

IN THE SUPREME COURT OF FLORIDA

CASE NO. 93,697

SEBURT NELSON CONNOR,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

AN APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR MIAMI-DADE COUNTY

ANSWER BRIEF OF APPELLEE

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TABLE OF CONTENTS

TABLE OF CITATIONS	iii-vi
CERTIFICATE REGARDING FONT SIZE AND TYPE	vii
STATEMENT OF THE CASE AND FACTS	1-25
A. Evidence Presented at the Suppression Hearing.....	2-19
B. The Trial Court’s Findings on the Motion to Suppress.....	19-23
C. Trial Testimony	23-44
1. The State’s Case	23-36
2. The Defense Case	36-44
D. Penalty Phase Testimony	44-57
E. Sentence	58-59
SUMMARY OF ARGUMENT	59-60
ARGUMENT	61-99
I. THE TRIAL COURT PROPERLY DENIED THE MOTIONS TO SUPPRESS WHERE THERE WAS NO ILLEGAL ARREST OF THE DEFENDANT AND PHYSICAL EVIDENCE AND STATEMENTS WERE OBTAINED PURSUANT TO VOLUNTARY CONSENT.....	61-74
II. THE TRIAL COURT PROPERLY FOUND THAT THE MURDER WAS COMMITTED TO ELIMINATE A WITNESS	74-81

III. THE TRIAL COURT PROPERLY FOUND THE MURDER TO BE COLD, CALCULATED AND PREMEDITATED 81-85

IV. THE TRIAL COURT PROPERLY REJECTED THE STATUTORY MENTAL HEALTH MITIGATORS..85-94

V. THE TRIAL COURT PROPERLY REJECTED THE LACK OF A SIGNIFICANT PRIOR CRIMINAL HISTORY MITIGATOR.....94-95

VI. THE DEATH PENALTY IMPOSED HEREIN IS PROPORTIONATE TO THAT UPHELD IN OTHER CASES95-99

CONCLUSION 100

CERTIFICATE OF SERVICE 100

TABLE OF CITATIONS

<u>Case</u>	<u>Page</u>
Almeida v. State, 1999 WL 506965 (Fla. 1999)	98
Alston v. State, 723 So. 2d 148 (Fla. 1998)	75,83,84
Arbelaez v. State, 626 So. 2d 169 (Fla. 1993)	84,96-7
Atkins v. State, 497 So. 2d 1200 (Fla. 1986)	98
Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed. 2d 317 (1984)	64-65
Blanco v. State, 706 So. 2d 7 (Fla. 1997)	94
Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed. 2d 416 (1975)	67
Byrd v. State, 481 So. 2d 468 (Fla. 1985)	71-72
California v. Beheler, 463 U.S. 1121, 103 S.Ct. 3517, 77 L.Ed. 2d 1275 (1983)	61-62
Carroll v. State, 636 So. 2d 1316 (Fla. 1994)	98
Cave v. State, 727 So. 2d 227 (Fla. 1998)	74
Cooper v. State,	

739 So. 2d 82 (Fla. 1999)	69
Cooper v. State, 24 Fla. L. Weekly S383 (Fla. 1999)	98
Correll v. State, 523 So. 2d 562 (Fla. 1988)	74,80
Craig v. State, 685 So. 2d 1224 (Fla. 1996)	94
Cruse v. State, 588 So. 2d 983 (Fla. 1991)	84
Davis v. State, 698 So. 2d 1182 (Fla. 1997)	97
Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed. 2d 824 (1979)	67
Florida v. Bostick, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed. 2d 389 (1991)	61-62
Johnson v. State, 1999 WL 820574 (Fla. 1999)	69
Johnson v. State, 660 So. 2d 637 (Fla. 1995)	87,94
Knight v. State, 721 So. 2d 287 (Fla. 1998)	87,90,93, 94
New York v. Quarles, 467 U.S. 649, 104 S.Ct. 2626, 81 L.Ed. 2d 550 (1984)	68
Nix v. Williams, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed. 2d 377 (1984)	73

Oregon v. Mathiason, 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed. 2d 714 (1977)	66
Pardo v. State, 563 So. 2d 77 (Fla. 1990)	95
Parker v. State, 611 So. 2d 1224 (Fla. 1992)	72
Porter v. State, 564 So. 2d 1060 (Fla. 1990)	95
Raleigh v. State, 705 So. 2d 1324 (Fla. 1997)	75,81,94
Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed. 2d 633 (1980)	68
Saavedra v. State, 622 So. 2d 952 (Fla. 1993)	70,71
Scull v. State, 533 So. 2d 1137 (Fla. 1988)	94
Stano v. State, 460 So. 2d 890 (Fla. 1985)	81
Stansbury v. California, 511 U.S. 318, 114 S.Ct. 1526, 128 L.Ed. 2d 293 (1994)	62
State v. Boyd, 615 So. 2d 786 (Fla. 2d DCA 1993)	68
State v. Champion, 383 So. 2d 984 (Fla. 4th DCA 1980)	68
State v. Gribeiro, 513 So. 2d 1323 (Fla. 3d DCA 1987)	67

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968)	64
Tillman v. State, 591 So. 2d 167 (Fla. 1991)	95
United States v. Melendez-Garcia, 28 F. 3d 1046 (10th Cir. 1994)	67
United States v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed. 2d 605 (1985)	66
Voorhees v. State, 699 So. 2d 602 (Fla. 1997)	61-62
Walls v. State, 641 So. 2d 381 (Fla. 1994)	83-85, 87, 90
Wike v. State, 698 So. 2d 817 (Fla. 1997)	97
Willacy v. State, 696 So. 2d 693 (Fla. 1997)	74, 75, 80, 81
Zakrzewski v. State, 717 So. 2d 488 (Fla. 1998)	83, 84, 97

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The undersigned attorney hereby certifies that this Answer Brief of Appellee has been typed in Times New Roman, 14-point type.

STATEMENT OF THE CASE AND FACTS

The Defendant was charged with two (2) counts of murder of Lawrence and Jessica Goodine in November, 1992. (R. 1-3). The Defendant was also charged with burglary of the Goodine residence, and kidnapping of Jessica. Id. Pretrial suppression hearings commenced in December of 1995. (T. 113-522). After testimony was presented by both sides, defense counsel announced that the Defendant was incompetent. (T. 528). The trial judge then heard testimony from four (4) mental health experts in March, April and June of 1996 (T. 556-927), and found the Defendant competent. (T. 930). The trial judge then entered a lengthy order denying the defense's motions to suppress. (R. 435-41).

Jury selection began in June, 1997, and continued for several days. Defense counsel then informed the prosecutor that the Defendant was probably incompetent, but that he could not inform the court for fear of damaging his relationship with the Defendant. (T. 5994-96). The State thus informed the court, and another competency hearing with four (4) additional experts ensued. (T.2 051-2146). The judge again found the Defendant competent. (T. 2145-46).

The jury trial then took place in January and February, 1998. The Defendant was convicted on all counts as charged. (T. 5243-45). The jury recommended a

sentence of life as to the murder of Lawrence Goodine. The jury recommended a sentence of death for Jessica's murder. The trial judge imposed a sentence of death in accordance with the jury's recommendation, and her extensive findings were entered on June 19, 1998. (R. 2199-2218).

A. Evidence Presented at the Suppression Hearing

The trial court, on December 5 and 14, 1995, held an evidentiary hearing as to Defendant's motions to suppress physical evidence and statements.

Metro-Dade Officer Felix Jimenez testified that he became involved in the investigation of this case on Friday night, November 20, 1992. (T. 311). At approximately 10:00 p.m. that night, he had received a call from the Broward Sheriff's Homicide Section, informing him that the body of victim Lawrence Goodine had been found in a remote field in Dania, Broward County. (T. 312-14, 344). The Broward officers had discovered the body earlier that afternoon, and had identified the victim through fingerprints. (T. 379). The Broward officers had then gone to the victim's home in Dade County to notify the relatives. (T. 312-14). However, at the victim's residence, they had seen blood and other evidence indicating that the victim's homicide had been committed in his home. Id. The Broward officers had thus called Jimenez. Id.

Jimenez then assigned Detective Sara Tymes as the lead officer. Jimenez,

Tymes, and Detectives Bayas, Vas and Butchko then went to the victim's residence. They arrived at approximately 11:00 p.m. on the same day. (T.381-82).

Upon arrival at the Goodine residence, Detective Tymes interviewed the Broward officers and the victim's wife. She spoke with Mrs. Goodine sometime "after midnight." (T. 381-82). Mrs. Goodine advised that her 10-year-old daughter, Jessica, had also been missing since the disappearance of her father, Lawrence, the day before. (T. 381-86). Mrs. Goodine's older daughter, Karen, had reported both missing since approximately 6:00 p.m. the day before, Thursday, November 19, 1992, while Mrs. Goodine was at work. Id.

Mrs. Goodine advised Tymes that their home had also been burglarized at this time. Id. Several comforters, clothing, ceramic picture frames, jewelry and other personal items had been taken. Mrs. Goodine suspected the Defendant, Seburt Connor, in the disappearance of her husband and child, and the burglary of her home. Id.

Mrs. Goodine told Tymes that she had a prior relationship with Connor. Id. She had ended the relationship and reconciled with her husband, Lawrence. Connor had then followed, harassed and threatened her on a number of occasions. Id. Mrs. Goodine thus obtained a restraining order. Id. However, her home had still been burglarized several times. Every time, the only items taken were clothing, linen and

personal items belonging to Mrs. Goodine. Id.

Detective Tymes also ascertained that Jessica had last been seen alive the previous afternoon, leaving her home. She was riding in a black Cadillac. (T. 398-99). Mrs. Goodine had previously advised the police that Connor owned such a vehicle, which was virtually identical to the Cadillac owned by Mrs. Goodine. (T. 497-98).

Mrs. Goodine advised Tymes a missing person report was filed on her husband and daughter the day before. She stated that Officer Murias had investigated and prepared the report after speaking with her the day before. (T. 382, 386).

Tymes thus contacted Murias, who responded to the Goodine residence. (T. 386, 388). Murias informed the detectives that the night before he had gone to Connor's residence and spoken with Connor, who denied any knowledge of the disappearance of Lawrence and Jessica. Id. Tymes testified that at this juncture she was concerned about the welfare of Jessica, as a result of what had happened to her father. (T. 386). The detectives thought Jessica was still alive. (T. 504-505). Tymes wanted to contact Connor, to see if he would answer some questions. Tymes' interviews at the Goodines' residence had been completed shortly before 2:00 a.m.; it was now early Saturday morning, November 21, 1992. (T. 348).

Detective Jimenez suggested to Tymes "that if she was going to ask Mr.

Connor to accompany her to the Homicide office for questioning, that she approach him with Detective Murias who had previous contact with Mr. Connor, so as to not frighten Mr. Connor in any way by having to have the entire squad show up. . . .” (T. 348). At “around 2:00 a.m.,” Tymes and Murias went to Connor’s residence. (T. 588-89).

After lifting the latch on the unlocked gate, Tymes and Murias walked up to the front door of the residence. (T. 389). Detectives Bayas and Jimenez, in separate cars, had parked away from the residence, and remained in their cars. (T. 389, 316-19).

Murias knocked on the door and Mrs. Connor answered. (T. 391). Murias identified himself and Tymes, and told Mrs. Connor that he had been there previously. (T. 391). Mrs. Connor “invited us inside the residence,” and Murias asked her if Connor was home. Id. Mrs. Connor said “yes,” and Murias asked if they “could speak with him.” Id. Mrs. Connor again said yes, and went to the bedroom. (T. 391-92).

Tymes and Murias remained in the living room. The Defendant came out to the living room from the adjacent bedroom, within seconds. (T. 392-93). Murias then advised Connor that he had previously been inquiring about the “missing persons, Jessica and Lawrence Goodine.” (T. 393). He introduced Tymes as “Detective

Tymes,” and stated they were continuing the investigation into the missing persons. (T. 394). Murias then asked Connor, in a “very mild tone,” “if he could respond, you know, to our office so that we could continue the interview.” (T. 394, 396). The Defendant replied “yes.” (T. 394). The Defendant then asked if he could go and change his clothes, and Tymes said it was “okay.” (T. 397).

On cross-examination, Tymes stated that she initially advised the Defendant that she “needed to talk with him,” “being that Detective Murias had already spoken with him.” (T. 439-40). She stated that since “Murias had previously spoken with him as to the missing persons,” Tymes would “also like to speak with him.” (T. 441). The Defendant “said yes.” Id. The Defendant had asked why he needed to go to the station, and Tymes had responded for “further interview.” (T. 465).

Tymes and Murias then waited outside, while the Defendant went and changed his clothing. (T. 397). The Defendant came out approximately five minutes later. Id. Detective Tymes then advised him that she would transport him to the station in her car. (T. 397-98). The Defendant had no objection. (T. 398).

At this juncture, the Defendant had not been placed under arrest, and he had not been told that he was under arrest. (T. 398-99). Both Tymes and Murias had been in plain clothes. There were no handcuffs. No weapons were visible; Tymes had worn her weapon on the side, inside her jacket. (T. 436-37, 469-70). No “demanding” tone

had been used in any of the conversation. (T. 440).

The Defendant's black Cadillac was parked to the side of the front door. (T. 318). Once they were all outside of the residence, Tymes asked if she could look inside this vehicle, and the Defendant orally agreed. (T. 446). Prior to any search, Tymes also read out loud a "consent to search" form to the Defendant. (T. 400).

Tymes advised the Defendant that "before any search is made, he must understand his rights." (T. 400). The Defendant was then advised that:

Number one, you may refuse to consent to a search and may demand that a search warrant be obtained prior to any search of the premises or vehicle described below.

Number two, if you consent to a search, anything of evidentiary value seized in the course of the search can be introduced into evidence in court.

I have read the above statement of my rights and I am fully aware of said rights. I hereby consent to a search without a warrant by officers of the Metro Dade Police Department.

(T. 400). Tymes then filled out the description of the area to be searched on the form:

"All areas and contents of the below described vehicle, which is a 1985 Cadillac Fleetwood, four door, black in color, bearing Temporary Tag 1235992." Id. The form then provided that the Defendant authorized the seizure of any article of evidentiary value, and that, "This statement is signed of my own free will without any threats or promises having been made to me." (T. 401). The Defendant then signed the form

and Tymes witnessed it at 2:15 a.m. Id.

The search was conducted after the above oral and written consent. (T. 401). Tymes did “just a preliminary search.” Id. She opened up the passenger side and trunk of the vehicle, and looked inside, observing blood. (T. 401-402). At this juncture, she felt she had probable cause for arrest. (T. 448).

Tymes said nothing to the Defendant about the blood. (T. 402). She proceeded in accordance with her prior agreement and transported the Defendant to the police station. (T. 402-03). She did not place him under arrest. (T. 453, 448). The Defendant sat in Tyme’s front passenger seat. She and the Defendant were alone in her car during the transport, and no questions were asked during this time. (T. 402-403, 450).

Upon arrival at the station, the Defendant was placed in an interview room and advised of his Miranda rights, from the standard Metro-Dade constitutional rights form. (T. 403-407). Tymes first asked the Defendant whether he was under the influence of any drugs, alcohol or medication; he was not. (T. 405). Tymes then ascertained that the Defendant was able to read and write English, and had a twelfth grade education. Id. She then read the Miranda rights out loud, and the Defendant indicated his understanding by initialing next to each right. (T. 406-407). The Defendant was advised of the standard rights. At one point, the form provides that,

“if you want a lawyer to be present during these rights, or any time hereafter, you are entitled to have a lawyer present.” Id. The Defendant waived his rights, agreed to talk with the detective, and signed the form which expressly states: “This statement is signed of my own free will without any threats or promises having been made to me.” Id.

The Defendant signed the waiver of Miranda rights at 2:50 a.m. Id. Tymes also signed the form as a witness at the same time. Id. Tymes read the Defendant his rights in a normal tone of voice, and did not coerce, threaten or promise him anything. Id. The Defendant had appeared to understand his rights. Id.

Tymes thus questioned the Defendant. There were no signs of any “resistance” by the Defendant to talking with her. (T. 408). After background questioning, such as date of birth, age, employment, etc., Tymes asked about Lawrence and Jessica Goodine. Id. The defendant responded to and answered every question by Tymes. However, he “made no admissions” and did not confess. (T. 408-409, 412).

During the above questioning, Tymes noticed that the defendant was wearing yellow socks and black shoes, with some obvious blood spatters on them. (T. 413-17). Tymes asked him about this blood, and if she could retrieve the socks and shoes. Id. The Defendant again agreed, and Tymes again read him his rights from the standard Consent form, which provided that the Defendant had the right to refuse consent and

require the detective to obtain a warrant. Id. After reading the rights, Tymes wrote in the description of the shoes and socks on the form. Id. The Defendant then signed the form giving consent to the search of these items. Id. The form reflected that it had been signed at 4:30 a.m., approximately 15 minutes after Tymes had first noticed the blood on the items. Id.

Tymes then asked if the Defendant would agree to a search of his residence. (T. 419). The Defendant said “yes, but would like to make phone contact with his wife.” Id. Tymes thus took the Defendant out of the interview room, to her office area where the telephone was located. (T. 419-20). In her presence, the Defendant then telephoned his wife and stated that he had given “permission” to search, and that it was “alright.” (T. 420). Tymes then again read the Defendant the standard form for consent to search, advising him of the right to refuse consent and require the police to obtain a warrant. (T. 421-23). Prior to signing the form, the Defendant was advised that the police wanted to search both the main residence and the separate structure in the back of it. Id. Tymes made no threats or promises to induce the Defendant’s signature. He signed the form without any resistance. Id. The form reflects that it was signed at 5:00 a.m. Id.

During the encounter with Tymes, the Defendant never asked for an attorney. (T. 423). The Defendant never asked to leave, or to be taken home. Id. He was

placed under arrest at 10:30 a.m., and was not in “custody” prior to that time. (T. 471).

Tymes called Detective Jimenez upon her discovery of blood in the Defendant’s Cadillac. (T. 319-20). She called a second time, at approximately 5:00 a.m., and informed him of the Defendant’s consent to the search of his residence. (T. 320-21).

After the first call about the blood in the vehicle, Jimenez had remained in his car outside the Defendant’s residence, and called for an assistant state attorney. He needed to consult with the attorney as to whether a warrant was necessary, because the Cadillac needed to be removed from the premises for an examination of the blood evidence, and could involve some dismantling of the car, such as removing fabric swatches for the blood analysis. (T. 322,364-65). The assistant state attorney arrived at 4:30 a.m., stating that a warrant should be obtained. (T. 357, 323). The attorney and Butchko thus left to procure the warrant. (T. 323). Jimenez remained in his car.

At the time of Tymes’ second call at 5:00 a.m. as to the Defendant’s consent to a search of his premises, Detective Vas, having processed the Goodine home, arrived on the scene. (T. 320-21). Jimenez and Vas then approached the Defendant’s residence to obtain additional consent to search from the defendant’s wife. (T. 323-25).

Detective Vas knocked on the door and the Defendant's wife answered. (T. 122). Vas introduced himself and Jimenez as police officers, and asked if they could come in and talk with her. Id. Mrs. Connor agreed, without any force, threat, coercion or promise. Id. The officers thus entered and sat in the living room, whereupon the Defendant's daughter, Garla, joined them. (T. 122-23).

Vas then informed Mrs. Connor and Garla that the officers wanted permission to search the residence. Id. Vas informed them that the officers had a "form called a consent to search form" that he wanted to read to them. Vas thus read the form out loud, to the Defendant's wife and daughter. (T. 124, 129). They both agreed to the search of both the main residence and the cottage behind it, and signed the consent form. The standard form, which was the same as that read to the Defendant previously, advised them that: a) they had the right to "refuse to consent to search"; 2) they had the right to demand a search warrant prior to any search; 3) the officers could search and remove "any article, which they may deem to be of evidentiary value"; and, 4) anything seized in the course of searching could be introduced into evidence in court. (T. 129-32). The form then provided: "I hereby consent to search without a warrant by officers of the Metro-Dade Police Department of all areas and contents of the below described premises." Id. Detective Vas had written in the description of both the main residence and the back cottage: "The residence located

at 1537 Northwest 43rd Street, Dade County, Florida, consisting of two bedrooms and one bath, as well as a separate residence consisting of one bedroom and one bath, located at the rear of the main residence.” (T.130). The form then provided that it was “signed of my own free will without any threat or promises having been made to me.” (T. 132).

Mrs. Connor and her daughter then read the form over, and both signed it. (T. 133-34). They signed voluntarily; no force, threat or promises of any kind were made to induce their signatures. (T. 132-35). Mrs. Connor and Garla had been “calm, rational, coherent.” (T. 154). The form was signed at 5:10 a.m.; both Vas and Jimenez witnessed the signatures. (T. 150, 128-29). Garla had asked why she was being asked to sign, as she did not own the premises; it was her parents’ house. Vas informed her it was because she was an adult in the house. (T. 144).

Detective Vas then searched the main residence. (T. 135). He asked Mrs. Connor for the clothing worn by the Defendant on Thursday, November 19, 1992, the day of the victims’ disappearance. Id. Mrs. Connor pointed out the clothing worn by the Defendant on that day, which was on the floor in the master bedroom. Id. Detective Vas retrieved this clothing as evidence. Id.

The search of the main residence was completed in about 45 minutes. (T. 372). Vas then left and took the clothing he had retrieved back to the station. (T.3 30). At

the station, Vas went to the Defendant's interview room, showed the Defendant the clothing, and asked if it belonged to him. (T. 417-19). The Defendant confirmed that the clothing was his, and that he had worn it on that Thursday. Id.

Jimenez did not immediately search the back residence, because of the lack of "man power." (T. 330-31). Vas had left, Tymes and Bayas were at the station, and Butchko had left to obtain the warrant for the Defendant's vehicle. Id. Jimenez thus remained inside his vehicle to maintain the integrity of the scene. Id.

At approximately 10 to 11:00 a.m., Butchko arrived with the warrant for the Cadillac, which was then towed for processing. (T. 332, 356). The crime scene technicians also arrived at this time. (T. 332-34). Detectives Jimenez and Butchko thus proceeded to search the back cottage pursuant to the written consents of the Defendant, his wife and daughter. Id.

Crime scene technicians entered the cottage and photographed the inside first. Id. Butchko and Jimenez then entered to search. Id. Jimenez observed a pile of sheets and comforters near the bed in the bedroom. Some of the items in the back cottage matched those described by Mrs. Goodine as having been taken from her residence at the time of the victims' disappearance. (T. 338-39, 333-34).

Jimenez then pushed the bed away from the wall, reached down, and felt a "bundle." (T. 338-339). The bundle, inside a comforter, felt like somebody was

wrapped inside it. Id. Jimenez and Butchko put the bundle on the bed and called the medical examiner. (T. 340). The medical examiner came to the scene. Id. The bundle contained Jessica Goodine's body. Id.

Detective Murias, who worked in the missing persons' division, had first gone to the Goodine residence at approximately 1:00 a.m. early Friday morning, November 20, 1992, hours after the victims' disappearance, to investigate. (T. 495-96). After Mrs. Goodine reported her suspicions of the Defendant, Murias went to Connor's residence, at approximately 2:30 - 3:00 a.m. the same day. Id. He went to the front door, knocked, and the Defendant's wife answered through the side window. (T. 496). Murias said that he needed to talk with Connor, "if he was available." Id. Mrs. Connor said she would call her husband, "that he was in the back." Id.

Within a "couple of minutes," the Defendant came outside, and walked up to Murias "from the back, through the outside of the house." (T. 477). Murias introduced himself, and said he wanted to talk about an investigation. The Defendant agreed. They both remained outside. Murias told the Defendant that Mrs. Goodine had reported her husband and daughter missing; that she was suspicious of the Defendant because she had a restraining order against him; and, that the Defendant had a vehicle that closely resembled hers. (T. 497-99). The Defendant talked with him voluntarily, without any threats, coercion, or promise. Id.

The Defendant denied any knowledge of the disappearance of the victims, stating that he had stayed away from Goodine; that he had problems with her in the past; and, that he did not wish to have anything to do with her. (T. 499). The conversation lasted no longer than 5 minutes; Murias then “shook hands” with the Defendant, and left. Id.

Murias, with Tymes, then went to the Defendant’s residence a second time the next day, at approximately 2:00 a.m. (T. 500). He again walked up to the front door and knocked. Mrs. Connor responded and recognized him from the previous encounter. Id. Murias said he wanted to speak with the Defendant, and remained standing at the door while Mrs. Connor went to get the latter. (T. 501-502). The Defendant then opened the door and asked them to come in. Id.

Once inside the living room, Murias introduced Detective Tymes. Id. The latter then asked if the Defendant “could come down to” headquarters to speak with them as to the continuing investigation of the missing Goodines. Id. The Defendant said, “sure, that he would come.” (T. 501).

Murias was also present when they left the house, and Defendant signed the consent form for the search of the Cadillac. (T. 501-502). After the search, Tymes and the Defendant left. Murias stayed, and Detective Butchko joined him. (T. 502).

Murias testified that Butchko then approached and told Mrs. Connor that they

were “looking for a little eight-year-old girl that had been kidnapped and that, as a result, we were looking to see about any chance she had been in the back cottage, still alive.” (T. 504). Mrs. Connor gave them the keys to the cottage and stated that they “were more than welcome to look around.” (T. 505). Murias and Butchko looked inside the back cottage “for a live girl.” (T. 505, 522). The lighting was “very poor.” (T. 519). They did not find or remove anything, and Murias then left. (T. 505, 509).

Detective Bayas testified that immediately after Tymes and the Defendant initially left for the station, shortly after 2:00 a.m., he also went to the station, separately. (T. 474). At approximately 5 or 6 a.m., Tymes, after a “couple of hours” of interviewing the Defendant, had left the latter alone in the interview room, and briefed him on the status of the case. (T. 474-75). Bayas had then spoken with the Defendant, alone. Id. Bayas had not threatened, coerced or made any promises to the Defendant. (T. 475-76). The latter had shown no reluctance in speaking with him, and answered his questions. Id. The Defendant, however, did not make any “admissions” as to the victims to Bayas either. Id.

The Defendant’s wife, Dorothy Connor, testified that on Saturday morning, November 21, 1992, at 2:00 a.m., the police knocked on the front door of her residence. (T. 209). She heard the knock, looked out the window, “saw it was a detective,” put on her robe, and then opened the door. (T. 210). Two officers were

at the door, asking to speak with the Defendant, and Mrs. Connor let them in the house. Id. Mrs. Connor then went to the bedroom, and told the Defendant that the officers wanted to speak with him. (T. 212). The Defendant put on his pants and went to the living room, where he met with the officers. (T. 213). The female officer, Sarah Tymes, told the Defendant that, “she needed him to come to the station to answer some questions,” about the “missing child.” (T. 214). The defendant “said something to the effect, “This late?,” whereupon Tymes told him that, “she needed him to come to the station to answer some questions.” Id. The officers then exited the house, while the Defendant went back to his bedroom and got dressed. (T. 215). The Defendant then left with the officers. Shortly after they had exited the house, Mrs. Connor saw the officers looking inside the Defendant’s car. (T. 257).

Mrs. Connor said that later that morning, two other officers knocked on her door. (T. 222). She was awake; she opened the door, and the officers asked to come in. (T. 222-23). She let them in, and they followed her into the living room. (T.224).

When asked why she signed the consent form for the search of the premises, she responded: “Because the officer asked me to sign it.” (T.2 40). Mrs. Connor also admitted that she had given a prior sworn statement, where she had stated that she gave her consent to search without any force or threats. (T. 241-42). She stated that she gave the officers “permission” to search the premises, after a telephone

conversation with the Defendant. (T. 238-39). She gave the officers her “consent because they were the officers that has asked me permission.” (T. 259). Mrs. Connor wanted to “cooperate” with the officers, and did not think that her husband had a body hidden in the back cottage. (T. 259-60). Mrs. Connor testified that the detective also asked her daughter, Garla, to sign the consent form. (T. 228). Garla had asked why it was necessary for her to sign, as she did not own the premises. Id. The detective had responded because “she was an adult in the household.” Id.

Mrs. Connor testified that after she signed the consent form, the officers searched the main residence and obtained some clothing previously worn by the Defendant, which was on the bedroom floor. (T. 229-30). The officers needed to search the cottage because they were “trying to find this missing child.” (T. 231). Mrs. Connor thus got her keys and went to the cottage with the officers. Id. The search took only a few minutes and nothing was taken out. (T. 231-32). The detectives also asked for her keys and she gave them the keys, because the officers had “asked for them.” Id. A “couple of hours later,” the officers came back and went to the back cottage. (T. 262). This time they found the missing child’s body. Id.

Garla Connor testified that she was twenty (20) years old at the time of the crimes, and lived with her parents. (T. 158). On Saturday, November 21, 1995, she had gone to sleep at 12:30 a.m. and slept “soundly,” until her mother woke her up at

5:00 a.m. (T. 182). Her mother had asked her to come into the living room as there were two police officers who wished to speak with them. A “day or two” earlier, her mother had mentioned that the police had questioned the Defendant as to the whereabouts of a missing little girl. (T. 1666).

Ms. Connor testified that she thus changed her clothing first, and then went into the living room. (T. 167). She was initially in a “daze,” but then became “fully alert” when detective Vas presented her with the consent to search form. (T. 177-78). Vas had stated that he “needed” her consent, and she understood that this meant that Vas was asking her “permission” to search. (T. 183). Ms. Connor asked Vas why she needed to sign the form, as she did not own the premises and this was her parents’ house. (T. 169). Vas explained that as an adult in the household he needed her consent. Id. She asked Vas if she had a choice, and “he did not answer.” (T. 173). She then contradicted herself and stated that Vas had told her that she had no choice. Id. Ms. Connor then testified that Vas “did not verbally threaten me. He did stand over me and put a form in my hands and asked me to sign it.” (T. 185).

Ms. Connor recognized the form expressly provided that she had the right to refuse consent. (T. 191). She stated, however, that she had decided not to read the form when she had signed it. (T. 187). Of course, Ms. Connor did not recollect her mother having signed the form either. (T. 188). However, upon being confronted

with the actual form, she admitted that her mother's signature in fact appeared immediately above her own. (T. 189-90). Finally, Ms. Connor stated that if she had taken the time to read the form, she would indeed have signed it! (T. 191-92).

B. The Trial Court's Findings on the Motion to Suppress

The trial court, in an extensive written order, found that all of the evidence at issue was legally obtained. (R. 435-442). With respect to the Defendant's contention that he had been falsely arrested at his residence, the trial court ruled that, "The correct test is whether a reasonable person would have believed that he was not free to leave, or as applied here, free to stay." (R. 437). The judge found, "Regardless of the Defendant's subjective perception of the situation, the Defendant was not in custody at that time." Id. She found that Detectives Murias and Tymes, "dressed in plain clothes with weapons concealed, knocked on the Defendant's door to request entry." (R. 436). The Defendant's wife "consented to their entry by opening the door and inviting the detectives inside. . . ." Id. The court further found that when the Defendant appeared after being called by his wife:

Detective Tymes, the lead investigator, requested the Defendant accompany her to the police station for further questioning. Defendant's initial response was to question whether it was necessary to go to the station at 2:00 a.m. When Detective Tymes replied that it was, in fact necessary, Defendant complied with her request. There is no evidence that either officer, physically or vocally threatened the Defendant by indicating that compliance with their request may be compelled. In fact, after the Defendant consented to the detective's request, he was free to

return to his residence unescorted, speak to his wife and change his clothing while the officers remained outside and awaited his return.

(R. 436). The court found that the Defendant “remained unrestricted and free of handcuffs,” and ruled that the allegation of “false arrest” was “without merit.” (R. 437).

With respect to the evidence of the search of the Defendant’s Cadillac, the court found that the search was pursuant to a “voluntary and knowing” consent, and that the evidence was thus admissible:

The Court finds this consent was voluntarily and knowingly given because of the following reasons: (1) Defendant verbally permitted detectives to search the car and there is no indication that he refused the request any point during the search; (2) he physically consented by giving the detectives the keys to his vehicle; and, (3) he knowingly consented by signing the Consent to Search which informed him of his right to refuse. Also, the search was legitimate and legal since it was reduced in scope. See, Florida v. Jimeno, 500 U.S. 248, 111 S.Ct. 1801 (1991) At that point, the detective’s priority was to find the missing child. The detectives did not, at any point, go through small bags or open closed containers. Instead, the search was limited to the areas in which the defendant could possibly have hidden Jessica Goodine.

Furthermore, the Court finds that the subsequent search warrant was not a post-facto attempt to validate the initial search. The preliminary search for Jessica Goodine’s body was permissible since it was a voluntary search limited to finding the kidnapped child. The subsequent search warrant, however, was necessary, since the scope of the first search, which was initially limited to finding the kidnapped victim, had increased to acquiring any material evidence to connect the Defendant to the murder of Laurence and the kidnaping Jessica Goodine.

(R. 437-38). The trial court also found the evidence of Defendant's socks and shoes to be admissible as these had been seized pursuant to the Defendant's "voluntary and informed consent," and did not result from any illegal custodial interrogation:

There was no air of coercive custodial interrogation which would invalidate this seizure. The Defendant was at the police station voluntarily. While he was there, only one police officer questioned him at a time. He remained unrestricted and free of handcuffs. He was read hi [sic] Miranda rights which he waived by signing the Waiver of Constitutional Rights Form. The Court finds the waiver knowing, free and voluntary. When Detective Tymes asked for Defendant s [sic] shoes and socks, she filled out a Consent to Search form which specifically detailed the objects to be seized. The form, which was read aloud to the Defendant, indicated that he had the right to refuse. He then signed the form, voluntarily removed his shoes and socks, and gave them to Detective Tymes. This was not mere submission to police authority; it was an act of voluntary and informed consent. . . . After reviewing the totality of circumstances, the court finds that the evidence was legally and legitimately seized.(R. 438-39).

Finally, the evidence retrieved from the Defendant's main and back residences was also found to be admissible, due to the Defendant's, his wife's and his daughter's knowing and voluntary consent:

. . . The United States Supreme Court has consistently held that when there is consent, the search is reasonable and not violative of the Fourth amendment. Schneckloth, supra. Additionally, the Court has held that a third party possessing common authority over a residence may consent to a search. U.S. v. Matlock, (1973). According to our Florida Supreme Court, a wife has actual authority by virtue of her marital relationship to the Defendant. Ferguson v. State, 417 So. 2d 631 (1982); State v. Silva, 344 So. 2d 550 (1977); accord, State v. Martin, 636 So. 2d 1036, (3rd DCA 1994). Even, assuming arguendo, that Defendant's allegation of false arrest were true, our courts have consistently held that subsequent

voluntary consent washes the taint from an illegal arrest. State v. Martin, 635 So. 2d 1036 (3d DCA, 1994); Husted v. State, 370 So. 2d 853 (Fla. 1979). The consent to search of the residence was legal and did not violate any of the Defendant's Constitutional rights.

When Detective Tymes requested permission to search Defendant's residence, Connor answered that he would consent if he could speak to his wife. Detective Tymes then escorted the Connor, [sic] who was not handcuffed or otherwise restricted, to the telephone, and allowed him to speak with his wife. After that conversation between Mr. and Mrs. Connor, Detective Tymes filled out the Consent to Search form specifically describing the focus of the search (which included both the front and back residence). She then read Defendant the form which, once again, informed Defendant of his right to refuse. According to the facts presented, the Defendant's consent to search his residence was given knowingly and willingly.

Additionally, the Court also finds that Defendant's wife and daughter voluntarily and knowingly consented to the search. The testimony of Garla and Dorothy Connor concur [sic] with the detectives testimony showing that the police were permitted entry by Dorothy Connor and that the detectives were dressed in plain clothes with weapons concealed. Although there is some dispute as to whether the officers read the consent form aloud, it is uncontroverted that the consent form indicated their right to refuse consent and expressly specified the objects of the search. Both Garla and Dorothy Connor testified that the officers did not, in any way, coerce or threaten them to sign. Their subjective compulsion to sign did not result from any act or statement by the detectives. Each resident asserted that they signed the form because they felt they had to comply. When asked why she signed, Defendant's daughter testified that she signed the form because the police officer had asked.

The actions of the Defendant's wife also reveal that the consent was voluntary. Dorothy Connor's presence throughout the entirety of the initial search is indicative of her voluntariness to consent. State v. Martin. Furthermore, she willingly gave the keys to the front and back residences and all of the cars parked on her property to the police

officer. She did not ask the police to return these keys and knew that the police possessed them when they left the first search. Defendant's wife identified clothing (which was subsequently seized) that the Defendant wore on the day of the kidnapping. In light of these facts, the behavior demonstrated by Defendant's wife and daughter does not indicate that there existed the lack of voluntariness necessary to invalidate the consent. (R. 439-442).

C. Trial Testimony

1. The State's Case

Detective Ilarroza, of Broward County, found the body of Lawrence Goodine in a "desolate," "heavily wooded" area near the Fort Lauderdale airport, at approximately 4:20 p.m. on Friday, November 20, 1992. (T. 3640-42, 3680). The body was wrapped in a quilt. The head was wrapped in a blue bathrobe, and was partially laid in some water. (T. 3646, 3648, 3654-56). Based upon the nature of the injuries, and the absence of any blood splatter or likely weapon in the surroundings, the detective determined that this victim had been killed at another location and then "dumped" where he was found. (T. 3659-60). Upon identifying the victim, the detective then went to the Goodine home in Dade County to notify the relatives. (T. 3661).

Mrs. Goodine then notified Ilarroza that her daughter, Jessica, was also missing since the disappearance of her father. (T. 3662-63). The detective then described the bathrobe and the quilt in which Lawrence's body was wrapped, and asked if Mrs. Goodine was missing such items. (T. 3663-65). Mrs. Goodine checked her closet for

the robe, and the detective noticed a “blood smear” on the door. Id. The officer investigated further, with the aid of a flashlight, and found some blood under a runner on the top of the living room carpet. (T. 3665, 3689-90). With a flashlight, the detective also noticed some blood splatter on the wall unit next to the runner. Id. The detective noted a chair, with legs apparently broken, in the corner of the dining room. (T. 3666, 3679). Ilarroza then felt that Lawrence may have been killed in his home, and called the Dade County homicide office. (T. 3666). Subsequent DNA analysis of a blood stain on the wall unit and carpet reflected that these matched Lawrence.

The medical examiner testified that Lawrence Goodine’s cause of death was multiple blunt trauma to the head. (T. 3705-12). This victim had been hit on the head five (5) times. Id. The frontal bone and the base of his skull had been fractured, and the brain itself had injury. Id. These injuries required a “lot of force,” and were not inflicted by accident or during any fall. Each of the blows would have been fatal. Id. The first blow would have rendered the victim immediately unconscious. Id. The remainder of the blows were inflicted after the victim had fallen. Id. The injuries were consistent with having been inflicted by a “cross-walk” from the broken chair, found inside the victim’s residence. (T. 3712-13, 3678-79).¹ The victim had been killed approximately 24 hours prior to the time he was found, that is on Thursday

¹ Mrs. Goodine subsequently testified that the chair had not been broken prior to the victims’ disappearances.

afternoon, November 19, 1992. (T. 3717-20, 3680-81).

Margaret Goodine first met and then had a romantic relationship with the Defendant in 1976 or 1977, until she found out that he was married. She thus ended the relationship. (T. 3724-25). She met victim Lawrence Goodine in 1978 and married him in 1979. (T. 3725). She had two daughters, Karen and victim Jessica Goodine. (T. 3726). In 1988, the Goodines separated, and she asked him to leave their home. (T. 3727, 3790). She however maintained a good relationship with him. (T. 3770).

Mrs. Goodine resumed her relationship with the Defendant. (T. 3727). After the separation of the Goodines, the Defendant started spending time at the Goodine household. He would be there almost every day. (T. 3727-28). He would sometimes spend a “couple of nights”; sometimes “the whole week.” (T. 3728-29). He would sometimes help with the household expenses. (T. 3792-93). He also cared for and spent time with Jessica. (T. 3800). He had never threatened Jessica. Id.

Approximately 8 or 9 months prior to the murders, Mrs. Goodine told the Defendant she did not wish to see him any more. (T. 3728-29). The Defendant, however, wanted to continue their relationship. He told her on several occasions that “he will never see me with anybody else.” (T. 3721-22).

After the break-up, numerous crimes happened in the Goodine household. On

one occasion, a car drove by and shot into a bedroom in the Goodine house, breaking windows. (T. 3731). The house was burglarized on four or five occasions, and Mrs. Goodine's personal belongings would disappear. (T. 3732-33). Warnings, such as rope shaped into a cross, and tape would be left at the house. (T. 3734). There were no signs of forced entry whenever these incidents occurred. (T. 3735). Another time, someone poured paint all over an overnight guest's, Ms. Webb's, car. (T. 3736-37).

Mrs. Goodine obtained a restraining order against the Defendant. The permanent injunction was issued on August 19, 1992 and was served on that date. (T. 3754). The Defendant was present in court, and the judge explained the contents of the order to him. (T. 3755, 3760). In late August or September, Mrs. Goodine asked her husband, Lawrence, to move back into their home, because she and her children were afraid. (T. 3770). She thought Lawrence's presence in the house would help.

Id.

Mrs. Goodine stated that on the morning of the crimes herein, she, her daughter Karen, and both of the victims, were present in their home. Jessica left first to go to school. (T. 3772-73). Karen next departed for school. Mrs. Goodine then drove to work in her 1985 black Cadillac at approximately 9:00 a.m., and Lawrence Goodine remained home. Id. The black Cadillac remained with her all day, until she got back from work, after both victims had disappeared. (T. 3773). The Cadillac was usually

parked in the garage when Mrs. Goodine was home. (T. 3774). Lawrence Goodine had a gray Buick which he usually parked in front of the house. Id.

Mrs. Goodine had been informed of the victims' disappearances, and the burglary of their home, on Thursday afternoon, November 19, 1992, by her older daughter, Karen. The latter had called her at work. Mrs. Goodine had asked her to go to their neighbor, Ms. Merit, and call the police. (T. 3774-77). Mrs. Goodine also confirmed her reports of the victims' disappearances, the burglary, and her suspicions of the Defendant, to Officer Murias, Detectives Ilarrazo and Tyme, respectively. (T. 3777, 3779-86). These accounts have been previously detailed in the suppression hearing testimony, set forth herein at pp. 3-4, 14.

Mrs. Goodine identified the blue bathrobe found wrapped around Lawrence Goodine's head, as having belonged to her and as having disappeared from her home on the day of Lawrence's death, November 19, 1992. (T. 3786-87). Mrs. Goodine also stated that she had owned a bedspread/quilt "like" the one in which Lawrence Goodine's body was found wrapped in. (T. 3654-55, 3786-87, 3809-10, 3816-17). However, Mrs. Goodine was not certain whether this bedspread had in fact belonged to her. (T. 3787, 3809-10, 3816-17). Mrs. Goodine also did not know when the bedspread had been taken - whether during the November 19th burglary or during one of the prior burglaries in the preceding months. (T. 3809-10, 3816-17).

The items taken during the November 19th burglary were a wedding picture of her and Lawrence, miscellaneous pillows and linens, and liquor bottles from her bar. (T. 3778-79). Mrs. Goodine subsequently identified some of these items, and others, which had been retrieved from the cottage, as having belonged to her, and having been taken on November 19, 1992, or in the earlier burglaries of her home. (T. 4611-19). The Defendant's fingerprints were on the liquor bottles, which were also recovered from his back cottage. (T. 4540, 4424-30).

The Goodines' neighbor, Ms. Merit, testified that she had last seen Lawrence at 2:30 p.m. on Thursday, November 19, 1992. (T. 3917-18, 3993). She had seen him arrive home in his car, a gray Buick, and she had also talked with him at this time. (T. 3933, 3995-96). The victim had not left his house after this time. First, his car was left parked in front of the house from the time of his arrival that afternoon at 2:30 p.m., and stayed in that position until after his funeral several days later. (T. 3938). Second, it was the victim's custom to inform Ms. Merit if he was leaving, since Merit would then have to let the victim's children into their home, and supervise them. Merit had keys to the Goodine residence for this purpose. (T. 3941, 3947-48).

Ms. Merit stated that Jessica returned from school at 3:30 p.m. that afternoon, as she did every day. (T. 3946). Jessica then came over to her house to play with her best friend, Ms. Merit's daughter, Faisha. (T. 3826, 3828). Ms. Merit supervised the

children, and saw Jessica leave to go to her house at approximately 4:00 p.m. (T. 3935). Jessica left because she had seen “a black Cadillac in the yard like her mother’s,” in the Goodines’ driveway. (T. 3829). Jessica returned to the Merit house to ask a question, said she was leaving, and left again. (T. 3935, 3829).

Merit’s daughter, Faisha, saw Jessica sitting in the front seat of the black Cadillac, and saw the car leave. (T. 3830-31). Faisha was upset because Jessica always waved her hands at Faisha when she was leaving; Jessica had not done so on this occasion. Id.

Merit confirmed that Faisha started crying when Jessica left. Faisha was upset because she had seen Jessica leaving in the Cadillac with whom she thought was Jessica’s father; Jessica had not said goodbye to Faisha. (T. 3935-36, 3831-32). Merit stated that Jessica could not have left with her father, as Mrs. Goodine, Jessica’s mother, had the Cadillac. Id. Mrs. Goodine had left in that car at approximately 9:00 a.m. that day; she had not come back home yet; and her Cadillac had been in her possession all day. (T. 3936, 3932, 3920, 3773).

Ms. Merit also testified that after the Defendant and Mrs. Goodine’s relationship had ended, she had frequently seen the Defendant driving slowly through the neighborhood in his Camaro, watching the Goodine home. (T. 3925-26). After Mrs. Goodine had obtained a restraining order, the pattern changed. A black Cadillac

would now drive slowly through the neighborhood. (T. 3926-28). Ms. Merit had also personally seen the Defendant shoot into the Goodine residence, after his relationship with Mrs. Goodine had ended. (T. 3921-22).

Ms. Merit also testified as to several burglaries at the Goodine home, which all occurred after the end of the relationship between Mrs. Goodine and the Defendant. (T. 3922-25, 3944). The Goodine children would take Merit over to their home every time such a burglary occurred. Id. Ms. Merit was well familiar with the contents of the Goodine home. Id. During every burglary, clothing, linen and personal items which were not of any obvious value would be taken. Id. Every time the Defendant “came there, something was missing.” (T. 3942-43).

At approximately 5:50 p.m. on November 19th, after Jessica had left in the Cadillac, Karen Goodine reported another such incident. (T. 3937-39). Ms. Merit went over to the Goodine home. Again, Mrs. Goodine’s clothing, and comforters and linens were missing. Id. Ms. Merit identified the linen in which Jessica’s body had been found wrapped, as one which had been taken from the Goodines’ home. (T. 3939, 3861). She also identified the dress found worn by the dead child as being the same clothing worn by Jessica on the day of her disappearance. (T. 3939).

Ms. McLaughlin was another neighbor of the Goodines. (T. 4582). On one occasion, she had attempted a reconciliation between the Defendant and Mrs.

Goodine. (T. 4588-89, 4593-94). During this meeting, the latter was crying and begging the Defendant to leave her alone. Id. The Defendant stated that he would not bother her anymore, if Lawrence moved back into the Goodine home. Id. After the injunction against the Defendant was issued, Ms. McLaughlin again saw the Defendant in the neighborhood, at a time when Mrs. Goodine had been staying with friends. (T. 4594-97). The Defendant told her that he knew all about Mrs. Goodine's whereabouts. Id. McLaughlin also received a series of telephone calls from the Defendant, where although he had disguised his voice, she could identify him as he had called her by a name which only the Defendant had previously utilized. (T. 4599-4601). During these calls, the Defendant stated that he would kill Mrs. Goodine and Karen. Id.

Ms. Webb, Mrs. Goodine's cousin, also knew the Defendant well and spoke with him often. (T. 4505-07). While denying having committed any burglary, the Defendant had nevertheless given her instructions on how to retrieve Mrs. Goodine's clothes which had been taken during these burglaries.(T. 4510-11). The Defendant had given her an address, told her where the keys could be found, and that Mrs. Goodine's clothes were inside. Id. Webb had gone to the address given, found the key, and retrieved the clothing. Id. The Defendant also confirmed that he was responsible for having poured paint all over Webb's car, when the latter had been a

guest at the Goodine home. (T. 4509). He called Webb and apologized for the incident; he had offered to pay damages but never actually did so. Id.

The Defendant told Webb, “a lot of times,” that he was going to do “mean things” to victim Lawrence Goodine, and that he would put the latter out of “his misery.” (T. 4511). Prior to the crimes herein, the Defendant also told Webb that he was going “to buy a car exactly like Margaret’s [Mrs. Goodine’s] own.” (T. 4510).

The State introduced side-by-side photographs of Mrs. Goodine’s black Cadillac and the identical vehicle purchased by the Defendant approximately four (4) to six (6) weeks prior to the murders. (T. 4104-06, 4725). The Defendant had acquired a virtually identical vehicle as that of Mrs. Goodine. Id. The vehicles were of the same make, year, model, color, and accessories, with “fairly unique” “double thin red stripes” that went down the side of the car, matching that of Mrs. Goodine’s vehicle. Id. Blood stains from the rear seat and pouch of the Defendant’s Cadillac, obtained pursuant to the search warrant, had been examined by DNA analysis. (T. 332, 4173-74). DNA analysis showed that this blood was that of Lawrence Goodine.

Testimony from Detectives Jimenez, Bayas, Vas, Murias, and Tyme as to their investigation of the crimes and retrieval of evidence from the Defendant and residence, was in substantial conformity with their testimony presented at the suppression hearing, which has been previously set forth at pp. 2-16.

Detectives Tymes and Bayas also testified as to the Defendant's statements. Tymes had interviewed the Defendant from approximately 3:00 a.m. to 4:30 a.m. (T. 4678-79). After providing background information, he stated that he had known Mrs. Goodine for 17 years, and had first met her in Honduras. (T. 4640). They had begun a relationship after they both relocated to Miami. Id. According to the Defendant, the relationship had lasted approximately 1 ½ years, and had ended in January, 1991. Id. The Defendant stated that he had no contact with Mrs. Goodine since ending the relationship. He had, however, seen her in church five weeks before, without actually speaking to her. (T. 4641). When asked about Lawrence Goodine, the Defendant stated he knew nothing "about that man." (T. 4642). Tymes had informed the Defendant that Lawrence was dead; the Defendant responded, "Larry's dead?" without any emotion. (T. 4643, 4666). The Defendant did not initially respond to questions as to how this victim was killed (T. 4643), but then he denied having killed the latter, and had asked "do I look like a killer." (T. 4648).

With respect to the blood on his socks and shoes, the Defendant had shown Tymes a "small laceration" on his leg. (T. 4644). Tymes had pointed out that this laceration was in the healing process, and the Defendant did not respond. Id. Tymes had then asked whether the Defendant's job or other circumstances could have caused the blood stains. The Defendant had responded in the negative. Id.

At 4:30 a.m., the consent form for the search of the Defendant's socks and shoes had been obtained. (T. 4645, 4679). Tymes had then stopped the interview, as a crime technician needed to photograph these items. Id. She had resumed the interview at approximately 5:00 a.m., when the Defendant gave consent for the search of his residence, after having called his wife. (T. 4680). Shortly prior to 6:00 a.m., Detective Vas had come into the interview room with a pair of pants and a shirt retrieved from the Defendant's residence. (T. 4646-47). The Defendant had identified the clothing as his own, and further confirmed that he had worn those on November 19th. Id. At this juncture, Tymes had left the Defendant alone. Detective Bayas had then spoken with the Defendant, alone, for about an hour, from approximately 6:00 to 7:00 a.m. (T. 4689, 4718, 4735-36). Tymes did not question the Defendant any further after 7:00 a.m., when Bayas's interview had ended. (T. 4689, 4684, 4691). The prior questioning of the Defendant had not been continuous. (T. 4651-52, 4677-78, 4684). The Defendant had been placed under arrest at approximately 12:30 p.m. (T. 4650-51).

Detective Bayas testified that the Defendant had said that he was from Honduras; that he had been married for 25 years; that he had five grown children; and that he was a truck driver. (T. 4719). The Defendant was calm, "very attentive" and respectful. (T. 4721). He had known Mrs. Goodine for 20 years, and she had been his

girlfriend for 17 of those years. (T. 4720). The Defendant had indicated that he would pay for her mortgage and car payments, and give her money for groceries and spending. (T. 4721). The relationship had then ended. Id. The Defendant denied having committed any prior burglaries of the Goodine house. (T. 4724-25). He denied having gone to the Goodine house or being in its vicinity on November 19th. (T. 4726-27). He could not “really give a response” as to why he had purchased a car so similar to Mrs. Goodine’s. (T. 4725). He stated that he had no contact with Lawrence Goodine for over a year, and denied having been responsible for his death. Id. The Defendant denied any involvement with Jessica’s disappearance. Id. As to his own whereabouts on November 19th, he stated that he had not gone to work that day. (T. 4723). He had gone to visit his attorney in the morning; he had gone to a tile company thereafter; and finally to a supermarket in the area of 79th Street and Biscayne Boulevard, in northern Dade County. (T. 4723). According to the Defendant, he had then gone home at approximately 6:00 p.m., and remained there for the rest of the evening. Id. The Defendant did not specify the names or locations of his attorney or the tile company. Id.

DNA analysis of the blood stains on the Defendant’s socks and shoes, and pants worn on November 19th, reflected that this blood was Lawrence Goodine’s. (T. 4359, 4364).

As noted previously, Jessica's body was found wedged behind the Defendant's bed in his back cottage. The child's body was wrapped in a blanket/comforter which was kept in place by several pieces of rope tied on the outside of the comforter. (T. 4432-36). The rope was tied all around the contours of the body from the neck area to the foot area. Id.

Inside the bundle, Jessica's head was found to be additionally covered by three (3) "grocery type" "plastic" bags. Id. A "crumpled" paper bag was also found in between the plastic bags. Id. The paper bag was stained with bodily fluids, blood and saliva from the child's face. Id. The area around the child's mouth also had duct tape "residue," consistent with her mouth having been taped shut and then pulled off prior to her murder. (T. 4706-07). A roll of duct tape and several pieces thereof were also recovered from the Defendant's cottage. (T. 4531). Rope consistent with that tied around the body was also recovered from the Defendant's cottage.

The medical examiner testified that Jessica had been killed approximately 24 hours after her father's death, on late Friday, November 20, 1992. (T. 5320). The cause of death was asphyxia by manual strangulation, "choking" (T. 4711-14), as evidenced by petechiae and hemorrhaging in the eyes. (T. 4705). There was hemorrhaging into the neck muscles, both in front and in back, which went down to the spine. (T. 4710-11). She also had hemorrhaging in the vocal area of her voice

box. Id. The injuries reflected that pressure had been applied to both sides of the child's neck for a sustained and continuous period of "a few minutes." (T. 4712-14). Apart from the duct tape residue around the mouth, Jessica also had an injury inside her mouth, which had been inflicted prior to her death. (T. 4707-08). This injury was consistent with a hand having been pressed down over her mouth with sufficient force to cause hemorrhaging along the gum line. Id. Jessica's eyes were also very puffy, indicating a prolonged period of crying. (T. 5321).

2. The Defense Case

The defense presented testimony from the Defendant, who testified for a approximately six (6) hours. The Defendant has had "a speech impediment, a stammer,"his entire life.(T. 4763). He lived in Dade County with his wife, two daughters, and a son. (T. 4760). In November, 1992, he was 50 years old, his wife was 44, and the children were 19, 17 and 13 years old, respectively. (T. 4761-62). The Defendant had two other children, 27 and 24 years old, respectively, who did not live with him at the time. Id.

The Defendant was born in Honduras, in Central America. He left there at age 19, when he joined the Merchant Marines. Id. He settled in the United States in 1965. (T. 4763). That same year, he married his current wife, and purchased a house. Id. He then purchased his present house in 1977. Id.

During the two years prior to the crimes, the Defendant worked for a leasing/delivery company in Dade County, as a truck driver. (T. 4767, 4784, 4800-03). He made deliveries throughout the State on an as-needed basis. Id. Prior to that, he was employed at the Dade County Seaport, as a “heavy equipment operator,” for a period of 16 years. (T. 4767).

The Defendant testified that he first met Margaret Goodine in the early seventies, in Miami. (T. 4764-65). According to the Defendant, they began an “affair” from 1974 through the latter part of 1991. Id. The Defendant “moved in” with Mrs. Goodine in mid-1991, after her husband moved out. (T. 4767, 4770). He was there “off and on,” sometimes spending the night, and sometimes a week. Id. This arrangement continued for about a year, until mid-1992. Id. The Defendant testified that he ended the relationship, because one night Mrs. Goodine did not come home until midnight, and would not state where she had been. (T. 4771, 4862). The Defendant maintained that he had not had any contact with the Goodines, except for two telephone calls, since the relationship ended in mid-1992. (T. 4865-66).

The Defendant testified that he had purchased his Cadillac after the relationship ended, because, “I seen the car, and I fall in love with it. And I bought it.” (T. 4855-56). He testified that he had not driven the Cadillac at all, for a two-week period prior to the crimes, because the temporary tag on the vehicle had expired. (T. 4831,

4854).

With respect to the instant crimes, the Defendant stated that, on November 19, 1992, he had not gone to work, because he had not been “called in.” (T. 4784). That day he had “dropped off” his wife at the Metrorail station, at approximately 8:00 a.m. (T. 4775). He had then gone to the medical Art Center, for a refill of his prescription medication, but it was early and the building was closed. (T. 4775, 4884-88). He had then gone to an attorney’s office on “14th Avenue, but that office was not open either. Id. The Defendant had a pending civil lawsuit against the Miami Police Department at the time, had fired his first attorney, and was in the process of finding another one. He stated that he did not remember the attorney’s name, but had had the latter’s business card in his wallet. The Defendant stated that his wallet had been taken by the police at the time of his arrest, and he had subsequently been unable to retrieve the wallet from the police. Id.

The Defendant testified that he then went to Florida Lumber Company to look for some tiles, in order to complete a “bathroom,” but they did not carry the kind of tiles he wanted. (T. 4776-77, 4890-93). He then went to another tile company he had dealt with, but found that the store had been destroyed by Hurricane Andrew. Id.

The Defendant then returned to the Medical Arts Building, around noon. Id. The pharmacist there, however, gave him “a hard time, and asked for either a

prescription or the bottle from his last refill, even though the information was computerized and available at the pharmacy. Id. The Defendant then left and went back to the attorney's office, but the secretary told him that the attorney was in court. Id. The secretary asked him to call at 2:00 p.m. and set up an appointment. Id.

The Defendant did not do so, and instead went home, where he stayed until approximately 2:00 p.m. Id. He then went to a supermarket, because he was expecting visitors. The Defendant stated that he went back home at about 4:30 that afternoon. Id. He put away the groceries, and went to the back cottage to pack some boxes.

The Defendant and his brother had planned to go to Honduras for Christmas, and he wanted to ship the boxes there prior to their arrival. (T. 4779-81, 4899). They were due to arrive in Honduras approximately two weeks after his arrest, although they had not purchased any travel tickets as of that time. Id. The items to be shipped were TV's, VCR's, stereos, tapes, women's and children's clothing, shoes, jewelry, sheets, comforters, and pillows. Id. The Defendant was packing these items for resale in Honduras. Id.

According to the Defendant, the clothes, jewelry, linen and liquor bottles found in his cottage had not belonged to Mrs. Goodine. (T. 4832, 4839-40, 4842-46). They had not been taken during any burglaries. Rather, he and his brother had purchased

some of these items at a flea market; the older linen and jewelry had been obtained from his wife's aunt, who had died shortly prior to the crimes. Id. The liquor bottles had been accumulated by the Defendant's brother, who, as a crewman on a ship, was allowed to bring two bottles of liquor on every trip. (T. 4843, 4912).

The Defendant explained that he had used duct tape and rope to pack his boxes for shipping. (T. 4847-48, 4902-05). However, the rope tied around Jessica's body was plastic, and not of the type used by him. Id. Similarly, the roll of duct tape he had used was "wider" than the one found in the cottage, although he had used more than one roll of tape. Id. The Defendant added that he had no knowledge of the pieces of duct tape found scattered through the cottage. Id.

The Defendant stated that he had packed boxes until approximately 9:00 p.m. on November 19th, when his wife informed him of a telephone call. (T. 4784). The caller had identified herself as Detective Sara Tymes, and asked if he knew the Goodines. (T. 4784, 4787). The Defendant had said that he knew the woman "for 19, 20 years, and the man about 12 or 13 years." (T. 4789-90). He told Tymes that, "I haven't seen those people for a year or more." (T. 4790, 4907-09). The Defendant stated that he had lied about the latter timing, because his mind was on his own business and not that of the Goodines. (T. 4907-09).

According to the Defendant, several hours later, during the morning of

November 20th, Detectives Tymes and Bayas had come to his backyard. (T. 4797-99). The Defendant's dog "charged" the officers, sending them running to the front door. (T. 4798-99). The Defendant opened the door, and told Tymes that she was "harassing" him. Tymes had "no answer" to this, and thus left his property. Id.

The Defendant then went to bed, and left for work at 5:30 a.m. on Friday, November 20th. (T. 4800-03). He saw someone following him in an unmarked car. Id. He stated that he arrived at work at 6:00 a.m., and drove a "40-foot tractor," making ten (10) deliveries in Palm Beach County. (T. 4802-06). He arrived back home at approximately 6:00 p.m., and went to the cottage to resume packing boxes. Id.

The Defendant stated that although he had previously locked the cottage, the door was now open. Id. Nothing was missing from the cottage, but someone had placed a pair of pants and a shirt on the floor. The Defendant took these and threw them near the bed in the master bedroom in the main house, although he did not know who they belonged to. Id. After some packing, the Defendant then took a bath and went to bed at 7:00 p.m. Id.

He testified that he was then woken up at 10:00 p.m. that night, by Detective Murias. (T. 4807-10, 4939-41). The Defendant stated that he went to the back yard, and voluntarily sat in Murias' car for approximately a half hour. Id. Murias was

respectful. The Defendant answered questions about the “Goodine family,” repeating what he had told Tymes on the telephone, and also talked about the “islands.” Murias then left and the Defendant went back to bed. Id.

The Defendant stated that several hours later, at about 2:00 a.m., on Saturday, November 21st, he was again woken, by either his wife or the sound of his gate opening. (T. 4810, 4814-16, 4941-48). He stated the he went outside, and saw Tymes and Murias in his Cadillac. He stated that he caught them “red-handed,” “planting evidence” in his car, although he had not seen what if anything they had in their hands. Id. The Defendant ordered the officers off of his property, but they closed in on him, and said he had to go to the police station with them. Id. According to the Defendant, Tymes then transported him to the station, and locked him in a room. (T. 4819).

The Defendant stated that once at the station, the detectives left him completely alone from the time of his arrival at 2:30 a.m. until the time of his arrest at 10:30 a.m. (T. 4819-20, 4949). According to the Defendant, the only interaction in this interim had been at 4:30 - 5:00 a.m., when an unknown male officer asked if the Defendant would consent to the search of his house. (T. 4819-20, 4949, 4820-21). The Defendant testified that, as he had “nothing to hide,” he had called his wife at that time, and told her to let the officers search the premises. (T. 4820-21, 4949).

The Defendant added that two officers had subsequently questioned him for a total of one (1) hour, only after he was formally arrested at 10:30 a.m. (T. 4822-26, 4948-49). The officers had called him “names,” and tried to “get me angry.” Id. The Defendant testified that he had, however, “kept cool.” Id. He had not admitted any wrongdoing. (T. 4824, 4848). The Defendant testified that he had not seen, nor killed, either of the victims. (T. 4846-47, 4833, 4838, 4972).

With respect to the consent and Miranda waiver forms signed by him, the Defendant testified that he had signed all of these forms after his formal arrest at 12:30 p.m., and because the police had said the forms were “procedure.” (T. 4816-17). He emphatically added, however, that if the police had bothered to ask, he would “no doubt” have signed each and every one of the forms at issue and consented, because he had “nothing to hide.” (T. 4949-51, 4955-56).

With respect to Lawrence Goodine’s blood in the Defendant’s vehicle, the Defendant stated that the evidence had been planted by the police. (T. 4830-31). The Defendant denied having seen or had anything to do with Jessica’s body or any bundle in his cottage. (T. 4837-38). He stated that he had loved the child. Id. As to the victim’s blood on the Defendant’s socks and shoes, the Defendant stated that there was no blood on these items when he had exited his house. (T. 4828-30, 4960). He testified that he had accidentally cut his ankle and bled a little, when he stepped into

Tymes' car while being transported to the police station. Id. As to the victim's blood on the pants retrieved from the master bedroom of his house, the Defendant stated that the pants did not belong to him. (T. 4845-46). He added that the pants did not even fit him. Id.

D. Penalty Phase Testimony

The State presented testimony from the medical examiner as to Jessica's manner of death, which evidence has been summarized at p. 36 herein. The State also presented victim impact testimony from Jessica's brother and mother. (T. 5331-37).

The defense first presented testimony from the Defendant's children and his wife. Garla Connor, 25 at the time of the sentencing, was pursuing a masters degree in nursing and worked in her field. (T. 5340-41). The Defendant had been an "excellent" father to her, supporting her in many ways. (T. 5342-45). Once, however, he engaged in harsh discipline, precipitating a call to the police. (T. 5352). Garla was in close touch with her father during his six-year, pre-trial incarceration, and they continued their close relationship, with the Defendant providing her with helpful fatherly advice. (T. 5345-48). He also helped her raise her own child. Id. Garla was unaware of any psychological problems on the part of her father, either through her own observations or through comments of family members. (T. 5350-52).

The Defendant's son, 18 at the time of the trial, in high school, and applying

to college, provided similar testimony, regarding a “close” relationship with the Defendant, regular visits and phone calls during the incarceration, and fatherly advice throughout. (T. 5363-69). He, too, was unaware of psychological problems, never seeing the Defendant act “paranoid,” and never hearing other family members mention such problems. (T. 5370).

The Defendant’s wife testified that he was “a good father” and provider. (T. 5355-58). He helped with the children’s schooling, their religious training and discipline. Id. There was no mention of any mental illness.

The Defendant’s second daughter testified that her father was “wonderful,” kind, loving, supportive, and strong. (T. 5380-84). She had also maintained contact with the Defendant during his incarceration. The Defendant had helped with her personal problems during this time. Id. Again, there was no mention of any mental illness.

Two corrections officers, familiar with the Defendant during his pretrial confinement, stated that the Defendant was never a disciplinary problem. (T. 5371-76, 5740-43). The Defendant had never been housed in an available “psychiatric wing.” (T. 5743-44). He had never exhibited any behavior warranting such placement, although one officer was looking for any such signs. Id.

Dr. Eisentein was a clinical neuropsychologist. (T. 5408). He had seen the

Defendant may times from 1993 through the time of sentencing, and had conducted psychological testing. (T. 5415). Eisenstein testifies for the defense in the “vast majority” of homicide cases. (T. 5474).

According to Eisenstein, psychological testing is “not definitive”; these are only “aids” to a clinician’s final diagnosis. (T. 5467-68). His psychological testing reflected that while the “Halstead, Reiten” was “in the moderate to severe impairment range” (T. 5456-57), the Defendant’s full scale IQ was 84, which is “a little lower than normal,” “in the low/average range.” (T. 5452). The Defendant scored even higher on the Wexler memory scale, such that his “overall working memory,” was “basically within the average range.” (T. 5460-61). The Defendant’s MMPI scores, which in part reflect how an individual views himself, were within the normal range. (T. 5455-56).

Eisenstein’s diagnosis was “organic Brain Syndrome” and “paranoid schizophrenia,” both of which are major mental illnesses. (T. 5445, 5491-94). The Defendant’s condition had not changed from the time Eisenstein had first examined him in 1993 through the time of sentencing in 1998. (T. 546-61). Furthermore, the brain disorder had existed for most of the Defendant’s life, and the latter would have thus exhibited signs of this disorder throughout his life. (T. 5498). The symptoms of the disorder are that the Defendant “can not think and weigh options.” (T. 5447). He

would have “great difficulty with doing one focused task. Clearly he could not do two.” (T. 5443). With respect to paranoid schizophrenia, Eisenstein admitted some of the diagnostic criteria for such an illness were “really missing.” (T. 5491-95). The Defendant nonetheless “at times” suffers from this condition, that is when “active hallucinations” are present. (T. 5495-96). No such hallucinations were reported at the time of the crimes. Id. The Defendant had denied any involvement, and had not discussed his motivation. (T. 5490).

Based on the above diagnoses, the Defendant was unable to testify “relevantly,” (T. 5521), was not “competent,” “did not know right from wrong,” and did not “appreciate the nature and consequences” of his actions. (T. 5549-50). As to the statutory mental mitigators, while “at this point, [Defendant] appreciates” the criminality of his acts, “at the time that they were committed, if he committed them, he would have been unable to have controlled his own behavior given his organic cognitive brain damage.” (T. 5446). The Defendant knows that murder is wrong, but he believes that he did not commit the crimes and is being accused because “people are out to get him,” which “makes it a psychiatric component.” (T. 5552). Eisenstein admitted that the Defendant’s denial of involvement was also consistent with “lying because he does not want to take responsibility for what he did.” (T. 5552, 5450). Moreover, the Defendant’s “life style” demonstrated that he was not “honest with

people,” and that he was “not a reliable source of events.” (T. 5491-92). Nonetheless, “patients never lie, we just need to understand them.” (T. 5468).

Dr. Mosman, a licensed psychologist and practicing attorney, interviewed the Defendant, reviewed employment records and other doctors’ reports, spoke with some family members, and administered two tests: the Rorschach and “Denham.” (T. 5611-15). Mosman also primarily testifies for the defense. He diagnosed the Defendant as having a “fairly well developed history” of the major mental illness of “paranoid schizophrenia.” (T. 5661-63). A second “technical” diagnosis was “a change in the personality more likely related to an organic condition.” (T. 5664). A third diagnosis was “stuttering,” which was an “emotional reaction,” unrelated to any neurological problem. Id.

Mosman was “confident” that the paranoid schizophrenia had developed in 1983-84, had become “full blown” in 1986, and had continued through the time of the trial. (T. 5565-66, 5729). The illness and the timing thereof were allegedly substantiated through the Defendant’s employment records from 1971 through 1986. (T. 5565-66). These reflected that the Defendant had been dismissed from his county employment in 1983 because he had attempted to fondle a female employee, and had kicked her when she refused his advances. (T. 5697-5702). The Defendant had sued and won reinstatement of his county job. Id. Thereafter, he had been “written up” for

such incidents as taking unauthorized breaks, using county equipment without permission, to retrieve frisbees on one occasion and coconuts on another occasion. (T. 5702-06). Based upon these latter incidents, the Defendant had been fired, on the grounds that he had impaired “the operation of the whole unit.” *Id.* In contrast, the Defendant’s pre-1983 employment record, at a time when according to Mosman there was no schizophrenia, reflected far more serious and violent behavior. (T. 5697-5702). The Defendant, from 1971 to 1983, had been receiving “high ratings” in his job evaluations, which described his quality of work as “accurate,” and stated that he showed “initiative,” “resourcefulness,” complied with “all rules and regulations,” and had had a good relationship with fellow employees and the public. (T. 5699-5701). At these times, however, on separate occasions throughout the years, the Defendant had: 1) left a note threatening to blow up another employee’s truck when that employee had not complied with the Defendant’s wishes as to a parking space; 2) threatened another employee with a “machete,” when that employee had not complied with the Defendant’s wishes to get off his truck; 3) bitten and scratched another employee who had refused to obey the Defendant’s instructions to leave the workplace. (T. 5697-5701).

Based upon his diagnosis, Mosman had, prior to trial, predicted that the Defendant would be unable to control himself during trial; that he would be unable

to testify relevantly; and, that he would not remain “coherent.” (T. 5723-26). A review of the transcript of the Defendant’s testimony at trial did not support Mosman’s prior predictions. Id.

In rebuttal, the State presented Dr. Garcia, a forensic psychologist. (T. 5747-48). He had examined the Defendant on four (4) occasions, reviewed prior medical records, and had administered mental status, IQ, Wechsler, TAT and Bender Gestalt testing. Id. Garcia had also reviewed Mosman’s and Eisenstein’s reports, as well as the “raw data” from the latter’s psychological testing. (T. 5749-50). Dr. Garcia did not find paranoid schizophrenia. (T. 5750-51). He stated that the Defendant had “paranoid traits in his personality, without any psychotic features.” Id. The paranoid personality is “significantly different” from paranoid schizophrenia which is a “devastating” disease found in only 2 % of the population. Id. The Defendant’s scores on the MMPI, which measures personality and different emotional functions, were further inconsistent with paranoid schizophrenia. (T.5751, 5753).

Garcia also testified that the Defendant’s test results reflected “minor signs of organicity,” but that these were insufficient for any diagnosis of a “serious organic impairment.” (T. 5754-55). The test results were also inconsistent with Eisenstein’s testimony that the extent of organicity rendered the Defendant unable to perform two mental functions at the same time. Id. Moreover, the transcript of the Defendant’s

trial testimony reflected that he was “coherent” and able to answer questions in a “relevant” manner. Id. The transcript of this testimony was also inconsistent with any “serious organic difficulties.” (T. 5756). The Defendant’s “intellectual scores,” further reflected that he “functioned fairly well,” and that any organicity was not so severe as to “impair his judgment.” Id. Garcia testified that neither of the statutory mental health mitigators were applicable to the Defendant. (T. 5758).

On February 26, 1988, the jury recommended a sentence of life, as to the murder of Lawrence Goodine. (T. 5901-02). The jury recommended a sentence of death, by a vote of eight to four, for the murder of Jessica Goodine. Id. The trial judge then conducted additional hearings on April 24, and May 20, 1998.

In addition to the three mental health experts noted above, the trial court also considered mental health testimony from four (4) other experts who had testified during the two competency hearings. Both parties had requested consideration of this testimony and stipulated to the use thereof. (T. 5963). These experts, while examining the Defendant for competency, had also conducted substantial psychological and neuropsychological testing, and delved into the underlying presence or absence of mental illness. The testimony is as follows:

Psychologist Eli Levy examined the Defendant on two (2) separate occasions. (T. 2051-52). He had conducted a clinical interview and a mental status evaluation.

(T. 2052). He had also administered the following clinical tests: “the Bender Gestalt, House-Tree-Person Test, Chromatic and Achromatic, Animal Drawing Test, and the Rorschach.” (T. 2052). He had also reviewed handwritten pleadings and correspondence between the Defendant and the court. (T. 2053). Based upon the foregoing, Dr. Levy found that not only was the Defendant competent (T. 2054-55), but that he did not suffer from any major disorder. (T. 2057).

Dr. Levy found the Defendant to be “quite intelligent,” after taking into account the latter’s cultural differences with the norm of subjects utilized in the standardized psychological tests. (T. 2062-63). Based upon his evaluation and testimony, he stated that he had no concerns about, “mental retardation or any organic brain symptomatology”; that the Defendant “did reasonably well in terms of his verbal cognitive response”; and, that the Defendant was “functioning with the average range.” (T. 2088-90).

Dr. Levy added that, based upon some portions of the Wechsler test, the Defendant had the ability “to abstract.” (T. 2093). He added:

When you sit down and talk to him [Defendant], it is my experience with him, he is very fluent, directional, goal directional. He is spontaneous. He is able to send the information. He is coherent and logical and focused and able to convey his feelings and sentiment quite well.

Id. The Defendant is “orderly” and “capable of planning.” (T. 2086). In tests to

assess the Defendant's "judgment, his common sense, [ability] to deal with specific social situations," the latter did "reasonably well." (T. 2087). Any "deviation" in the testing was "more from the emotional side, but not the neurological, organic." (T. 2086).

The "deviations" consisted of "aggressive impulses," "reactiveness, emotionalism." (T. 2073-74, 2086). The Defendant was "under terrible stress," as he "essentially feels that his life has been a mess right now." (T. 2075). The Defendant had "feelings of insecurity, the feeling of lack of stability." (T. 2078, 2086). Dr. Levy explained that the Defendant, "is suspicious of the legal system. He is suspicious of the mechanism of it. He is suspicious that black people, essentially, and him specifically, don't get a fair shake at things." (T. 2079). Dr. Levy further opined: "I think that his suspicions of the system is very much correlated with his life circumstances." (T. 2081). He added, "within the context of [Defendant's] life circumstances there is enough evidence within it to understand why he would feel this way." (T. 2083). The suspicions were not due to any "psychosis." (T. 2092). Dr. Levy opined: "It's coming out of his own life experiences . . . that he has been incarcerated for four years. His case has not been heard. He doesn't really feel that the system has served his civil rights or his rights correctly." *Id.* Dr. Levy added:

Given these circumstances, your Honor, I don't know any one of us would feel differently, than he he feels, suspicious of the system.

Given his experience, I would be suspicious too. Given that he doesn't feel his case was brought to justice and took all this time to get there, I would be pissed off too. So, again, I don't see Mr. Connor, when we look at him within the context of his life, if we take the context and change it to see I don't see him being sick.

(T. 2094-95). Dr. Levy concluded that: "I do not feel that when I saw him he was sick, mentally retarded." (T. 2096).

Dr. Herrera is a psychiatrist, board certified in both psychiatry and forensic psychiatry. (T. 2099-2100). He conducted a clinical interview, and obtained the Defendant's medical history, psychiatric history, and "psychosocial history." (T. 2101). Dr. Herrera found the Defendant competent. (T. 2103). However, he was also "looking for everything, schizophrenia, mental retardation, anything." (T. 2116). Dr. Herrera opined, "I didn't find any real, any bona fide psychiatric disorder present." Id. He testified that the Defendant's "intellect is intact." (T. 2105).

The Defendant would be a difficult client. (T. 2106). He had shown a resentment or distrust of one of his attorneys by stating that "the first attorney was not good and there was a huge delay in the trial." (T. 2117, 2108). The Defendant also wanted to "place his story in the media," "the fact that he had not been tried after so long," but his attorney had advised against it, and the Defendant had not actually gone to any newspapers. (T. 2117, 2108).

Dr. Herrera's likely diagnosis of the Defendant was a "paranoid personality."

(T. 2110-11). “[P]aranoid personality is not the same as paranoid disorder.” (T. 2111). “Paranoid disorder is the illness and paranoid personality is somebody who is over suspicious.” Id. A paranoid personality “is not someone who is psychotic, who has paranoid delusional disorder.” (T. 2112). The Defendant’s traits were inconsistent with the mental illness of paranoid disorder. First, the disorder does not occur for the first time at the Defendant’s age. (T. 2103-2104). Second, the Defendant had not been “distrustful” during the interview, and in fact had been a “delightful person to talk to.” (T. 2104). Dr. Herrera had “never seen a situation” where someone with a paranoid disorder had the ability to come across “so likeable,” as the Defendant had. Id. Third, the “paranoid illusions” alleged to be present were inconsistent with a paranoid disorder. Paranoid “delusions are real seldom, if ever, self-serving.” (T. 2104).

Dr. Jane Ansley, a clinical psychologist, performed a “neuropsychological evaluation” of the Defendant on two (2) separate occasions. (T. 2128). On yet a third separate occasion, she conducted a competency evaluation of the Defendant. Id. She had again examined him for a fourth time, immediately prior to testifying, in order to ascertain if the Defendant’s condition had changed. Id.

She performed neuropsychological tests, selected subtests of “the Halstead-Reitan Neuropsychosocial Test battery,” “a standardized procedure well accepted in

the psychological community,” which took “between six and eight hours of testing face to face.” (T. 2129). Dr. Ansley also found the Defendant to be competent. Id.

The Defendant had “a full scale IQ of 87,” which is in the “low average range.” (T. 2145). The Defendant was “calm and cooperative” during all of their encounters, although Dr. Ansley had “deliberately” tried to be “tough,” in order to ascertain the Defendant’s behavior during stressful situations. (T. 2130-31). The Defendant communicated in a “logical and coherent manner,” although he has a “stutter.” (T. 2131). The stutter is sometimes worse than other times, but “certainly did not interfere with the overall communication.” Id. There was no indication of any “delusional thinking.” Id. The Defendant was “emotionally stable.” (T. 2132).

Dr. Ansley was asked whether in the course of her psychological testing, there was “any kind of disturbance, whether it be emotional, whether it be organic, whether it be intellectual.” (T. 2140). She responded that the Defendant “didn’t do perfectly on everything, but there was nothing that suggested gross organic brain dysfunction.” (T. 2141). She was then asked whether there was “anything that reflected any dysfunction, dysfunction at all, whether it be gross or not gross?” Id. Dr. Ansley responded that one (1) of the neuropsychological tests reflected “borderline functioning,” which meant, “the least amount of deficit that falls into the category of deficit.” (T. 2141-44). The “deficit,” which did not qualify as an “impairment,” was

in the area of “psycho motor information processing.” Id. The Defendant was “a little bit slow” on a timed test measuring his ability to match numbers to symbols. Id. The Defendant was also “mildly impaired” on a “test of sequencing, alternating between numbers and letters.” Id. Dr. Ansley explained, however, that one could not separate single scores, but had to look at “patterns” and look at the “overall performance” to determine whether an “organic brain dysfunction” existed. Id. In light of the marginal performance on two of the subtests, Dr. Ansley administered more testing, which measured “similar kinds of ability.” Id. She found no pattern of any significance. Id.

Dr. Ansley reviewed the Defendant’s pro se pleadings and correspondence with the court. (T. 2132-33). Those documents, “in terms of the legal procedures [are] very coherent and also reality based.” (T. 2134). The Defendant was concerned about “speedy trial,” consistent with his verbal communications with Dr. Ansley during every interview. (T. 2133-34). Thus, “the issue that most bothers him is why has it been so many years. I mean, it’s a legitimate issue. It’s not something different.” Id. Other correspondence, however, indicated “a bit unusual” thinking. Id. The Defendant had sent the court a diagram of his holdings (a hotel) in the Bahamas, which on its face did not appear relevant to the case. Id. Dr. Ansley thus explored further and found the Defendant’s explanation “logical.” (T. 2134-35). The Defendant had explained that, when first arrested, he wanted the judge to know that

he was, “not just a nobody, that I am some one who had substantial holdings,” in the hope that the judge “would pay more attention to someone who was of the land of aristocracy than a homeless person.” *Id.* This correspondence, “psychologically, it served the same purpose to say to the judge, you know, I am someone important here.” (T. 2136). Moreover, the Defendant never claimed that the details illustrated were in actual existence; rather, he was demonstrating how his holdings would have progressed if he had not been arrested and incarcerated for four years.

Dr. Jacobson, a psychiatrist practicing for 30 years, examined the Defendant on two (2) occasions, finding the Defendant’s “overall cognitive abilities were quite adequate.” (T. 683, 703). The Defendant does have some “deficits.” (T. 709). He is “wordy, circumstantial, at times not to the point, not precise, not concise. He is suspicious, mistrustful, grandiose, narcissistic, wilful.” *Id.* The Defendant’s “paranoia,” is a “defensive paranoia relating to him seeing himself at risk from other people who might want to take things that are important to him.” (T. 711). The Defendant’s account of the crimes was, “not the most precise and logical and careful explanation and alibi, . . . but on the other hand, it is not bizarre. . . . it’s the kind of a defense or excuse that someone might use if you don’t have a better one.” (T. 708). Based upon Dr. Eisenstein’s “material,” there was some evidence of “organic stuff.” (T. 714). The Defendant has, “some memory dysfunction. He is not as sharp, precise,

perhaps as he was.” Id.

E. Sentence

The trial judge entered her extensive sentencing order on June 19, 1998. (R. 2199-2218). She imposed a life sentence as to the murder of Lawrence Goodine. (R. 2217-18). She imposed a sentence of death as to the murder of Jessica Goodine, having found the following five (5) aggravating factors: 1) the Defendant was previously convicted of a prior violent felony - murder (given “great weight”); 2) the capital murder was committed during the course of a kidnapping (“great weight”); 3) the capital murder was committed for the purpose of avoiding arrest (“great weight”); 4) the murder was especially heinous, atrocious or cruel (“very great weight”); and, 5) the murder was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification (“great weight”). (R. 2200-06). The judge rejected the lack of significant prior criminal history statutory mitigator. (R. 2206). She also rejected both of the statutory mental health mitigators, having found the totality of the evidence “fly in the face of Dr. Eisenstein’s and Dr. Mosman’s opinions.” (R. 2206-16). The trial judge, however, found that “the defense has established the non-statutory mitigator that the defendant suffers from a mental or emotional illness. It is to that lesser extent that the court gives this mitigator substantial weight.” (R. 2214). The judge additionally found the following

nonstatutory mitigators: a) the Defendant has been a good father to his children (“little weight”); b) the Defendant will die in prison if given a life sentence (“some small weight”); and, c) the Defendant has had no prison problems. (“some small weight”). (R. 2216-17).

SUMMARY OF ARGUMENT

I. Suppression of physical evidence and statements was properly denied where the encounter between the Defendant and the officers was voluntary, and there was no illegal arrest tainting subsequent consents, searches or statements. Alternatively, what transpired was within the scope of a permissible Terry investigatory detention, where the Defendant was not told that he was under arrest, questioning was limited in scope and duration, and the officers, at the time, had reasonable suspicion as to the Defendant’s possible involvement in murder of Lawrence Goodine and disappearance of Jessica..

II. The witness elimination aggravator was properly found, as the dominant motive for the murder of Jessica was her elimination as a witness. She was capable of placing the Defendant at the scene of the murder of her father, and of identifying the Defendant as her father’s murderer. No other motive for her murder reasonably exists.

III. the cold, calculated and premeditated aggravator was properly found, as the

murder of Jessica was based upon careful reflection, over a period of more than 24 hours, after the Defendant abducted her and decided what to do with her.

IV. Statutory mental health mitigators were properly rejected by the lower court, as the opinions and conclusions of the defense mental health experts were controverted by both the testimony of the State's experts and by the Defendant's own actions and testimony.

V. The statutory mitigator of lack of a significant prior criminal history was properly rejected by the lower court, where there was evidence that the Defendant had engaged in numerous prior criminal acts of burglaries, threatening and harassing telephone calls, stalking, drive-by shooting, and destruction of property.

VI. The death penalty imposed in this case is proportionate to that upheld in other cases. Numerous other cases decided by this Court, with murders of young children, have resulted in affirmances of death penalties with comparable or lesser aggravating factors, and comparable or greater mitigation.

ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED THE MOTIONS TO SUPPRESS WHERE THERE WAS NO ILLEGAL ARREST OF THE DEFENDANT AND PHYSICAL EVIDENCE AND STATEMENTS WERE OBTAINED PURSUANT TO VOLUNTARY CONSENT.

The Appellant claims that he was illegally arrested when he was taken from his residence to the police station for questioning, and that all of the physical evidence and statements obtained subsequent to that illegal arrest are thus tainted. The premise of the Appellant's argument - that the interaction between the Appellant and the police constituted an "arrest" - is predicated on the slender reed that the evidence allegedly reflects that he was told by the police that it was "necessary" that he come to the station, and that he did not, therefore, come to the station voluntarily. That contention is based on an incorrect reading of the evidence.

The determination of whether a person is in custody for Fourth Amendment purposes, whether for a seizure or an arrest, is based upon the totality of the circumstances. See Voorhees v. State, 699 So. 2d 602, 608 (Fla. 1997); Florida v. Bostick, 501 U.S. 429, 439, 111 S.Ct. 2382, 115 L.Ed. 2d 389 (1991) The determination of the question of custody focuses on whether there is a formal arrest, or a restraint on the person's freedom of movement which would be associated with a formal arrest, as determined from the perspective of how a reasonable person in the

suspect's position would have understood the situation. California v. Beheler, 463 U.S. 1121, 1125, 103 S.Ct. 3517, 77 L.Ed. 2d 1275 (1983); Voorhees, *supra*; Bostick, *supra*. The question is based on an objective view of the facts; not the suspect's subjective perspective. Stansbury v. California, 511 U.S. 318, 114 S.Ct. 1526, 128 L.Ed. 2d 293 (1994).

The Appellant's argument rests entirely on the assertion that he was told that it was "necessary" for him to go to the station. That, however, is an inaccurate reading of the record. According to Detective Tymes, when she was at the Connor residence, Detective Murias "asked [Mrs. Connor] if we could speak with [the Appellant] and she responded yes. . . ." (T. 391). After Mrs. Connor brought her husband out, Detective Murias, according to Tyme, "asked him if he could respond, you know, to our office so that we could continue the interview." (T. 394). On cross-examination, Detective Tyme simply asserted that she indicated to the Appellant that she needed to speak to him; not that he "needed" or was "obligated" to come to the station. (T. 439-40).

When the officers knocked on the Connor residence door, Murias told Mrs. Connor that "we wanted to speak with" the Appellant. (T. 500). When Mrs. Connor got her husband, the officers "asked him if he could come down to the – via to the Metro-Dade Headquarters Building to speak to them regarding the investigation." (T.

501). He responded, “‘Sure,’ that he would come.” Id.

While Mrs. Connor, on direct examination, stated that Detective Tyme said that “she needed him to come to the station to answer some questions,” (T. 214), on cross-examination, she indicates that this was not expressed in terms of any “necessity”:

Q. At that point, they asked your husband, in your presence, if he would come down to the station to talk to them; am I correct?

A. Yes.

Q. He said, “Why go to the station?” Am I correct?

A. Yes.

Q. The police said because they wanted to talk to him; am I correct?

A. Yes.

Q. Your husband’s response was to turn around and get his clothing?

A. Yes.

(T. 257). Thus, all three witnesses ultimately concur that the officers asked him to come to the station, without the compulsion of words of necessity.

Even more significantly, whether the officers used the phrase “need to come” or its equivalent is not dispositive, as it is necessary to look to the totality of the circumstances. First, one of the officers, Murias, had been out to the Connor residence the day before, and had spoken to the Appellant without the confrontation escalating into any form of custodial detention. Thus, there was no reason to believe

that this instance would be any different. Second, the officers were in plain clothes and no weapons were utilized. Third, when the Appellant got into the officers' vehicle, he got into the front passenger seat, without handcuffs - facts which are inconsistent with an arrest. Fourth, the officers did not search the Appellant at that time, which, for safety purposes, they would do with an arrest. Fifth, after the Appellant agreed to go the station, the officers waited for him outside of the house, while he went to his bedroom to change his clothing. This, too, was inconsistent with the safety concerns which inhere in an arrest.

The totality of the above circumstances, when viewed from the objective perspective of a reasonable person, compel the conclusion that the Appellant was not in custody or under arrest at the time that he was taken to the station. Absent such custody, no illegal arrest exists, and none of the subsequent searches or statements would be tainted by any prior illegality.

Even if the Appellant is viewed as being in the custody of the officers while still at his residence, certainly, at that time, his custodial status would have been no more than a mere temporary, investigatory detention, under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968). As of that time, the interaction between the Appellant and the officers had been brief, and the officers made known their desire to speak about an ongoing investigation. Under Terry, "the stop and inquiry must

be ‘reasonably related in scope to the justification for their initiation.’” 392 U.S. at 29. “Typically, this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer’s suspicions.” Berkemer v. McCarty, 468 U.S. 420, 439, 104 S.Ct. 3138, 82 L.Ed. 2d 317 (1984).

In this case, no questions had been asked inside the Defendant’s home. Once outside, the officer had seen a Cadillac closely resembling that in which Jessica had last been seen alive. She thus asked the Defendant if she could look inside, and, advised him of his right to refuse consent. The officer then did a visual search of the car, in the areas where the child could have been hidden, in order to confirm or dispel her suspicions. The officer saw blood inside the car, which necessitated further investigation.

The significance of this encounter, is that the inquiry, through that point in time, was fully within the scope of Terry. As the inquiry, through that point in time, was within the scope of Terry, it further means that there was no arrest and the consent obtained as to the initial search of the Cadillac, was not tainted by any prior illegality. The discovery of the blood in the Cadillac would therefore not be suppressed. Indeed, the Brief of Appellant herein, p. 40, acknowledges that if the confrontation were merely one arising to the level of a Terry stop, as opposed to an

arrest, suppression would not ensue. It is therefore significant that at the time of this confrontation, the officers possessed the reasonable or articulable suspicion required under Terry.²

Furthermore, even if custodial status existed when taken to the station, the encounter still remained within the scope of a Terry stop, and did not arise to the level of an arrest. The changed location of the questioning, to the police station, did not necessarily transform the encounter into an arrest. See Oregon v. Mathiason, 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed. 2d 714 (1977). The scope and permissible duration of a Terry investigation are not measured by any bright line test as to the length of time. See United States v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed. 2d 605 (1985). The question is whether “the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.” 105 S.Ct. at 1575. The questioning at the station was not unduly long; it focused on obtaining consents for searches; it further focused on locating the still missing child; and the Appellant was never told that he was under arrest or not free to leave. Thus, the encounter at the station was still within the scope of Terry and none of the consents to search obtained there, or Mirandized statements,

² Mrs. Goodine, as of that time, had made Connor a suspect, based on their prior relationship, Connor’s threats and the restraining order against him, the nature of the items taken from the Goodine residence, and Jessica having last been seen in a Cadillac closely resembling hers.

were tainted by any prior illegal conduct.

Alternatively, even if the Appellant is deemed to have been illegally arrested, sufficient intervening circumstances exist to remove any taint from the prior illegality. In the context of confessions after prior illegal arrests, the United States Supreme Court has emphasized several nonexclusive factors in determining whether the taint from the prior illegality has been removed: “the temporal proximity of the arrest and the confession, the presence of intervening circumstances, . . . and, particularly, the purpose and flagrancy of the official misconduct. . . .” Brown v. Illinois, 422 U.S. 590, 603-604, 95 S.Ct. 2254, 45 L.Ed. 2d 416 (1975). Brown further emphasized that the purpose of the inquiry was to determine whether the subsequent confession was obtained “by exploitation of [a prior] illegal arrest.” 422 U.S. at 603. See also Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed. 2d 824 (1979). The Brown factors have likewise been applied in the context of physical evidence obtained subsequent to an illegal arrest. See, e.g., United States v. Melendez-Garcia, 28 F. 3d 1046, 1053-55 (10th Cir. 1994) (substituting consent to search for the subsequent confession in Brown).

A. Search of Car

As to the car search, even if any initial illegality existed, the officers did not exploit that illegality. First, they obtained the Appellant’s voluntary consent prior to

the search of the car. The search came after not just a full consent, but after the Appellant was expressly advised of his right to refuse consent, and to compel the officers to obtain a warrant. (T. 400). The Appellant thereafter signed the consent form, which further stated that his consent was of his “own free will” (T. 401). Subsequent consent, when coupled with an express admonition of the right to refuse, has typically been deemed a highly significant factor in dissipating taint. See, e.g., State v. Gribeiro, 513 So.2d 1323, 1324 (Fla. 3d DCA 1987) (and cases cited therein); State v. Boyd, 615 So. 2d 786, 790 (Fla. 2d DCA 1993); State v. Champion, 383 So.2d 984 (Fla. 4th DCA 1980).

Not only was there a compelling intervening circumstance with the consent predicated upon advice of the right to refuse, but, the “purpose and flagrancy of the official misconduct” are equally significant. The undisputed purpose herein was to determine whether the missing girl was still alive and, if possible, to save her. The initial search of the car was fully consistent with that purpose. The police, during this initial search, merely looked into the areas in which the girl could possibly have been hidden - the interior of the car and the trunk. Cf., New York v. Quarles, 467 U.S. 649, 104 S.Ct. 2626, 81 L.Ed. 2d 550 (1984) (Miranda violation not dispositive where police were acting out of concern for public safety, evidenced by possibly loaded, abandoned weapon in public area).

Similarly the conduct evinced no flagrant illegality. Based on the facts set forth herein, the officers could reasonably believe that they had not engaged in any illegal conduct. Even if a court ultimately disagrees on that, the reasonableness of the officers' beliefs would negate any "flagrancy" of such illegality.³

B. Interrogation

Once again, a significant intervening circumstance exists, as questioning at the station was preceded by Miranda warnings. While the Appellant claims that the standard Metro-Dade warnings which were utilized in this case were defective as to the right to counsel, the exact warnings form has twice been held to be sufficient by this Court. Cooper v. State, 739 So. 2d 82, 84 at n. 8 (Fla. 1999); Johnson v. State, 1999 WL 820574, *3 and n. 4. Moreover, as noted by this Court, several other courts have also upheld the form at issue. See Johnson at n. 4.

For the reasons set forth previously at p. 68, there was no flagrant misconduct from which to justify the exclusion of evidence, and the purpose of the police conduct was still to try to locate and save the still missing child.

It is also significant that the questioning at the station was not for a prolonged

³ Thus, in Rawlings v. Kentucky, 448 U.S. 98, 110, 100 S.Ct. 2556, 65 L.Ed. 2d 633 (1980), the Court observed that in a case where the legality of a detention was "an open question," and where the officer's belief "may well have been erroneous," the officer's conduct would not be deemed to "rise to the level of conscious or flagrant misconduct requiring prophylactic exclusion of petitioner's statements."

duration. At the suppression hearing, the testimony established that one officer had questioned the Appellant for approximately two hours, with interruptions; at trial, the Defendant himself put the time of the total interrogation at about one hour. The officers established that the Appellant did not display any resistance to questioning; that he did not ask to leave; and he did not ask for counsel. Furthermore, although the Appellant was answering all questions, he was not making any admissions. The questioning still focused on the consents to search, along with repeated admonitions of the right to refuse, thus negating any exploitation of an alleged prior illegality.

C. Socks and Shoes

When Detective Tymes obtained the Appellant's consent to the retrieval of his socks and shoes, she again read him his rights from the standard consent to search form, including the right to refuse consent and require a warrant. (T. 413-17). Thus, the facts again show a highly significant intervening fact, a motive of saving the child who was still not known to be dead; an absence of any flagrant prior illegal conduct; and, informed consent.

D. Residence and Cottage Search

The cottage was searched twice. The first time was shortly after the Appellant left for the police station, as the remaining officers obtained the consent of Mrs. Connor, who furnished them with a key. At that time, the officers were obviously

considering the possibility that the missing child was alive, and indeed articulated their motive to Mrs. Connor. The officers did not observe anything useful and took no evidence. As Mrs. Connor obviously lived at the residence, produced the keys to the cottage, and advised the officers that they were “more than welcome to look around” (T. 505), articulable facts existed from which the police could obviously conclude that, in the absence of her husband, Mrs. Connor had common authority to permit entry into the cottage. Saavedra v. State, 622 So. 2d 952 (Fla. 1993).

As in the foregoing discussion, based on the wife’s consent, the absence of any seized evidence, the motive of saving a missing child, and the absence of any flagrantly illegal conduct, any “taint” from prior illegal conduct was clearly dissipated. Furthermore, at the time of this consent, Mrs. Connor did not have any basis for believing that her husband had been arrested or that he would not be coming back. As to the search of the main residence, where the Defendant’s bloody clothing was retrieved from the floor in the master bedroom, clearly the consent was within Mrs. Connors’ authority. Saavedra, supra.

With respect to the search of the main residence, and the second search of the cottage, it should also be noted that the Appellant again verbally consented, and spoke to his wife prior to any search. (T. 419-23). Mrs. Connor, Garla, and the Defendant, were all apprised of the right to refuse consent, and all signed express

written consents. (T. 421-23; 129-32).

It must therefore be concluded that any taint from an allegedly illegal arrest must be deemed sufficiently attenuated, as intervening consents, with warnings of rights to refuse, were given; the purpose of the police conduct was still to locate a missing child in danger, who might still be alive; there was no flagrant illegal police conduct, as the officers reasonably believed that they had not acted illegally; and, the objective facts are not such as to compel a conclusion that any working officers, under conditions of pressure, should realize that their acts had effected an arrest as of 2:00 a.m., en route to the police station with the Appellant.

This Court, in Byrd v. State, 481 So. 2d 468 (Fla. 1985), after rejecting the argument that Byrd's warrantless arrest at his residence was illegal, concluded, in the alternative, that even if the arrest had been illegal, the subsequent confession at the police station would still have been admissible. The reasoning in Byrd is applicable herein:

Although we find that appellant's arrest was proper under the factual circumstances of this case, we note that, even if the arrest was improper, the confession was not so tainted as to be inadmissible. We reach this conclusion because appellant knew the officers, had talked to them before his arrest, was advised of his rights at his residence and at the police station, and also signed a "consent to be interviewed" form and indicated to police that he wanted to give a statement. In addition, appellant was afforded time alone with his girlfriend to discuss his predicament before he actually gave the confession.

481 So. 2d at 472-73. Similarly, Connor had previously spoken to one of the officers; he was repeatedly given warnings, both as to consents to searches and as to statements; and his sole request to speak to his wife was honored prior to the consent which led to the discovery of Jessica's body. Just as those factors dissipated any taint in Byrd, so too, any taint was dissipated in the instant case.

E. Inevitable Discovery and Waiver

In addition to the foregoing, it is further clear that, at an absolute minimum, Jessica's body would inevitably have been discovered in the cottage, as would the blood matched to Lawrence Goodine found in the Appellant's Cadillac. "The fruit of the poisonous tree doctrine is inapplicable when . . . evidence inevitably would have been discovered." Parker v. State, 611 So. 2d 1224, 1227 (Fla. 1992). See also Nix v. Williams, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed. 2d 377 (1984).

Based upon the Appellant's known threats to the Goodines, his prior relationship, his matching and unique Cadillac, Jessica's entry into such a Cadillac (other than her mother's) immediately prior to her disappearance, the blood traces in the Goodine residence, and the burglary/theft of Mrs. Goodine's personal items, it can reasonably be said to be inevitable that the police would have obtained a search warrant for the Defendant's vehicle, and discovered the blood on the back seat which matched Lawrence Goodine's DNA. This, in turn, based on the timing of Lawrence's

death and the disappearance of Jessica, would have further provided probable cause for a search warrant for the Defendant's premises, leading to the discovery of Jessica's body and the other evidence at issue herein.⁴

Lastly, the Defendant's testimony at trial should constitute a waiver of the suppression issue as presented by the Appellant herein. As detailed in the Statement of the Case and Facts, the Defendant's own trial testimony is utterly inconsistent with the suppression testimony and arguments presented on his behalf. Under such circumstances, the Defendant's own testimony at trial must be viewed as an express repudiation of the claims at the prior suppression hearing, and must similarly be viewed as an abandonment or waiver of the argument previously advanced. The Defendant can not, in good faith, proceed with an argument that officers, inside his house, told him it was necessary to go to the station, when he subsequently presents trial testimony which disavows that theory.

**II. THE TRIAL COURT PROPERLY FOUND THAT
THE MURDER WAS COMMITTED TO ELIMINATE
A WITNESS.**

The Defendant argues that the trial court improperly found that the murder was committed for the purpose of eliminating Jessica as a witness. However, the trial

⁴ With respect to the Defendant's statements to the police, it should be noted that the Defendant never confessed, and denied any involvement in the crimes. The admission of his statements was thus harmless beyond a reasonable doubt.

court's finding regarding this aggravator applies the correct law and is supported by competent, substantial evidence. As such, it should be affirmed. Willacy v. State, 696 So. 2d 693, 695 (Fla. 1997); see also Cave v. State, 727 So. 2d 227, 230 (Fla. 1998), cert. denied, 1999 WL 73704 (U.S. 1999)

The witness elimination factor, where the victim is not a law enforcement officer, must be supported by proof that, "the dominant motive for the murder was the elimination of a witness." Correll v. State, 523 So. 2d 562, 567 (Fla. 1988). Evidence that the victim knew and could identify the Defendant, that the victim was a witness to a prior crime, and that the relationship between the victim and defendant was otherwise "cordial," is sufficient to uphold this aggravator. Correll, 523 So. 2d at 568 ("It is also likely that Correll's daughter, Tuesday, was a witness to the [prior] murders. Since the relationship between Tuesday and her father appeared cordial, it is difficult to see why she was killed except to eliminate her as a witness."). See also Raleigh v. State, 705 So. 2d 1324, 1329 (Fla. 1997) (witness elimination was properly found where the victim knew the defendant, had seen the defendant approach the victim's roommate, and then heard shots, and, there was no prior animosity between the defendant and victim); Willacy v. State, 696 So. 2d at 696 (factor upheld where victim interrupted the defendant, her neighbor, while burglarizing her home, and defendant bound the victim prior to killing her. This Court noted that the victim was

“incapable of thwarting his purpose or escaping and could not summon help. There was little reason to kill her except to eliminate her as a witness. . . .”); Alston v. State, 723 So. 2d 148, 160 (Fla. 1998) (witness elimination factor proper, where the victim could identify the defendant, the victim had been a witness to a prior kidnapping and robbery, and the defendant drove victim to another part of town prior to killing him).

The trial judge herein relied upon the correct rule of law in Correll and progeny and the facts relied upon are well supported by the record, as set forth in the Statement of the Facts herein. In support of this aggravator, the trial court found:

Jessica Goodine arrived home from school on November 19, 1992 at approximately four-thirty (4:30) P.M.. As she usually did, Jessica played at her friend’s house until she thought she saw her mother’s black Cadillac in the yard. In fact, this Cadillac belonged to Seburt Connor. When she ran home, she stumbled upon the defendant’s commission of the Burglary of the Goodine residence, and the death of her father, Lawrence Goodine, at the hands of Seburt Connor. There is no evidence as to precisely what Jessica witnessed. The testimony at trial showed that only traces of blood evidence were left in the Goodine residence, indicating the scene’s careful clean-up by the defendant. Lawrence Goodine’s body was placed in the back seat of Seburt Connor’s car (where Lawrence Goodine’s blood was later discovered by the police) and transported to Fort Lauderdale. There is no evidence that the car came and went several times that day; or that Jessica was transported separately. Rather the evidence indicates that Jessica Goodine was forced into the automobile which at that time contained her father’s dead body. Whether she saw her father killed or not, Jessica surely witnessed Seburt Connor burglarizing her parents’ home. She knew Seburt Connor, and at age ten (10), and by all descriptions of the type of little girl she was, could have identified him.

The previous relationship of Seburt Connor and Jessica Goodine

was a loving, father-daughter relationship. Mr. Connor had lived as Jessica's "step-father" in her home with her mother Margaret, her sister Karen and herself. The defendant himself described the relationship with Jessica as a loving one. The phone threats of Seburt Connor toward Margaret and Karen Goodine never included Jessica. The burglaries and stalkings were directed at Margaret. Thus, there was no animosity against Jessica involved. Jessica was ten (10) years old. She had no money, nor wielded no other power over the defendant except that she could identify him as the perpetrator of the burglary of her home, and thus, her father's murderer. But for the mistake of believing that it was her mother's car in the driveway and running home from her friend's house, she might be alive today.

The evidence shows that her mouth was taped with duct tape at some time before her death and then removed. Seburt Connor was clearly trying to prevent Jessica Goodine from speaking out as to his identity. His demeanor within hours after the murder, when questioned, showed no signs of rage or panic. Her death was the ultimate elimination of his identification and, clearly the dominant and, by all evidence in the record, the only motive for her murder. The Court finds this aggravating circumstance has been established beyond a reasonable doubt by the State. The Court gives this aggravating factor great weight.

(R. 2202-03) (footnote omitted).

The Appellant has hypothesized that the Defendant may not have known that anyone was present at the Goodine house; that he thus did not intend to commit any crimes except taking personal property as he had before; that Jessica had not witnessed any crimes and the Defendant was not concerned about what she had seen; and that the Defendant killed the child in a panic because she had cried. The Appellant's suggestions are all refuted by the record. First, as noted by the trial judge, the Defendant, by virtue of having lived in the Goodine house (R. 2213), and

having stalked them for a period of months, was well familiar with the household's routine. Any suggestion that the Defendant did not know anyone was home and did not intend other crimes is negated by the evidence that Lawrence had parked his car in front of the house at the time of his murder, as was his custom whenever he was home, and that Jessica had returned from school at the same hour that she usually did.⁵ Moreover, the Goodines' older daughter was due and in fact came home from school, shortly after the Defendant left the Goodine residence. Ms. Webb testified that it was her custom to check on the children after their return from school and when their mother was working. The Defendant's suggestion that the Defendant had the opportunity to kill Jessica at the Goodine residence is thus also refuted, especially in light of the additional fact that the Defendant had spent a good amount of time cleaning up the house to prevent detection of Lawrence's murder.

Likewise, the suggestion that Jessica had not witnessed any crimes and had voluntarily traveled with the Defendant in his Cadillac is without merit. Whether Jessica actually witnessed her father's killing is not relevant. The salient fact is that she could place the Defendant at the scene of the murder (the Goodine house) and at the time of the murder. The Defendant was not supposed to be anywhere near the Goodine residence, in accordance with the prior restraining order against him.

⁵ Furthermore, the Defendant had repeatedly threatened Lawrence's life in the past.

Moreover, the evidence reflected that Jessica had not left voluntarily. Her best friend testified that Jessica would always wave at her when leaving in the car; Jessica had not done so when seen leaving the Goodine residence in the Defendant's Cadillac.

Furthermore, Jessica was present when the Defendant had transported Lawrence's bloody body on the back seat of the same vehicle she was in. While the Appellant argues that Lawrence's body may have been in the trunk of the Cadillac, the latter's blood was only matched to that on the back seat of this car, and not to any blood in the trunk. As noted by the trial judge, there was no evidence that the Defendant's black Cadillac had traveled back and forth to the Goodines' home to attempt separate transportation of the father and child. The neighbors, Ms. Webb and her daughter, both testified as to the arrival and departure of the Cadillac that afternoon.

The Appellant's fit of rage or panic argument, based on the alleged crying of the child, is likewise without merit. There was no evidence of rage or panic. Jessica was killed 24 hours after being abducted from her house. Before her killing, the Defendant had cleaned up the prior murder scene, and dumped Lawrence's body in a remote area in Dade County to avoid detection. Subsequently, Jessica had been "trussed up" in a comforter, to confine her movement. The child's mouth had also been taped shut with duct tape to prevent her from making any sounds. Moreover,

Jessica's "tremendously puffy" eyelids reflected a prolonged period of crying, not a sudden burst of tears. (T. 5321-23). The child's body was also hidden under the Defendant's bed, tied in a bundle ready for disposal, like that of her father's.

Furthermore, the Defendant continuously and consistently denied ever even being in the presence of the child, let alone having panicked. To the contrary, the evidence reflected that only hours before killing Jessica, the Defendant had talked with Detective Murias and had denied any knowledge of the whereabouts in a "very cool, calm, quiet, very serene," manner (T. 3960-61). Likewise, only hours after the murder, the Defendant had remained calm during his questioning by Detective Tymes.

The Defendant's reliance upon the testimony of Drs. Mosman and Eisenstein, that he could not plan, organize or make decisions at any time, is also without merit. This testimony was based only upon these experts' diagnoses of ongoing paranoid schizophrenia and organic brain syndrome. It was not based upon the circumstances of the crime, as the Defendant had never discussed these with the experts. The defense experts' diagnosis was expressly controverted and negated by that of five (5) other psychologists and psychiatrists, some of whom had reviewed the "raw testing data" from the defense experts' own examinations, and some of whom had administered the same tests. The defense experts' testimony was also contradicted

by the Defendant's employment records, his ability on the day of Jessica's murder to drive a forty foot tractor from Dade County to Palm Beach County while making at least ten separate deliveries, his trial testimony, and his life circumstances in having maintained a family, both financially and emotionally, for a period of more than 20 years. The Appellant's reliance on the "witless" behavior of the Defendant in wearing bloody socks and shoes, leaving his bloody clothing on the floor, and leaving blood inside his vehicle is likewise without merit. The Defendant explained that his socks and shoes were bloodied by a cut on his ankle while being transported by the police; that the bloody pants recovered from his house did not belong to him; and that, the police had planted the blood found in his vehicle. As noted by one of the experts, Dr. Jacobson, the Defendant's explanation was not indicative of illness, rather, "it's the kind of a defense or excuse that someone might use if you don't have a better one." (T. 708).

In sum, the trial court's findings, which were well supported by the factual record and applied the correct rule of law, should be affirmed. Willacy, supra; Correll, supra. Assuming, arguendo, that this Court finds the witness elimination factor to be invalid, any error was harmless beyond a reasonable doubt. First, the weighty aggravators of a prior murder, HAC and kidnapping have not been challenged herein. More importantly, the trial judge in her sentencing order stated: "This Court has

found the aggravating factor of witness elimination. This Court expressly finds that should the reviewing Court conclude that this factor was not established beyond a reasonable doubt, the Court has weighed the remaining aggravating factors together with the mitigating factors and concludes that a sentence of death is warranted.” (R. 2217).

III. THE TRIAL COURT PROPERLY FOUND THE MURDER TO BE COLD, CALCULATED AND PREMEDITATED.

The Defendant argues that the trial judge improperly found the CCP aggravator. Once again, a trial court’s findings of an aggravator should be affirmed where the trial court applies the correct rule of law, and competent, substantial evidence supports the finding. Willacy, 696 So. 2d at 695; Raleigh, 705 So. 2d at 1328. The trial court herein expressly stated: “The court understands that while the heinous, atrocious and cruel aggravator applies more to the nature of the killing (and the victim’s suffering), the cold, calculated and premeditated nature of the murder pertains to the mind, intent and motivation of the killer. Stano v. State, 460 So. 2d 890 (Fla. 1985).” (R. 2206). The trial judge found Jessica’s murder to have been cold, calculated and premeditated, as follows:

The defendant took Jessica Goodine from her home. He hid her for a full day while contemplating his decision to murder her. The manner he chose to murder the child for whom he professed affection was especially cold. The type of murder he chose was one which was

noiseless but not instantaneous. Dr. Rao testified that she struggled in her last moments, indicated by the hemorrhage in the gum margins. The defendant coldly and calculatingly hid the child. When questioned by Detective Sarah Times, he did not show any anger or any emotion. He was calm, cool and collected. His responses were thoughtful and enigmatic. “Do I look like a killer?”, he asked Detective Times.

Mr. Connor witnessed all of the child’s tears and struggles, first as he bound her and gagged her, and hours later as he placed his hands around her throat pressing harder and harder until her life was ended. He chose a specific manner and means of death. He had a significant period of time to contemplate and consider his alternatives.

The Court finds that the elapsed time of a full day between the kidnaping and the murder indicates a heightened premeditation. There is no evidence that his actions were performed in a rage or a panic. The Court does not believe that the defendant’s mental illness, that is, some organicity and some paranoid ideation, reached such a severity that it interfered with Mr. Connor’s ability to perceive events, or to coldly plan and carry out his murder of Jessica. Rather, the manner and means of death were done in a highly premeditated fashion, without any moral or legal justification. The Court finds that the State has proved this aggravating factor beyond a reasonable doubt and gives it great weight. (R. 2205-06).

The trial judge also noted:

The most chilling type of planning, and clear evidence of Mr. Connor’s ability to plan and to understand the significance of his actions was in his purchase of a black Cadillac that matched in every detail the Cadillac belonging to Margaret Goodine. This car was purchased less than thirty days before the murder. It was the defendant’s car that stood in front of the Goodine residence and drew little Jessica home on the day of her abduction. While Mr. Connor may not have planned that specific result (although having lived with the Goodines’, he knew the time the children came home from school), his use of the vehicle made his accessibility (burglary) to the Goodine residence easier and undetected. This scheme was not irrational or psychotic. It was diabolical. (R.

2213).

The Appellant first contends that there was no heightened premeditation, no coldness and no calculation. The trial judge's findings, however, are in accordance with this Court's precedent. See Zakrzewski v. State, 717 So. 2d 488, 492 (Fla. 1998). First, the "heightened premeditation" and "calculated" elements, "can be evidenced by a 'degree of deliberate ruthlessness.'" 717 So. 2d at 492, citing Walls v. State, 641 So. 2d 381 (Fla. 1994). These elements may also be established where the defendant has the opportunity to leave a prior crime scene and not commit murder, but does so. Alston v. State, 723 So. 2d 148, 162 (Fla. 1998). Moreover, when a defendant has had an "entire day" to reflect, the "cold" element of CCP is satisfied. Zakrzewski, 717 So. 2d at 492. Thus, the application of the CCP factor was upheld in that case, where the defendant purchased a machete during his lunch hour, brought it home, placed it behind his bathroom door, and then killed his family members by dragging each into the bathroom, and inflicting blows while they were struggling.

In the instant case, the Defendant had initially lured the child by purchasing a car identical to her mother's, at least a month in advance of the murders. Subsequently, prior to abducting the child, the Defendant had carefully and methodically cleaned the Lawrence Goodine murder scene. He had the opportunity to leave the child at her house, but chose to abduct her instead. He then disposed of

the first body, while keeping Jessica confined in a comforter, with her mouth taped shut. The Defendant then had more than a full day to contemplate his actions with respect to Jessica. During this time he had displayed no panic, rage or other unusual behavior. Instead, during the day of Jessica's murder, the Defendant had gone to work, driving a tractor from Dade to Palm Beach County, and made ten deliveries, without any difficulty. Upon his return, and only hours before killing Jessica, he had spoken with Detective Murias in a "very cool, calm, quiet, very serene," manner. (T. 3960-61). He had then exhibited "deliberate ruthlessness" by facing the helpless child, whom he professed to love and had no prior difficulties with, and strangling her with his hands for a period of at least several minutes. Finally, within hours after the killing, the Defendant had again been questioned by the police, and was again calm and rational. The State respectfully submits that it satisfied all of the elements of the CCP aggravator. Zakzrewski, supra; Walls, supra; Alston, supra; see also, Arbelaez v. State, 626 So. 2d 169, 177 (Fla. 1993) (defendant's overnight plan to drown girlfriend's child, where girlfriend had terminated her relationship with defendant, constituted CCP).

The Defendant's arguments with respect to sudden panic, lack of any prior plan or intent to commit any crimes, and reliance upon mental health experts have been fully addressed in Point II, at pp. 77-80, and the prior arguments are relied upon

herein. Moreover, even “extreme emotional distress” does not preclude the finding of CCP. Zakrzewski, 717 So. 2d at 492; see also, Cruse v. State, 588 So. 2d 983 (Fla. 1991). In the instant case, however, as previously noted, the trial judge expressly rejected the defense mental health experts’ testimony, which was not only controverted by five other experts, but also by the Defendant’s actions on both the day of the crimes and his life prior to these crimes. The triers of fact, after all, may reject mental health opinions which are either controverted or inconsistent with the factual circumstances of the crimes. Walls, 641 So. 2d at 390-91.

Finally, assuming, arguendo, that this Court invalidates this aggravator, any error was harmless beyond a reasonable doubt. As noted previously, the three (3) weighty aggravators of a prior murder, HAC and kidnapping, have not been challenged. The mitigation found by the trial judge does not rise to the level of statutory factors, either. As noted by the trial judge, the aggravators herein, “far outweigh the mitigating circumstances in this case. . . . The Court weighed especially heavily the heinous, atrocious and cruel nature of the defendant’s acts against an innocent victim who was killed during the felony of kidnaping.” (R. 2217). Any error in finding CCP was thus harmless beyond a reasonable doubt.

IV. THE TRIAL COURT PROPERLY REJECTED THE STATUTORY MENTAL HEALTH MITIGATORS.

The Defendant argues that the trial judge improperly rejected the statutory mental health mitigators, as the two defense experts, Mosman and Eisenstein, gave uncontroverted testimony as to the existence of said factors. The testimony of all seven (7) mental health experts who had repeatedly examined the Defendant for hundreds of hours throughout the course of more than five years, has been exhaustively detailed at pp. 45-57, and is relied upon herein. The evidence reflects that the two defense experts' testimony was expressly contradicted and negated by five (5) other mental health experts.⁶ The trial judge, having considered all of the expert testimony, found that the Defendant was not "as severely emotionally or mentally impaired as Drs. Eisenstein and Mosman describe." (T. 2206-12). The judge then also analyzed the factual circumstances herein, and concluded that the Defendant's mental health condition did not satisfy the statutory mental mitigator of extreme emotional or mental disturbance. (R. 2214). Instead, the judge found that "the defense has established the non-statutory mitigator that the defendant suffers from a mental or emotional illness. It is to that lesser extent that the Court gives this

⁶ The defense had requested and stipulated that the trial judge should consider this testimony. (T. 5963). The trial judge, in turn, expressly stated that she was "well aware" of the distinction between competency and proposed mental health mitigators. (R. 2207). The State would additionally note that some of these experts had not been presented at the penalty phase before the jury, because their religious and moral reservations against the death penalty precluded them from testifying on behalf of the State. (T. 5481).

mitigator substantial weight.” Id. With respect to ability to appreciate criminality of conduct, the judge again rejected Mosman’s and Eisenstein’s controverted testimony, and concluded that the Defendant “clearly appreciated the criminality of his acts” in light of his conduct at the time of the crimes. (R. 2215-16).

The findings here are in accordance with this Court’s precedents, which provide that it is within a trial judge’s discretion to reject statutory mental mitigators when the psychological testimony is controverted and contradicted. Johnson v. State, 660 So.2d 637, 646-47 (Fla. 1995) (contradictory expert evidence regarding mitigating factors supports trial court’s conclusion that the factor does not exist). Moreover, expert opinion testimony is “not necessarily binding even if uncontroverted.” Walls, 641 So. 2d at 390-91; Knight v. State, 721 So. 2d 287, 299 (Fla. 1998). “A debatable link between fact and opinion relevant to a mitigating factor, usually means, at most, that a question exists for judge and jury to resolve.” 641 So. 2d at 390-91. When a trial judge analyzes “the often contradictory expert testimony,” the “process” required by this Court has been satisfied. Knight, 721 So.2d at 299.

In the instant case, Mosman and Eisenstein diagnosed the Defendant as suffering from paranoid schizophrenia.⁷ Eisenstein additionally diagnosed organic

⁷ Eisenstein admitted that some criteria for such a diagnosis were missing. Mosman’s diagnosis was based upon the Defendant’s employment records. The

brain disorder, with moderate to severe brain damage, which meant the Defendant “can not think and weigh options.” (T. 5447). Both of these experts based their diagnosis on the psychological testing and their interviews of the Defendant. Their opinions as to the statutory mental health mitigators were premised and dependent upon the ongoing existence of said mental condition at the time of the crimes, and the abilities or lack thereof of a person suffering from such illnesses. The Defendant, after all, had denied any involvement in the crimes, and had not discussed his motivation with these experts.

The remaining five (5) mental health experts in this case, however, expressly

Defendant had a 16 year history of county employment, from 1970 to 1986. According to Mosman, the records supported his opinion that schizophrenia had begun in 1984, when the Defendant had been initially dismissed; he had kicked an employee who refused his advances. The Defendant had sued and won reinstatement. He had then again been permanently discharged in 1986. According to Mosman, the final discharge report in 1986 demonstrated “full blown” schizophrenia. The 1986 report stated that the Defendant had impaired the operation of his unit. The records further reflected, however, that the final report was based upon such minor disciplinary problems as taking unauthorized breaks, and using county equipment without permission in order to retrieve frisbees and coconuts. In contrast, during the decade prior to the initial discharge, when the Defendant was receiving exemplary evaluations and when there were no symptoms of schizophrenia according to Mosman, the Defendant was being reported for serious violent conduct. These reports had included: 1) leaving notes threatening to blow up another employee’s truck, which the Defendant had explained was just a joke; 2) brandishing a machete at another employee who refused to get off of the Defendant’s truck - the Defendant had explained that while there was an argument and he had a machete, he had not threatened anyone; and 3) biting and scratching another employee who had refused to leave when asked to do so by the Defendant - the Defendant’s explanation was self-defense. (T. 5697-5702; 5560-68).

repudiated the defense experts' diagnosis of the defendant's underlying mental illness. Dr. Garcia based, in part, upon review of the defense experts' own tests' "raw data" and scores, in addition to his own battery of psychological tests, stated that he did not find any evidence of paranoid schizophrenia; the test results were also inconsistent with such a finding. (T. 5749-51). Garcia could not verify an organic brain syndrome, either. Instead, Garcia testified that the test results reflected "minor signs of organicity," which did not impair the Defendant's judgment or cognitive abilities. (T. 5754-56). Garcia thus expressly testified that neither of the statutory mental mitigators were applicable to the Defendant. (T. 5758).

Likewise, Dr. Levy, who also conducted extensive testing, found that the Defendant did not suffer from "any major disorder." (T. 2057). Levy had no concerns as to "any organic brain symptomatology," and stated that the Defendant was within "the average range" in terms of cognitive responses. (T. 2088-90). The Defendant had the ability to "abstract" (T. 2093); he was "orderly," and "capable of planning." (T. 2086). In terms of "judgment," "common sense," and ability to deal with "social situations," the Defendant did "reasonably well," and there was no "neurologic, organic" signs in the testing. (T. 2086-87).

Dr. Herrera, a psychiatrist, testified that while he looked "for everything, schizophrenia, mental retardation, anything," he found no evidence of "any bona fide

psychiatric disorder.” (T. 2116). The Defendant’s intellect was “intact” (T. 2105), and his paranoid personality traits were inconsistent with the major mental illness of paranoid schizophrenia. (T. 2113-14, 2111-12).

Dr. Ansley, who had administered the “Halsted-Reitan,” as had Eisenstein (T. 2129), also found no substantial impairment. (T. 2140-44). Contrary to Appellant’s representation, apart from competency criteria, Ansley was asked whether the Defendants suffered “any kind of disturbance, whether it be emotional, whether it be organic, whether it be intellectual.” Id. She responded that on one of the subtests, the Defendant scored consistent with the “least amount” of a “deficit,” which did not even qualify as an impairment. The Defendant was “a little bit slow,” on a timed test for matching numbers to symbols. Id. There was also “mild” impairment on a test measuring the ability to alternate “between numbers and letters.” Id. Ansley stated that individual subtests were not definitive, and one had to look at “patterns” to determine “organic brain dysfunction.” Id. Ansley thus administered yet more tests measuring “similar kinds of ability.” She found no pattern of any significance for the presence of an organic brain dysfunction. Id. Finally, Dr. Jacobson, another psychiatrist, also testified that the Defendant’s “overall cognitive abilities were quite adequate.” (T. 709). Based on Eisenstein’s testing there was “some organic stuff”; the Defendant’, in terms of memory, was not “as sharp , precise, perhaps as he was.”

(T. 714). It should be noted that even according to Eisenstein, the Defendant's "overall working memory" was in the "average" range. (T. 5460-61).

As seen above, both the underlying basis and the opinions of the defense experts were expressly contradicted by other experts. The trial judge was thus well within her discretion to reject the statutory mitigator of great emotional distress, and consider the mental health evidence as nonstatutory mitigation. Knight, supra; Walls, supra; Johnson, supra. As previously noted, however, the judge also analyzed the factual circumstances herein and found additional support for rejecting the defense experts' opinions:

Mr. Connor is a Fifty-six (56) year old man, who in his lifetime has been married and has children. None of his children testified that there was anything abnormal or delusional about Mr. Connor's actions during the time in which they were growing up, either when they lived together or apart. On the contrary, they described a loving parent who gives sage advice, and encourages them to take the sane and moral path in life. While living part-time with his wife, Dorothy, Mr. Connor commenced an extra-marital affair with Margaret Goodine. He held affection for her and demonstrated it appropriately until she ended the relationship. He lived with her for a period of time and helped support her. He loved and cared for her children while he lived in the Goodine home.

It was only after Mr. Connor was rejected as a lover, that he began his angry, destructive and vengeful actions against the Goodine family. While his actions are evidence of an angry and impulsive personality, they are not the product of one who is as severely emotionally or mentally impaired as Drs. Eisenstein and Mosman describe.

Mr. Connor held down a job for many years with Dade County.

When fired, he used administrative and legal remedies to be rehired. He succeeded, but was fired once again (probably for less than good cause). He always worked at a lawful job, right up to the time he was arrested for murder.

His organicity did not impair him from operating machinery, a truck or automobile as part of his employment. Nor did his mental illness prevent him from intricate and extensive planning for a hotel and businesses, and also a series of burglaries wherein he stole items of personal clothing and effects from Margaret Goodine. The criminal actions of burglary and stalking are those of someone who deliberately wants to terrorize and control. When he was rejected, his threats and crimes were impulsive and angry. He demonstrated, as Dr. Garcia said, “some paranoid thinking”, just as he did in the actions that caused his first firing from Dade County.

The most chilling type of planning, and clear evidence of Mr. Connor’s ability to plan and to understand the significance of his actions was in his purchase of a black Cadillac that matched in every detail the Cadillac belonging to Margaret Goodine. This car was purchased less than thirty days before the murder. It was the defendant’s car that stood in front of the Goodine residence and drew little Jessica home on the day of her abduction. While Mr. Connor may not have planned that specific result (although having lived with the Goodines’, he knew the time the children came home from school), his use of the vehicle made his accessibility (burglary) to the Goodine residence easier and undetected. This scheme was not irrational or psychotic. It was diabolical.

Mr. Connor’s demeanor, for the many years he has appeared before this Court has always been the same. He testified at trial and penalty phase, before the Court and Jury. He also wrote a multitude of letters to the Court and had extensive conversations with the Court. He is articulate. His behavior toward the Court was polite and even gentlemanly. He controlled himself well throughout the trial and acted, for the most part, appropriately. His testimony was relevant and cohesive. While the jury did not believe it and it was not supported by the evidence, Mr. Connor demonstrated his ability to focus, follow a line of questioning, and concentrate over a long period of time. He even

showed flashes of humor at times in an appropriate way. The facts of this case, his actions as a parent to his own children, his conduct with the statements to the police as well as his testimony and conduct during numerous hearings and at trial fly in the face of Dr. Eisenstein's and Dr. Mosman's opinions.

It is based upon the Court's understanding of all the above factors that causes the Court to reject the statutory mitigator that the defendant suffered from extreme mental or emotional disturbance. The defendant clearly suffers some form of significant emotional disturbance. His employment history indicates this, as does all the psychological testing. His "paranoia" exists in areas Other than the crimes charged, i.e., the inability to cease discussions of the hotel, complaints about his lawyer, his clothes in jail and the government. While his mental illness is apparent, it clearly did not prevent him from living a full and rich life. The underlying motivation for his crimes were his anger and need for revenge and control. That, and not severe mental illness, guided him to murder Lawrence and Jessica Goodine. The Court, therefore, finds that while the defense has not proved the statutory mitigation of severe emotional or mental illness, the Court finds that the defense has established the non-statutory mitigator that the defendant suffers from a mental or emotional illness. It is to that lesser extent that the Court gives this mitigator substantial weight.(R. 2211-14).

Similarly, with respect to the second statutory mental mitigator - capacity to appreciate criminality of conduct - again, the defense experts' opinions were based upon their diagnosis of the Defendant's underlying mental illnesses. As noted above, substantial expert testimony contradicted the defense experts. Moreover, the trial judge again analyzed the factual circumstances of these crimes in rejecting this statutory mitigator:

The facts of this case clearly do not match such analysis. The body of Lawrence Goodine was left, wrapped in bed sheets, in a non-

residential area of Broward County. The scene of the homicide had been cleaned up, even though some blood traces remained. The body of Jessica Goodine was wrapped in bedspreads and hidden so well that detectives did not see it the first time they briefly searched the cottage. Jessica Goodine was killed in order to eliminate a witness. Mr. Connor knowingly waived his rights, and then lied about his knowledge of the whereabouts of Lawrence and Jessica Goodine. He denied knowledge of any prior contacts with them at the time of the murder. He certainly understood what he had done and took some pains to hide the evidence of his crimes. He clearly appreciated the criminality of his acts.

He could conform his conduct to the requirements of the law and demonstrated that in his conduct during the regaining of his job, his conduct during the lawsuit (which he lost) in 1992, his conduct with the police during his arrest, wherein he consented to the search of his house, and his conduct at trial. Mr. Connor was capable of choosing lawful means of pursuing or obtaining his goals if he desired. The Court, therefore, rejects this as a statutory mitigator and gives it no weight.

(R. 2215-16). The trial judge's rejection of this statutory mitigator was again in accordance with this Court's precedents, and should be affirmed. Knight, 721 So.2d at 299; Walls, 641 So. 2d at 390-91; Johnson, 660 So. 2d at 646-47.

V. THE TRIAL COURT PROPERLY REJECTED THE LACK OF A SIGNIFICANT PRIOR CRIMINAL HISTORY MITIGATOR.

The Appellant argues that the trial court erroneously rejected the statutory mitigator of lack of a significant prior criminal history. The judge, in reliance upon the Defendant's numerous prior criminal acts of burglaries, threatening and harassing telephone calls, stalking, drive-by shooting, and destruction of property, rejected this

mitigator. (R. 2206).⁸ “Whether a mitigating circumstance has been established by the evidence in a given case is a question of fact and subject to the competent substantial evidence standard.” Raleigh v. State, 705 So. 2d 1324, 1330 (Fla. 1997), quoting Blanco v. State, 706 So. 2d 7 (Fla. 1997). The Appellant’s reliance upon Scull v. State, 533 So. 2d 1137 (Fla. 1988), and Craig v. State, 685 So. 2d 1224 (Fla. 1996), is unwarranted. In Scull, this Court held that it was “within the trial judge’s broad discretion” to reject “contemporaneous” crimes against the murder victims, as having established a “‘history’ of prior criminal conduct.” 533 So.2 d at 1143. Likewise, Craig also involved criminal acts against the murder victim.⁹ In the instant case, there was no reliance upon any contemporaneous or prior crimes against the capital murder victim, Jessica. The judge relied upon numerous and discrete criminal acts, committed during the course of several prior months, against other members of the Goodine family and third parties, such as Ms. Webb. The Appellant has thus

⁸ The State would note that in addition to the above, the Defendant had committed several other violent criminal acts against his co-employees during his county employment. See, pp. 87-88, n. 7, supra.

⁹ Both Scull and Craig also involved situations where the trial judge had actually found this mitigator. While this Court held that the proper standard for testing such findings was abuse of discretion, it also noted that this mitigator must be rejected, even with respect to crimes against a capital victim, when there is “lengthy criminal activity where each crime was ‘singular, discrete, and only tenuously related to other episodes.’” 685 So. 2d at 1231, citing Pardo v. State, 563 So. 2d 77, 80 (Fla. 1990).

failed to demonstrate any abuse of the trial judge's "broad discretion" in rejecting the instant mitigator.

VI. THE DEATH PENALTY IMPOSED HEREIN IS PROPORTIONATE TO THAT UPHELD IN OTHER CASES.

Proportionality review entails a consideration of the totality of the circumstances in any given case, comparing it with other capital cases; it is not merely a comparison of the number of aggravating and mitigating circumstances. Porter v. State, 564 So. 2d 1060, 1064 (Fla. 1990); Tillman v. State, 591 So. 2d 167, 169 (Fla. 1991). A comparison of the instant case to other capital cases, especially those in which young children have been the victims, with similar methods of tortured killings, including asphyxiation, compels the conclusion that the death sentence herein is proportionate to those in which it has been upheld. Those other cases have included comparable and often less substantial aggravating factors, and comparable or more mitigation.

The instant case involves five substantial aggravating factors, three of which have not even been challenged: HAC; prior murder; during a kidnapping; CCP; and witness elimination; there were no statutory mitigators, and most of the nonstatutory mitigation (good father, likelihood of death in prison if given a life sentence, and absence of disciplinary problems during incarceration), was given little weight. The

judge also found nonstatutory emotional distress which was given substantial weight. The lower court emphasized, however, that the aggravators “far outweigh” the mitigators, and that the Court, “weighed especially the heinous, atrocious and cruel nature of the Defendant’s acts against an innocent victim who was killed during the felony of kidnaping.” (R. 2217).

The prior cases which appear to have the greatest similarities to the instant one, and in which the death sentence was upheld, are Zakrzewski and Arbelaez, *supra*. In Zakrzewski, the defendant killed his wife and children. The aggravating factors were similar in nature, although less substantial: prior capital offenses (the contemporaneous murders); CCP; HAC. The mitigation accepted by the court was both statutory - no significant prior criminal history, and extreme mental or emotional disturbance - in addition to 24 nonstatutory factors, including being a good father and hard worker, among others. Both cases involve murders of children; both involve some level of emotional distress, with that found in Zakrzewski at a much higher level; Zakrzewski clearly involved more compelling mitigation; and the instant case has significant additional aggravation: murder during a kidnapping and witness elimination.

Likewise, Arbelaez involved a defendant who, after a break in his relationship with the child victim’s mother, and after some deliberation, killed the woman’s young

child, by squeezing the child's neck and throwing the child off a bridge, leaving the child to die through asphyxiation. The three aggravators were HAC, CCP and death during the kidnapping of the child - all of which exist herein, minus the additional aggravators of witness elimination and contemporaneous conviction for a prior murder. 626 So. 2d at 171, 174-75. Arbelaez also involved: the statutory mitigator of no significant prior criminal activity; and nonstatutory remorse. By comparison, the methods of killing are comparable in the two cases; the aggravators, if anything, are more compelling in this case, with the double murder; and, the mitigation in both cases is modest at best.

Other cases similarly support the proportionality of the death sentence herein. See, Wike v. State, 698 So. 2d 817 (Fla. 1997) (double murder of defendant's former girlfriend and her six-year-old daughter; aggravators of HAC, CCP, contemporaneous violent felonies (including kidnapping, inter alia), and avoid arrest. Modest weight was given to the defendant's age at time of murder and several nonstatutory mitigators, including emotional disturbance, alcohol/drug abuse; life sentence for other offense; good prison behavior); Davis v. State, 698 So. 2d 1182 (Fla. 1997) (strangulation murder of 11-year old girl, with aggravators of commission of offense by person under sentence of imprisonment; during kidnapping/sexual battery; purpose of avoiding arrest; and HAC. Statutory mitigator of extreme mental or emotional

disturbance given great weight; nonstatutory mitigation of good prison behavior, remorse, no prior violent history; and other factors given various degrees of medium to little weight); Carroll v. State, 636 So. 2d 1316 (Fla. 1994) (strangulation murder/rape of defendant's 10-year old stepdaughter, with prior violent felonies; murder during sexual battery; and HAC. Mitigation of some possible mental abnormalities); Atkins v. State, 497 So. 2d 1200 (Fla. 1986) (beating death of six-year old child, with aggravators of murder during kidnapping; avoiding arrest; and HAC. Mitigators of no prior significant criminal history; some evidence of mental and emotional problems falling short of statutory mitigator).

The primary cases upon which the Appellant relies are clearly distinguishable. Cooper v. State, 24 Fla. L. Weekly S383 (Fla. 1999), is totally inapposite, as it does not involve the murder of a child, and is based on a murder occurring during the robbery of a pawnshop, as opposed to the emphasis of the lower court herein on the murder of a helpless child. The aggravating factors in Cooper were also considerably less, as HAC and witness elimination were not present. Most significantly, the mitigation which the trial court found was compelling in comparison to the instant case, as Cooper was just 18 at the time of the murder, with no prior criminal record.

Almeida v. State, 1999 WL 506965 (Fla. 1999), is similarly distinguishable. It did not involve the murder of a child, as the defendant, who was thrown out of a

restaurant for drinking underage, returned to kill the manager. The case involved only one aggravator, and the death sentence was vacated on the principle that a single aggravator will not sustain the death sentence when there is substantial mitigation. The mitigation included three statutory factors - the defendant was only 20 years old, extreme emotional disturbance, impaired capacity to appreciate criminality - and extensive nonstatutory mitigation, including the influence of alcohol. The remaining cases relied upon by the Appellant, see Brief of Appellant, pp. 93-95, are also inapplicable, as they either involve single aggravating factors, or they do not involve the murders of young children.

In view of the foregoing, it must be concluded that the death sentence imposed herein was proportionate and proper.

CONCLUSION

Based on the foregoing, the convictions and sentences should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Appellee was mailed this _____ day of March, 2000, to LOUIS CAMPBELL, Assistant Public Defender, Office of the Public Defender, 1320 N.W. 14th Street, Miami, Florida 33125.

FARIBA N. KOMEILY

