflict great bodily harm upon more than one person. The jury recommended life sentences for both defendants on April 1, 2001. The trial judge sentenced the defendants to life sentences on April 27, 2001.

(74) State v. Thoa Tan Lam
Docket No. 97-1240 Division "H"
Crime Convicted: First Degree Murder
Sentence: Death

The defendant, Thoa Tan Lam, who had worked with the victims' family in the past, arrived at the Truong house at 3820 Chriswood Drive in Harvey, Louisiana, on February 4, 1997. Words were exchanged and the defendant shot Phuong Tu Tran, Truong's brother. Dat Phat Truong, who had been sitting on the sofa, rushed toward the defendant and was fatally shot. Nguyet Minh Lam, wife of Dat Phat Truong, entered the room to find out what the shooting was about and was shot and injured. Nguyet Minh Lam ran outside to a neighbor's house and alerted the police. Hearing the shots, 8-year son old Kerry Truong and 18-year old daughter Han Ngoc Truong walked down the stairs. The defendant fatally shot the girl in the head. The young boy ran out of the house. The defendant went into another room and shot himself in an unsuccessful suicide attempt.

The jury found Lam guilty of first degree murder and recommended he receive the death penalty. The aggravating circumstances found by the jury in the penalty phase was [*sic*] that the defendant knowingly created the risk of death to more than one person and that the murders were committed in an especially heinous, atrocious or cruel manner. Lam was sentenced to death. This court remanded for proceedings relative to the accuracy of the translation at trial.

- (75) **State of Louisiana vs. Michael Legrand**
Docket No. 99-4550 Division "F"
Crime Convicted: First Degree Murder
Sentence: Death
State v. Legrand, 02-1462 (La. 12-03-03),
864 So.2d 89.

On May 18, 1999 at approximately 4:59 p.m., deputies from the Jefferson Parish Sheriff's Office responded to a call at 2600 Houma Blvd. Apt. 106 in Metairie, Louisiana. When deputies entered the apartment, they found the lifeless body of Rafael Santos on the floor. Santos was stabbed multiple times in the head, chest, back, and throat. There were defensive wounds on his hands and his front tooth was knocked out of his mouth. The apartment showed signs of a struggle and several weapons were found in the area of the body, including several bent or broken kitchen knives, a pair of scissors and two flathead screwdrivers. A canvass of the apartment complex revealed that Santos was last seen alive on May 15, 1999.

On May 19, 1999, detectives developed information from Francine Flick and Kevin Brown that Michael Legrand was the perpetrator of the murder. Both Flick and Brown gave statements describing Legrand covered in blood on Saturday, May 15, 1999. Brown stated that Legrand admitted killing Santos. On May 20, 1999, deputies obtained an arrest warrant for Legrand. After being arrested and advised of his rights, Legrand gave a statement in which he admitted killing Santos for his compact disc collection. Legrand stated that Judy Fairness and Clayton Runnels helped him obtain and sell the CD collection. Legrand admitted that he and Runnels had tried to rob the victim prior to the murder but the attempt failed. Legrand told the detectives that Santos had cried out for help after being stabbed, but Legrand ignored him as he removed all the CDs from the apartment to his car. Legrand washed off in Santos's apartment and changed into Santos's clothes before he left.

Trial began on September 25, 2000. On September 28, 2000, the jury unanimously found Legrand guilty as

charged of first degree murder. On September 29, 2000, the jury unanimously recommended the death penalty finding as aggravating circumstances that Legrand was engaged in the perpetration or attempted perpetration of an armed robbery and that the offense was committed in an especially atrocious or cruel manner. Legrand was sentenced to death on February 16, 2000.

(76) State v. Shawn Higgins
Docket No. 00-4999 Division "I"
Crime Convicted: First Degree Murder
Sentence: Death
Modified Verdict: Second degree murder
Sentence on modified verdict: Life imprisonment

On October 25, 1998, Wanda Brown was leaving the Westbank Lounge when she saw the defendant, Shawn Higgins, confronting the victim, Donald Price. Ms. Brown could not hear what the men were saying, but she could tell that they were arguing, and she could see that Higgins was holding a gun pointed at Mr. Price in one hand, while he gestured for Mr. Price to give him something with the other hand. Ms. Brown could see that the victim was refusing to give something to the defendant. She saw the defendant shoot the victim and then run.

Deputy Sanderson, who was responding to the area of the crime scene, went to the nearby residence of Ruby Wells to investigate a suspicious person complaint. Ms. Wells heard gunshots, looked out the window, and saw a man enter a neighbor's yard, jump over her fence, and run to the side of the house. Deputy Hymel investigated the rear yard and located a red and blue plaid shirt, a black visor, a glove, a stainless steel revolver, and a blue and white bandana, all concealed under a broken swing. The gun was later determined to be the weapon used to kill the victim, Donald Price. A small amount of blood on the bandana was tested and the genetic profile of the sample was determined to be consistent with that of the defendant, Shawn Higgins. Ms. Brown, who did not know the victim or the perpetrator, subsequently identified a photograph of the defendant in a

photographic lineup procedure conducted in February of 2000.

The jury found Higgins guilty as charged of first degree murder on May 10, 2002. On May 11, 2002, the jury returned a verdict of death after finding the following aggravating circumstances: 1) the killing was committed during the perpetration or attempted perpetration of an armed robbery; and 2) the offender has previously been convicted of an unrelated murder. This Court set aside the defendant's first degree murder conviction on appeal and modified the jury's verdict to render a judgment of guilty of second degree murder. The case was remanded to the trial court for resentencing. On May 10, 2005, the trial court resentenced Higgins to life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence.

(77) State of Louisiana vs. Kellen Parker
Docket No. 02-4386 Division "N"
Crime Convicted: First Degree Murder
Sentence: Life
State v. Parker, 04-1017 (La. App. 5 Cir. 3/29/05)
 901 So.2d 513; writ denied 05-KO-1451
 (La. 1/13/06) 920 So.2d 235.

On June 6, 2002, Paul Fasullo and his two year old daughter, Samantha, were sleeping in their residence. His wife, Shannon Fasullo was awake and using her computer, when she heard a knock on the door. She put on a robe and opened the door. Dustin Dressner and Kellen Parker were at the front door. Dressner asked Shannon if her nephew was home and she told him that he was not. As she turned to close the door, she was struck in the back of her head with an object Shannon screamed for Paul, and crawled from the foyer area to the living room while the men continued to beat her with the object.

When Shannon was able to get to her feet, she saw her husband struggling with Dustin Dressner over a knife in the hallway. Dressner had the knife in his right hand, and her husband was holding Dressner's wrist. Shannon grabbed the

phone and called 911 from the master bedroom. As she screamed in the phone for help, Dressner entered the room followed by Kellen Parker. Dressner was armed with a silver knife. Dressner tried to cut her throat, but couldn't do it because her chin was down. He sliced her left eye vertically. She pushed him away and ran into the bathroom, closing the door and locking it. She could hear Dressner in the background saying "The bitch won't die, the bitch won't die!" The men kicked the door down on top of her, and one of them reached around it and stabbed her several times. Paul Fasullo was stabbed a number of times and died on the scene.

Shannon Fasullo identified Dustin Dressner, who had been to the Fasullo residence previously with Brandon Sapia, a friend of her nephew, Michael Fasullo, from a photographic lineup. Although Shannon was unable to identify Kellen Parker as the second perpetrator, Parker made a statement to police in which he admitted entering the victim's house with Dressner, who he referred to as "Shorty," while Troy Arnaud waited in the car. In his statement, Parker also admitted stabbing Shannon Fasullo three times in the shoulder after Dressner hit her on the back of the head with a wine bottle in a paper bag, and to being present when Dressner kicked in the victim's bathroom door.

Kellen Parker testified at his trial. Although he admitted entering the house with Dustin Dressner, he denied any involvement in the attack on Paul Fasullo, or in his murder. He admitted to stabbing Shannon Fasullo three times, but claimed that he stabbed her only after she lunged at him. The evidence indicated that Shannon Fasullo was stabbed more than a dozen times. The jury found Kellen Parker guilty of first degree murder on November 22, 2003. After the jury was unable to reach a unanimous determination as to the defendant's sentence, the trial court imposed a sentence of life imprisonment. The Louisiana Fifth Circuit Court of Appeal affirmed the defendant's conviction and sentence on appeal.

- (78) Dustin Dressner**
Docket No. 02-4386 Division "N"
Crime Convicted: First Degree Murder
Sentence: Death

Dustin Dressner was indicted with Kellen Parker for the first degree murder of Paul Fasullo. For a recitation of the facts of this case, see Number (76) above.

On May 23, 2004, the jury found the defendant guilty as charged of first degree murder. On May 24, 2004, the jury determined that the defendant should be sentenced to death. As aggravating circumstances, the jury found that the crime was committed in an especially heinous, atrocious, or cruel manner, and that the offender knowingly created a risk of death or great bodily harm to more than one person. On November 18, 2004, the trial court sentenced the defendant to death.

2) A list of each capital aggravated rape case in which sentence was imposed after August 15, 1995.

- (1) John Kinsel**
Case No. 96-7544 "H"
Conviction: Aggravated rape
Sentence: Life imprisonment
State v. Kinsel, 00-KA-1 610 (La. App. 5 Cir. 3/28/01) 783 So.2d 532; writ denied 01-K-1230 (La. 3/28/02) 812 So.2d 641

At trial, the victim, A.M. testified that John Kinsel's sexual abuse of her began when she was six years old in Monroe, Louisiana. From Monroe, A.M. and her family moved to a home on Mason Street in Gretna, Louisiana. A.M. testified that while her mother was at work during the day, defendant, who resided with them at the time, would take her into his room and sodomize her. A.M. estimated that this occurred five or six times while she lived at the Mason Street address.

A.M., and her family moved from Mason Street to her grandfather's residence on Sheree Lyn Court in Gretna, Louisiana. A.M. testified that at the residence on Sheree Lyn, defendant would wake her up in the morning and bring her to the bathroom, where he would penetrate her anally. At this address, defendant also made vaginal penetration. A.M. estimated that defendant raped her approximately ten times while she resided with her grandfather.

Finally, A.M. and her family moved into a residence on Hunterbrook Street. On one afternoon, A.M. testified that defendant had become upset with her about something she had told friends about defendant. She and defendant were alone in the house, and defendant began to choke her, saying, 'Don't tell anyone that I've ever done this, or I'll kill you, and then I'll kill your whole family.' The defendant then raped her vaginally and forced her to perform oral sex upon him.

Eventually, A.M. told her mother that defendant had touched her in a way she didn't like. A.M. then told a school counsel about the abuse, indicating she wanted the police to be contacted, but not her parents.

A physical examination of the victim revealed abnormalities in the area around the hymen which were consistent with, but not 100 percent indicative of, sexual abuse or blunt trauma.

The victim's mother, Ms. M., testified that the defendant did not reside with her family from November 1993 to May 1994, the period of time when the family lived at Sheree Lyn Court in Gretna, Louisiana. Ms. M. Also stated that she suspected her daughter was lying about the accusation.

The defendant also testified at trial and denied performing any sexual acts with A.M, and also denied ever living on Sheree Lyn Court with the family.

On January 30, 1997, the defendant was charged by bill of information with the aggravated rape of A.M., a person

under twelve years of age. The indictment alleged the offense occurred from on or about November 1992 through October, 1995, and thus includes a period prior to the August 15, 2005 effective date of the amendment to La. R.S. 14:42 authorizing the death penalty for the rape of a child under twelve. Although the bill of indictment alleged the victim to be a juvenile under twelve and indicated that the matter was a first class case, the State did not seek the death penalty.

A jury trial began February 11, 1998. On February 13, 1998, a defense motion for mistrial was granted. A new trial was held August 30, 1999 - September 1, 1999. The jury found Kinsel guilty as charged of aggravated rape. On December 7, 1999, the trial judge sentenced Kinsel to life imprisonment at hard labor without benefit of parole, probation or suspension of sentence, with credit for time served. On March 28, 2001, the Louisiana Fifth Circuit Court of Appeal affirmed petitioner's conviction on direct appeal. *State v. Kinsel*, 00-1610 (La. App. 5 Cir. 3/28/01) 783 So.2d 532. This Court denied petitioner's application for writ of certiorari on March 28, 2002, *State v. Kinsel*, 01-1230 (La. 3/28/02) 812 So.2d 641.

- (2) **State of Louisiana v. Donald Sims**
Docket No. 98-849, Division "N"
Crime Convicted: Aggravated Rape
Sentence: Life
State v. Sims, 00-KA-1728 (La. App. 5 Cir. 5/30/01) 796 So.2d 941 (Table)

On December 17, 1997, when the victim, S.S., was seven years old, she stayed home from school because she was ill. She was called into the living room by defendant, her eighteen year old cousin, who also lived at the house. Defendant then placed his hand over her mouth, removed her underwear and "put [his private part] in [her] private part." Defendant told her not to tell anyone.

About a week later, after noticing a foul odor emanating from her daughter, the victim's mother discovered a brown discharge in the victim's underwear. When questioned by

her mother, the victim reported the incident. S.S. was taken to the emergency room, where she was diagnosed with vaginitis and vaginal pin worms. Laboratory tests for chlamydia and gonorrhea were reported as negative at this time. A few months later, the victim was re-examined by an expert in the field of child sexual abuse. Tests conducted during the re-examination were positive for chlamydia and gonorrhea in both the vagina and anus of the victim.

The defendant was indicted for aggravated rape of a seven year old child, a violation of LSA-R.S. 14:42. Although the case was instituted as a first class case and initially prosecuted as a capital case, prosecutors subsequently determined that they would not seek the death penalty in this matter. The defendant waived a trial by jury and was subsequently found guilty as charged by the trial court on July 29, 1999. On September 9, 1999, the trial court sentenced the defendant to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

The defendant's conviction and sentence were affirmed by the Louisiana Fifth Circuit Court of Appeal on May 30, 2001.

- (3) **State of Louisiana v. Fred J. Leblanc**
Docket No. 98-5862, Division "G"
Crime Convicted: Aggravated Rape
Sentence: Life
State v. Leblanc, 00-1322 (La. App. 5 Cir. 5131101)
788 So.2d 1255; *writ denied* 01-K-1920 (La.
5/24/02) 816 So.2d 299

The victim, J.S., became acquainted with the defendant through her father, who had told her that the defendant was her uncle. The defendant babysat for J.S. over a period of years while her father was working offshore and her mother was out socializing in "bars." From the time that she was four years old, the Defendant forced J.S. to submit to a variety of sex acts, including fondling, oral sex, anal sex, and vaginal sex. He also made her perform oral sex on him,

and had her watch pornographic videotapes and magazines. The defendant repeatedly told her not to tell anyone.

In late January of 1998, the victim's aunt began living with J.S. As a result of caring for J.S. she noticed a "very heavy discharge" in J.S.'s underwear. She became suspicious after observing that J.S. became upset and cried after speaking with the defendant on the phone, and after observing the defendant ask J.S., "Where is my hug and kiss?" The victim disclosed the abuse to her aunt after her aunt discovered her crying uncontrollably.

The State elected to seek the death penalty. Trial before a jury of twelve persons began on February 14, 2000 and concluded on February 16, 2000. The jury unanimously found the defendant to be guilty as charged. During their penalty phase deliberations on March 3, 2000, the jury became hopelessly deadlocked. Therefore, as required by law, the trial court sentenced the defendant to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. The Louisiana Fifth Circuit Court of Appeal affirmed Leblanc's conviction and sentence on appeal.

- (4) **Robert Bourgeois**
Case No. 99-2714 "C"
Conviction: Aggravated rape, aggravated incest, aggravated oral sexual battery
Sentence: Life Imprisonment (aggravated rape), 15 years (aggravated incest and aggravated oral sexual battery
***State v. Bourgeois*, OO-KA-1353 (La. App. 5 Cir. 4/11/01) 786 So.2d 771**

Between January of 1993 and November of 1996, the Robert Bourgeois sexually molested his great-granddaughter who was between the ages of nine and twelve. The sexual acts occurred while the defendant babysat the victim in the victim's home. Over the three year period, the defendant french-kissed, fondled, performed oral sex on the victim, and showed the victim pornographic videotapes. In addition, the defendant had the victim perform oral sex on

him. The defendant attempted intercourse with the victim several times, but stopped when she cried out in pain. The victim reported the sexual abuse to her mother who called the police. The defendant subsequently gave a confession and was arrested.

On May 13, 1999, the defendant was charged by bill of indictment with the aggravated rape of a juvenile under twelve years old in case number 99-2714. A separate bill of indictment was filed in case number 99-3125, charging the defendant with aggravated incest and aggravated oral sexual battery. On July 16, 1999, the State determined that it would not seek the death penalty in case number 99-2714. The State dismissed case number 99-3125, and amended the bill of indictment in case number 99-2714 to add the counts previously charged in case number 99-3125.

After a two day trial on November 17 and 18, 1999, the Defendant was unanimously found guilty as charged on all three counts by a twelve person jury. He was subsequently sentenced to life imprisonment at hard labor on the aggravated rape conviction and to fifteen years imprisonment at hard labor each on the aggravated oral sexual battery and aggravated incest conviction, to run concurrent with his life sentence. On appeal, the Louisiana Fifth Circuit Court of Appeal affirmed the defendant's convictions and sentences in part, but remanded the case in part for further proceedings on defendant's claim that the State impermissibly used its peremptory challenges to exclude males from the jury in violation of *JEB. v. Alabama ex. rel.* T.B. 511 U.S. 127, 114 S. Ct. 1419, 128 L.Ed.2d 89 (1986).

- (5) **Lester Gomez**
Docket No. 99-2944 "L"
Crime Convicted: 2 counts Aggravated Rape (Plea)
Sentence: Life Imprisonment

The defendant, Lester Gomez, was the cousin of the live-in boyfriend of eight year old B.S.'s mother. The defendant stayed with B.S.'s family on weekends after returning from offshore work, sleeping in the same room as

victim B.S. On occasion, eight year old B.H. spent the night in B.S.'s room, giving the defendant access to both boys. The defendant used these occasions to fondle, anally rape, and orally copulate the boys. After several months, victim B.S. disclosed the incidents to his mother, who in return informed the mother of victim B.H. B.H. disclosed the abuse when confronted by his mother. Lester Gomez made a statement to police in which he denied abusing the victims, but advised that he was a bisexual male whose partner had died of the AIDS virus. The defendant contended that he had been tested for the virus in the past. Neither child tested positive for the AIDS virus.

On, May 7, 1999, the defendant was indicted on two counts of aggravated rape of a child under twelve. The case was instituted as a first class case, and prosecuted as a capital case. On February 6, 2001, the defendant withdrew his former pleas of not guilty, and entered a plea of guilty as charged on each count. The trial court sentenced the defendant to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence.

- (6) **State of Louisiana v. Daniel E. Dickerson**
Docket No. 99-2946, Division "D"
Crime Convicted: Aggravated Rape
Sentence: Life
State v. Dickerson, 01-KA-1 287 (La. App. 5 Cir. 6/26/02) 822 So.2d 849; *writ denied* 02-K-2108 (La. 2121103) 837 So.2d 627

In May of 1998, A.R, who is the victim's mother and the defendant's daughter, allowed three of her children, including D.R. and her then three-year-old twin siblings, to stay with her father and his live-in-girlfriend for the summer. D.R. was four years old when she went to stay with her grandfather and his girlfriend. She turned five-years-old on June 30, 1998.

While D.R. was staying at the defendant's house, he anally and vaginally raped her. D.R. testified that she was very afraid, and that it hurt when the defendant did that. Defendant told her that if she didn't tell anyone what had

happened, he would give her anything she wanted. If she did tell, he would “whup” her and not give her anything. Although she was afraid, D.R. told her older sister about the things defendant was doing to her. D.R.’s older sister told her mother, who later called the police. D.R. recounted the abuse to members of the Jefferson Parish Sheriff’s Office, and in a videotaped interview with a forensic interviewer at the Children’s Advocacy Center.

The State noticed its intent to seek a capital verdict in this matter. The jury found the defendant guilty as charged of aggravated rape of a juvenile under twelve on January 27, 2001. On January 29, 2001, the jury was unable to reach a unanimous verdict regarding sentencing. The trial court subsequently imposed a sentence of life imprisonment. The Louisiana Fifth Circuit Court of Appeal affirmed the defendant’s conviction and sentence on appeal.

(7) Ronald Knightshed
Docket No. 99-3818 “0”
Crime Convicted: 1 count Aggravated Rape (Plea)
Sentence: Life Imprisonment

After observing a discharge in the six year old victim’s bed, the victim’s mother brought the victim, J.S., to the doctor. Tests were performed and the results were positive for gonorrhoea. The victim, J.S. disclosed that her father, Ronald Knightshed touched her private part with his hand and with his private part, and that his private part was outside and inside her private part. He also sucked her private part with his mouth. These incidents occurred more than once on the same day.

In a taped statement, the defendant advised police that he came home drunk one evening and J.S. was upstairs because she was punished. He admitted to touching the victim’s vagina with his finger, to licking her vagina, to inserting his penis into her vagina about a quarter of an

inch, and to rubbing his penis against her vagina until he ejaculated.

The defendant was charged by bill of indictment with aggravated rape of a juvenile under twelve. The case was instituted as a first class case, and prosecuted as a capital case. On September 5, 2000 the defendant withdrew his former plea of not guilty and entered a plea of guilty as charged.²

- (8) **Donald Washington**
Case No. 98-5426 "F"
Conviction: Sexual battery
Sentence: Ten years
State v. Washington, 99-KA-1330 c/w 99- KA-1331
(La. App. 5 Cir. 5/17/00), 793 So.2d 574; writ
denied 00-KO-1943 (La. 9/21/00) 797 So.2d 59

Defendant was the boyfriend of the mother of victim B. When the defendant lived with them, he would enter her mother's bedroom where B. usually read before bedtime. The defendant would pull down her pants and "stick his penis in [her] booty." He did this to her more than once.

On September 13, 1998, the defendant was charged by bill of indictment with the aggravated rape of a female juvenile under the age of twelve in case number 98-5426 of the docket of the 24th Judicial District Court. The defendant was separately charged by bill of indictment with the aggravated rape of two juveniles while armed with a

² The defendant was separately indicted on a charge of aggravated oral sexual battery of J.S., a violation of La. R.S. 14:43.4, in case number 99-4933. On September 5, 2000, the defendant entered a plea of guilty as charged and was sentenced to twenty years imprisonment at hard labor concurrent with the sentence in case number 99-3818.

dangerous weapon in case number 98-5427. The victims in case number 98-5427 were B's fourteen year-old sister, Q, and Q's fourteen year-old friend, D.J. Although case number 98-5426 was instituted as a first class case, the State informed the trial court and the defendant on December 4, 1998, that it would not seek the death penalty in this matter.

Case numbers 98-5426 and 98-5427 were jointly tried by a jury on May 10 and 11, 1999. At the close of trial, the jury found the defendant guilty of the lesser offense of sexual battery of B. in case number 98-5426, and of the lesser offenses of forcible rape with respect to the charges involving Q and DJ. He was sentenced to 10 years imprisonment without benefit of parole, probation or suspension of sentence for sexual battery in case number 98-5426, and to forty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence for each forcible rape conviction in case number 98-5427. The defendant was adjudicated a third felony offender, and re-sentenced on one of the forcible rape convictions to life imprisonment at hard labor, without benefit of probation, parole or suspension of sentence. The defendant's conviction was affirmed on appeal by the Louisiana Fifth Circuit Court of Appeal.

- (9) **Latroy Oates**
Case No. 99-7044 "N"
Crime Convicted: Aggravated Rape (2 Counts)
Sentence Imposed: Life Imprisonment
State v. Oates, 01-KA-63 (La. App. 5 Cir. 5/30/01)
 796 So.2d 941 (Table); *writ denied*, *State v. Oates*, 01
 (La. 6/14/02)817 So.2d 1150.

D.L., an eight year-old-female, and her siblings went to spend time with their aunt and uncle, Latonya Oates and Joe Lee, while their mother worked. The house in Kenner was occupied by Oates, Lee, their two children, and a roommate, Chris Robinson. D.L. stayed their [*sic*] during July 1999. One bedroom of the two bedrooms in the Lee house was continually occupied by Oates and Lee. The other bedroom was occupied, alternatively, by Robinson

and the children. When the children visited and slept in the living room, Mr. Robinson slept in the second bedroom.

On July 10, 1999, and July 13, 1999, respectively, D.L. and her siblings were staying with her aunt and uncle in their house. On each of those nights, D.L. was asleep when Ms. Oates' brother, Latroy Oates, knocked on the front door and Chris Robinson let him inside. Once inside, Mr. Oates picked up D.L. and took her to the kitchen where he placed her on the floor. He removed her clothes and, according to the victim, he "put his private part in her private part." On the first occasion that s occurred, D.L. began to cry and Latroy Oates covered her mouth. After each encounter, the child was instructed by defendant to go use the bathroom, which she did. Following the incident, the defendant left the house.

Within a week of the second assault, D confided in her ten-year-old cousin, D.K., about the two rapes. D.K. relayed this information to her aunt, Theresa Babineaux. Ms. Babineaux told the victim's mother, who reported the incident to the police. The victim subsequently identified the defendant as the perpetrator from a photographic line-up. A physical examination revealed irregularities in the victim's hymen, compatible with vaginal penetration.

On October 28, 1999, the defendant was charged by bill of indictment with two counts of aggravated rape of a juvenile under the age of twelve. The case was instituted as a first class case, and was initially prosecuted as a capital case. The State later determined that it would not seek the death penalty in this case. On September 14, 2000, a twelve person jury found the defendant guilty as charged on both counts. The trial court sentenced the defendant to concurrent terms of life imprisonment at hard labor. The defendant's conviction was affirmed on appeal by the Louisiana Fifth Circuit Court of Appeal.

- (10) Bernard Williams**
Case No. 99-7488 "E"
Crime Convicted: Aggravated Rape
Sentence: Life imprisonment

***State v. Williams*, 05-KA-318 (La. App. 5 Cir. 1117/06) 921 So.2d 1033; writ denied 04-KO-0051 (La. 5/21104) 874 So.2d 171**

In November of 1999, while conducting an investigation into an allegation that the defendant forcibly raped an adult female acquaintance, Det. Michael Cunningham sought to interview the defendant's daughter, J.W., as a possible witness to the incident. J.W. disclosed to Det. Cunningham that her father had been sexually abusing her for years.

Trial in this matter was held July 13-16, 2004. J.W., who was fifteen years old at the time of trial, testified that she had previously resided with her father and a disabled aunt J.W. related that the defendant began using his hands and penis to touch her private parts when she was five years old. As she became older, the defendant began to place his penis halfway inside of her front and back "private parts" using Vaseline. On one incident, her babysitter, M.W. was sucking on Williams' "private part," and then he told both of them to take their clothes off. He put his mouth on their private parts, and inserted his penis into them both. This occurred more than once on the same evening. M.W., an admitted prostitute, confirmed the incident involving herself. She testified that Williams began having sex with her when she was sixteen years old.

The defendant was charged by bill of indictment with the aggravated rape of a juvenile under 12, with the bill of indictment indicating that it was a first class case. However, the State did not pursue the death penalty in this matter. On July 16, 2004, the jury returned a verdict of guilty as charged. Counsel waived all delays, and the defendant was sentenced to life in prison at hard labor, without benefit of parole, probation, or suspension of sentence. The Louisiana Fifth Circuit Court of Appeal affirmed the defendant's conviction and sentence on appeal.

- (11) **Bryan Cole**
Docket No. 02-5357 "B"
Crime Convicted: 2 Counts of Aggravated Rape
(Plea)

Sentence: Life imprisonment

On July 5, 2002, the Jefferson Parish Sheriff's Office was contacted following V.C.'s disclosure of sexual abuse by her father, Bryan Cole. Five year-old V.C., the victim of count one of the bill of indictment, was anally and vaginally raped by her father while on a camping trip which she took with him, her older sister, C.C., and their eleven year old friend, M.V. This incident was observed by C.C. and M.V. Bryan Cole also performed anal and vaginal intercourse on V.C. when she visited him at his residence, and placed vaseline on his penis which he then made her masturbate until he ejaculated. V.C. was examined at Children's Hospital where it was learned that she tested positive for gonorrhea.

M.V., the victim of the second count of the indictment, disclosed that Bryan Cole penetrated her rectum with his penis on an occasion when she spent the night with his daughters at his residence. M.V. also related that the defendant had her masturbate him with Vaseline until he ejaculated. This incident was observed by C.C.³

The defendant was indicted on two counts of aggravated rape of a juvenile under twelve. The case was prosecuted as a capital case. On November 14, 2003, the defendant withdrew his pleas of not guilty and entered pleas of guilty as charged to both counts of the indictment. The trial court imposed a sentence of life imprisonment at hard labor

³ Bryan Cole was separately charged in case number 02-6005 of the docket of the 24 Judicial District Court with the non-capital aggravated rape of an adult female, with the non-capital aggravated rape of his six year old stepson, which occurred prior to the August 15, 1995 amendment authorizing the death penalty for the aggravated rape of a child under twelve, and aggravated incest of his juvenile, biological daughter C.C. He entered a plea of guilty as charged to all counts on November 14, 2003, and was sentenced to two consecutive terms of life imprisonment on the aggravated rape counts, and a concurrent sentence of twenty years on the aggravated incest count. The court ordered the sentences in case number 02-6005 to run concurrently with the sentences imposed in case number 02-5357 "B."

without benefit of parole, probation, or suspension of sentence on each count.

(This Case) Patrick Kennedy
98-1425 "0"
Conviction: Aggravated Rape
Sentence: Death

On March 2, 1998, the victim, eight year old L.H., lived with her mother, brother and her stepfather, Patrick Kennedy. That morning, the victim's mother left the house to go to work, leaving the victim in the home with her brother and the defendant. L.H. awoke in her bed to find the defendant on top of her. Her shorts and underwear had been removed. The approximately 300 pound defendant's clothes were off. He raped her with his private part, and her private part was bleeding when he was finished. The defendant covered her eyes with his hand while he was raping her with his private part. After L.H. observed that she was bleeding, she fainted. The defendant left her room and then returned carrying a cup of orange juice and some pills chopped up in it. The defendant brought the victim into a bathroom where she threw up in the bathtub. L.H. was later transported by ambulance to Children's Hospital where she underwent surgery to repair a deep laceration running from her front vaginal wall to her rectal area which was causing her rectal wall to bulge out.

After 9:00 a.m. on the morning of March 2, 1998, the defendant called 911 to report that his little girl had been raped. The defendant related to the dispatcher that the victim was in the garage when two boys grabbed her and pushed her and raped her. The defendant stated that he found the victim in a side yard by an empty house after he heard screaming. The defendant went on to relay information about the race of the perpetrators and to describe an individual he claimed to have seen outside. The victim later parroted the defendant's account of the incident.

Investigators noted discrepancies between the evidence at the scene and the defendant's account of the incident. Details of the incident changed as the defendant spoke to

investigators. Although the defendant did not report the rape until after 9:00 a.m., it was learned that as early as 6:30 to 7:30 on the morning of March 2, 1998, the defendant called the dispatcher at his place of employment to tell him that his daughter had become a young lady that morning, and to ask if he knew how to get blood out of a white carpet. At 7:37 that morning, the defendant called B&B Carpet Cleaning wanting to have blood stains cleaned from some carpets.

Eventually, the victim advised her mother that the defendant, Patrick Kennedy, was in fact the person who raped her. The defendant was charged by bill of indictment with the aggravated rape of a child under twelve. The State sought the death penalty in this matter. Trial in this matter commenced on August 8, 2003. On August 25, 2003, the jury found the defendant guilty as charged.

At the sentencing hearing, C.S. was called to testify by the State. The defendant was previously married to C.S.'s cousin. C.S. was eight or nine when she stayed with the defendant and her cousin for the summer. The defendant checked her out of school, brought her back to the house and had intercourse with her, then told her to tell her cousin that she had injured herself at school. C.S. did not pursue charges against the defendant. On August 26, 2003, the jury determined that the defendant should be sentenced to death, finding as aggravating circumstances that the offense occurred during an aggravated rape and that the victim was under twelve years of age. On October 2, 2003, the trial court sentenced the defendant to death.

Wherefore, the State respectfully submits the instant Capital Sentencing Memorandum in compliance with Louisiana Supreme Court Rule 28.

Respectfully Submitted,

/s/ _____
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