IN THE SUPREME COURT OF FLORIDA

CASE NO. 93,697

SEBURT NELSON CONNOR,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

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

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

PAGE(S)

TABLE OF AUTHORITIES

CASES **PAGE(s)**

CONSTITUTIONS

STATUTES

ARTICLES & BOOKS

CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

INTRODUCTION

This is a direct appeal from judgments of conviction and a sentence of death, entered after a jury trial. In this brief, the clerk's record on appeal is cited as "R." and the transcript of the proceedings as "T."

STATEMENT OF THE CASE

Seburt Connor was arrested in November 1992 for the murder of Lawrence Goodine, the burglary of the Goodine home, and the kidnapping and murder of Jessica Goodine. (R. 1-3). Mr. Connor was indigent. The court appointed Louis M. Jepeway, Jr. to represent him. At Mr. Jepeway's request, the court appointed Eugene Zenobi as second chair. (R. 22; T. 8-9).

Motions to Suppress and First Competency Hearing

The defense moved to suppress statements Mr. Connor made after he was taken to the police station, articles of clothing seized from him at that time, and evidence seized from his residence and automobile. (R. 91-104). A hearing on the motions to suppress began in December 1995. (T. 113-522). After testimony was taken from both sides, the hearing was interrupted to determine whether Mr. Connor was competent to proceed. (T. 527). On their own initiative, the jail personnel had moved

Mr. Connor to the area reserved for mentally-ill inmates, and three doctors consulted by the defense had determined that he was not competent. (T. 527-30). The court appointed additional mental health experts to examine Mr. Connor. (T. 529-30, 540).

The court heard testimony from the expert witnesses (Drs. Hyman H. Eisenstein, Bill E. Mosman, Sanford Jacobson, and Lazaro Garcia) in March, April, and June 1996 (T. 566-663, 683-756, 767-927). Mr. Connor was a 53-year-old black man, originally from Honduras. He was of low average intelligence and had a speech impediment (stuttering). (T. 577, 684, 834, 836). He suffered from hypertension and vascular disease. (T. 690-91, 700). There was evidence of brain damage and paranoid thinking. (T. 578-83, 595-96, 714, 729, 774-80, 806-8, 814, 838-39,862). He was not malingering. (T. 595, 717). In fact, he wanted to be seen as a competent person. (T. 801).

Drs. Eisenstein and Mosman believed that Mr. Connor was incompetent; Drs. Jacobson and Garcia believed him competent. The court ruled that Mr. Connor was competent to stand trial. (T. 930).

At this point, the prosecutor suggested that there was a conflict of interest between Mr. Jepeway and Mr. Connor. (T. 930-31). Mr. Connor had filed a complaint against Mr. Jepeway with the Florida Bar and had written several letters to the judge complaining about the behavior of both his counsel. (T. 551, 667-70). Copies of letters to his attorneys and to other persons, such as the Governor,

accompanied these materials. The court had questioned Mr. Connor about these allegations before and during the competency hearing, and now questioned him again. (T. 551-64, 671-78, 931-35).

According to Mr. Connor, Mr. Jepeway and his investigator tricked Connor's wife into giving them a briefcase containing valuable coins, watches, and jewelry as well as $25,000 to $30,000 worth of uncollected receipts from his trading business. They had kept the briefcase and its contents. (T. 556-62). Neither of his lawyers had shown any interest in bringing him to trial and as a result he had been falsely incarcerated for several years, as everyone knew. (T. 551-54, 564, 674-78). The police, the jail personnel, the state, Mr. Jepeway, and Mr. Zenobi were all using "surreptitious tricks" in an effort to have him declared incompetent and to deny him a trial. (R. 402). The competency hearing was part of the plot. (T. 669-70). His attorneys had employed psychiatrists to write false reports. (R. 402). They had also sent someone from the State Attorney's Office to convince him to plead insanity. (T. 562-64). In addition, the guards had stolen his court clothes, which he calculated were worth $1,666. (R. 428-433). However, "these surruptitious [sic] tricks are not working by taking away my court clothes and sending men to ple[a] with me these tricks are not working and never will." (R. 421).

When Mr. Connor stated that there were witnesses to substantiate the allegations in the Bar complaint, Mr. Jepeway attempted to question Mr. Connor

regarding these allegations, arguing that further inquiry was needed to determine whether Mr. Connor was delusional. (T. 933-34, 936-37). The court would not permit this, stating that Mr. Connor had been found competent and, for purposes of determining the existence of a conflict of interest, the substantive truth of the Bar complaint did not matter. (T. 934-37).

On June 20, 1996, the court discharged Mr. Jepeway (denying his requests for further inquiry of Mr. Connor) and appointed Mr. Zenobi. (T. 949-54). The court emphasized that the discharge did not indicate that the court had found the allegations against Mr. Jepeway to be credible. (T. 952-54).

The motions to suppress were denied on September 26, 1996. (R. 435-41).

Second Competency Hearing

Jury selection began in June 1997. However, after several days of voir dire, the prosecutor requested that experts be appointed to examine Mr. Connor to determine if he was competent. (T. 1972). The court discharged the prospective jurors and appointed three experts. (T. 1973-76, 1989-97). The second competency hearing was held on January 20, 1998. (T. 2051-2146). The court found that Mr. Connor was competent. (T. 2145-46).

Trial and Sentence

A jury trial was held in January and February 1998. The defendant was convicted on all counts as charged. The jury recommended life imprisonment for the

murder of Lawrence Goodine and, by a vote of 8-4, recommended a sentence of death for the murder of Jessica Goodine.

The trial court found that Connor suffered from organic brain damage, paranoia, and "some form of significant emotional disturbance." (R. 2207, 2214). It was "apparent" that he was mentally ill (R. 2214) and "seriously troubled." (R. 2207). However, the court did not believe that his mental illness and emotional disturbance were sufficiently severe to justify finding any statutory mental mitigators. Finding five aggravators and four nonstatutory mitigators, the court sentenced Mr. Connor to death for the murder of Jessica Goodine. He was sentenced to life for the murder of Lawrence Goodine, and to consecutive sentences of twenty years for the kidnapping and burglary. (R. 2218).

STATEMENT OF THE FACTS

1942-1979

Seburt Connor was born on June 5, 1942, in Roatan, one of the Bay Islands of Honduras. (R. 115; T. 4762). At age 19, he became a seaman in the merchant marine. (T. 4762). In 1965 he settled in Miami. (T. 4763). He married Dorothy in 1967 and bought a small house. (T. 4764, 5354). The couple had five children. (T. 4761-62).

In 1970 Mr. Connor was hired by Dade County. He was a hardworking, punctual, and enthusiastic employee, who showed initiative and had excellent attendance. (T. 583, 5700-1). By the mid-1970s he had attained the position of

operator of heavy equipment (trucks, payloaders, backhoes) (T. 4767) and had achieved a modest prosperity. He was able to buy a small two-bedroom house just down the block from his first house. (T. 4764). He took pride in supporting his family. The trial court found that Mr. Connor was a loving and caring father to his children, supporting them financially and encouraging them to live good moral lives, and to get an education. (R. 2216). Two of his children (Garla and Erica) graduated from college. (T. 5341, 5379-80).

1979-1986

Some time in the late 1970s, Mr. Connor commenced an extra-marital affair with Margaret Bennett. Margaret eventually broke off the affair after she realized that Seburt was married. (T. 3724-25). She married Lawrence Goodine, twenty years her senior, in 1979. (T. 3725). They had two children: Karen, born in July 1979, and Jessica, born in 1982. (R. 112, 123; T. 382).

Until the early 1980s, Mr. Connor's job performance evaluations continued to be favorable, despite a number of altercations with other employees over the years. (T. 583-84, 5700-1).[1] However, in 1983, he was terminated after he allegedly

[1]In 1971, another truck driver repeatedly parked in the area Connor was using to refill the water truck he was driving. Connor left notes but these were ignored. He then placed a note on the windshield allegedly indicating that the truck would blow up when the engine was started. (T. 5560-61, 5699). In 1973, he allegedly brandished a machete at a member of the work crew who ignored his instructions not to ride on top of the truck. (T. 5563, 5699). In 1977, he had a fight with another employee over moving some "angle irons." (T. 5563-64).

harassed a female co-worker. (T. 5566, 5568, 5700). Although he appealed and was reinstated, from this time forward his job performance deteriorated. (T. 5701-2). He was now continuously in trouble with his supervisors and received numerous disciplinary reports. (T. 5704-6). Finally, in September 1986, he was fired because his conduct "impair[ed] the operation of the whole unit." (T. 5706).

Mr. Connor believed that his difficulties with his supervisors stemmed from his protests at having been passed over for a promotion because of favoritism. He was convinced that there had been a conspiracy, encompassing his labor union and his own son, to get him fired. (T. 584, 687, 5694-95).

1986-1992

After he was fired, Mr. Connor worked at a succession of temporary jobs. (T. 4767). He also pursued a workman's compensation claim which, in 1988, was settled for $50,000. (T. 584-85, 644-45, 713).

In 1988, Ms. Goodine, who had by then separated from her husband, renewed her relationship with Mr. Connor. (T. 3727, 3790-91). Mr. Connor went to Ms. Goodine's house almost every day, helped her with household expenses, and gave her presents, such as dresses, perfume, or jewelry. (T. 3727-28, 3795-96, 4770).

Mr. Connor loved and cared for Ms. Goodine's daughter Jessica as if she was

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These incidents resulted in administrative complaints. He had no criminal convictions. (T. 5703).

his own child. Jessica loved him very much and called him "daddy." (T. 3800-4, 4513-15, 4602-3, 4606). Mr. Goodine would sometimes come by the house when Mr. Connor was there; the two men never argued. (T. 3798).

Mr. Connor had a trading business in which, with the help of friends and relatives in Honduras, he shipped new and used items to the Bay Islands for resale. He was also planning to build a hotel or resort there. (T. 4779-81, 4830-43, 4872-73, 4901). Ms. Goodine participated in these business activities. (T. 4872-73, 4876).

Mr. Connor was also pursuing a civil suit against the City of Miami Police Department. He claimed that he had been falsely arrested in 1989 for shoplifting a 79 cent chapstick, and that the arresting officers had stolen $900 (or $9100) from his wallet. (T. 586, 5559, 5592-93, 5669). The suit was ultimately dismissed in May 1992. (T. 586, 5669). Mr. Connor was convinced that the judge had been bought off, and was part of a conspiracy against him. (T. 586, 5669-70). Thereafter he attempted to refile a civil rights action. (T. 586-87).

In 1991, Mr. Connor's father was hacked to death in Honduras. (T. 646-48, 5670). Mr. Connor believed that his father was killed in order to steal a large amount of money that Connor had given to him. Mr. Connor had been very close to his father and was never the same afterwards. (T. 5670).

Mr. Connor and Ms. Goodine had a falling out. On February 10, 1992, the police came to the house because Connor had "started a verbal altercation" with Ms.

Goodine, and refused to leave. (R. 115). A couple of months later, she told him that she did not want to see him anymore, and he left the house. (T. 3728-29, 4585). According to Ms. Goodine, he continued to call her, telling her that he "will never see me with nobody else." (T. 3732). On April 15, 1992, Ms. Goodine reported to the police that while she was in the house "unknown persons" broke a window pane and the front-porch light fixture by "unknown means." (R. 116). Her neighbor, Ann Merrit, testified that she had witnessed Mr. Connor shoot at the house as he drove by in his car. (T. 3921). According to Ms. Merrit, after Ms. Goodine broke up with Connor, she often saw him drive slowly past the house in a Camaro. (T. 3925-26, 3950).

Apparently Mr. Connor was concerned that Ms. Goodine was seeing men other than himself or her husband. One night he poured paint over a car that was parked in front of Ms. Goodine's house, mistakenly believing that it belonged to a Haitian man, Juan Swan, who lived next door to Ms. Goodine. (T. 3736-38, 4508-9, 4518).

On May 14, 1992, Ms. Goodine reported that an "unknown male," whom she suspected was acting at the instigation of Seburt Connor, had made threatening phone calls to her next-door neighbor, Alice McLaughlin, over the course of the past week. (R. 111). The man told Ms. McLaughlin that he was going to kill Ms. Goodine's daughter Karen. Ms. Goodine herself had received a phone call from an unknown male, who asked her if she had received the message, and then stated that "If Mr.

Sebert is not at the Rolex [bar] at 10 o'clock, your daughter Karen will be killed." (R. 111). At trial, Ms. McLaughlin testified that the caller had threatened to kill Ms. Goodine and Karen, and that she thought the caller was Mr. Connor. (T. 4600-1, 4604).

On July 18, 1992, Ms. Goodine reported to the police that an unknown subject had thrown a brick through a window of her home. She suspected Mr. Connor because she had gotten into a "verbal altercation" with him a few hours before. (R. 113). Ten days later, on July 28, 1992, Ms. Goodine obtained an ex parte domestic violence injunction against Mr. Connor. (T. 3738-39, 3753-54). While she was at the courthouse her black Cadillac was stolen. (T. 3738-39). The car was recovered by the police a week later. (T. 3760). A permanent injunction was issued on August 19, 1992. Mr. Connor was present in the courtroom and was instructed by the judge to stay away from Ms. Goodine's residence and place of employment. (T. 3760).

On August 23, 1992, Ms. Goodine reported to the police that the previous day someone had entered the house and taken dresses, skirts, bed sheets, and pillow cases from the master bedroom. (R. 108-9). The next day, Hurricane Andrew struck, and Ms. Goodine moved to a friend's house. (T. 4596). A couple of days later, Mr. Connor drove up to Ms. Goodine's residence and told her neighbor, Alice McLaughlin, that "he knows all of Margaret's whereabouts." (T. 4596).

Ms. McLaughlin attempted to effect a reconciliation between Mr. Connor and

Ms. Goodine. Ms. McLaughlin invited him into her house and then went to get Ms. Goodine, to see if things could be straightened out between them. (T. 4588-89). Ms. Goodine pleaded with Mr. Connor to leave her alone. He told her that "if she would go back to Larry he wouldn't bother her anymore." (T. 4593, 4605).

On September 13, 1992, Ms. Goodine reported another burglary to her home. The burglar had broken a window. Nothing of value (such as the television) was taken. The only things that were missing were sheets from her bed, towels, linens, and personal toiletry items such as perfume, makeup, and her toothbrush. She told the police that she suspected Mr. Connor and was afraid of him. (R. 121-22).

Ms. Goodine asked her husband to come back to the house, because she was afraid of Connor, and he had promised to leave her alone if she took her husband back. (T. 3761-62, 3770, 3793-94, 3807-8, 4605, 4793-94, 5335-36). She was not in love with Mr. Goodine, and he continued to maintain a separate household. (T. 3807, 3945).

On September 21, 1992, Ms. Goodine and Mr. Goodine reported yet another burglary. They believed Connor was responsible because the only items taken were women's clothing and linens. (R. 118-19). In all, there had been four or five similar burglaries. (T. 3735). Only Ms. Goodine's personal things were taken. (T. 3733).

Throughout this period, Mr. Connor was frequently in Ms. Goodine's neighborhood. He had numerous conversations with her neighbors (Ms. McLaughlin

and Ms. Merrit), and with her cousin Anita Webb, whom he saw almost every day. He told Ms. Webb many times that he had not committed the burglaries. (T. 4510, 4520). However, he called Ms. Webb one day to tell her to go to a certain address where she would find Ms. Goodine's clothes. (T. 4511). He also told Ms. Webb on many occasions that he was going to get Lawrence "out of his misery" because "he didn't like what Margaret was doing to Larry." (T. 4511). He told Ms. Merrit that he believed she (Ms. Merrit) and Mr. Goodine "had put down a voodoo to break him and Margaret up." (T. 3931).

Mr. Connor told Ms. Webb that he was going to buy a car exactly like that of Ms. Goodine. (T. 4510). In late October 1992, he bought a 1986 black Cadillac, the same make, model, and color as Ms. Goodine's car. (T. 4172-73). At trial, Mr. Connor explained that while he was living with Ms. Goodine he had often driven her car and had fallen in love with it. (T. 4855-56). Ms. Merrit testified that she had seen a 1986 black Cadillac drive slowly through the neighborhood. (T. 3928).

The Disappearance of Jessica and Lawrence Goodine, November 19-20, 1992

On Thursday, November 19, 1992, Margaret Goodine left for work at 9:30 a.m. Her daughters Karen and Jessica had already left for school. Mr. Goodine remained at the residence. (T. 3773). Mr. Goodine was last seen at about 2:30 p.m., when he returned to Ms. Goodine's residence after doing repair work at his other house. (T. 3933, 3945).

Later that afternoon, Jessica Goodine came home from school and went across the street to Ms. Merrit's house, to play with Ms. Merrit's seven-year-old daughter Faisha Thomas. (T. 3827-28, 3934-35, 3946). While the girls were playing in the front yard, they noticed a black Cadillac at the Goodine home. (T. 3827-29, 3935). The car looked like that of Jessica's mother. (T. 3829). Jessica went home. (T. 3829).

Later, Jessica returned to the Merrit's house "to ask a question" (T. 3935), and to tell Faisha that she was going to leave (T. 3829). She then went back to her home. (T. 3829). Subsequently, Faisha saw her friend leaving in the black Cadillac. (T. 3830, 3957). Jessica was in the front passenger seat. A man was driving. Faisha assumed that the man was Jessica's father, but she could only see the back of his head. (T. 3830, 3837, 3839-40). Faisha did not see Jessica enter the Cadillac, or walk up to it. She only saw Jessica after she was already in the car. She did not observe any fighting or any "words." (T. 3834-36).

Jessica's sister Karen came home at about 6:00 p.m. (T. 3955). Karen called her mother, who was still at work, to tell her that Mr. Goodine and Jessica were not at home and it appeared that someone had been in the house. (T. 3776-77). The police were called (T. 3936-38), and investigated the scene between 7:00 and 7:40 p.m. (R. 123-24).

Ms. Goodine came home at 9:30 p.m. (T. 3954). Jessica and Mr. Goodine were

still missing. Ms. Goodine called the police and reported her suspicion that Mr. Connor had something to do with their disappearance. (T. 3777-78). At about 9:30 or 10:00 p.m., an officer made a phone call to the Connor residence. The officer said she was investigating Jessica's disappearance and spoke to both Mr. and Mrs. Connor. (T. 198-202, 244-46). The officer asked if they owned a black Cadillac and whether Mr. Connor knew the Goodine family. (T. 201, 4906-9).

Detective Juan Murias went to the Goodine residence at 11:45 p.m. (T. 3593). He spoke to Ms. Goodine, who related the events of that afternoon and evening and explained the circumstances leading to the restraining order against Mr. Connor. (T. 3955-56). Detective Murias then went to the Connor residence at about 3:00 a.m., Friday, November 20, 1992. (T. 495, 3956). A black Cadillac was parked on the property. (T. 3957). Murias told Mrs. Connor he wanted to speak to her husband. Mr. Connor was in the cottage, and Mrs. Connor went to get him. (T. 496, 3957-58).

After asking Mr. Connor to step into his police car, Murias explained that he was investigating the disappearance of Jessica and Lawrence Goodine. (T. 497-98, 3959). Mr. Connor told the detective that although he had had a relationship with Ms. Goodine for about a year, he no longer wanted anything to do with her and had not seen her in the last month. (T. 499, 3960). He said he had not had contact with Jessica or Lawrence Goodine that afternoon. (T. 3960). He did not express concern about the fact that Jessica and Lawrence were missing. (T. 3960-61). He seemed

calm and unemotional. (T. 3960).

Late in the afternoon of Friday, November 20, 1992, Lawrence Goodine's body was found in a wooded area near the Fort Lauderdale airport. (T. 3640-41, 3680). The body was wrapped in a quilt. The head was wrapped in a blue bathrobe. (T. 3646, 3648, 3654-56). The cause of death was multiple blunt trauma to the head. (T. 3712). Mr. Goodine had been hit on the head five times. Each of the blows would have rendered him unconscious, and each of them was fatal. (T. 3708-10, 3715-16). When his body was removed by the police (at about 4:30 p.m.), he had been dead for about twenty-four hours. (T. 3641, 3680-81, 3683-84, 3718-20). When the detectives went to the Goodine residence to report this, at 10:00 p.m., they found blood on the living room carpet near the front door, next to a wall unit, on the wall unit itself, and on a ceramic figurine in the unit. (T. 3661-62, 3665, 3963, 4003-5). Subsequent tests indicated that the blood was probably that of Mr. Goodine. (T. 4365-66). A throw rug extended over the area where blood was found on the carpet. (T. 4004, 4052-54, 4065, Exhibits 27, 29-30). Ms. Goodine reported that several comforters were missing, as well as some of her clothing, ceramic pictures, pieces of jewelry and some other items. (T. 385-86, 3955-56).

Interrogation of the Defendant, and Search of Cadillac, Residence and Cottage

On Saturday, November 21, 1992, at 2:00 a.m., several detectives arrived at the Connor residence. (T. 315, 388, 500, 3964, 4108-9). Detectives Times and Murias

opened the gate in the fence which surrounded the property, walked up to the front door, and knocked. (T. 137-38, 350, 434-35, 3846, 3848, 4109). Mrs. Connor responded. Detective Murias told her they wanted to speak to Mr. Connor. She said she would get him. (T. 391, 3964). Seconds later Mr. Connor came out of the master bedroom. (T. 392-93, 3964-65). The detectives told Mr. Connor that they were continuing to investigate the disappearance of Lawrence and Jessica Goodine. Detective Times then "advised Mr. Connor that I needed to further talk to him at my office." (T. 4081). Connor, who was in pajamas, asked if he could get dressed; Detective Times gave him permission to do so. (T. 397, 441, 4098). He went into the bedroom for five or fifteen minutes and got dressed. (T. 397, 3969, 4118). He was alone in the bedroom and was free to dress any way he chose. (T. 4098).

As they went out of the house, Detective Times asked Mr. Connor if she could search the black Cadillac that was in the driveway. (T. 398, 502, 4082, 4121). After he assented, the detective filled out a consent form, which Connor signed. (T. 399-401, 502, 4088-90). Detective Times conducted a search and saw what appeared to be blood stains inside the trunk and on the back seat of the vehicle. (T. 401-2, 4091). Connor was then taken to the Homicide Bureau. He was not handcuffed. (T. 4092).

In back of the residence there was a small cottage. It was very close to the house but separate from it. (T. 130, 195, 303, 3847, 4209). While Mr. Connor was on his way to the police station, Detective Murias and another detective conducted

a search of the cottage, pursuant to Mrs. Connor's consent to their entry. (T. 504-5, 509, 513-15, 3901, 3909, 3965-78). It was an extremely small structure (14' 10" by 16' 2") which was partitioned into a small bedroom, a living room area, and a bathroom with a toilet and a shower. (T. 130, 3851, 3972, 3974-75; Exhibit 20). He saw nothing suspicious anywhere in the cottage. (T. 3977). After the search, the door was locked. Detective Butchko kept the key. (T. 4454, 4464-65).

Meanwhile, Detective Times was interrogating Mr. Connor at the Homicide Office. Times advised Connor of his *Miranda* rights and he signed a standard waiver form. (T. 403, 405-7, 4634-35). He was not free to leave, but he had not been told that he was under arrest. (T. 4134).

During the interrogation, Detective Times noticed that there were "very obvious" blood splatters on Connor's gold-colored socks and on his shoes. (T. 413, 4097). There was a large bloodstain on one of the socks, and what appeared to be blood around the seams of his shoes. (T. 4097). Asked how he got blood on his socks and shoes, Connor showed Times a small laceration on his leg. Times told him that the laceration was very small, and already healing, and could not account for the profuse bleeding evidenced by the blood stains. (T. 4644). Connor did not respond to this. (T. 4644). Times told Connor that she needed to take his socks and shoes as evidence. (T. 416). He signed a consent form without resistance at 4:35 a.m. (T. 416, 4102, 4645). Subsequent DNA testing showed that the blood on the socks and shoes

was that of Lawrence Goodine. (T. 4359, 4364).

Detective Times then asked Connor for permission to search his residence. He said yes but said he wanted to call his wife. (T. 419, 4143-44). He was allowed to tell his wife that he had given his permission to have the residence searched. (T. 420). Connor then signed (at 5:00 a.m.) a form consenting to a search of both the residence and the cottage. (T. 420-23, 4094, 4121-22).

Detective Times called Sergeant Jimenez, who was still outside the Connor residence. Times informed Jimenez that she had obtained Connor's consent for a search of the residence, and asked Jimenez to obtain the consent of Mrs. Connor and of her daughter Garla. (T. 320-21, 323). Ten minutes later Sergeant Jimenez and Detective Vas had obtained the signatures to a search of both the residence and the cottage. (T. 121-24, 127-32, 4283-87). Detective Vas asked Mrs. Connor for the clothing that her husband had been wearing on Thursday, November 19, 1992. She pointed to a pile of clothing in the master bedroom. Detective Vas seized a shirt and a pair of gray pants that appeared to have bloodstains on them. (T. 4291, 4296).

The bloodstained pants and shirt were taken to the Homicide Office, where they were shown to Mr. Connor. He admitted that he had been wearing these clothes on Thursday. (T. 417-18, 4647). He did not respond when asked how the blood got on the pants and shirt. (T. 4647). Subsequent DNA testing showed that the blood on the pants was that of Lawrence Goodine. (T. 4359-60, 4364).

Detectives Times and Bayas continued questioning the defendant. Mr. Connor denied knowing where the blood came from, and denied knowing what happened to Mr. Goodine. (T. 4648-49). He denied responsibility for Jessica's disappearance and denied knowledge of her whereabouts. (T. 4726-27, 4740-41). He also denied having burglarized the Goodine residence. (T. 4725). Asked why he had bought a car so similar to Ms. Goodine's, he could not really give a response. (T. 4725).

Connor said that he had not gone to work on November 19. (T. 4723). He claimed that he had gone to visit an attorney but could not give the attorney's name or address or the time he had gone to see him. He said that, after meeting with the attorney, he had gone to a tile company but could not give a specific time or location or even say whether he had actually purchased any tile. (T. 4723). He said he had then gone to a supermarket, and had returned home by about six o'clock. (T. 4723).

When asked again to explain how the blood came to be on his clothes, Connor could not respond. (T. 4650). At that point he was informed that he was under arrest for first-degree murder. (T. 4650). It was about 12:30 p.m. (T. 4651).

After a search warrant had been obtained, at 11 a.m., the Cadillac was towed away for further processing. (T. 332). A blood stain was found on the pouch behind the driver's seat, and another on the rear seat. (T. 4173-74). DNA analysis showed that the blood was that of Lawrence Goodine. (T. 4359-60).

At around 11:00 a.m., the police conducted a second search of the cottage. (T.

3901). Detective Butchko used the key he had obtained from Mrs. Connor. (T. 3850, 4416). In the bedroom, wedged between the bed and the wall, Sergeant Jimenez found the body of Jessica Goodine. (T. 339, 3854). It was wrapped in a green comforter (T. 339, 3854, Exhibit 76). This green comforter did not come from the Goodine home. (T. 4618).

Jessica probably died "sometime late on Friday" (i.e., November 20, 1992). (T. 5320). The cause of death was asphyxia by manual strangulation. (T. 4714). Her eyes were puffy, indicating she had been crying. (T. 5321). There was residue of duct tape on the face. (T. 4706-7). A hand had been pressed down over her mouth with sufficient force to cause hemorrhaging along the gum margin. (T. 4706, 5329). She had not been sexually molested. (T. 3372-73, 4325). There were no ligature marks on the body. (R. 2204).

Several articles taken from the Goodine home were also found in the cottage, including jewelry, sheets, pillow cases, and shoes. (T. 4609-19).

The Defendant's Testimony

At trial, Mr. Connor testified concerning his background, his relationship with the Goodine family, and his activities between Thursday, November 19, 1992, and Saturday, November 20, 1992. That testimony essentially reiterated his statement to the police. (T. 4775-87, 4796-4804).

During the penalty phase, Connor vehemently denied that he was incompetent.

He believed that Dr. Eisenstein was paid to "demoralize" him, to bring him down, and that Dr. Eisenstein was a liar. (R. 5582-83). Dr. Mosman, like Dr. Eisenstein, was trying to deceive the jury into thinking that he had no sense. (T. 5583). He was perfectly normal. (T. 5583). He had been seen by a dozen psychiatrists, and only two of them, namely Mosman and Eisenstein (both of whom found him incompetent), gave him "a bad recommendation." (T. 5584).

Mr. Connor further testified that it was very hard for him to understand how the twelve members of the jury had condemned him "without a speck of evidence, not even the size of a mustard seed," besides the fabricated evidence presented by the prosecutor. (T. 5586).

As for the photographs taken by the police of his blood-stained socks and feet, Mr. Connor insisted that those were not his feet. He added that any blood on the socks would have turned dark by contact with the air and heat, and would not be red as shown in the photographs. Yet the jury had not even questioned that. (T. 5587). Nor had it questioned how the body got in the cottage, while Connor was in custody and after Detective Murias had searched every inch of the cottage and found nothing. (T. 5591-92). According to Mr. Connor, the reason the detectives came back to the cottage nine hours after the initial search was because they found out that he had a lawsuit pending against the City of Miami Police Department. (T. 5591).

He related how he had been robbed of $9,100 by two City of Miami police

officers, after they arrested him for allegedly stealing a 79 cent Chapstick. (T. 5592-93). He had filed a lawsuit. Although the lawsuit did not have anything to do with this case, the police department knew that he was going to file a second lawsuit against the county for violation of his civil rights. (R. 5593-94). This led to them coming into his yard at two o'clock in the morning, where they killed his dog and broke into his car. (T. 5593). He was told at the police station that when they got through with him he would never be able to sue another police department: "[T]hat is the answer right there to why I was being actually framed." (T. 5594).

He questioned why it had taken his attorney six or seven years to bring him to trial. (T. 5584). He claimed that the delay had cost him over a million dollars. (T. 5588). This is the amount he had spent on his cattle ranch and the construction of a 24-room hotel, or resort, in Central America with ten bungalows, a restaurant, bar, facilities for scuba diving and bus tour. (T. 5588).

There was no cross-examination, but Mr. Connor was permitted to "add one more fact." (T. 5596). He then reiterated his point that the blood should not have been red. (T. 5597-98).

Testimony of Mental Health Experts

During the penalty phase, the defense called Dr. Hyman H. Eisenstein and Dr. Bill E. Mosman. The state called Dr. Lazaro Garcia. At sentencing, the court also considered the expert testimony relating to competency. This included the testimony

of Drs. Eisenstein, Mosman, Garcia, and Sanford Jacobson at the first competency hearing, and the testimony of Drs. Edward Herrera, Eli Levy, and Jane Aynsley at the second competency hearing.

Dr. Eisenstein

Dr. Eisenstein, a clinical psychologist specializing in neuropsychology, examined Mr. Connor on numerous occasions in 1993, 1995, and 1998. He also spoke to family members and reviewed police reports and work records. He conducted a complete neuropsychological evaluation, administering a battery of standardized tests to assess brain functioning. (T. 771-72, 781, 5415-18, 5488-89).

Dr. Eisenstein concluded that Mr. Connor suffered from organic brain damage (T. 5458-59) or, more precisely, an "executive brain disorder" (T. 5492), and also from paranoid schizophrenia, secondary to organic brain illness (T. 808, 814). In Dr. Eisenstein's opinion, the crimes were committed while under the influence of extreme mental or emotional disturbance, and Mr. Connor lacked the capacity to appreciate the criminality of his conduct and conform his conduct to the requirements of the law. (T. 5469-70). Connor's illness is a substantial impairment. (T. 5470). "He views a situation so much from his own internal self that there is no consideration given to his conforming behavior to the requirements of the law. It is not considered. That is not weighed as an option." (T. 5448). Because of the organic brain damage he cannot weigh options or alternative behaviors. (T. 5447). The murders were not the first time

that Mr. Connor has acted in a way which does not consider the options or does not consider what is right and what is wrong. (T. 5448).

The neuropsychological tests, including the Halstead-Reitan Neuropsychological Battery, showed damage to the frontal lobe, with profound impairment of cognitive functioning. (T. 774, 5441-45, 5456-58, 5499). Although Mr. Connor was of low average IQ (T. 5451-52), and his ability to remember events, as determined by the Wexler Memory Scale, was not impaired (T. 5459-60), there was a continuing deterioration of judgment, reasoning, and problem solving skills (T. 780). The organic brain damage limits his ability to shift between thought patterns, to plan, to weigh options and make decisions, and to learn new material. (T. 5445-46, 5459).

Mr. Connor had great difficulty doing one focused task, and could not do two. Dr. Eisenstein testified that "once [Mr. Connor] has a particular thought process in his head, he is unable to shift and move into another area where there is another demand that is placed on him." (T. 5443). Dr. Eisenstein believed this was the result of damage to the frontal lobe, which controls planning, sequencing, organizing, and the ability to change cognitive sets. (T. 5444-45). Mr. Connor is unable to think logically and sequentially when under stress or under the demands of more difficult tests. (T. 5469).

Mr. Connor is also very paranoid. He is extremely suspicious and mistrustful.

(T. 5449). At times, his paranoia reaches psychotic proportions. (T. 5492-95, 5532). He believes that he is the victim of an all-pervasive conspiracy in which everyone (the police, defense counsel, the prosecutor, the judge, the psychiatrist) is out to get him. (T. 786, 796, 798, 5575-76). His paranoid and suspicious state makes him question everyone's motives, and distorts his perception of events. (T. 5551). He reinterprets events to fit into his mind set, resulting in outlandish explanations that are not related to reality. (T. 5551, 5575-76). For example, although Connor understands that murder is wrong, and can appreciate, in retrospect, the criminality of the acts with which he is charged, he firmly believes that he did not commit these acts and is being accused because people are out to get him, are planting evidence, and so forth. (T. 5446, 5550-52). He also believed that the conversations in the interview room were being taped; that people who came to interview him were in disguise, as part of a ploy to get him to reveal information; that the corrections officers were police officers in disguise; and that the conspiracy had raised the electric bills at his house to $400 a month. (T. 788, 5574).

Dr. Eisenstein, like the other doctors who examined Mr. Connor, concluded that he was not malingering. (T. 5436-40, 5579). To the contrary, Mr. Connor wanted to prove that he is normal, has no mental or psychological impairment, and no brain damage; he was very upset that Dr. Eisenstein found he was not competent to proceed. (T. 5438-40, 5484-85, 5502).

Mr. Connor tries to control his paranoia in his interactions with others. (T. 797). As a result of his training and upbringing, Mr. Connor is extremely self-controlled and respectful. (T. 784). He can remain courteous and polite as long as his thinking is not challenged. (T. 791-92). Only after a prolonged interview do his real thought processes begin to emerge. (T. 785-86, 5513).

Dr. Eisenstein believed the organic brain damage probably existed for the greater part of Connor's life, but his mental faculties have been on a slow decline for a period of years. (T. 780, 5498-5500). This mental deterioration has exarcerbated his paranoia, and the combination of brain damage and paranoia cause Connor to misperceive events and to misjudge particular situations. (T. 790, 5449-50, 5498). Dr. Eisenstein found that Connor experiences numerous brief psychotic episodes in which he decompensates but then recoups. (T. 806).[2] Despite his defense mechanism of self-control, major stressors cause him to decompensate, bringing the underlying paranoia to the surface. This, together with his mental deficiencies, lead him to act in an irrational and paranoid state. (T. 806, 5500-1).

Dr. Mosman

Dr. Mosman, a clinical psychologist specializing in neuropsychology,

[2]At the competency hearing the trial judge noted that she may have observed some of these brief episodes, and that Connor seemed to recoup from them fairly quickly. (T. 823). Dr. Eisenstein was not sure whether the problem could be handled with recesses. (T. 823).

interviewed Mr. Connor in 1995 and 1996. He also spoke to Connor's wife and daughter, and to the guards at the jail. He reviewed the reports of other doctors, as well as work records, police reports, and other documents. (T. 5611-14, 5671-72).

Dr. Mosman diagnosed Mr. Connor as schizophrenic, paranoid type and with personality change due to organic involvement (i.e., organic brain damage). (T. 582-83, 595-96, 5662-64). He also diagnosed stuttering, which appeared to be psychogenetic ("basically, an emotional reaction to situations") rather than the result of brain damage or a neurological problem. (T. 595-96, 5664). He specifically ruled out a personality disorder (including antisocial, narcissistic, or passive aggressive personality), and also ruled out malingering. (T. 595-96, 5634, 5664).

Dr. Mosman's own testing, like Dr. Eisenstein's results, indicated frontal lobe damage. (T. 5615, 5624, 5633, 5635-37). Dr. Mosman later reviewed the results of Dr. Eisenstein's extensive testing, and, after making his own interpretation of the data, agreed with Dr. Eisenstein's conclusions. (T. 5625, 5639). The tests showed that Mr. Connor had "very profound damage" to the right side of the brain, which affected his ability to plan, organize, and set things in motion (T. 5639-40), as well as damage to the frontal lobe area, which affected his ability to analyze possibilities, to select, and to judge (T. 5640). "[H]is basic intellectual ability was subaverage even on a good day so he does not have much material to process with him" (T. 5692), and his abilities decrease markedly under stress (T. 577-78, 5713).

At the time Dr. Mosman interviewed him, Mr. Connor was convinced that Mr. Jepeway had stolen some watches and gold coins from him, and was also very angry that Mr. Jepeway would not file a suit against the police department and the State Attorney's Office for conspiring to keep him in jail so that he could not sue them for the violation of his civil rights in robbing him when he was arrested several years before. (T. 5669-70). After investigation, Dr. Mosman determined that there was nothing to support Connor's allegations. (T. 5660-61). Connor thought there were conspiracies against him, people were out to get him, people were being paid off, everybody was involved. (T. 5661). He was convinced that the judge who had ruled against him in his civil suit had been bought off and was part of a conspiracy. (T. 5669-70).

Dr. Mosman concluded that there were two explanations for Mr. Connor's behavior: Because of the frontal lobe damage, he was taking things out of context and not accurately processing information, and he was suffering from paranoid schizophrenia. (T. 5661). His beliefs concerning a conspiracy were not completely involuntary (if they were, Connor would be insane), but were basically controlled by his mental illness and the damage to the frontal lobe and right parietal area. That is, they were the result of "major substantial impairment." (T. 5673).

Dr. Mosman found that Connor exhibited delusions (unrealistic interpretations and belief systems that are not supported by reality). He frequently became somewhat

incoherent, and exhibited flat affect, inappropriate emotional responses, and problematic, disorganized behavior. (T. 5662).

The paranoid schizophrenia was of late onset, beginning to develop in 1983 or 1984, and becoming "fairly full blown" in 1986. (T. 5665-66). At that point, Connor's mental illness affected his occupational level, his family, and his social interactions. (T. 5633). Dr. Mosman noted that, despite increasing dysfunction, family members may not recognize a parent's or spouse's schizophrenia because they try to rationalize his behavior in a different way. (T. 5667-68).

Dr. Mosman concluded that the crimes were committed while under the influence of an extreme mental or emotional disturbance (T. 5669), and that Mr. Connor's ability to conform his conduct to the requirements of law was substantially impaired (T. 5670-71).

While Connor's paranoid schizophrenia was not the sole cause of the homicides, it was a contributing factor and substantially impaired his capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of law. (T. 5683-85). Mr. Connor's brain damage is also specifically related to the functions and thought processes that would have produced this type of crime. (T. 5692). His history over the previous six years showed that his consistent response to the perception of risk was to see a conspiracy. (T. 5692-93). For example, he was convinced that his being fired from his county job was the fault of his son, whom he

saw as a member of a conspiracy. (T. 5692-93). These conspiracies helped him to understand and interpret risks and dictated his behavior in response. (T. 5963). Dr. Mosman believed this same pattern was more likely than not repeated with respect to the crime. (T. 5693).

Dr. Jacobson

Dr. Sanford Jacobson, a psychiatrist, examined Mr. Connor twice for competency to stand trial, in January 1996, for a total of two hours and fifteen minutes. (T. 684). Like Drs. Eisenstein and Mosman, Dr. Jacobson found Mr. Connor to be "very paranoid", and believed that he has been paranoid for a good part of his adult life, with his paranoia probably worsening as he got older, exacerbated by his hypertension and vascular disease until his statements were no longer credited by others. (T. 700, 709, 729)). Mr. Connor became less adaptive and less functional. (T. 700). However, he still knows certain things to be true and others not to be true and is not so delusional that he would not know what he did. (T.701).

Dr. Jacobson agreed with Drs. Eisenstein and Mosman that there was evidence of cognitive and memory dysfunction. (T. 714). The fact that he was "very circumstantial" might be seen as normal in someone 75 years old, but not for someone Connor's age. Dr. Jacobson thought that this was additional evidence of "organic stuff." (T. 714). Mr. Connor's organicity, like his paranoia, would probably get worse, and Mr. Connor would continue to deteriorate. (T. 715). He was more

functional years ago when "he was able to ... [drive] a tractor trailer rig, [and] maintained two relationships with two different women for a long period of time. Then things began to kind of come apart. I don't think that was just bad luck." (T. 713-14).

Like Drs. Eisenstein and Mosman, Dr. Jacobson was of the opinion that Connor is not malingering. (T. 717). Dr. Jacobson was not asked for and offered no opinion regarding the existence of the statutory mental mitigators.

Dr. Garcia

Dr. Garcia, a psychologist, interviewed Mr. Connor on four occasions in 1996, and conducted some testing. (T. 832-33, 5747-48).[3] The purpose of the examination was to determine if Connor was sane at the time of the offense and if he was competent to stand trial. (T. 849-51, 5748). Dr. Garcia testified at the competency hearing, and at the penalty phase hearing, that Connor was competent and not insane. (T. 5786-88).

Dr. Garcia found some paranoid features (for example, Connor believed that his family and the guards were after him, and that the excessive water bill might be part of a conspiracy), as well as "some features of delusion of grandeur in his

[3]The tests included an IQ test, the Thematic Apperception Test, and the Bender Gestalt Test. (T. 5748-49). He also reviewed records and the reports of other doctors, including Dr. Eisenstein, Dr. Mosman, and Dr. Jacobson. (T. 5748-49).

thinking." (T. 860-62, 865, 868, 920). However, Dr. Garcia did not think Connor was a paranoid schizophrenic. (T. 904, 5750-51). He had a paranoid thinking style, but did not suffer from "paranormal" delusions. (T. 838-39, 868). He did not tell Dr. Garcia that "Martians are after me" or things of that nature. (T. 839).

While Connor's assertion that he had lost a million dollars as a result of his incarceration -- if untrue -- would be a sign of grandiosity, Dr. Garcia did not believe it was a delusion. (T. 841-42, 5757). Connor was able to explain to Dr. Garcia in great detail his plan to build a hotel in Honduras, a plan which Dr. Garcia characterized as "very possible" and therefore not delusional. (T. 841).

Regarding Mr. Connor's complaint that his lawyer had stolen a brief case full of valuable coins and watches worth several thousand dollars, Dr. Garcia opined that, if the charges were untrue, Connor's claims would be consistent with a paranoid delusion. (T. 870). However, that was not enough to conclude that a syndrome existed. (T. 870).

Dr. Garcia noted that there was no history of psychiatric treatment, and opined that, if Connor was a paranoid schizophrenic, he would have come to the attention of a mental health professional at some earlier point in time. (T. 5760-61). Family members would have noticed that he was acting strange or different. (T. 5783-84). On the other hand, persons with organic brain damage "very often do not raise the level of suspicion" that paranoid schizophrenics do. (T. 5785). Even very severe

organicity often goes unnoticed. (T. 5784).

Unlike Connor, who denied committing the offenses with which he was charged and claimed to have been framed, a paranoid schizophrenic who committed a crime in an acute phase would have related what happened in a very distorted manner. (T. 5763-64).

Although Dr. Garcia agreed that Connor was paranoid, he testified that Connor's score on the "paranoid scale" of the MMPI fell within the average range, which was inconsistent with a diagnosis of paranoid schizophrenia. (T. 5753). Dr. Eisenstein agreed that the MMPI came out "basically normal." (T. 5456). However, Drs. Eisenstein and Garcia both testified that the MMPI is a self-administered inventory. (T. 5751, 5454). As Dr. Eisenstein explained, it indicates how the individual views himself, not how others may perceive him, or what the truth might be. (T. 5456). Mr. Connor does not want to see himself as mentally ill, and worked very hard to show that he is normal, that he is not paranoid or schizophrenic, that there is nothing wrong with him. (T. 5455).

Dr. Garcia's testing, like that of the other doctors revealed indications of organic brain disorder. (T. 5753-54, 5769-79, 5786). However, Dr. Garcia believed the impairment was not so serious that Connor would not know right from wrong (T. 5753-54), and not so profound that it would impair his judgment. (T. 5756). Dr. Garcia did not see evidence that Connor would not be able to perform two mental

functions at the same time. (T. 5754). Mr. Connor was able to answer questions relevantly, could discern subtleties in language, and showed a sense of humor, which Dr. Garcia considered to be inconsistent with profound organic brain damage. (T. 5755-56).

At the penalty phase, Dr. Garcia testified that, in his opinion, despite paranoid ideations and organic brain damage, the level of impairment did not rise to the level that Connor's ability to appreciate the criminality of his conduct or to conform to the requirements of law was substantially impaired at the time the crimes were committed. (T. 5758-59). When asked whether Connor was under the influence of extreme mental or emotional disturbance at the time the crimes were committed, Dr. Garcia testified that there was nothing to suggest that Connor was in severe distress. (T. 5763). During his cross-examination, however, it was revealed that Dr. Garcia equated the phrases "substantial impairment" and "emotional problem or emotional distress" with the criteria for incompetence. (T. 5787-88).

Dr. Aynsley, Dr. Levy, and Dr. Herrera

Dr. Jane Aynsley, a clinical psychologist, saw Connor for a neuropsychological evaluation and a competency evaluation in September and October 1997, and in January 1998. (T. 2128). She found Connor competent to stand trial. (T. 2129).

Dr. Aynsley testified that Connor's letters and other documents indicated that his thinking was sometimes "a bit unusual." (T. 2133). There was a "very, very

intense focus on issues not particularly related to the court proceedings," but what he wrote about legal procedures appeared to be reality based and coherent. (T. 2133-34). Connor believed that he had been falsely arrested in the present case and was frustrated by the delay in bringing him to trial. (T. 2134-38). Dr. Aynsley found most troublesome a large diagram of the property Connor claimed to own in the islands. Connor told Dr. Ansley that he sent the diagram to the judge because he wanted the judge to know "that I am not just a nobody, that I am someone who had substantial holdings." (T. 2134). Dr. Aynsley thought that this was logical but showed grandiosity. (T. 2134-36).

Dr. Aynsley administered portions of the Halstead-Reitan Neuropsychological Battery. (T.2129). Mr. Connor's test results showed deficiencies in certain areas of brain functioning, ranging from borderline to mild impairment, but not "gross" organic brain dysfunction. (T. 2141-43). His intelligence was in the low average range. (T. 2141, 2145).

Dr. Eli Levy, a psychologist, evaluated Connor for competency in September 1997. (T. 2051-52). Dr. Levy found Connor competent to proceed. (T. 2053). There were indications of paranoia, which appeared to be related to his life circumstances rather than to internally-generated "global more thematic universal" sorts of delusions. (T. 2079-82). Connor believed he was unjustly accused and was frustrated by the fact that he had not been brought to trial. (T. 2075, 2079, 2082-84). His

emotional state is more like that of a child than that of an adult. (T. 2065). He had a difficult time controlling his impulsive behavior. (T. 2087-88). He appeared to be functioning in the average range of intelligence and to be capable of planning. (T. 2086, 2090). Because Connor was able to communicate with him, Dr. Levy was not concerned about organic brain symptomatology and conducted only limited testing. (T. 2052, 2088).

Dr. Edward Herrera, a psychiatrist, interviewed Connor in September 1997, for about 45 minutes. (T. 2102, 2114). Dr. Herrera found Connor competent to stand trial. (T. 2103). Dr. Herrera thought that Connor might have a paranoid personality, but neither made that diagnosis nor ruled it out. (T. 2111). Because Connor appeared to be very forthcoming, and likeable, he did not "come across" as a person suffering from a paranoid delusional disorder. (T. 2103-2104). Dr. Herrera did no testing and was not aware of the testing done by the other doctors. (T. 2115).

Neither Dr. Aysnley, Dr. Levy, or Dr. Herrera was asked to give an opinion regarding the existence of the statutory mental mitigators.

SUMMARY OF THE ARGUMENT

I. The trial court erred in denying the motions to suppress statements made by the defendant after he was taken to the police station, articles of clothing seized from him at that time, and evidence seized from his residence and automobile, where the statements and evidence were the fruits of an illegal arrest, the defendant was not adequately warned of his *Miranda* rights, and his statements were not made voluntarily.

II. The trial court erred in finding the avoid arrest aggravator where the victim was not a police officer and the evidence was insufficient to prove that the sole or dominant motive for the killing was to eliminate a witness.

III. The trial court erred in finding the cold, calculated and premeditated aggravating circumstance.

IV. The trial court erred in rejecting the statutory mitigating circumstances that the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance, and that the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

V. The trial court erred in failing to find the statutory mitigating circumstance that the defendant had no significant history of criminal activity.

VI. The death sentence is disproportionate in this case.

ARGUMENT

I

THE TRIAL COURT ERRED IN DENYING THE MOTIONS TO SUPPRESS, IN VIOLATION OF ARTICLE I, SECTIONS 9 AND 12, OF THE FLORIDA CONSTITUTION, AND AMENDMENTS IV, V, AND X1V TO THE UNITED STATES CONSTITUTION.

The defendant moved to suppress the statements he made after he was taken to the police station, articles of clothing seized from him at that time, and evidence seized from his residence and automobile. (R. 91-104, 157-186). The trial court's denial of the motion (R. 435-41) was error.

A person is seized within the meaning of the Fourth Amendment and Article I, § 12 of the Florida Constitution, "if, under the circumstances, a reasonable person would conclude that he or she is not free to end the encounter and depart." *Popple v. State*, 626 So. 2d 185, 188 (Fla. 1993); *Florida v. Royer*, 460 U.S. 491 (1983); *United States v. Mendenhall*, 446 U.S. 544 (1980).

Several detectives arrived at the Connor residence at 2:00 a.m. in separate vehicles. (T. 315, 388, 500, 3964, 4108-9). Detectives Times and Murias opened the gate in the fence surrounding the property and walked around to the front door, which was located on the side of the house. (T. 137-38, 350, 434-35, 3846, 3848, 4109). Mrs. Connor responded to their knock on the door. The detectives told her that they wanted to speak to Mr. Connor. She said she would get him. The officers followed

her into the living room. (T. 501). Seconds later Mr. Connor came out of the master bedroom. (T. 392-93, 3964-65). The detectives told him that they were investigating the disappearance of Lawrence and Jessica Goodine and that they "needed" to talk to him at the Homicide Office. (T. 501, 4081). Mr. Connor asked if it was really necessary to do this at this time. He was told that it was. (R. 192, 436; T. 214). Mr. Connor, who was in pajamas, then asked for permission to get dressed. (T. 441).

These facts show an arrest, not a voluntary trip to the station. The lateness of the hour, the fact that there were several officers (two inside and several more parked outside), and the language used -- they "needed" him to go to the station -- were enough to indicate that the officers expected compliance. The officers did not tell him that he was free to refuse and was not under arrest. To the contrary, their curt response that it was "necessary," when he attempted to protest the unreasonableness of being taken down to the station at that hour, conveyed the message that compliance would be compelled. *See B.S. v. State*, 548 So. 2d 838, 840 (Fla. 1989) (officers' statement that they "wanted" juvenile to come to the station for questioning was clearly closer to an order or demand than to a non-mandatory request or invitation) (citing cases). That this was the situation is further shown by the fact that Mr. Connor felt he needed to ask for the officers' permission in order to get dressed. These circumstances amount to a show of authority such that "a reasonable person would have believed that he was not free to leave." *Mendenhall*, 446 U.S. at 554. Mr.

Connor had been seized.

Moreover, Mr. Connor's property was completely surrounded by a fence, and to get to the entrance to the residence, the officers not only had to open the closed gate in the fence, they had to go around to the side of the house. The state argued below that the police cannot be prevented from doing what any ordinary citizen, such as a delivery boy could do. (R. 191). However, there was no evidence that what the officers did was accepted practice in Mr. Connor's neighborhood, especially at two o'clock in the morning. The entry on the property was unlawful, *see State v. Rickard*, 420 So. 2d 303 (Fla. 1982), and, under the circumstances, powerfully contributed to the officers' display of authority.

The seizure was an arrest, not a *Terry* stop. The state and federal constitutions permit police to make a temporary investigative stop based on reasonable suspicion *Terry v. State*, 392 U.S. 1 (1968); *Popple*, 626 So. 2d at 186. However, "detention for custodial interrogation -- regardless of its label -- intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest." *Dunaway v. New York*, 442 U.S. 200, 216 (1979). Here the police clearly seized the defendant for the purpose of custodial interrogation and not for a brief investigative detention; indeed, they said so.

As the officers conceded (T. 347, 444-45), at this point there was no probable cause to arrest. The information known to the officers gave rise only to a suspicion

that Connor may have been involved in the crimes: A seven-year-old girl, Faisha Thomas, had seen her friend Jessica leaving in a black Cadillac. (T. 3957). The Cadillac was like that of Jessica's mother, and Mr. Connor owned one like it. Ms. Goodine suspected him of various burglaries to her home and of being involved in the disappearance of her husband and daughter. (T. 384-85, 3955, 3957).

Because the arrest was illegal, the subsequent statements and physical evidence resulting from it were the fruit of that poisonous tree and must be suppressed. *See, e.g., Wong Sun v. United States*, 371 U.S. 471, 484-87 (1963).

The consents to search obtained after the illegal arrest did not break the chain of illegality. The standard for determining the voluntariness of a consent to search after illegal police activity is stated in *Norman v. State*, 379 So. 2d 643 (Fla. 1980):

> The voluntariness vel non of the defendant's consent to search is to be determined from the totality of the circumstances. But when consent is obtained after illegal police activity such as an illegal search or arrest, the unlawful police action presumptively taints and renders involuntary any consent to search. . . . The consent will be held voluntary *only* if there is clear and convincing proof of an unequivocal break in the chain of illegality sufficient to dissipate the taint of prior illegal action.
>
> 379 So. 2d at 646-47.

Here, rather than dissipating, the taint of the illegal action became deeper and deeper as the officers confronted the defendant with the fruits of their searches and seizures.

Search of Car

As soon as Detective Times escorted Mr. Connor out the door of his residence, she obtained his assent to a search of the Cadillac, which was parked on his property. (T. 317-18, 398, 502, 4082, 4121). This consent was inadequate to dissipate the taint of illegality because it was given before Connor was advised of his right to refuse. Only after obtaining this uninformed acquiescence to the search, did Times tell him of his right to refuse, by reading to him the form she had prepared. (R. 193; T. 400-1, 4088-89).

After Connor signed the form and the Cadillac was searched. Detective Times observed what appeared to be blood stains on the back seat and in the trunk. (T. 402, 4091). Because this was the fruit of an illegal search, it could not be used to justify the custodial interrogation which followed.

Interrogation

At the station, Connor was placed in an interview room. Detective Times did not tell him he was not free to leave, but she would not have let him go. (T. 451-52). Times read him his *Miranda* rights and he initialed and signed a waiver form. (T. 405-7). The defendant could not make a valid waiver of his *Miranda* rights because the police never fully informed him of them. Both the federal and state constitutions require police to inform a suspect of his right to consult with counsel before interrogation. *See Miranda v. Arizona*, 384 U.S. 436, 470 (1966); *Traylor v. State*,

596 So. 2d 957, 970 (Fla. 1992). Here, the police used a defective warning form that failed to advise the defendant of this right, and accordingly the defendant's statements must be suppressed.

The police used a standard Metro-Dade Warnings form to advise the defendant of his constitutional rights. While the form includes many of the warnings required by *Miranda*, it provides only the following advice concerning the right to counsel: "If you want a lawyer to be present during questioning at this time or anytime hereafter, you are entitled to have a lawyer present." (T. 4636-37). This advice is inadequate because it fails to advise a suspect that he has the right to consult with counsel before submitting to any questioning. Courts have repeatedly noted that the *Miranda* rights include the distinct rights to both consult with an attorney before questioning and to have counsel present during questioning. *See Duckworth v. Eagan*, 492 U.S. 195, 204 (1989); *California v. Prysock*, 453 U.S. 355, 361 (1981); *Patterson v. Illinois*, 487 U.S. 285, 288 n. 1 (1988); *Miranda*, 384 U.S. at 470. The Florida Constitution independently requires that a defendant be advised of both the right to consult with a lawyer before interrogation and the right to have a lawyer present during interrogation. *See Traylor*, 596 So. 2d at 957 & n. 13. The failure to warn a defendant of the right to consult with counsel before interrogation renders the warnings inadequate. *People v. Snaer*, 758 F. 2d 1341 (9th Cir.), *cert. denied*, 474 U.S. 828 (1985).; *People v. Kelly*, 800 P. 2d 516, 526 (Cal. 1990), *cert. denied*, 502

U.S. 842 (1991); *Contra Cooper v. State,* Fla. L. Weekly S383, S384 n.8 (Fla. July 8, 1999).

Moreover, *Miranda* warnings alone do not purge the taint of an illegal arrest and render a statement admissible. *Lanier v. South Carolina*, 474 U.S. 25 (1985) (fact that a confession may be voluntary for purposes of the Fifth Amendment, in the sense that *Miranda* warnings were given and understood, is not by itself sufficient to purge the taint of the illegal arrest; in this situation a finding of "voluntariness" for purposes of the Fifth Amendment is merely a threshold requirement for Fourth Amendment analysis).

The statements must also be suppressed because they were not made voluntarily. Mr. Connor was subjected to prolonged interrogation, by alternating questioners, over a period of ten hours, and in the face of his obvious unwillingness to speak. This is inconsistent with any contention that his confession was the product of his free and rational choice. *See Mincey v. Arizona*, 437 U.S. 385, 401 (1978).

Socks and Shoes

During the interrogation, Detective Times told him about the blood she had seen in the trunk of the Cadillac. (T. 467). She noticed that there were blood spatters on Connor's socks and shoes. (T. 413). She advised him of her observations and told him she needed to collect those items for evidence. (T. 416). He signed a consent form without resistance. (T. 416). The socks and shoes were photographed and taken

into custody. (T. 4645). This evidence was the fruit of the illegal custodial interrogation.

Search of Cottage and Residence

The initial search of the defendant's cottage was made without the consent of Mr. Connor. The officers only obtained the consent of Mrs. Connor. This search was illegal because, as the police officers' recognized, only Mr. Connor could consent to a search of the cottage. (T. 4457). The cottage was a separate structure from the house; it was built by Connor himself, and he was the only member of the family who used it. (T. 130, 172, 195-96). Connor put a lock on it, and would sleep there. (T. 196-97). His wife never went in there. (T. 198). Because Mrs. Connor did not have joint control of the premises she could not validly consent to the search. *Saavedra v. State*, 622 So. 2d 952, 956 (Fla. 1993).

The consent obtained for the search of the residence, and for the second search of the cottage, was illegal as well. The consent of Mr. Connor, of his wife, and of his daughter, was presumptively invalid because of the prior illegal police conduct in arresting Mr. Connor without probable cause. *See United States v. Maez*, 872 F. 2d 1444 (10th Cir. 1989).

II

THE TRIAL COURT ERRED IN FINDING THAT THE MURDER WAS COMMITTED TO ELIMINATE A WITNESS, IN VIOLATION OF SECTION 921.141, FLORIDA STATUTES, ARTICLE I, SECTION 17 OF THE FLORIDA CONSTITUTION, AND AMENDMENTS VIII AND XIV TO THE UNITED STATES CONSTITUTION.

Where the victim is not a law enforcement officer, the avoid arrest aggravator does not apply unless the state proves that the sole or dominant motive for the killing was to eliminate a witness. *Consalvo v. State*, 697 So. 2d 805, 819 (Fla. 1996) *cert. denied,* 118 S.Ct. 1681 (1998); *Davis v. State*, 604 So. 2d 794, 798 (Fla. 1992); *Geralds v. State*, 601 So. 2d 1157, 1164 (Fla. 1992); *Menendez v. State*, 368 So. 2d 1278, 1282 (Fla. 1979). Proof of the requisite intent to avoid arrest and detection must be "very strong." *Consalvo*, 697 So. 2d at 819 (quoting *Riley v. State*, 366 So. 2d 19, 22 (Fla. 1978)); *Scull v. State*, 533 So. 2d 1137, 1141 (Fla. 1988), *cert. denied*, 490 U.S. 1037 (1989). Mere speculation that witness elimination was the dominant motive behind a murder is not sufficient. *Consalvo*, 697 So. 2d at 819; *Scull*, 533 So. 2d at 1142. Nor is the mere fact that the victim knew and could identify the defendant sufficient, without more, to prove this aggravator. *Consalvo*, 697 So. 2d at 819; *Geralds*, 601 So. 2d at 1164; *Davis*, 604 So. 2d at 798.

Although an aggravating circumstance may be supported entirely by circumstantial evidence, "the circumstantial evidence must be inconsistent with any

reasonable hypothesis which might negate the aggravating factor." *Geralds*, 601 So. 2d at 1163.

In the present case, the evidence pertaining to this aggravator was entirely circumstantial. The facts were as follows:

On Thursday, November 19, 1992, Lawrence Goodine returned to Ms. Goodine's residence at 2:30 p.m. (T. 3933, 3946). Ms. Goodine was still at work at that time, and her two daughters, Karen and Jessica, were at school. Jessica came home from school later that afternoon and went across the street to Ann Merrit's house, to play with Ms. Merrit's daughter Faisha Thomas. (T. 3827-28, 3934-35, 3946). The girls were playing in the front yard when they noticed a black Cadillac in the driveway of the Goodine residence. (T. 3827-29, 3935). The car looked like that of Jessica's mother. (T. 3829). Jessica went across the street and into her house. (T. 3829).[4]

Both Faisha Thomas and Ann Merrit testified that shortly <u>after</u> Jessica went home, she <u>came back</u> to the Merrit residence to ask Ms. Merrit a question (T. 3935), and to tell Faisha that she was going to leave (T. 3829). Jessica then went back to her home. (T. 3935). Subsequently, Faisha saw Jessica leaving in the black Cadillac. (T. 3830). Jessica was in the front passenger seat. A man was driving. Faisha assumed

[4]Faisha's testimony that Jessica had gone into the Goodine residence at this point is corroborated by the fact that Jessica's school books and lunch box were found on the bed in her bedroom. (T. 3955).

the man was Jessica's father, but she could only see the back of his head. (T. 3830, 3837, 3839-40).

Mr. Goodine's body was found near the Fort Lauderdale airport the following afternoon. (T. 3640-41, 3680). The cause of death was multiple blunt trauma to the head. (T. 3712). The homicide had probably occurred 24 hours before; that is, some time in the afternoon of November 19, 1992. (T. 3681). The body was wrapped in a quilt; the head was also wrapped in a blue bathrobe. (T. 3646, 3648, 3654-56). Both the robe and the quilt came from the Goodine residence. (T. 3786-87, 3811). Blood stains were found on the carpet of the Goodine residence, in the area near the front door. (T. 4003-5). They were underneath a carpet runner, which led from the front door to the living room. (T. 4004). Blood stains were also found in Mr. Connor's Cadillac -- on the back seat and on the back of the driver's seat. (T. 4173-74).

Jessica Goodine's body was found in the cottage behind Connor's residence. The time of death was probably some time late on Friday, November 20, 1992. (T. 5320). She had been crying very hard and a hand had been pressed down forcefully over her mouth, indicating that there had been a struggle moments before she was manually strangled. (T. 4706, 5321, 5329).

* * * *

The evidence does not support the conclusion that Jessica Goodine was

murdered in order to avoid arrest. To the contrary, the evidence shows that the murder took place under circumstances indicating an instinctive or panicked response, rather than a calculated plan to eliminate the victim as a witness. *See Perry v. State*, 522 So. 2d 817, 820 (Fla. 1988); *Garron v. State*, 528 So. 2d 353, 360 (Fla. 1988); *Geralds*, 601 So.2d at 1164; *Cook v. State*, 542 So. 2d 964, 970 (Fla. 1989); *Urbin v. State*, 714 So. 2d 411, 416 (Fla. 1989).

The prosecution's theory that Connor took the child with him as part of a plan to eliminate her as a witness is inconsistent with the facts. If he had intended to kill her, there could have been no better opportunity to do so unobserved than at the Goodine residence. No one else was in the house. Taking her elsewhere only invited detection. Moreover, after Jessica went into her house, she was allowed to return to the neighbor's house to ask Ms. Merrit a question and to tell her friend Faisha that she was leaving. (T. 3829, 3935). This strongly indicates that she had not witnessed Mr. Connor commit any crimes, and that he was not concerned about what she may have seen in the house. There was probably nothing obvious to see: The most noticeable blood stain was underneath a carpet runner. Police officers who were in the house later that day -- at 7 p.m. (R. 123-24) and again at 11:45 p.m. (T. 3593) -- did not see any blood. In any event, when Jessica returned to Ms. Merrit's house she did not report any crimes, and there was no testimony that she appeared distraught, either at

that time or when, shortly thereafter, she was seen leaving in the Cadillac.[5]

The child was murdered over a day later. She had been crying very hard. There had been a struggle, during which a hand had been pressed forcefully over her mouth; she was then manually strangled. (T. 4706, 5321, 5329). These facts suggest that the murder was committed during a fit of rage, or as a panicked or instinctive response; they do not indicate a calculated plan to eliminate the victim as a witness. *See Geralds*, 601 So. 2d at 1164 (fact that burglary victim was bound rather than immediately killed indicated that the defendant had not planned to kill her and that the killing may have been committed in a rage provoked either by unsuccessful interrogation or by an attempt to escape); *Perry*, 522 So. 2d at 820 (although defendant knew the victim, whom he strangled in her home during an attempted robbery, the evidence was insufficient to show intent to avoid arrest because there was no direct evidence of motive and there was "some evidence" that the defendant may have panicked during the murder); *Garron*, 528 So. 2d at 360 (fact that defendant shot his stepdaughter after she witnessed him kill her mother and as she was in the act of calling the police insufficient to prove avoid arrest aggravator since evidence of the "true motive" was unclear); *Cook*, 542 So. 2d at 970 (avoid arrest aggravator did not apply where defendant shot robbery victim -- who had witnessed

[5]Although Jessica's friend Faisha was upset because Jessica did not wave to her, what really upset Faisha was the fact that she could not go with her friend. (T. 3830-31, 34840-41). There is no evidence that Jessica saw Faisha, who apparently was viewing the Cadillac from the rear.

the defendant shoot her fellow employee and husband -- to keep her quiet because she was yelling and screaming).

Moreover, as the trial court found, Mr. Connor is a mentally ill person, who suffers from both organic brain damage and paranoia. (R. 2207, 2214). Two experts in the field of neuropsychology, Dr. Eisenstein and Dr. Mosman, testified that damage to the frontal lobe and to the right parietal region of his brain impairs his judgment and his ability to plan, organize, and make decisions. It also interferes with his ability to keep his paranoid thinking under control. Mr. Connor is not able to think logically when under stress and decompensates under major stress, leading him to act in an irrational and paranoid state. (T. 806, 5449-50, 5469, 5500-1). Both Dr. Eisenstein and Dr. Mosman concluded that the murder was committed under the influence of an extreme emotional disturbance and that Mr.Connor's capacity to appreciate the criminality of his conduct and conform his conduct to the requirements of law was substantially impaired. (T. 5469-70, 5569-71). As will be discussed below (Argument IV), their testimony in this regard, and with regard to his inability to think logically while under stress or pressure, was not rebutted by other expert testimony and is consistent with the facts. Their testimony negates the state's theory that Jessica Goodine was murdered pursuant to a calculated plan to eliminate her as a witness.

The trial court's discussion of the avoid arrest aggravator (and of CCP) completely disregards the evidence of mental illness (and the court's own findings in

that respect), as well as the evidence that the murder was a spontaneous response, during a rage or panic. Moreover, that discussion relies on speculation -- e.g., that Jessica was forced to accompany the defendant after she "stumbled" upon the murder of her father (R. 2202) -- which is based solely on the assumption that since the defendant took the child with him, he must have intended to kill her from the start, and is contrary to the facts, as related by Ann Merrit and her daughter, who were the only witnesses to the abduction.

Not only is it the case, as the trial court acknowledged, that there is "no evidence as to precisely what Jessica witnessed" (R. 2202), the testimony of Ms. Merrit and her daughter that Jessica returned to their home to ask a question and to say that she was leaving strongly indicates that the defendant did not view her as someone who might incriminate him; that is, she did not stumble upon any crimes. There was nothing to contradict the version of events related by Ms. Merrit and her daughter. Their testimony was simply overlooked.

There was also no evidence to support the trial court's assertions that Jessica was "forcibly removed from her home" (R. 2201) and then "forced into the automobile."(R. 2202). The only person to see Jessica leaving in the Cadillac was Faisha Thomas, who testified that she did not observe any force or coercion and did not even see Jessica approaching or entering the car. (T. 3834-38). As even the prosecutor conceded, it was "very clear" that Faisha "saw [Jessica] when she was

already inside the car. She didn't see the process of getting inside the car." (T. 3838).[6]

While recognizing that "[t]here is no evidence as to precisely what Jessica witnessed," and that Jessica may not have seen evidence of the murder in the house since "only traces of blood evidence were left in the Goodine residence" (R. 2202), the court suggested that perhaps Jessica had seen Mr. Goodine's body in the back seat of the Cadillac, thus giving rise to a motive to kill her. (R. 2202, 2203). This was mere speculation. Although Mr. Goodine's blood was found on the back seat, this alone does not support the inference that his body was lying in full view when Jessica entered the car. Indeed, the evidence is to the contrary: Mr. Goodine's head had been wrapped in a blue bath robe, and the body had been wrapped in a quilt, both of which came from the Goodine residence. (T. 3646, 3648, 3654-56, 3660, 3786-87); and there was no testimony of any trail of blood leading to where the car had been parked. The logical inference is that the body had been wrapped in the robe and quilt while still inside the house and then taken to the car and placed in the trunk.

The facts of this case are very different from those of *Correll v. State*, 523 So.

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[6]Although taking the child qualified as a constructive non-consensual confinement, *see* § 787.01(1)(b), Fla. Stat. (1991), there is no reason to suppose that either Mr. Connor or the child thought of it as an abduction. The fact that Jessica came back to the Merrit's house to report that she was leaving indicates that she in fact went with him willingly. To her, he was "daddy." (T. 4513, 4602-3, 4603). He had always treated her as if she was his own daughter and, indeed, believed that he might actually be her father (T. 3800-3, 4513-15, 4833-36).

2d 562 (Fla.), *cert. denied*, 488 U.S. 871 (1988), upon which the trial court relied. Unlike in *Correll*, where the evidence showed that the defendant had come to the victims' house planning to commit murder and with the intent to leave no survivors[7], here, the evidence does not show such a plan. Indeed, Mr. Connor probably had no plan to kill anyone when he came to the house, but only to take some of Ms. Goodine's personal items, as he had in the past. It appears that Mr. Goodine may have surprised him in the act of burglarizing the house. Although Mr. Connor owned a firearm, Mr. Goodine was killed with a blunt instrument (the prosecutor suggested one of the dining room chairs). (T. 3713, 3921). And when, some time later, Jessica came to the house, she was not murdered, but rather was allowed to go to Ms. Merrit's house to ask a question and to tell her friend that she was leaving. Jessica was murdered over a day later under circumstances indicating a panicked or enraged response.

Contrary to the trial court's assertion, the police officers' failure to observe signs of rage or panic "within hours after the murder" (R. 2203) proved nothing about Mr. Connor's state of mind at the time of the crime itself. And his actions were clearly not those which might be expected from a rational person intent on avoiding

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[7]Correll arrived at the home of his ex-wife, whom he had previously threatened to kill, and stabbed her and everyone else in the house to death, including his ex-wife's sister and mother, and his own five-year-old daughter, with whom he had a cordial relationship. During the course of the murders he cut the phone lines to the house, with a knife that was already bloody.

being linked to a murder:

> • After asking Detective Times for permission to get dressed before being taken to the Homicide Office, he went into his bedroom and put on a pair of yellow socks and a pair of shoes that were "very obvious[ly]" stained with blood. (T. 397, 413, 441, 3969, 4097-98, 4118).
>
> • The bloody pants and shirt he had admittedly worn on the day of Mr. Goodine's murder (T. 417-18, 4647) were left lying on the floor of the master bedroom, where Mrs. Connor subsequently pointed them out to Detective Vas (T. 370, 4291, 4296).
>
> • He made no effort to clean the Cadillac, and in particular to remove the blood stains on the rear seat, even though he knew, from his conversation with Detective Murias a day before (T. 3959), that the police believed a black Cadillac was involved.
>
> • During interrogation, although able to respond with simple denials, or with silence, to outright accusations of murder, he readily admitted facts whose damning import would have been obvious to any rational person, for example, the fact that on the day that Lawrence and Jessica Goodine disappeared, he had been wearing the bloody shirt and pants left on the floor of his bedroom. (T. 417-18, 4647).

This manifestly witless behavior is inconsistent with the trial court's characterization of Mr. Connor as a cold, calculating killer, cunningly trying to avoid detection and able to parry police interrogation with "thoughtful and enigmatic" responses. (R. 2202, 2205). It fully bears out the testimony of Dr. Eisenstein and Dr. Mosman that Mr. Connor's "basic intellectual ability was subaverage even on a good day" (T. 5692) and that this limited ability to think rationally evaporates under stress. (T. 5469). The circumstances of the murder itself suggested that it had been an instinctive or panicked response rather than the result of a calculated plan. The

evidence was insufficient to prove that, beyond a reasonable doubt, witness elimination was the sole or dominant motive for the murder. *Perry*; *Garron*; *Geralds*; *Cook*.

III

THE TRIAL COURT ERRED IN FINDING THAT THE MURDER WAS COLD, CALCULATED, AND PREMEDITATED, IN VIOLATION OF SECTION 921.141, FLORIDA STATUTES, ARTICLE I, SECTION 17 OF THE FLORIDA CONSTITUTION AND AMENDMENTS VIII AND XIV TO THE UNITED STATES CONSTITUTION.

A finding of CCP requires that the state prove beyond a reasonable doubt (1) "that the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold)"; (2) "that the defendant had a careful plan or prearranged design to commit murder before the fatal incident (calculated)"; (3) "that the defendant exhibited heightened premeditation (premeditated)"; and (4) "that the defendant had no pretense of moral or legal justification." *Gordon v. State*, 704 So. 2d 107, 114 (Fla. 1997), *quoting Jackson v. State*, 648 So. 2d 85, 89 (Fla. 1994); *Woods v. State*, 733 So. 2d 980, 991 (Fla. 1999). Unless all these elements are established, a finding of CCP will not be upheld. *Gordon*, 704 So. 2d at 114.

Although CCP can be established by circumstantial evidence, that evidence "must be inconsistent with any reasonable hypothesis of innocence which might

negate the aggravating factor." *Gordon*, 704 So. 2d at 114, *quoting Geralds v. State*, 601 So. 2d 1157, 1163 (Fla. 1992); *Woods*, 733 So. 2d at 991. A suspicion that a plan to kill existed is not enough. *Besaraba v. State*, 656 So. 2d 441 (Fla. 1995).

The CCP aggravating factor is intended to apply to "execution or contract-style killings" and will not be sustained where the evidence suggests that the murder was a spontaneous reaction, or was committed while in a rage or panic. *See Perry*, 522 So. 2d at 820; *Garron*, 528 So. 2d at 361. Moreover, evidence offered in support of the mental mitigating circumstances may negate the CCP aggravating factor. *Spencer v. State*, 645 So. 2d 377 (Fla. 1994); *see also Woods*, 733 So. 2d at 991.

Here, the evidence was insufficient to prove that the murder was the product of cool and calm reflection (cold), or that the defendant had a careful plan to murder the child before the fatal incident (calculated), or that the defendant exhibited heightened premeditation. To the contrary, as discussed above with regard to the avoid arrest aggravator, the evidence suggests that the murder was committed as a spontaneous response, during a rage or panic, after the child began to cry. *See Garron*, 528 So. 2d at 361(heightened premeditation not shown where the murder appeared to be a spontaneous reaction); *Geralds*, 601 So. 2d at 1164 (evidence was insufficient to prove CCP, where the fact that murder victim was bound rather than immediately killed and that there had been a struggle suggested the reasonable hypothesis that the murder was not premeditated).

There was also expert testimony that Mr. Connor was unable to think rationally, and would become paranoid when under stress; that the crime was committed under the influence of extreme mental or emotional disturbance; and that his capacity to appreciate the criminality of his conduct and conform his conduct to the requirements of law was substantially impaired. (T. 806, 5449-50, 5469-70, 5569-71, 5714). This testimony negated the cold and calculated components of CCP. *See Spencer*, 645 So. at 384 (although there was evidence that Spencer contemplated the murder in advance, expert testimony offered in mitigation that defendant was unable to cope, and would become paranoid, when stressed, negated the cold component of CCP); *Woods*, 733 So. 2d at 991 (CCP not proved where the evidence was unclear as to what happened at the time of the murder and it appeared that due to his limited mental ability the defendant's thinking may have been confused and irrational).

The evidence does not show a cold and calculated plan to commit murder, but rather a series of impulsive acts by a mentally ill person whose judgment and ability to think rationally were substantially impaired. During the several months preceding the murders, Mr. Connor had been obsessed with the idea of reestablishing his relationship with Ms. Goodine. In addition to other acts of harassment, he had committed several burglaries of the Goodine home, taking only personal items belonging to Ms. Goodine (such as her perfume, makeup, and toothbrush) but nothing of real value. Although he was concerned that Ms. Goodine would become involved

with another man, he apparently did not perceive her elderly husband, with whom she had years since ceased to have marital relations, as a rival. In fact, Connor had told her that "if she would go back to Larry he wouldn't bother her anymore." (T. 3762, 4593). Despite Mr. Connor's promise, the burglaries continued. (R. 118-19).

There is no evidence that Mr. Connor planned to murder anyone when he came to the Goodine residence on the afternoon of Thursday, November 19, 1992, or indeed that he had any reason to believe that there would be anyone in the house. At that time of the afternoon, Ms. Goodine was at work and her daughters were at school. There had been no one in the house until 2:30 p.m., when Mr. Goodine, who continued to spend time at another residence, returned from there. (T. 3933, 3946). Mr. Goodine was attacked just inside the front door (T. 4003-5), which suggests that he may have surprised Mr. Connor in the course of yet another burglary. That there had been no plan to commit murder is further evidenced by the fact that Mr. Connor owned a functioning firearm (T. 3921), Mr. Goodine had not been shot to death, but was bludgeoned with a blunt instrument, possibly the "crosswalk" of one of the broken chairs in the living room. (T. 3713).

Mr. Connor's state of mind after this unplanned murder is unlikely to have been cool and rational. Although some effort may been made to clean up the obvious blood stain on the carpet, the blood spatter on the wall unit and coffee table was left untouched. Mr. Goodine's head was wrapped in a blue bath robe taken from Ms.

Goodine's room, and the body was then wrapped in a quilt. Although the trial court interpreted this as an attempt to avoid detection, the only testimony on this subject suggested that it was more likely an emotional response to the fact that Mr. Connor knew the victim, and could not bear to look at his body, as Detective Ilarroza testified. (T. 3659).

That Mr. Connor's thinking was substantially impaired at this time and thereafter is clearly shown by the fact that, more than a day-and-a-half later, he had not eliminated the evidence which ultimately convicted him, namely, his bloody clothing and shoes and the blood stains in the Cadillac. Far from concealing this evidence, he left his bloody clothing on the floor of the bedroom he shared with his wife, and later, when he was allowed to dress before being taken to the police station for questioning, he actually chose to put on the blood-stained socks and shoes he had been wearing at the time of the murder. (T. 370, 397, 413, 441, 3969, 4097-98, 4118, 4291, 4296).

There was certainly no evidence of any pre-existing plan to kill Jessica Goodine and, as set forth above with regard to the avoid-arrest aggravator, the evidence is inconsistent with the theory that Mr. Connor decided to kill her when she came to the house. The trial court's assumption that Mr. Connor abducted the child with the purpose of killing her to eliminate her as a witness, and then spent a full day coldly and calculatingly contemplating how to carry out the murder (R. 2201-2, 2205-

6), is simply speculation. It is also contrary to the record. Had that been the defendant's purpose, he would have killed Jessica at the Goodine home, he would not have allowed her to go to the Merrit residence to report that she was leaving, or have abducted her in full view of the neighbors and then taken her to the house he shared with his wife and three children.

In finding CCP, the trial court emphasized that the child had been manually strangled and that this manner of death was not instantaneous. (R. 2205). However, this Court has repeatedly held that this is not enough to prove CCP. *See Hardwick v. State*, 461 So. 2d 79, 81 (Fla. 1984) (because CCP aggravator emphasizes cold calculation before the murder itself, the fact that it took a matter of minutes to kill victim by strangulation did not support finding this aggravator), *cert. denied*, 471 U.S. 1120 (1985); *Capehart v. State*, 583 So. 2d 1009, 1015 (Fla. 1991) (rejecting argument that because smothering takes several minutes to kill the victim, the act per se qualifies as CCP), *cert. denied*, 502 U.S. 1065 (1992); *Holton v. State*, 573 So. 2d 284, 292 (Fla. 1990) (murder by ligature strangulation was not shown to be CCP, where it "could have been a spontaneous act in response to the victim's refusal to participate in consensual sex"); *Castro v. State*, 644 So. 2d 987, 991 (Fla. 1994) (murder by strangulation and stabbing during robbery not CCP); *Perry*, 522 So. 2d at 820 (same).

Contrary to the trial court's assertion (R. 2205), the fact that the murder was

committed a full day after the child was abducted does not indicate a heightened premeditation. This delay, like the abduction itself, only compounded the risk of detection. In fact, considered together with the fact that the murder was committed during a struggle, while the child was crying very hard, the prolonged delay suggests that the murder was not planned, but was rather a spontaneous act of panic or rage. *See Geralds*, 601 So. 2d at 1164 (fact that burglary victim was bound rather than immediately killed indicated that the defendant had not planned to kill her and committed the murder in a rage after unsuccessful interrogation or after the victim tried to escape).

IV

THE TRIAL COURT ERRED IN REJECTING THE STATUTORY MENTAL MITIGATING CIRCUMSTANCES AND FAILING TO GIVE EFFECT TO UNCONTROVERTED MITIGATING EVIDENCE, IN VIOLATION OF SECTION 921.141, FLORIDA STATUTES, ARTICLE I, SECTION 17 OF THE FLORIDA CONSTITUTION, AND AMENDMENTS VIII AND XIV TO THE UNITED STATES CONSTITUTION.

In its sentencing order, the court found that Mr. Connor suffered from organic brain damage, paranoia, and "some form of significant emotional disturbance," and that it was "apparent" that he was mentally ill and "seriously troubled." (R. 2207, 2214). The court further found that the evidence established the non-statutory mitigator that Mr. Connor suffered from a "mental or emotional illness" at the time of the offense, and gave that mitigator substantial weight. (R. 2214).

However, the trial court rejected the statutory mitigators that "[t]he capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance," § 921.141(6)(b), Fla. Stat. (Supp. 1992), and "[t]he capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired," § 921.141(6)(f), Fla. Stat. (Supp. 1992). (R. 2214, 2216-17).

This was error because both of these statutory mitigating circumstances were established by "a reasonable quantum of competent, uncontroverted evidence," including the testimony of two expert witnesses whose opinions regarding the defendant's mental state at the time of the crimes were unrebutted by other expert testimony and were supported by the facts. *See Knowles v. State*, 632 So. 2d 62, 67 (Fla. 1993) ("we have made clear that 'when a reasonable quantum of competent, uncontroverted evidence of a mitigating circumstance is presented, the trial court must find that the mitigating circumstance has been proved'"), *quoting Nibert v. State*, 574 So. 2d 1059, 1062 (Fla. 1990).

The trial court's conclusion that, mentally ill and emotionally disturbed though he was, his mental illness had no bearing on the commission of the crimes (R. 2214, 2215-16), is contrary to the facts in the record and arbitrarily rejects uncontroverted expert testimony which supports application of the statutory mental mitigators. Its discussion of these mitigators reveals a misunderstanding both of the expert

testimony and of the issue. Contrary to what that discussion suggests, the defense did not have to prove that the defendant was "psychotic" at the time of the crimes, or that he had no capacity to understand the criminality of his actions. What the defense had to show, and did show, was that the crime was committed while under the influence of a mental or emotional disturbance which, while less than insanity, was "extreme" in the sense that it was "more than the emotions of an average man, however inflamed," *Dixon v. State*, 283 So. 2d 1, 10 (Fla. 1973), *cert. denied sub nom Hunter v. Florida*, 416 U.S. 943 (1974), and that the mental disturbance "interfere[d] with but [did] not obviate the defendant's knowledge of right and wrong," *id.*

A.

THE TRIAL COURT ERRED IN REJECTING THE UNCONTROVERTED EXPERT TESTIMONY ESTABLISHING THE MENTAL MITIGATORS.

There was a consensus among the expert witnesses that Mr. Connor was of low average intelligence, suffered from some degree of brain damage and paranoid thinking, and was not malingering. There was also agreement that the defendant was not legally insane. Opinions differed as to whether he was competent to stand trial and as to what label to place on his mental illness.

Only two experts -- Dr. Eisenstein and Dr. Mosman -- addressed the question of whether the crimes were committed under the influence of a mental or emotional disturbance which, though less than insanity, could be considered "extreme" in the

sense required by the statutory mitigator, and whether the mental disturbance interfered with Mr. Connor's ability to know right from wrong. Dr. Eisenstein and Dr. Mosman answered both questions in the affirmative. (T. 5469-70, 5569-71). All the other expert witnesses limited their evaluation and opinions to the questions of whether Mr. Connor was competent to stand trial and whether he was insane at the time of the crimes.

Dr. Eisenstein and Dr. Mosman were also the only experts to give an account of Mr. Connor's thinking process, and of how his mental deficiencies and paranoia affect his ability to think logically and act appropriately when under great stress. Their conclusions in this regard -- that, because of his organic brain damage and paranoia, he is unable to think logically under stress or pressure, and will decompensate under major stress -- were not contradicted by any other expert testimony. Indeed, the major premises for that conclusion (the presence of organic brain damage and paranoia) were accepted by other experts, and by the court. Their testimony as to how the particular sort of brain damage involved would interact with the underlying paranoia was clearly a matter for expert rather than lay opinion, and there was no expert testimony to the contrary.

The conclusions of Dr. Mosman and Dr. Eisenstein were based on extensive testing, numerous interviews with Mr. Connor, interviews with members of his family and others, and review of police reports, employment records and other documents.

Dr. Eisenstein, an expert in the field of neuropsychology, interviewed Mr. Connor on numerous occasions over a five-year period (1993 to 1998), and conducted a complete neuropsychological evaluation. (T. 771-72, 781, 5416-18, 5488-89). Among the tests he administered was a neuropsychological battery to assess brain damage. This battery covered all areas of brain functioning and was administered three separate times (in 1993, 1995, and 1998), with nearly identical results. (T. 5456-57). Dr. Mosman, a clinical psychologist specializing in neuropsychology, independently assessed the results of Dr. Eisenstein's testing, conducted testing of his own, interviewed Mr. Connor in 1995 and 1996, spoke with Mr. Connor's wife and daughter, spoke with the guards at the jail, and reviewed the reports of other doctors, as well as work records and police reports. (T. 5611-15, 5624-25, 5633, 5635-37, 5639-40, 5671-72).

Consistent with the observations of the other experts, Dr. Eisenstein and Dr. Mosman found that Mr. Connor was of low average intelligence (T. 577, 5451-52), was very paranoid (T. 5449), and had brain damage to the frontal lobe area and right parietal area. (T. 581, 774, 780, 5443-46, 5499, 5615, 5624, 5633-40). He was not malingering. (T. 595, 5436-40, 5579, 5634, 5657). To the contrary, he strongly desired to appear completely normal and resented any suggestion that he was mentally or psychologically impaired in any way. (T. 5438-40, 5484-85, 5502).

Dr. Mosman and Dr. Eisenstein arrived at similar diagnoses of the defendant's

mental condition.[8] Their opinions as to Mr. Connor's state of mind at the time of the crimes were based on a clinical assessment of his mental functioning, particularly when under stress. (T. 817-23, 5692, 5734-35). Both the organic brain damage and the paranoia distort Mr. Connor's perception and interpretation of events. In addition to this cumulative detrimental effect upon his ability to process information, the brain damage also interferes with his ability to control his paranoia which, as a result, may at times reach psychotic proportions. (T. 790, 806, 5449-50, 5492-95, 5498, 5500-1, 5532, 5551, 5575-76, 5661).

Because the damage to the brain is to specific areas (the frontal lobe and right parietal area) it affects some functions but not others. It impairs Mr. Connor's judgment and his ability to plan, organize, make decisions, weigh options and alternative behaviors, and to shift between different thought patterns or tasks (T. 780, 5445-48, 5459, 5639-40). It prevents him from accurately processing information and from seeing things in their proper context. (T. 5449-50, 5661). Moreover, his intellectual ability, which is "subaverage even on a good day" (T. 5692), decreases markedly under stress. The testing showed that Mr. Connor is unable to think logically and sequentially when under stress or under the pressure of the more

[8]Dr. Mosman diagnosed schizophrenia, paranoid type, and personality change due to organic involvement (i.e., organic brain damage). (T. 582-83, 595-96, 5662-64). Similarly, Dr. Eisenstein concluded that Connor suffered from organic brain damage (T. 5458-59, 5492) and paranoid schizophrenia, secondary to organic brain illness (T. 808, 814).

difficult tests administered. (T. 577-78, 5469, 5713).

Mr. Connor's perception and interpretation of events is also distorted by his paranoid thinking process, which consistently leads him to interpret any threatening or anxiety-producing event (such as the loss of his job, or the loss of his civil law suit) as a conspiracy against him. (T. 5551, 5575-76). The content of his psychopathology (that is, the precise nature of the conspiracy and the identity of the conspirators) can change, but the result is always the same: someone is trying to hurt him. (T. 798, 5575-76). Although Mr. Connor tries hard to control his paranoia (T. 797), his brain damage interferes with his ability to maintain that self-control, particularly when under stress. (T. 5449-50, 5661). Major stressors will cause him to decompensate, bringing the underlying paranoia to the surface, which, together with his mental deficiencies, leads him to act in an irrational and paranoid state. (T. 806, 5500-1). Dr. Eisenstein testified that Mr. Connor experiences numerous, brief psychotic episodes; he will decompensate and then recoup. (T. 806).[9]

Mr. Connor's life history showed a slow, ongoing deterioration in his mental faculties and in his ability to function. (T. 780, 5499-5500). The brain damage and paranoia appear to have been present for most of Mr. Connor's adult life, but his illness remained sub-acute until about 1983 or 1984, and he was able to manage until

[9]Dr. Eisenstein was referring primarily to episodes of decompensation brought on by major stressors. (T. 806). But there were also other lesser, briefer episodes. The trial judge stated that she may have observed some of these, noting that "he recoups from it fairly quickly." (T. 823).

then. (T. 583). By 1986, however, when Connor was forty-four years old, the mental illness was clearly evident. (T. 5665-66). Dr. Mosman and Dr. Eisenstein noted that in the period of a year or more preceding the crimes, there had been several external stressors of sufficient magnitude to cause Mr. Connor to decompensate, including the brutal murder of Mr. Connor's father in 1991 and the loss of his law suit in May 1992. (T. 5500-1, 5669-70).

This account of Mr. Connor's thinking process and of the course of his illness is consistent with the facts of the case and of his life history. It was not refuted by other expert testimony. The testimony of Dr. Jacobson, who, as the trial court noted, is a psychiatrist with more than 30 years of experience, was generally similar. Dr. Jacobson testified that Mr. Connor was suspicious, mistrustful, grandiose, narcissistic, extremely circumstantial when answering questions, and "very paranoid." (T. 709, 729). He was not malingering. (T. 717). Dr. Jacobson also agreed that there was evidence of organic brain damage, and that both this damage and the paranoia had gotten worse over the years. (T. 714-15). It was likely that Mr. Connor's hypertension and vascular disease contributed to this deterioration. (T. 700). Mr. Connor clearly had been more functional several years ago: "Then things began to kind of come apart. I don't think that was just bad luck." (T. 713-14).

The Trial Court's Discussion of the Expert Testimony

The trial court evidently accepted much of the testimony of Dr. Mosman and

Dr. Eisenstein, and, in particular, the conclusion that Mr. Connor suffered from organic brain damage and paranoia. As stated in the sentencing order,

> The Court is reasonably convinced that the defendant suffers from some type of organic brain syndrome and paranoia. His testing has shown some evidence of that; as well as his actions in court evincing his perseverative thinking in some areas, his mistrust of government, his numerous letters and statements to the Court about the jail, his clothing and the alleged perceived actions of his former attorney. All these issues are evidence of an individual who is seriously troubled, and to some extent, mentally or emotionally ill.

(R. 2207).

However, while thus accepting two of the major premises for the experts' conclusion, the court rejected their opinion that the crimes were committed while under the influence of extreme mental or emotional disturbance, and that Mr. Connor lacked the capacity to appreciate the criminality of his conduct and conform his conduct to the requirements of law. (R. 2214, 2216-17). The court likewise appears to have rejected their testimony concerning the effect of the organic brain damage and paranoia upon Mr. Connor's ability to think logically when under stress or pressure.

The trial court's discussion of the mental health testimony reflects certain misunderstandings concerning the testimony of the expert witnesses and of the issues before the court at the penalty phase. Although the court noted that many of the experts whose testimony it was considering had examined Mr. Connor for purposes of determining his competency (R. 2207), it failed to take that fact into account when

evaluating their testimony and comparing it to that of Dr. Mosman and Dr. Eisenstein.

The court emphasized that Dr. Aynsley testified that Mr. Connor was able to communicate in a logical and coherent manner, and that her own testing (more limited than that conducted by Dr. Eisenstein) had found no "gross" organic brain dysfunction. (R. 2207). However, when viewed in the context of the question that Dr. Aynsley was addressing, namely, whether Mr. Connor was competent to proceed in January 1998 (T. 2129, 2131, 2141), her testimony cannot be considered inconsistent with the conclusions of Dr. Eisenstein and Dr. Mosman regarding the defendant's state of mind at the time of the crimes.

Dr. Aynsley did find evidence of brain dysfunction. She simply did not think the deficits were so severe that they rendered Mr. Connor incompetent. (T. 2141-42).[10] Dr. Aynsley gave no opinion as to the behavior Mr. Connor might exhibit under stress or pressure as a result of his brain damage and paranoid thinking.

Likewise, Dr. Garcia's statements that he would not characterize Mr. Connor as delusional, that his thought processes appeared to be logical and coherent, and that

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[10]Her statement that the dysfunction was not "gross" evidently meant no more than this. The word "gross" does not appear to be a term of art -- it is not in *Stedman's Medical Dictionary* (25th ed. 1990). In its ordinary dictionary sense it can mean "total" or "unmitigated in any way, utter" or "glaringly obvious, flagrant" or "broad, general." *American Heritage Dictionary* (3rd ed. 1992). In those ordinary senses, the absence of "gross" brain dysfunction is consistent with the testimony of Dr. Eisenstein and Dr. Mosman, who carefully noted that the damage only affected specific areas of the brain, and emphasized the fact that Mr. Connor's ability to function deteriorated dramatically when under stress.

there was evidence of minor organicity (R. 2211), were all made in the context of an evaluation limited to the questions of whether Mr. Connor was legally insane or incompetent to stand trial. Thus, Dr. Garcia testified that while Mr. Connor had a low average IQ, the cognitive deficit was not "of such magnitude that he cannot tell right from wrong" (T. 5757), and that the impairment resulting from his brain damage was not so serious that Connor would not know right from wrong when he commits an act (T. 5753-54).

The experts' views on whether various statements of the defendant reflected mental illness or "delusional" thinking must also be placed in the context of the level of dysfunction that the experts were looking for. Dr. Garcia would not characterize Mr. Connor's statements as delusional because, although they showed paranoid ideation, they were not based on "paranormal" beliefs (e.g., in "Martians"), they were not necessarily impossible, and he could modify them to some extent. (T. 838-39, 841-43, 5757). For example, Dr. Garcia was willing to concede that, if untrue, there was some grandiosity in Connor's assertion that his incarceration had cost him a million-dollar investment in a projected hotel. However, he thought Connor's detailed explanation of his business plan was "very possible" and he was impressed by the flexibility shown by Connor's willingness to concede that perhaps the loss was not quite one million, but nearer to $800,000, because there would after all be some expenses to pay. (T. 842-43). Evidently, Dr. Garcia was not giving Mr. Connor a

clean bill of mental health. He even accepted that some of Connor's statements might actually be paranoid delusions. (T. 870). He simply did not regard them as bizarre enough to justify the conclusion that Mr. Connor was legally insane.

Dr. Aynsley's discussion of Mr. Connor's statements reflects a similar focus. She found that the thinking illustrated by Mr. Connor's letters was "a bit unusual" and noted that there was a "very, very intense focus on issues not particularly related to the court proceedings." (T. 2133-34). The item which Dr. Aynsley found "the most bothersome" was Mr. Connor's large diagram of the resort he was supposedly building, because it had nothing to do with the charges he was facing and was evidence of grandiosity. (T. 2134-36). However, Connor gave what seemed to be a logical reason for telling the judge about his resort, namely, to show that he was "not just a nobody" but rather "someone who had substantial holdings." (T. 2134-35). And, in Dr. Aynsley's opinion, what Mr. Connor had included in the letters regarding the legal procedures was "very coherent and also reality based." (T. 2133-34).

Some of Mr. Connor's oral and written communications -- which even the trial court found to evidence mental illness (R. 2207) -- are in the appellate record, and this Court may judge to what extent they show a grasp of legal procedure which is both "coherent" and "reality based." Among Mr. Connor's statements were the following:

> • Although the state knew that there was nothing to link him to the crime, he had been arrested and falsely incarcerated because the

police discovered he had filed a civil lawsuit against the City of Miami Police Department (R. 36, 450).

• As a result of his false incarceration he had lost over a million dollars worth of property, described as: "70 acers [sic] of Cattle ranch, Cattles, horses, pigs, Chickens, etc. 6-bedroom 4-bath home, sixty thousand in hotel accessory's [sic], 24-room hotel, restruant [sic], bar" (R. 35).

• The police, the state, the guards, and his own attorneys were using "surreptitious tricks" to have him declared incompetent and thus deny him a trial (R. 402). Among these tricks was the employment of psychiatrists to file false reports, the theft by the guards of court clothes worth hundreds of dollars, the theft by his counsel of a briefcase full of valuable coins and watches and other property worth over a hundred thousand dollars, the sending of agents (by his lawyers and/or the State Attorney's Office) to convince him to plead insanity (R. 402, 421, 428-33, 457; T. 562-64, 669-70), and so on.

In making these statements, Mr. Connor was not attempting to portray himself as mentally ill. His purpose was to persuade the experts, the judge, and (eventually) the jury that he was completely competent and had no psychological or mental problems whatever, and that he was actually innocent of the crimes charged. (T. 595, 699-700, 717, 5438-40, 5485-85, 5502, 5579, 5634, 5657). It should also be noted that nobody but Mr. Connor took his claims seriously. Indeed, the judge obviously dismissed most of them (such as the idea that the competency hearing was a state plot) (R. 402; T. 660-70)) as patently absurd.

Whether or not they should be labeled delusional[11], these statements fully

[11]They in fact seem to fit the usual definition of a delusion: "A falsely held belief that cannot be influenced or corrected by reason or contradictory evidence." Michael A. Fauman, *Study Guide to DSM-IV* (1994), 143. Dr. Garcia's assertions

corroborate the description of Mr. Connor's thought process given by Dr. Eisenstein and Dr. Mosman. Characteristically, the process begins with a real event, which is misperceived and misinterpreted, and emerges transformed into a belief which is false, outlandish, and, almost always, embedded in the framework of a conspiracy. Every setback is sooner or later brought into line with his underlying paranoid belief system: The loss of his county job was a conspiracy (his labor union and his own son were part of the plot); the loss of his civil law suit was a conspiracy (the judge was bought off); his arrest was a conspiracy (the police and the prosecution want to forestall his civil suit, which will force city to pay him a million dollars for the violation of his civil rights); the competency hearing and the delay in bringing him to trial (which deprived him of a million dollars) are part of the conspiracy, and everyone, including the judge and his lawyers, is on it. (T. 584, 587, 669-70, 687, 788, 5574-76, 5588, 5593-94, 5669-70, 5694-95). Although a doubt may sometimes be entertained (his loss may not be exactly one million, maybe it was closer to $800,000), the usual course is for the belief to become more firmly fixed and

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notwithstanding, a delusion may be "nonbizarre," that is, involve "situations that could occur in everyday life" as opposed to "fantastic situations that could never occur in reality." *Id.*

Moreover, it is not necessary that the delusion be held "utterly without doubt"; partial delusions also exist, "in which the patient entertains doubts about the delusional beliefs." Harold I. Kaplan & Benjamin J. Sadock, *Comprehensive Textbook of Psychiatry/VI* (1995), 647. "Such doubts," Kaplan and Sadock explain, "may be seen during the slow development of a delusion, as the delusion is gradually given up, or intermittently throughout its course." *Id.*

extravagant (by the penalty phase, Mr. Connor had not merely lost a million dollars in income; he had actually spent that amount). The record reveals the same process at work over and over and over again.

As Dr. Mosman and Dr. Eisenstein testified, this is not something that Mr. Connor can set aside at will. This is how he thinks. There is no support for the trial court's assertion that his mental illness exists only in areas other than the crimes (R. 2214). The opinion of Dr. Mosman and Dr. Eisenstein regarding Mr. Connor's thought process and his state of mind at the time of the crimes was not controverted by other expert testimony. It was supported by extensive testing and interviewing, by a review of the police reports, employment records, and other documents, and by the facts of the defendant's life history. It was also, as set forth in arguments IV(A) and IV(B) below, consistent with the facts of the case. It could not be ignored. *See Spencer*, 645 So. 2d at 385 (error to reject uncontroverted expert opinions which were based on psychological and personality tests, as well as interviews, examination of the evidence, and a review of defendant's life history, school records, and military records).

B.

THE TRIAL COURT ERRED IN REJECTING THE STATUTORY MITIGATING CIRCUMSTANCE THAT

THE CAPITAL OFFENSE WAS COMMITTED WHILE UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE.

This Court has construed "extreme mental or emotional disturbance" to mean something "less than insanity but more than the emotions of an average man, however inflamed." *Dixon*, 283 So. 2d at 10. The aggravator is reasonably established where, as here, there is evidence that the crime was committed under the influence of mental illness and the passions brought on by intense jealousy or an obsessive desire to re-establish a broken marital or romantic relationship. *See Kampff v. State*, 371 So. 2d 1007, 1008, 1010 (Fla. 1979) (defendant, a chronic alcoholic, was obsessively concerned about regaining his former status as a husband, and this obsession intensified when he began to suspect that his ex-wife was becoming involved romantically with another man; after three years of continually harassing his former wife and begging her to remarry him, he finally killed her at her place of employment); *Klokoc v. State*, 589 So. 2d 219, 222 (Fla. 1991) (defendant who suffered from bipolar affective disorder, of manic type with paranoid features, killed his daughter in order to spite his estranged wife); *Farinas v. State*, 569 So. 2d 425, 431 (Fla. 1990) (defendant was obsessed with the idea of having the victim return to live with him and was intensely jealous, suspecting that she was becoming romantically involved with another man). Such evidence has been held to establish the mitigator even where the murder did not occur in a heightened rage. *Klokoc*, 589

So. 2d at 222.

Here, the record shows that for months Mr. Connor had been obsessed with the idea of reestablishing his relationship with Margaret Goodine, who had broken up with him in early 1992 after a verbal altercation. He became intensely concerned that she might become involved with another man. He told her that he would never see her with "nobody else." (T. 3732). A series of acts of harassment began, which finally ended in the murders of Lawrence and Jessica Goodine. He would drive slowly by Ms. Goodine's house. (T. 3925-26, 3950). One evening he was seen shooting out the light on her front porch. (T. 3739-31, 3921). On another occasion a brick was thrown through a window, after a verbal altercation between Connor and Ms. Goodine. (R. 113). One night he threw paint on the car of Ms. Goodine's cousin Anita Webb, mistakenly believing that it belonged to a next-door neighbor he suspected of being involved with Ms. Goodine. (T. 3736-38, 4508-9, 4518). Ms. Goodine and her next-door neighbor, Alice McLaughlin, received anonymous phone calls in which the caller threatened to kill Ms. Goodine and her daughter Karen. (T. 4600-1, 4604). The caller told Ms. Goodine that "If Mr. Sebert is not at the Rolex [bar] at 10 o'clock, your daughter Karen will be killed." (R. 111). After Ms. Goodine obtained a domestic violence injunction against Mr. Connor in late August 1992, a series of burglaries of her residence began. Nothing of real value (such as the television) was taken. The only things missing were personal items belonging to Ms.

Goodine, such as the sheets from her bed, pillow cases, articles of clothing, linens, makeup, and her toothbrush. (R. 108-9).

Although Mr. Connor was concerned that Ms. Goodine would become involved with some other man, he apparently did not perceive Mr. Goodine as a rival. When she pleaded with Mr. Connor to leave her alone, he told her that "if she would go back to Larry he wouldn't bother her anymore." (T. 4593, 4605). Nevertheless, when she eventually asked Mr. Goodine to stay at the house, the burglaries continued. By then, it appears, Mr. Connor suspected that some conspiracy was afoot. He told Ann Merrit (the neighbor across the street) that she and Mr. Goodine "had put down a voodoo to break him and Margaret up." (T. 3931).

Mr. Connor's reaction to the break with Ms. Goodine went well beyond "the emotions of an average man," and even beyond the emotions of an average man inflamed by jealousy or rejection. Indeed, it went well beyond the conduct Mr. Connor himself had shown thirteen years earlier, when Ms. Goodine first broke up with him. On that occasion he apparently had not harassed her in any way. Nor had Mr. Connor ever argued with Mr. Goodine, whom Margaret married after the break up. (T. 3798). By contrast, in 1992, Mr. Connor responded to the break-up of his renewed relationship with Ms. Goodine by embarking upon a course of conduct for which there is really no precedent in his prior life history.

What had changed in the interval between 1979 and 1992 was Mr. Connor's

mental condition. Despite his low intelligence, brain damage and paranoid thinking, Mr. Connor had managed to function adequately for many years. However, by the mid-1980s -- as Dr. Eisenstein, Dr. Mosman, and Dr. Jacobson testified, and his employment history confirms -- his paranoia and brain damage had progressed to the point where he was no longer able to do this. (T. 583, 713-15, 5665-66). As Dr. Jacobson testified, things began to "come apart" and this was not simply because of bad luck. (T. 713-14).

At one time considered an exceptional employee, he was fired from his county job in September 1986 because his conduct resulted in the "impairment of the whole unit." (T. 5706).[12] The county job had been a major achievement, and its loss was a devastating blow, which, had he been able to do so, he would surely have avoided. That job was what enabled Mr. Connor -- a black man from a small, impoverished Caribbean island; a man plagued with a low IQ, organic brain damage, and paranoid thinking -- to buy a little house and fulfill the role, in which he took evident pride, of a loving, supportive parent to his children.

Since losing the county job, Mr. Connor's major activity was the pursuit of a civil suit against the City of Miami Police Department, based on the claim that he had been falsely arrested in 1989 for shoplifting a piece of chapstick and the arresting

[12]Characteristically, Mr. Connor attributed the loss of his job to a conspiracy, which encompassed not only his supervisors and fellow employees, but his labor union and his son as well. (T. 687, 5694-95).

officers had stolen nine hundred (or ninety-one hundred) dollars from his wallet. (T. 586, 5559, 5592-93, 5669).

Some time in 1988, Mr. Connor renewed his relationship with Ms. Goodine, who had by then separated from her husband. (T. 3727, 3790-91). Mr. Connor spent time, almost every day, at her house, gave her presents, and helped pay her bills. (T. 3727-28, 3795-96). He treated her daughter Jessica as if she were his own child. (T. 3800-4, 4513-15, 4602-3, 4606). Mr. Goodine would occasionally come to the house. The men did not fight or argue. (T. 3798, 3805-6).

During the year-and-a-half preceding the crimes, Mr. Connor's life continued its downward trend. In 1991, his father was hacked to death in Honduras. (T. 646-48, 5670). In February 1992, he had an argument with Ms. Goodine and a couple of months later she broke off their relationship. (R. 115; T. 3728-29, 4585). In May 1992, he lost his civil suit against the City of Miami Police Department. (T. 586, 5669-70). Mr. Connor's subsequent course of conduct, which culminated in the murders of Lawrence and Jessica Goodine, was not simply the result of the inflamed passions of a jilted lover. It was the reaction of a diseased mind. Dr. Mosman's and Dr. Eisenstein's testimony that the murders were committed under the influence of an extreme mental or emotional disturbance was uncontroverted, well-supported, and could not be summarily rejected. *Spencer*, 645 So. 2d at 385. Because this statutory mitigating circumstance was established by "a reasonable quantum of competent,

uncontroverted evidence," it was error for the trial court to reject it. *Knowles*, 632 So. 2d at 67; *Nibert*, 574 So. 2d at 1062.

The trial court improperly refused to give effect to this uncontroverted mitigating evidence, reasoning that while his mental illness is "apparent," the murders were the result of Mr. Connor's "anger and his need for revenge and control" rather than his illness. (R. 2214). The court asserted that organic brain damage and paranoia had not prevented Mr. Connor from establishing caring relationships with others, nor from leading a "full and rich" life, nor from holding a county job for many years, nor from conducting an extra-marital affair (R. 2211-12, 2214). In fact, however, as Dr. Mosman, Dr. Eisenstein, and Dr. Jacobson agreed, Mr. Connor's capacity to function had deteriorated dramatically from the time he successfully held down the county job or conducted his initial romance with Ms. Goodine. Mr. Connor's increasingly bizarre and hostile conduct toward Ms. Goodine, like the bizarre and hostile conduct that cost him his county job, was the product of his deteriorating mental state. There is no record support for the trial court's illogical conclusion that Mr. Connor's brain damage and paranoia affected only <u>other</u> aspects of his life. Although the burglaries may have been, as the trial court said, the actions of an angry, impulsive person (R. 2212), that is not inconsistent with the extensive, uncontroverted testimony that Mr. Connor was under the influence of extreme mental or emotional disturbance.

Finally, according to the court, the fact that Mr. Connor purchased a black

Cadillac which was nearly identical to that of Ms. Goodine showed "[t]he most chilling type of planning" and was "clear evidence of Mr. Connor's ability to plan and understand the significance of his actions" (R. 2213). The court speculated that the Cadillac was purchased pursuant to a "diabolical" scheme to facilitate the burglaries by making them easier to commit undetected. The record, however, is directly to the contrary. Mr. Connor made no secret of his purchase of this car. Indeed, he trumpeted the fact to Ms. Goodine's neighbors and friends. He told Ms. Goodine's best friend Anita Webb that "he was going to buy a car exactly like Margaret own" (T. 4510), and then, after he had bought the car, he drove it slowly past Ms. Goodine's home, in full view of her neighbor Ann Merrit, who, as he must have known, spent all her time at home and kept a close watch on the activities in the Goodine residence. (T. 3928). Buying this car is evidence of mental disturbance; it certainly is not evidence of a clever scheme to commit burglaries undetected, or of the defendant's rationality.

C.

THE TRIAL COURT ERRED IN REJECTING THE STATUTORY MITIGATING CIRCUMSTANCE THAT THE DEFENDANT'S CAPACITY TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW WAS SUBSTANTIALLY IMPAIRED.

The trial court not only rejected the statutory mitigator that Mr. Connor's capacity to appreciate the criminality of his conduct or to conform his conduct to the

requirements of law was substantially impaired, it gave no consideration at all to the evidence of impairment. (R. 2215-16).

As set forth above, in argument IV(A), the testimony of Dr. Mosman and Dr. Eisenstein that Mr. Connor's capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was substantially impaired (T. 5469-70, 5569-71), and their conclusions that, because of his organic brain damage and paranoia, he is unable to think logically under stress, were not rebutted by other expert testimony. Their testimony was also consistent with the facts. If, as the trial court asserts, he was making an effort to hide the evidence of his crimes (R. 2215), what he actually did in this regard can only be considered to be evidence of substantial impairment. Indeed, it almost appears as if he was taking "some pains" to put the evidence that would convict him under the nose of the police. Although he knew from his conversation with Detective Murias that the police believed a black Cadillac had been involved (T. 3959), he made no effort to remove the blood stains on the rear seat. Although he had a day and a half to do so, he failed to get rid of the blood-stained clothes he had been wearing on the day of Mr. Goodine's murder, and instead elected to leave them on the floor of the bedroom he shared with his wife. (T. 370, 4291, 4296). When Detective Times gave him permission to get dressed before being taken to the station for questioning, he decided to put on the blood-spattered shoes and socks he had been wearing at the time of Mr. Goodine's murder. (T. 397,

413, 441, 3969, 4097-98, 4118). As Detective Times emphasized:

> [H]e went on his own free will, selected the clothing which would include his socks, shoes, pants, whatever attire he had on. It was his choice as to what he wore to my office.

(T. 4098).

The fact that, in retrospect, he is able to see that he has done something wrong, does not show that this capacity was unimpaired at the time of the crimes or that he was able to conform his conduct to the requirements of law. It is not Mr. Connor's ability to recall events that is impaired, but, rather, his ability to think logically and sequentially, particularly when under stress. (T. 5459-60, 5469).

The trial court's observation in rejecting this mitigator that Mr. Connor knew how to use the legal system to obtain his goals lawfully actually contradicts the court's conclusion. Mr. Connor's obsession with his lawsuits, and his explanation for why he was not succeeding (the conspiracy), are further evidence of his mental deterioration and growing paranoia. Similarly, his letters to the court, in which he details the various surreptitious tricks which the conspirators against him were using to railroad him into a mental institution, are, as the trial court itself found (R. 2207), further evidence of mental illness, not of capacity to function.

Because this statutory mitigating circumstance was established by "a reasonable quantum of competent, uncontroverted evidence," it was error for the trial court to reject it. *Knowles*, 632 So. 2d at 67; *Nibert*, 574 So. 2d at 1062; *see also Spencer*, 645 So. 2d at 385. Moreover, even if that were not the case, it was error for

the court to fail to consider the expert testimony of impaired capacity as nonstatutory mitgation. *See Stewart v. State*, 620 So. 2d 177, 180 (Fla.), *cert. denied*, 510 U.S. 980 (1993); *Jackson v. State*, 704 So. 2d 500, 507 (Fla. 1997).

V

THE TRIAL COURT ERRED IN FAILING TO FIND THE STATUTORY MITIGATING CIRCUMSTANCE THAT THE DEFENDANT DID NOT HAVE A SIGNIFICANT PRIOR HISTORY OF CRIMINAL ACTIVITY, IN VIOLATION OF SECTION 921.141, FLORIDA STATUTES, ARTICLE I, SECTION 17 OF THE FLORIDA CONSTITUTION, AND AMENDMENTS VIII AND XIV TO THE UNITED STATES. CONSTITUTION.

The trial court rejected the statutory mitigator that the defendant had no significant history of criminal activity because, as stated by the court, "the defendant, prior to committing the crimes involved in this case, burglarized the Goodine home on other occasions, made threatening and harassing phone calls to the Goodine Family, and stalked Margaret Goodine," and "also committed criminal mischief when he mistakenly threw paint on the car of Margaret's friend because he thought it was another man's car." (R. 2206).

However, all of this prior criminal activity was substantially related to the murders, and accordingly could not be used as a basis for rejecting the application of this statutory mitigator. *Craig v. State*, 685 So. 2d 1224, 1231 (Fla. 1996).

Contemporaneous criminal conduct cannot be considered as prior criminal activity. *Scull v. State*, 533 So.2 d 1137 (Fla. 1988).

In *Craig*, the manager of a cattle ranch killed the owner of the ranch after the latter discovered that the defendant was stealing his cattle. Evidence of the uncharged cattle thefts committed by the defendant was held to be admissible because the thefts were relevant to show the defendant's motive for committing the murder and because they were not wholly independent of the murders but rather were an integral part of the entire factual context in which the charged crimes took place. *Craig v. State*, 510 So. 2d 857, 863 (Fla. 1987). The trial court found as a mitigating circumstance that Craig had no significant history of prior criminal activity, rejecting the state's argument that the cattle thefts should be considered in rebuttal of this mitigating factor. This Court upheld the trial court's conclusion, holding that the evidence in the record supported the trial court's ruling that the cattle thefts were substantially related to the murders. 685 So. 2d at 1231.

Here, as in *Craig*, the purpose of introducing the collateral crimes evidence was to show the defendant's motive for committing the murders, and the context out of which they arose. According to the prosecutor, the collateral crimes showed that the motive for the murders was the defendant's anger at Ms. Goodine for breaking up with him, and his desire to get back together with her. (T. 102-3). The court apparently viewed this evidence as indispensable to the prosecution's case, stating:

"I do not understand how the State can present their case, especially with the testimony of Margaret Goodine, especially based on their theory of prosecution, without going into some of the prior situations." (T. 105).

Because the collateral criminal conduct was substantially related to the murders, and an integral part of the factual context out of which the murders arose, it was error to consider it as prior criminal history. *Craig*; *see also Scull.*

VI

THE DEATH SENTENCE IS DISPROPORTIONATE, IN VIOLATION OF SECTION 921.141, FLORIDA STATUTES, ARTICLE I, SECTION 17 OF THE FLORIDA CONSTITUTION, AND AMENDMENTS VIII AND X1V TO THE UNITED STATES CONSTITUTION.

This Court has recently reaffirmed that the death penalty is reserved under Florida law for only those case in which "the crime falls within the category of both (1) the most aggravated, and (2) the least mitigated of murders." *Almeida v.* State, 24 Fla. L. Weekly S336, 339 (Fla. July 8, 1999); *accord Cooper v. State*, 24 Fla. L. Weekly S383 (Fla. July 8, 1999); *Kramer v. State*, 619 So. 2d 274, 278 (Fla. 1993). The present crime, though horrible and senseless, is neither one of the most aggravated nor the least mitigated of murders this Court has reviewed.

The trial court found that it was apparent that Mr. Connor was mentally ill and seriously troubled, and determined that this factor should be given "substantial weight" as nonstatutory mitigation (R. 2214). The court also found in nonstatutory

mitigation that Mr. Connor had been a good father to his children, that he will die in prison if given life sentences, and that he had adjusted to incarceration and was likely to continue that behavior. (R. 2216-17).

The record shows (as set forth in Argument IV above) that the crimes were committed under the influence of extreme mental or emotional disturbance and that Mr. Connor's capacity to appreciate the criminality of his conduct and conform to the requirements of law was substantially impaired. The record also shows that the murders were the direct result of his mental illness.

For most of his life, Mr. Connor has suffered from organic brain damage and paranoid thinking. (T. 583, 700, 709, 729, 780, 5498-5500). He is also of low average intelligence and has a speech impediment. He came from a small island in one of the most impoverished countries in Central America. But he was willing to work hard, took pride in supporting his family, and was determined to make a better life for his children. Despite his substantial social and mental disadvantages, by the late 1970s he had achieved, through hard work and self-control, a modest prosperity. He obtained a job with the county and worked up to the position of heavy equipment operator. He was an enthusiastic, punctual worker, and was well regarded by his supervisors. (T. 583, 4767, 5700-1). He bought a small house where he lived with his wife and five children. He encouraged his children to become educated and to lead moral lives. (R. 2216). Two of them became the first persons in his family to obtain

college degrees. (T. 5341, 5379-80).

But as he entered middle age, his mental faculties and ability to function were slowly deteriorating, as a result of the progressive worsening of his organic brain damage and paranoia, to which, Dr. Jacobson testified, his hypertension and vascular disease likely contributed. (T. 700, 714-15). By 1986, when Mr. Connor was in his mid-forties, his capacity to function had deteriorated dramatically. (T. 713-14, 5665-66). He was no longer the exceptional employee he once had been. He was fired from his county job because his increasingly bizarre conduct impaired the operation of the whole work unit. (T. 5706). Thereafter, he would only hold temporary jobs. He was no longer able to control his paranoia. He interpreted every setback (such as the loss of his job, and, later, the loss of his civil suit against the city) as the result of a conspiracy. (T. 5551, 5575-76). He became preoccupied with a law suit against the City of Miami Police Department for an alleged theft of several hundred dollars, which, he said, had been taken from him during an illegal arrest for stealing a piece of chapstick. (T. 586, 5559, 5592-93, 5669).

A few years later, Mr. Connor's life, and mental state, took another turn for the worse. In the months preceding the murder, Mr. Connor suffered three major blows. His father was brutally murdered in 1991. (T. 646-48, 5670). He lost his civil suit against the city of Miami in May 1992. (T. 586, 5669-70). Almost at the same time, Ms. Goodine broke off her relationship with him. (T. 3728-29, 4585). In contrast to

the equanimity Mr. Connor displayed when Ms. Goodine terminated an earlier relationship with him, this time Mr Connor became obsessed with reestablishing the relationship and intensely concerned that she might become involved with another man. He shot out the light on Ms. Goodine's front porch, threw a brick through the window, made threatening phone calls (including the puzzling threat that if "Mr. Seburt" was not at the Rolex Bar at a certain time, Ms. Goodine and her daughter Karen would be killed), and burglarized Ms. Goodine's house several times, taking only personal items of no real value. He believed Mr. Goodine and a neighbor had "put down a voodoo" to break up his relationship with Ms. Goodine.

As set forth in Argument V, above, Mr. Connor had no significant history of prior criminal activity until he began the pattern of bizarre and obsessive behavior that tragically culminated in the murders of Lawrence and Jessica Goodine. Just as his deteriorating mental state had resulted in the loss of his county job, the murders appear to have been the unplanned result of this mentally and emotionally disturbed behavior, organic brain damage, and paranoia which, together, render Mr. Connor unable to think logically or act appropriately when faced with highly stressful situations.

There is no evidence that Mr. Connor planned to murder anyone when he came to the Goodine residence on Thursday, November 19, 1992. Rather, it appears that he was surprised by Mr. Goodine while committing yet another burglary. Although

Mr. Goodine would stay at the house overnight, he would spend time at his other household during the day, and Mr. Connor had continued to take Ms. Goodine's personal items (R. 118-19). There is no evidence that Connor had reason to know that Mr. Goodine would be there at the time he came to the house. Mr. Goodine was killed by several blows with a blunt instrument, possibly part of a broken dining room chair, as the prosecutor suggested. (T. 3713). Mr. Connor had never argued or fought with Lawrence Goodine and did not view him as a rival. (T. 3762, 3790-91, 3794, 3798, 3805-6, 4593).

When Jessica subsequently came home, she was allowed to go across the street to ask the neighbor a question and to tell her friend that she was going to leave. (T. 3829, 3935). Mr. Connor then openly took her with him in his car. (T. 3830). His motives for taking her are not clear, but his actions were inconsistent with a plan to murder her. Mr. Connor loved and cared for Jessica as if she were his own child. He had never threatened to harm her. The circumstances of the murder, over a day later, suggest that it was a panicked reaction to the child's crying. (T. 4706, 5321, 5329). There was expert testimony that, because of his organic brain damage and paranoia, Mr. Connor could not think or act logically in a situation that had spiralled out of control. The only two experts asked to address the question concluded that Mr. Connor committed the murder under the influence of extreme mental disturbance, and that Mr. Connor's capacity to appreciate the criminality of his conduct or to conform

his conduct to the requirements of law was substantially impaired. The opinions of Dr. Eisenstein and Dr. Mosman in this regard were not controverted by other expert testimony, and were supported by extensive testing and interviewing, by a review of police reports and other records, and by the facts of the defendant's life history.

These facts show the inapplicability of two of the aggravators found by the court (CCP and avoid arrest, see Arguments II and III, above), and mitigate the weight of the remaining aggravators, *see Huckaby v. State*, 343 So. 2d 29 (Fla. 1977) (death sentence disproportionate where the heinous and atrocious manner in which the crime was committed and the great risk of harm to which members of defendant's family were exposed were the direct consequence of his mental illness); *Smalley v. State*, 546 So. 2d 720 (Fla. 1989) (frustrated by his inability to stop his girlfriend's 28-month-old child from crying, the defendant killed her by banging her head on the floor several times; despite valid HAC aggravator, the death penalty was held disproportionate where there was a lack of significant prior criminal activity, and the defendant cared deeply for the child, was not normally abusive to children, felt genuine remorse, was a willing worker and good employee, and his mental state was apparently the major contributing factor in the killing); *see also Klokoc v. State*, 589 So. 2d 219 (Fla. 1991) (defendant, who had an ongoing history of violence towards his family, killed his daughter to spite his estranged wife; death penalty held disproportionate despite valid finding of CCP, where although the murder occurred

when the defendant was not in a heightened rage, it was unrefuted that he was under extreme emotional distress, he suffered from bipolar affective disorder, manic type with paranoid features, and he had no record of prior criminal activity); *De Angelo v. State*, 616 So. 2d 440 (Fla. 1993) (despite CCP aggravator, and death by strangulation, death penalty not warranted where there was evidence of brain damage, hallucinations, delusional paranoid beliefs, and mental disturbance).

This Court has reversed the death penalty in cases where multiple aggravators were posed against comparable mitigation. *See Blakely v. State,* 561 So. 2d 560 (Fla. 1990) (longstanding marital discord culminated in an argument during which the defendant bludgeoned his wife to death with a hammer; death penalty disproportionate, despite HAC and CCP, where the court found no significant prior history of criminal activity and the defendant had committed no prior similar crime); *Farinas v. State*, 569 So. 2d 425 (Fla. 1990) (felony murder (kidnapping) and HAC in aggravation; defendant's obsessive behavior and jealousy tended to establish that the murder was committed under the influence of extreme mental or emotional disturbance and the murder was the result of a heated, domestic confrontation); *Wright v. State,* 688 So. 2d 298 (Fla. 1996) (death disproportionate where defendant with organic brain damage impairing his reasoning skills was distraught over losing his children, broke into his ex-wife's home and shot her, after shooting her sister in a prior argument); *Santos v. State,* 629 So. 2d 838 (Fla. 1994), 629 So. 2d at 840

(death disproportionate for killing of defendant's estranged girlfriend and their 22-month child where defendant was highly emotional, paranoid, and delusional, including complete denial that he had committed the murders), *appeal after remand by* 591 So. 2d 160 (Fla. 1991); *Maulden v. State,* 617 So. 2d 298 (Fla. 1993) (death disproportionate in double homicide of defendant's ex-wife and her new boyfriend where defendant suffered from untreated schizophrenia and depression); *Fitzpatrick v. State,* 527 So. 2d 809 (Fla. 1988) (death disproportionate despite prior violent felony, great risk, felony-murder (kidnaping), avoiding arrest, and pecuniary gain aggravators where defendant had brain damage and symptoms consistent with schizophrenia); *see also Robertson v. State*, 699 So. 2d 1343 (Fla. 1997)(death disproportionate in burglary/strangulation murder where defendant had substance abuse problem, history of mental illness and borderline intelligence).

Indeed, even where the aggravating circumstances include a discrete, additional homicide, this Court has found death to be disproportionate in the face of substantial mitigation, similar to the evidence presented in this case. For example, in *Almeida*, the defendant had two prior first-degree murder convictions. Nevertheless, death was not a proportionate punishment in the face of the "three statutory and many nonstatutory mitigators" present in the case. 24 Fla. L. Weekly at S339. The Court noted that all three of the homicides occurred during a six-week period, during which Almeida had been particularly upset due to a marital crisis. Almeida had been

severely abused as a child, resulting in a lack of impulse control. Mental health experts testified variously that he was schizophrenic; suffered from a mixed personality disorder with paranoid features; severe depression; post-traumatic stress disorder; and alcohol problems. *Id.*

In *Cooper*, the Court similarly set aside a death sentence despite the aggravators of felony-murder (robbery) and pecuniary gain, CCP, and prior violent conviction for an entirely discrete first-degree murder, committed during a subsequent robbery. Cooper's mitigation was similar to Connor's (though more hotly contested by the state), including evidence of organic brain damage, low intelligence, and mental illness (possible paranoid schizophrenia). 24 Fla. L. Weekly at S383. Cooper also had no prior criminal history (as of the commission of his first homicide). Although the trial judge in *Cooper*, like the trial court in this case, had rejected both statutory mental mitigating circumstances, this Court found the crime to be "one of the most mitigated killings we have reviewed." *Id.*

Cooper is a *more* aggravated case than this. Whereas the homicides in this case were the culmination of an increasingly bizarre course of conduct, fueled by Mr. Connor's apparent agitation over Margaret Goodine's termination of their relationship, Cooper was convicted of killing two total strangers during two, separate and carefully planned robberies. This Court has repeatedly recognized that killings arising from the combination of a defendant's mental and emotional impairments and

highly emotional, personal disputes are less aggravated than the sort of well-planned, murder-for-money homicide committed by Cooper. Moreover, while Cooper and Mr. Connor suffer similar mental impairments, Mr. Connor has a long history of struggling to overcome both his mental limitations and the extreme poverty from which he came -- and succeeding for a substantial time in maintaining gainful employment, providing for his family, and being a good father.

If death was not a proportionate penalty in *Cooper*, then it surely is not appropriate in this case in which the defendant stands sentenced to die for tragically killing a child he loved as his own, as a result of his deteriorating mental state, growing paranoia, and loosening grasp on reality.

CONCLUSION

For the foregoing reasons, appellant's convictions and sentence of death must be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded by mail, to the office of Assistant Attorney General FARIBA N. KOMEILY, Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 950, Miami, Florida 33131 this 12th day of October 1999.

_____
LOUIS CAMPBELL
Assistant Public Defender