IN THE SUPREME COURT OF FLORIDA

BARRY TRYNELL DAVIS, JR.,

Appellant, **CASE NO. SC15-1794**
L.T. No. 2013-CF-000124

v.

STATE OF FLORIDA **DEATH PENALTY CASE**

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, FLORIDA

ANSWER BRIEF OF THE APPELLEE

PAMELA JO BONDI
ATTORNEY GENERAL

JENNIFER L. KEEGAN
ASSISTANT ATTORNEY GENERAL
Florida Bar No.0105283
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3579 (tel)
(850) 487-0997 (fax)
capapp@myfloridalegal.com
Jennifer.Keegan@myfloridalegal.com
COUNSEL FOR APPELLEE

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PRELIMINARY STATEMENT

Citations to the record in this brief will be designated as follows: The record on appeal shall be referred to by the volume number followed by the appropriate page number; the supplemental record shall be referred to by "SR" and followed by the volume and page number; Appellant's Initial Brief shall be referred to by "IB" followed by the page number.

STATEMENT OF THE CASE AND FACTS

Background

On May 18, 2015, Appellant was found guilty by a jury for the murder of John Gregory Hughes and the murder of Heidi Ann Rhodes, committed on or about May 7, 2012. (10:1924-26) Appellant was also found guilty of twelve other offenses, including burglary of a dwelling, theft, two counts of grand theft auto, burglary of an unoccupied structure, fraudulent use of a credit card, three counts of forgery of a check, and three counts of uttering a forged check, committed in the weeks and months following May 7, 2012. (10:1924-26) The jury subsequently recommended death for the murder of Hughes by a vote of nine to three, and for the murder of Rhodes by a vote of ten to two. (10:1939) The trial court sentenced Appellant to death for the murders of Hughes and Rhodes on August 25, 2015. (13:2430)

Prior to trial, Appellant filed a Motion to Suppress Evidence in Unlawful Search. Appellant sought the exclusion of all evidence obtained during, and as a result of, a warranted search of his residence at 265 County Road 10a, in Walton County, Florida, on July 10, 2012. (2:277-87) The search involved a lawful warrant to search for Hughes' debit card at Appellant's home. (15:2830-16:2837) Appellant's primary arguments were that probable cause was not established, the information in the warrant was stale and lacked a proper nexus to the area searched, and the search exceeded the scope of the warrant when the investigators photographed and videoed the scene during the search. (2:277-87)

At the motion to suppress evidentiary hearing, Investigator Sunday and Investigator Brown both testified that they believed the debit card would be found at Appellant's home. (39:102, 144, 147) Investigator Brown explained that debit cards are usually kept in a person's physical possession or in their home, and he believed that it was likely that Appellant would not discard the debit card so he could use it again later. (39:147, 149) Investigator Laura Gainey, the crime scene investigator that photographed and videoed the search, testified that she was present at the team debriefing prior to the search, and the object of the search was to find a credit card with the name

John G. Hughes on it. (39:175) She also stated there may have been members of the team who believed stolen property might be found on the premises. (39:184-86) Gainey further explained that the purpose of her presence at the search was to photograph and video the premises to document the search pursuant to department policy. (39:175-76) There is no indication in the record that the search team was seeking out any items other than the debit card.

Gainey provided a copy of the Walton County Sheriff's Office written policy, General Order 6-10, which governs search warrants. (39:176-77) General Order 6-10 was admitted into evidence. (39:178-79) Gainey testified that the Order requires investigators to photograph or video the premises to be searched before and after the search. (39:179, 15:2805-07) She further explained that wherever the search is happening, she photographs what is being done if it has evidentiary value. (39:179-180) Gainey believed that she took about as many photos as she usually would, and actually took far fewer photographs in this case than she did in a recent search, where she took approximately 350 photographs. (39:181, SR 2:31)

After hearing testimony and carefully inspecting the photos Gainey took, the trial court found that the photographs and testimony did not indicate that an "inventory search" was

conducted (5:992), but rather that the investigators were following department policy. (5:992-93) The trial court denied the motion to suppress on all grounds. (5:993)

Guilt Phase

On Wednesday, May 9, 2012, Rhodes failed to show up for work, and her boss, Ray Webb, became concerned. (58:1192, 1195) He was aware that Rhodes had a relationship with Hughes (58:1193), and the following day he drove to both her house and Hughes' house looking for her. No one was at either home, and Hughes' house looked empty, with cleaning materials outside. Within a day or two, he reported her missing. (58:1195) On May 24, 2012, Matt Makowski, a Walton County Sheriff's Deputy, went to Hughes' home in response to a missing person report filed by Rhodes' sister, and found the house empty and locked. (58:1200-01) The following day, Investigator Steven Sunday began a missing person case for Rhodes. (59:1456)

On May 29, 2012, Investigator Sunday went to Hughes' home and found it bare of any furniture, decorations, or other fixtures with mail piling up at the mailbox. (59:1459-61) An inquiry with the post office revealed he had not given a forwarding address nor assigned an agent to collect his mail. (59:1493) There were no records of Hughes or Rhodes travelling internationally. (59:1464) Investigator Sunday also identified

Kellie Kamens and William Smith as holding power of attorney over Hughes. (59:1461) Kamens testified that they never authorized Appellant to sign checks for Hughes, to use Hughes' debit card, or to enter Hughes' home or shed. They also never authorized Appellant to take Hughes' Cadillac Escalade, his motorcycle, or any of his other belongings. (67:2970-71)

Investigator Sunday spoke to neighbors as well. At trial, Julie McClosky, Hughes' neighbor, testified that she saw an orange and white truck in May 2012, that she assumed to be a U-haul parked at his place, but did not see anyone there. (58:1327, 1334) Sam Doungdara, another neighbor, also testified that she saw a large moving truck one day at Hughes' house and remembers seeing a black man and a white man by the shed around the same time she saw the truck. (59:1354, 1356, 1359-62) She was certain that the white man she saw was not Hughes, and never saw Rhodes there while the moving truck or men were there. (59:1362-63) Investigator Sunday called multiple U-haul dealers in the nearby area, and all confirmed they had not rented a U-haul to Hughes or Rhodes. (59:1466-67)

On June 1, 2012, Investigator Sunday and Lieutenant Lorenz entered Hughes' home through an open door that had been locked on his previous visit. (59:1469-71) The house was empty and in the master bedroom the back right corner of the wall a large

portion of the sheetrock had been removed. (59:1472) They located a few items, including some Auburn jackets, a golf bag, and some clothing. (59:1473) Susan Hughes, Hughes' cousin, testified that when she entered the house for the first time several months later, she noticed some personal items that had been left behind, including a serenity prayer hanging on the wall that had been in their grandparent's home when they were both children. (61:1847) A search of the house for forensic evidence revealed that the area with the missing sheetrock had been scrubbed with a cleaning solution that bleached out the wall around the area where sheetrock had been removed. (59:1418, 1421-22) They searched every room and were unable to locate any blood. (59:1423) The forensic team later rechecked the bedroom wall where the sheetrock was removed and took samples of an area of the wall at the edge of the ripped sheetrock near the floor. (66:2746-47, 2749-50) The swabs from the wall revealed a full DNA profile that matched the DNA profile for Hughes. (68:3169-74)

During the investigation, Investigator Sunday determined that Hughes owned a 2003 Cadillac Escalade and a 2001 fishing boat and boat trailer, and Rhodes owned a Chrysler Sebring. (59:1476-78) On June 5th, 2012, Investigator Sunday spoke with John Sexton at Sunrise Marine (59:1479) who testified that

Hughes delivered his boat for extensive repair and renovation in January 2012. (69:3412) Hughes wrote check number 3934 for a $6,000 deposit for the work. (69:3412-16) Mr. Sexton's records reflect that Susan Hughes came and picked up the boat and paid the remaining balance of $3,709. (69:3417-18) While the boat was still under repair, a man called the marina representing himself as Mr. Hughes' assistant and asked about the status of the boat. (69:3419) About three weeks later, Sexton was contacted by Investigator Sunday regarding the missing person investigation. (69:3420-21)

That same day, Investigator Sunday also spoke with Hughes' cousin, Susan Hughes. (59:1479, 61:1839) When he previously called her and told her that Hughes was a person of interest in Rhodes' missing person case, she looked through his bank account at the First National Bank of Hartford, where she worked. (61:1839, 1843) She found two checks that had cleared his account for large amounts. (61:1845) One was check number 4048, dated May 19, 2012, for $3,500.40 and the other was check number 4101, dated May 24, 2012, for $8,340. Both checks were made out to Barry Davis. (59:1480, 70:3675) Upon examining the signature on the checks, Susan Hughes immediately recognized that it was not Hughes' signature. (61:1845-46) A third check came in later, deposited on June 9, 2012. It was also made out to Barry Davis,

number 4052, dated May 26, 2012, for $4,087. Susan Hughes testified that Hughes also did not sign that check. (61:1846-47, 70:3675)

Investigator Sunday became aware that Hughes' debit card was still being used. (59:1518-19) On June 13, 2012, he contacted the Express Lane Convenience Store in Freeport, Florida, and the Wal-Mart in DeFuniak Springs, Florida, to get video surveillance footage from them. (59:1519) The Express Lane video depicts Appellant using Hughes' debit card at the store on May 18, 2012. (20:3818-3830, 70:3669-70) The DeFuniak Springs Wal-Mart video depicts Appellant using Hughes' debit card at the store on May 10 and May 18, 2012. (20:3811, 70:3672-73) Investigator Sunday later got surveillance footage from a St. Cloud Publix (60:1560) that was stipulated to depict Appellant using Hughes' debit card to withdraw $200 at an automated teller machine on May 11, 2012. (60:1577)

On July 10, 2012, a search warrant was executed on Appellant's home in DeFuniak Springs, Florida, to search for Hughes' credit card. (16:2830-37) The debit card was never located, but photographs of Appellant's home were taken during the search on July 10. (64:2438-39) The photographs were shown to numerous individuals who knew Hughes and were familiar with his household, and they identified numerous items of Hughes'

property depicted in the photographs. (60:1564, 1567, 1568, 65:2571-79, 67:2981-88, 3037-49)

Donna Gee, accompanied by Appellant, rented a 26-foot U-haul truck on May 14, 2012, and a storage unit. She returned the truck on May 18. (61:1815, 1819, 1829) Appellant also rented an additional U-haul truck and a storage unit a few days later. (61:1820) Mark Carley, the operator of the storage unit business, remembers seeing them loading and unloading the trucks over a period of days, and remembers seeing Appellant driving a white Cadillac Escalade during that time. (61:1819, 1821-22) On June 18, 2012, Investigator Sunday served a search warrant on storage unit 20, which was rented in Appellant's name. (59:1540) Inside the unit they found four metal barstools (59:1541) that were later identified as belonging to Hughes. (70:3547)

Hughes' Cadillac Escalade was located on the property of Kenneth Ingram, an acquaintance of Appellant. (65:2588) The vehicle was parked and covered by a tarp. (64:2441-45) The interior of the vehicle was covered in mildew, most of the carpeting had been removed, and the rear seat had been removed. (64:2457-58, 60) The forensic team applied a chemical reagent to detect blood, and several areas throughout the vehicle reacted, indicating the possible presence of blood. (64:2462-64) The samples were tested and could not be linked to Appellant,

Hughes, or Rhodes. (68:3157-62) Cecil Galloway testified that he assisted Appellant in removing the bench seat and the carpet in the back of the Escalade (62:2109-11), and watched Appellant spray the inside, outside, and undercarriage of the Escalade with a solution that smelled like bleach. (63:2112-13) When Galloway asked why all of this was being done, Appellant told him there was a body in the trunk. (63:2115)

Around the same time the Escalade was discovered, both of Hughes' nightstands were recovered from Gee's storage unit in October 2012. (65:2685-86) One of the nightstands tested positive for blood (65:2686), and DNA analysis matched the blood to Hughes' DNA profile. (68:3165-66)

Tiffani Steward testified that Appellant had been her boyfriend for years and was the father of her child. (70:3587) Prior to the murders, he was having serious financial trouble and his electricity was turned off by his electricity provider in late April 2012. (70:3609-10) On May 7, 2012, Appellant told Steward he needed to go collect money from someone and she insisted on coming along, even though it was clear he did not want her to. (70:3596-97, 3611) When they arrived at Hughes' home he invited them in, but did not appear to have been expecting them. Hughes and Rhodes were in the middle of cooking

dinner and invited Steward and Appellant to stay for dinner and have margaritas. (70:3616)

During the few months preceding May 7, 2012, Appellant made comments to Steward about kidnapping Hughes, and said, "I got to get him." (70:3612) Appellant told her that Hughes had money, and Steward had noticed that he had nice things and appeared to be financially stable. (70:3613) Appellant also told her that he was going to kidnap Hughes and hold him for ransom. (70:3614) During the ride to Hughes' house, Appellant complained about his financial situation and told Steward he did not have any drugs to sell. Regarding Hughes, he said, "Baby, I got to get him. I got to get him." He also said he had to "whack him off." (70:3615)

That evening, Rhodes did not have all the ingredients to make margaritas, so Steward drove Rhodes to the grocery store to pick up some items. (70:3617) While Steward was waiting in the car in the parking lot for Rhodes to come out of the grocery store, Appellant began calling repeatedly to ask where she was and when she was coming back. (70:3620-22) Steward did not testify that Appellant sounded hysterical or emotional during the repeated phone calls.

When Steward and Rhodes arrived back at the house, Appellant was at the door telling them to hurry up and come

inside. When Steward walked through the door Appellant shoved her behind the door and told her to lock it when Rhodes came in. (70:3623) Steward attempted to obey him, but her hands were shaking. When Rhodes walked in, he shoved her against the wall, and she started yelling, "Barry, what did I do? What's wrong? What did I do?" He responded, "Shut up, bitch." Steward was very scared and screaming, and while he was hitting Rhodes, Appellant told her, "Shut up or you're next." He then yelled at Steward to leave the room so he could think. (70:3624-25) Steward complied and left the room and went into the kitchen area. She then saw Hughes lying on the bedroom floor near the wall. (70:3625-26) Steward saw blood everywhere, with large puddles of blood around his body. There was something that looked like a white sheet on top of him. (70:3626) She also saw blood on a lower corner of the nightstand that was nearby. (70:3641) She heard him making noise, like he was snoring, but he was not moving. (70:3630) She saw Appellant strangling Rhodes on the floor, and saw Rhodes with her hands up. After she was unconscious, he dragged her into the bedroom by her foot. (70:3627) Steward then saw Appellant walk over to the bathtub and turn the water on to fill the tub. He then told Steward to "Go get my bag out of the F'ing car." (70:3628) Steward complied without knowing what was in the bag, and brought it to him. When she returned, he was putting

Hughes and Rhodes into the bathtub face first. He pulled duct tape out of his bag and wrapped their ankles with it while their heads were submerged under water. (70:3629) Steward heard a noise coming from Hughes and Rhodes, and mentioned to Appellant that she thought they were still alive. And he told her no, the noise was just gas leaving the bodies. (70:3630) Steward repeatedly asked Appellant to let her leave as she was crying. He finally let her do so. Steward was crying on the witness stand during this testimony. (70:3630-31) When she left, Hughes and Rhodes were still in the bathtub, and that is the last place she saw them. (70:3632-34)

Shortly after Steward left Hughes' house, she stopped at a gas station, and saw Appellant pass the gas station in Hughes' white Cadillac Escalade. (70:3635) Appellant spoke to her on the phone and threatened her and her family, saying he would kill her family if she ever said anything. He had previously threatened to kill her father, so she believed the threat was genuine. (70:3636)

The following day, Steward was at Appellant's house when his electricity was reconnected. Appellant told Steward that day that he killed Hughes for money, and that he did not want to kill him, but Hughes ran. (70:3639-40) During the next several months, Appellant told Steward how he cleaned up the murder

scene. He pulled a wall out at the house that was in the right-hand corner of the bedroom where Hughes was laying because there was blood everywhere. (70:3641) He also told her he bleached the floor, wrapped up Hughes' and Rhodes' bodies and put them in the Cadillac Escalade for a few days (70:3642), then he cut up the bodies and burned them at his home in New Harmony, Florida. A few days after the murders, Steward heard a saw running from sundown until 4am or 5am the next morning, and later saw Appellant bringing a large amount of firewood to the house, but never personally witnessed Appellant dispose of the bodies. (70:3643-44) Steward saw a burn barrel out in the yard, and saw Appellant bleaching the porch near where the saw noise had been coming from. She later saw him dragging a blue storage container across the yard toward the firewood that smelled horrible and looked very heavy. (70:3646-49)

Steward testified that Appellant had possession of Hughes' cellular phone after the murders, and he would check the voicemails on the phone to see if anyone was looking for Hughes or Rhodes. (70:3652) He told her he also used Hughes' debit card and would ask her for advice on how to make the checks look believable when he was writing checks from Hughes' account to himself. (70:3650, 3673, 3679-82) Steward recalled that when Appellant was writing out the last check, he backdated it to

throw off the investigation because he had just been interviewed by Investigator Sunday and he wanted the check to have a similar date to the others. (70:3688) Steward was present at Appellant's residence when a large amount of furniture, art, scuba gear, a scooter, boat motor, televisions, and a stereo were moved in. (70:3683) She had not seen these items in any of Appellant's previous residences or in Appellant's possession prior to May 7, 2012. (70:3684) During direct-examination, the State never questioned Steward on whether Appellant possessed a firearm on the night of the murders.

During cross-examination, defense counsel questioned Steward on a sworn statement she gave to law enforcement on November 13, 2012, in which she stated that Appellant did not take a firearm with him on the night of the murders. (71:3894) In an attempt to demonstrate inconsistency, defense counsel then questioned Steward on a portion of a note she later wrote to Investigator Armstrong in January 2013, telling Investigator Armstrong that she now recalled Appellant taking a firearm with him. (71:3897) Defense counsel questioned her on the lack of corroborating evidence of a firearm, asking, "[w]ell, you didn't see a gun that night … You didn't see any gun shells on the floor, did you?" (71:3897)Throughout this portion of the cross-

examination, defense counsel expressed disbelief at Steward's account. (71:3897-99)

On redirect-examination, the State read an additional portion of the note not discussed during cross-examination. The State read, "Barry said he made Hughes open a safe and there was pills, weed, and car title in the safe. Barry said Hughes tried to run to his cell phone located on the nightstand. Makes sense, because when I saw Hughes and the blood, he was laying in front of the nightstand." (71:3905) Defense counsel objected on relevance and hearsay. The State argued that it was admissible under the Rule of Completeness, and the court overruled the objection because defense counsel opened the door. (71:3906) Steward then testified that she had never said that Appellant told her he shot Hughes, she had always maintained that he hit them. (71:3906-07) The following exchange then occurred:

Q. And you never said you saw a gun that night; is that correct?

A. Correct.

Q. You had only seen a gun in the past in the possession of Mr. Davis? (71:3907)

Steward was answering "yes" at the same time defense counsel objected that the questioning was irrelevant, prejudicial, and not probative. The trial court overruled the

objection. (71:3907) During closing argument, the State said, "she's seen him with a black revolver in the past, and he's not the first drug dealer to have one." (73:4218) Defense counsel did not object to that statement. (73:4218-19)

During closing argument, while describing Steward's testimony of Rhodes' murder, the State displayed a photograph of Steward crying while on the witness stand. The photograph was treated as a demonstrative aid. (SR 2:38, 73:4185-86) Defense counsel objected to display of the photograph because it was an emotional appeal to the jury. The State argued that displaying the photograph was no different than reminding them that she tearfully testified. The trial court overruled the objection because it was an accurate display of her demeanor during her testimony. (73:4186)

During trial several witnesses testified to hearing confessions from Appellant. While Steward and Appellant were arguing at Donna Gee's house, she overheard an argument between them during which Appellant screamed, "I killed two people for our family to survive, to be able to make it." (62:1972) Her teenage daughter, Takylah Glenn, also overheard an argument in her mother's house between Steward and Appellant. (61:1866-67) Glenn testified to hearing Appellant shout, "I killed two people for this family." (61:1867) One day, Glenn also overheard

Appellant talking on the phone about committing a murder. (61:1868) She heard him telling someone on the phone that a man owed him money and he went to go beat him up, but he accidentally killed him. The man's girlfriend walked in and was freaking out, so he had to make her pass out. (61:1868) He also explained that he had to tear down a wall because there was blood on it, he killed them both, and burned their bodies. (61:1869-70) Makenzie Roulhac, Gee's cousin, also overheard an argument at Gee's house between Steward and Appellant. (63:2235-36) She did not pay attention to everything being said during the argument at the house (63:2239), but after the argument, Roulhac was in a car with Steward and Appellant, driving to Steward's father's house. (63:2237) While Steward and Appellant continued arguing, Roulhac heard Appellant telling Steward she was ungrateful and selfish, and he said, "I killed two people for our family." (63:2240, 2248, 2252)

Penalty Phase

On May 20, 2015, the trial reconvened for the jury penalty phase. (74:4411) The defense proceeded with testimony before the State and called as penalty-phase lay witnesses Appellant's mother, Bolita Brown; Appellant's uncle, Mike Brown; Appellant's father, Barry Davis, Sr.; Appellant's stepmother, Debbie Davis; and Keanna Davis, Appellant's sister. (74:4443-75:4550, 77:4931-

4936) As expert witnesses, Appellant's defense counsel called Dr. Geoffrey Colino, Dr. Julie Harper, and Dr. Joseph Wu. (75:4553-77:4869) The State then called Lieutenant Angie Hogeboom as a lay witness, and Dr. Gregory Prichard as an expert witness. (77:4942-78:5071)

The jury was instructed on four aggravating factors (aggravators) for Hughes' murder: 1) the defendant was previously convicted of another capital felony; 2) the capital felony was committed while the defendant was engaged in the commission of or an attempt to commit robbery; 3) the capital felony was committed for financial gain; and 4) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification (CCP). (10:1946-47) The jury was instructed on six aggravators for Rhodes' murder: 1) the defendant was previously convicted of another capital felony; 2) the capital felony was committed while the defendant was engaged in the commission of or an attempt to commit or flight after committing or attempted to commit any robbery or burglary; 3) the capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody; 4) the capital felony was committed for financial gain; 5) the capital felony

was especially heinous, atrocious, or cruel (HAC); and 6) CCP. (10:1947)

The jury was instructed on four proposed mitigating circumstances (mitigators): 1) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance; 2) the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired; 3) the age of the defendant at the time of the crime; 4) the existence of any other factors in the defendant's character, background, or life, or the circumstances of the offense that would mitigate against the imposition of the death penalty. (10:1949-50) Following the penalty phase, the jury recommended death by a vote of nine to three for Hughes' murder and ten to two for Rhodes' murder. (10:1939)

On August 25, 2015, the trial court issued a sentencing order imposing the death penalty for the murder of Hughes and Rhodes. (13:2407-30) In its sentencing order, the trial court found all of the same aggravators for Hughes' and Rhodes' murders that were instructed to the jury, and gave each great weight. However, for both murders, the trial court merged the aggravator that the murder was committed during a robbery and/or burglary with the aggravator that the murder was committed for

pecuniary gain, and considered both as a single aggravator. (13:2408-13) As justification for the CCP finding for Hughes' murder, the trial court found the following facts:

> There was no moral or legal justification for the killing of John Gregory Hughes. The defendant needed money, and he knew that John Gregory Hughes had money and valuable possessions. The defendant also knew that John Gregory Hughes was of slight build and had a physical handicap in one hand. The defendant told Tiffani Steward that he had to "get" John Gregory Hughes and "whack him off," and the defendant's actions show that he carried out that intent. After the defendant attacked John Gregory Hughes and rendered him unconscious, the defendant could have fled, but he instead remained at the scene waiting for Tiffani Steward and Heidi Rhodes to return. John Gregory Hughes was still alive at this point, as indicated by a "snoring" sound later observed by Tiffani Steward. When the defendant attacked Heidi Rhodes he told Tiffani Steward to leave the room so he could "think." After the defendant incapacitated Heidi Rhodes, he told Tiffani Steward to bring him his backpack. The defendant retrieved duct tape from the backpack, bound the victims with the tape, coldly placed both victims in the bathtub, and submerged their heads underwater to ensure their deaths.

(13:2410)

As justification for the finding that Rhodes' murder was committed for the purpose of avoiding arrest, the trial court found the following facts:

> The defendant, after having incapacitated John Gregory Hughes, communicated with Tiffani Steward via cell phone while she was away from home with Heidi Rhodes, and he requested Tiffani Steward to return. There was no evidence that the defendant had made statements of intent to take property from Heidi Rhodes or that she had any property of significant value. Heidi Rhodes

> would have been able to identify the defendant, and indeed, she called out his name when he was attacking her. There is no evidence that Heidi Rhodes posed any physical threat to the defendant or provoked his attack. The defendant's primary purpose for murdering Heidi Rhodes was to avoid or prevent arrest for the crimes he committed, and was in the process of committing, against John Gregory Hughes.

(13:2411-12)

In addition to the aggravators, the trial court also found numerous non-statutory mitigators. (13:2416) The trial court rejected all three proposed statutory mitigators as unproven. (13:2413-16) Of the 44 mitigators considered, the trial court found that 40 of those were established by the evidence. Of the 40 established by the evidence, the trial court allocated little,[1] moderate,[2] or substantial weight[3] to 20 of them. The majority of the individual mitigators encompassed common themes or issues, such as the Appellant's good acts or his family environment. (13:2416-27) For example, the mitigators that Appellant saved an elderly man from drowning and that he provided financial support to Donna Gee and her daughter are both listed individually in the sentencing order, but both focus

[1] The mitigators allocated little weight are numbered 1), 3), 4), 7), 11), 19), 21), 24), 28), 34), 37), 43), and 44) in the sentencing order.

[2] The mitigators allocated moderate weight are numbered 12), 14), 15), 35), and 39) in the sentencing order.

[3] The mitigators allocated substantial weight are numbered 20) and 21) in the sentencing order.

on the common theme of Appellant's good acts. (13:2420, 2426) Additionally, numerous mitigators focused on the common theme of Appellant's cognitive function and psychological health. (13:2417-23, 2425, 2427)

After weighing all of the aggravators and mitigators, the trial court concluded, "[t]he aggravating circumstances far outweigh the mitigating circumstances." (13:2428)

SUMMARY OF THE ARGUMENT

The trial court properly denied Appellant's motion to suppress and properly admitted evidence obtained during and as a result of the July 10, 2012, search of his home. The investigators' documentation of their search with photographs and video was permissible and done according to department policy. By only taking photographs and video of items that came into plain view during the normal course of the search, the investigators acted within the boundaries of the search warrant.

The trial court properly admitted evidence that Appellant previously possessed a revolver. This evidence was admitted to rebut defense counsel's impeachment of Steward's prior inconsistent statement. The State did not elicit testimony on direct-examination regarding Appellant's possession of any firearms, but defense counsel opened the door to this issue during cross-examination. Steward's testimony that Appellant had previously possessed a revolver was elicited on redirect-examination in rebuttal to defense counsel's impeachment. Defense counsel opened the door to this testimony, and the trial court did not abuse its discretion by admitting it.

The trial court properly permitted the State to display a photograph of Tiffani Steward crying. The State used a photograph of Steward crying during trial as a demonstrative aid

during closing argument. The photograph was not inflammatory and was an accurate depiction of Steward as the jury saw her during her testimony. The trial court did not abuse its discretion in allowing the demonstrative aid to be used.

Appellant is not entitled to relief under Hurst v. Florida, 136 S. Ct. 616 (2016). The jury unanimously found a sentencing aggravator for both murders during the guilt phase of Appellant's trial, satisfying the requirements of Ring v. Arizona, 536 U.S. 584 (2002), and Hurst. Any potential Sixth Amendment error would clearly be harmless beyond any doubt on the facts of this case. Appellant is not entitled to be resentenced to a life sentence under section 775.082(2), Florida Statutes, because this statute only applies where the death penalty itself is held to be unconstitutional, and Hurst struck down Florida's process for imposing capital sentences, not capital sentencing itself.

The trial court properly found that Rhodes' murder was committed for the purpose of avoiding arrest. The evidence establishes that after attacking and incapacitating Hughes, Appellant had the opportunity to flee, but instead waited at the house for Rhodes and Steward to return and even called Steward and told her to hurry up. Rhodes knew Appellant and would have been able to identify him later, and there is no evidence that

Appellant intended to rob her, nor that she owned anything of value. Competent, substantial evidence supports the trial court's findings.

The trial court properly found that Hughes' murder was committed in a cold, calculated, and premeditated manner (CCP). The evidence establishes that Appellant made numerous threats against Hughes' life before the murder. After attacking and rendering Hughes unconscious, Appellant waited to kill Hughes until Rhodes returned to the house and he could attack her as well. When he drowned them, he used tape he brought with him to bind their ankles. Competent, substantial evidence supports the trial court's findings.

The trial court properly evaluated non-statutory mitigating circumstances. The trial court carefully considered all of the non-statutory mitigators in this case, and the evidence at trial did not compel different findings than those rendered by the court.

Appellant's capital sentence is proportionate and supported by sufficient evidence. Upon review of capital cases with aggravators and mitigators similar to the present case, it is clear that the present case is among the most aggravated and least mitigated and is supported by sufficient evidence. The capital sentence should not be disturbed.

ARGUMENT

ISSUE I: THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION TO SUPPRESS AND PROPERLY ADMITTED EVIDENCE OBTAINED DURING AND AS A RESULT OF THE JULY 10, 2012, SEARCH OF HIS HOME

A. The officers did not conduct any unlawful search or seizure during the July 10 search[4]

Appellant incorrectly argues that the actions of the officers who executed the July 10 search warrant exceeded the scope of the search warrant. Specifically, Appellant argues that taking photographs and videos of items within plain view of the officers while they were conducting the search exceeded the scope of the warrant. (IB 47) The law does not support Appellant's argument because the act of documenting items in plain view while conducting a search is permissible under the Fourth Amendment to the United States Constitution.

Review of the trial court's denial of the motion to suppress requires this Court to apply a presumption of correctness to the trial court's findings of fact, but review any mixed questions of fact and law by a de novo standard. Wyche v. State, 987 So. 2d 23, 25 (Fla. 2008) (citing to Fitzpatrick v. State, 900 So. 2d 495, 510 (Fla. 2005)).

It is important to note that a "search" and a "seizure" are not the same in the eyes of the law. A "search" compromises the

[4] This issue addresses issues A, B, C, and D in Appellant's Initial Brief. (IB 45-57)

individual interest in privacy; a "seizure" deprives the individual of dominion over his or her person or property. Horton v. California, 496 U.S. 128, 133 (1990) (citing United States v. Jacobsen, 466 U.S. 109, 113 (1984)). The present case involved a lawful warrant to search for Hughes' debit card at Appellant's home. (15:2830-16:2837) Appellant argues that the boundaries of the warrant were exceeded by law enforcement officers because they conducted a "general exploratory" search of Appellant's residence. (IB 49, 54-55, 57) The record simply does not support this assertion. At the motion to suppress evidentiary hearing, Investigator Sunday and Investigator Brown both testified that they believed the debit card would be present at Appellant's home. (39:102, 144, 147) Investigator Brown explained that debit cards are usually kept in a person's physical possession or in their home, and he believed that it was likely Appellant would not discard the debit card so he could continue using it. (39:147, 149)

Investigator Laura Gainey, the crime scene investigator that photographed and videoed the search, testified that she was present at the team debriefing prior to the search, and the object of the search was to find a credit card with the name John G. Hughes on it. (39:175) While there may have been members of the team who believed stolen property might be found on the

premises (39:184-86), there is no evidence in the record that any instruction was given to seek out anything other than a debit card. (39:175, 182) Gainey further explained that the purpose of her presence at the search was to photograph and video the premises to document the search pursuant to department policy. (39:175-76)

The Walton County Sheriff's Office has a written policy, General Order 6-10, requiring investigators to photograph or video the premises to be searched before and after the search. (39:2805-07) Gainey testified that wherever the search is happening, she photographs what is being done if it has evidentiary value. (39:179-180) Furthermore, Gainey testified that she took about as many photos as she usually would, and actually took far fewer photographs in this case than she did in a recent search, in which she took approximately 350 photographs. (39:181, SR 2:31)

After hearing testimony and carefully inspecting the photos Gainey took, the trial court found that the photographs did not indicate that an improper "inventory search" had been conducted. (5:992) Rather, the trial court ruled that the photographs supported the testimony that the Walton County Sheriff's Office policy was followed during the search. (5:992-93)

The United States Supreme Court (Supreme Court) has long established that simply recording visible information, such as a serial number, is a search, not a seizure, within the meaning of the Fourth Amendment. Arizona v. Hicks, 480 U.S. 321, 324-25 (1987). Additionally, inspecting a portion of a piece of property that comes into view during and as the result of a lawful search does not constitute a separate, independent search. Id. at 325.

It is well established that that law enforcement officers are authorized to search throughout the specified premises for the items described in the warrant, so long as the areas and containers searched are ones in which the described items might reasonably be found. United States v. Ross, 456 U.S. 798, 820-821 (1982); Alford v. State, 307 So. 2d 433, 439 (Fla. 1975). The "search may be as extensive as reasonably required to locate the items described in the warrant." United States v. Wuagneux, 683 F. 2d 1343, 1352 (11th Cir. 1982). See Rimmer v. State, 825 So. 2d 304, 314-15 (Fla. 2002) (where searching a day planner, that did not appear incriminating on its face, was within the scope of the warrant because smaller items listed in the warrant, including trace evidence, blood, and shell casings, could have been contained within the day planner). Thus, a warrant authorizing a search for a small item, such as a debit

card, necessarily authorizes the search of any space in the specified premises in which the debit card could be contained.

A search that is authorized by a warrant can still violate the Fourth Amendment if the scope of the warrant is exceeded. For example, if an officer discovers concealed property during a warranted search by taking action that is not authorized by the warrant, a new, unwarranted search has occurred. Hicks, 480 U.S. at 324-25 (where an officer who was engaged in a lawful search moved a turntable to see its serial number, and this action was unrelated to the lawful search, such action did constitute a "search" separate from the lawful search in which the officer had been engaged).

Inventory searches are conducted as a caretaking function to protect the property owner and the police. Miller v. State, 403 So. 2d 1307, 1311 (Fla. 1981) (overruled on other grounds by Robinson v. State, 537 So. 2d 95 (Fla. 1989)). When conducted in good faith and according to routine police procedure, such searches are permissible. Miller, 403 So. 2d at 1312; Rolling v. State, 695 So. 2d 278, 294-95 (Fla. 1997) (holding that an inventory search of the defendant's tote bag at his campsite in which officer itemized the contents of the bag and cataloged stained money was a routine inventory search pursuant to a bank

robbery investigation and was reasonable in light of the circumstances).

In the present case, no evidence was presented that the officers moved or repositioned any items, or that any concealed items or spaces were revealed, for the purpose of photographing or videoing them. Unlike the officer in Hicks, the record does not indicate that the officers in this case were moving items for any reason other than to search for a debit card. In fact, Gainey testified that the officers appeared to be searching for a debit card, rather than conducting a general search. (39:175, 182) The record does not contain any evidence that the investigators exceeded the requirements of the department policy that Ms. Gainey detailed in her testimony. (39:177-80) She explained that as a matter of policy, they photograph what is happening if it could have any evidentiary value. (39:179-80)

Furthermore, the warrant authorized a search for John Hughes' Regions Bank debit card, which is very small in size. (16:2837) Much like the search of the day planner in Rimmer, the warrant that authorized the search for the debit card necessarily authorized the search of spaces in or under which a small item could be concealed. Rimmer, 825 So. 2d at 314. The photos taken at the scene do not depict anyone moving items that would not have otherwise been moved during the search for a

debit card. (SR 2:31) Therefore, the officers' actions complied with the requirements of Hicks, by not "taking an action unrelated to the objectives of the authorized search, which reveals concealed property." Hicks, 480 U.S. at 324-25.

The search, and the photographs taken during the search, were the result of the good faith actions of the search team. The trial court determined that the search team acted appropriately and according to a valid department policy. (5:992-93) Much like the inventory searches discussed in Miller and Rolling, the department's policy was in place to protect all the parties involved when a search is conducted. The evidence does not indicate that the search team acted outside the boundaries of their department policy or used the search as a pretext to look for evidence not described in the warrant, thus, the trial court's ruling should remain undisturbed.

Appellant mistakenly relies on the plain view doctrine and a Massachusetts Supreme Court case, Commonwealth v. Balicki, 762 N.E. 2d 290 (Mass. 2002), to make his point. Firstly, Appellant argues that the photographs and videos were impermissible because the criminal nature of the items was not immediately apparent. (IB 50-51) The reliance on the plain view doctrine is misplaced because under the plain view doctrine, an item may be seized without a warrant if: 1) the police see the item from a

place they have a lawful right to be; 2) the incriminating nature of the item is immediately apparent; and 3) the police have lawful access to the incriminating item. Pagan v. State, 830 So. 2d 792 (Fla. 2002). The plain view doctrine makes no provisions for situations where a seizure does not occur, and clearly only applies to seizures of property. As discussed supra, the actions of videoing and photographing items discovered or viewed during the course of a lawful search do not constitute a seizure, pursuant to Hicks, 480 U.S. at 324. The plain view doctrine is intended to create an additional hurdle for an officer to satisfy before seizing an object. Since the challenged actions constituted a search and not a seizure, Appellant's position is inconsistent with the purpose of the plain view doctrine.

Secondly, Massachusetts law is distinguishable from federal and Florida law because it has long required an inadvertence element to be satisfied as a precondition to applying the plain view doctrine.[5] Balicki, 762 N.E. 2d at 297 (citing Commonwealth

[5] The Supreme Court initially required that the seizure of items in plain view be inadvertent, Coolidge v. New Hampshire, 403 U.S. 443 (1971), but abandoned that requirement in Horton v. California, 496 U.S. 128 (1990). This Court has likewise departed from the inadvertence requirement. Jones v. State, 648 So. 2d 669, 677 (Fla. 1994) ("inadvertent discovery of the incriminating evidence is no longer considered an essential element of a valid plain view seizure").

v. D'Amour, 704 N.E. 2d 1166 (Mass. 1999)). Balicki discusses this unique requirement at length, explaining that the inadvertence requirement ensures that only evidence, which the police did not anticipate or know to be at the location of the search, can be seized under the plain view doctrine. Balicki, 762 N.E. 2d at 298. Appellant analogizes the facts in Balicki with the facts in the present case, but this comparison is not persuasive here because Balicki was decided based on the unique requirements of the plain view doctrine under Massachusetts law.

Balicki is also distinguishable from the present case on the facts. In Balicki, while it was common for photographers to be present when search warrants were executed, there is no indication that the department had a policy similar to Walton County Sheriff's Office policy to photograph or video the execution of search warrants. Balicki, 762 N.E. 2d at 295. There were also numerous incidents where officers moved items and property in order to take photographs or video of the items. Id. By contrast, in the present case, the record provides no indication that similar actions were taken. The photographs and video taken by the Walton County Sheriff's Office were within the scope of the search being lawfully conducted, and the trial court's ruling should be affirmed.

B. The evidence obtained during the July 10 search, as well as any evidence later derived from that search, was properly admitted by the trial court

Appellant argues that the exclusionary rule requires suppression of a wide variety of evidence in the case. While Appellee firmly contends that the entirety of the July 10 search was lawful, should this Court disagree, the evidence would be admissible under the inevitable discovery exception to the exclusionary rule. In Nix v. Williams, 467 U.S. 431, 448 (1984), the Supreme Court adopted the "inevitable discovery" exception to the "fruit of the poisonous tree" doctrine. Under this exception, "evidence obtained as the result of unconstitutional police procedure may still be admissible provided the evidence would ultimately have been discovered by legal means." Maulden v. State, 617 So. 2d 298, 301 (Fla. 1993). In adopting the inevitable discovery doctrine, the Supreme Court explained, "Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial." Nix, 467 U.S. at 446. In order to come within the inevitable discovery doctrine, the State must demonstrate "that at the time of the constitutional violation an investigation was already under way." Moody v. State, 842 So. 2d 754, 759 (Fla. 2003). In other words, the case must be in such a posture that the facts already in the possession of the police

would have led to this evidence notwithstanding the police misconduct. Id.

In the present case, Gainey testified that she believed others involved in the investigation thought there may be stolen property at the house. She further stated that those involved in the search were aware that furniture was missing from Hughes' residence. (39:186) If the officers had been without the benefit of a photographic or video recording device, they certainly still would have seen these items sitting out in plain view during their search. The officers could have easily described items of furniture, paintings, fixtures, and other property to Hughes' family members and friends during the investigation to seek identification of the items. It is clear that the officers would have eventually established probable cause that these items were stolen from Hughes and would have then secured a warrant. This case falls well within the parameters of the inevitable discovery exception.

Finally, should this Court find that the trial court erred in admitting the evidence in question, such error is clearly harmless. The overwhelming evidence of guilt presented in the case includes an eyewitness to the murders, previous threats made on Hughes' life by Appellant, video surveillance of Appellant using Hughes' debit cards and checks, among a wide

array of other evidence. When the evidence of guilt is contrasted with the minor role the challenged photographs played, any error is clearly harmless. See State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986); see also Almeida v. State, 748 So. 2d 922, 929-30 (Fla. 1999).

ISSUE II: THE TRIAL COURT PROPERLY ADMITTED EVIDENCE THAT APPELLANT PREVIOUSLY POSSESSED A REVOLVER

A. Evidence that Appellant previously possessed a revolver is highly relevant

Appellant incorrectly contends that Steward's testimony that Appellant previously possessed a revolver is not relevant. A trial court's ruling on the admissibility of evidence is reviewed for an abuse of discretion. Fitzpatrick v. State, 900 So. 2d 495, 514-15 (Fla. 2005). The rule of relevancy is defined in section 90.401, Florida Statutes, and provides, "[r]elevant evidence is evidence tending to prove or disprove a material fact." The credibility of a witness is always a relevant topic. § 90.608, Fla. Stat. (2015); Chandler v. State, 702 So. 2d 186, 195-96 (Fla. 1997); Butler v. State, 842 So. 2d 817, 827 (Fla. 2003). Furthermore, when a subject is raised or an action taken that "opens the door" to an issue, this allows evidence to be admitted that is otherwise inadmissible to "qualify, explain, or limit" testimony or evidence already admitted. Rodriguez v. State, 753 So. 2d 29, 42 (Fla. 2000) (citing Tompkins v. State, 502 So. 2d 415, 419 (Fla. 1986)). For example, in McCrae v. State, 395 So. 2d 1145, 1151 (Fla. 1980), defense counsel misled the jury during a direct-examination to believe that the defendant's prior violent felony was far less serious than it

actually was. This Court held that the State was then entitled to cross-examine the defendant on the nature of this prior felony, in order to rebut the impression created by defense counsel. Id.

In the present case, the evidence that Appellant previously possessed a revolver was highly relevant to rebut the impression created by defense counsel that Steward was lying. It is important to note here that much like the evidence in McCrae, the evidence in question was admitted to rebut evidence elicited by defense counsel. The State never elicited any evidence during Steward's direct-examination that Appellant had a firearm with him the night of the murders or at any time prior. (70:3586-3711) The first time the jury heard this information was during cross-examination when defense counsel brought up two prior statements made by Steward to law enforcement regarding whether Appellant had a firearm with him that night. (71:3891, 3897) Steward explained why mention of a firearm was only in the second statement, saying she "remembered later on" that Appellant told her he had a firearm with him. (71:3894, 3897) Defense counsel further questioned her on the lack of corroborating evidence of a firearm, asking, "[w]ell, you didn't see a gun that night." Defense counsel further pursued this line of questioning, asking, "[y]ou didn't see any gun shells on the

floor, did you?" (71:3897) Throughout this portion of the cross-examination, defense counsel repeatedly expressed disbelief at Steward's account that she had simply forgotten this detail in her first statement and included it when she remembered later. (71:3897-99) On redirect, the State properly elicited evidence from Steward to rebut defense counsel's cross-examination. (71:3904-08) Steward's testimony that she had not seen a gun that night but had seen one in Appellant's possession in the past (71:3907), is clearly relevant to rebut defense counsel's questioning on the lack of corroborating evidence to support her claim that Appellant possessed a firearm.

Appellant relies on Agatheas v. State, 77 So. 3d 1232 (Fla. 2011), and Jackson v. State, 25 So. 3d 518 (Fla. 2009), in an attempt to prove his point. However, these cases are clearly distinguishable from the present case. In both of these cases, the objectionable evidence was not admitted in situations where defense counsel opened the door to the issue and the prosecutor was attempting to rebut the issue opened by defense counsel. See Agatheas, 77 So. 3d at 1238-39; Jackson, 25 So. 3d at 528. Appellant further contends that in order for this evidence to be relevant, the State must show a link between this evidence and proving the charged crime. (IB 62) This is a clear misstatement of the law. The relevant evidence admitted in McCrae was related

to proving the nature of a prior offense, not to prove or disprove an offense presently charged in that case. McCrae, 395 So. 2d at 1151. Much like McCrae, the evidence that Appellant possessed a revolver in the past was highly relevant in this case because it properly rebutted an issue raised solely by defense counsel.

B. The probative value of the evidence that Appellant previously possessed a revolver clearly outweighs any danger of unfair prejudice

Appellant further contends that even if the evidence in question is relevant, it should have been excluded because it had very little probative value, inflamed the jury, and impermissibly appealed to the jury's emotions. (IB 64-65) This Court's precedent indicates that the evidence that Appellant previously possessed a revolver is relevant evidence that does not rise to the level necessary to require exclusion. Section 90.403, Florida Statutes, reads, "[r]elevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice…." This Court has repeatedly upheld the admission of relevant evidence that carries a far greater risk of prejudice and is far more emotionally charged than the evidence here. See Hertz v. State, 803 So. 2d 629, 641 (Fla. 2001) (where the probative value of gruesome photographs, taken of burned murder victims at the crime scene, outweighed

the risk of unfair prejudice because the photographs assisted crime scene technician testimony); Looney v. State, 803 So. 2d 656, 667-68 (Fla. 2001) (where the probative value of evidence of pursuit and capture of defendant and codefendant, including evidence that codefendant attempted to strike and knock down police officer with vehicle on the day of charged killings, outweighed the risk of unfair prejudice).

The probity of this evidence clearly outweighs any unfair prejudice because the evidence was introduced to rebut an issue raised by defense counsel, as discussed supra. Furthermore, Appellant's argument that the State grievously increased the alleged prejudice by linking Appellant's drug dealing and firearm possession in closing argument is without merit. (IB 65) Appellant did not find this statement offensive at the time it was made and failed to raise an objection at trial. (73:4218) The statement clearly did not inflame the jury and is not grounds for reversal as Appellant alleges.

The legal support for Appellant's argument is insufficient to establish prejudice. The only case Appellant relies on to support his position is a Second District court case in which evidence was admitted that the defendant had a firearm in his possession that was clearly unrelated to the same firearm used during the charged crime. Green v. State, 27 So. 3d 731, 734

(Fla. 2nd DCA 2010). This case is not binding on this Court and is dissimilar from the present case in several important ways. In Green, multiple firearms were found in the defendant's home that were forensically tested and determined to not be the same firearm used during the crime. Id. The victim in Green was also killed by a firearm, unlike Hughes and Rhodes. Id. Thus, the jury in the present case would not have drawn the same conclusions that were of concern in Green. Additionally, it appears that the evidence in Green was not admitted to rebut the defendant's evidence or to respond to an "open door" created by the defense. Id. at 737-38. Finally, the forensic evidence conclusively determined that the firearms found were not used in the charged offense. These facts are clearly unlike the present case, where the evidence in this case was offered in direct response to an issue opened by defense counsel (71:3894, 3897-99), making it highly probative. Additionally, the evidence helped to rebut the impression created by defense counsel that Steward's was a wild, unfounded accusation without any corroborating evidence. (71:3904-08)

Should this Court find that the trial court erred in admitting the evidence that Appellant previously possessed a revolver, such error is clearly harmless. As discussed supra, the firearm was not used to kill Hughes or Rhodes (70:3625,

71:3895-97), so the conclusions the jury may draw associated with admitting evidence of an unrelated firearm in other cases is not a risk in this case. Furthermore, there is nothing inherently prejudicial about possessing a firearm. The right to bear arms is constitutionally guaranteed and no evidence was presented to the jury that possession of a firearm by Appellant was illegal. Additionally, there was extensive evidence of guilt presented in this case, including an eyewitness to the murders (70:3586-3711) and multiple eyewitnesses to his admissions of guilt. (61:1867) Given the overwhelming evidence of guilt presented in the case, and the minor role the evidence in question played, any error is clearly harmless. See State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986); see also Almeida v. State, 748 So. 2d 922, 929-30 (Fla. 1999).

ISSUE III: THE TRIAL COURT PROPERLY PERMITTED THE STATE TO DISPLAY A PHOTOGRAPH OF TIFFANI STEWARD CRYING

Appellant incorrectly asserts that the trial court erred by permitting the State to display a photograph during closing that accurately portrayed Steward crying on the witness stand. There is no basis in fact or law to compel the trial court in this case to prohibit or limit the display of the photograph, which accurately depicted Steward's demeanor while on the witness stand.

A trial court's rulings regarding use of demonstrative aids are reviewed for an abuse of discretion. State v. Duncan, 894 So. 2d 817, 830-31 (Fla. 2004); Brooks v. State, 175 So. 3d 204, 240 (Fla. 2015). Demonstrative devices are permissible to aid the jury's comprehension of the evidence in the case. McCoy v. State, 853 So. 2d 396, 405 (Fla. 2003). The jury is charged with evaluating the reliability of witnesses, in part by considering how the witness behaved and what the witness said. Fla. Std. Jury Instr. (Crim.) 3.9. In Duncan, this Court found that the trial court's decision to allow a witness to use a dummy as a demonstrative aid to reenact the murder was not an abuse of discretion. Duncan, 894 So. 2d at 829. This Court noted that the defendant did not make any claim that the demonstrative aid was an inaccurate or unreasonable reproduction of the attack, and it

assisted the jury in its understanding of a relevant issue. Id. at 830-31. Much like Duncan, the defendant in Brooks did not contend that the demonstrative aid was inaccurate or an unreasonable reproduction of the facts, but rather that the demonstrative aid inflamed the emotions of the jury. Brooks, 175 So. 3d at 240. In Brooks, the prosecutor used a stabbing gesture in the air and raised his voice while counting the number of stab wounds inflicted on the victims during a reenactment of the murders. Id. at 239. This Court found that the trial court did not abuse its discretion in permitting the use of this demonstrative aid. Id. at 240.

Much like the facts in Duncan and Brooks, Appellant does not object to the use of the photograph because it was inaccurate or misleading, but because Appellant believes it "appealed to the jury's sympathy for Steward." (IB 68) The record clearly demonstrates that the photograph was an accurate depiction of Steward crying on the witness stand in front of the jury. (73:4186) The photograph was not used as an appeal to sympathy, but rather was used to aid the jury in their duty to evaluate Steward's testimony in light of her demeanor and what she said. See Fla. Std. Jury Instr. (Crim.) 3.9. The court overruled defense counsel's objection because the photograph was an "accurate display of the previous testimony and her demeanor

during — while she testified." (73:4186) Furthermore, the photograph of Steward crying is far less inflammatory or emotional than the reenactments of violent stabbings, as occurred in both Duncan and Brooks. If the demonstrative aids in Duncan and Brooks were not sufficiently inflammatory to require their exclusion, a photograph depicting Steward crying on the witness stand certainly is not.

Appellant relies primarily on a dissenting opinion in Brown v. State, 550 So. 2d 527 (Fla. 1st DCA 1989), to support his position. In Brown, the prosecutor inserted a knife into a Styrofoam head during closing as a demonstrative aid in describing the attack. This dissent is not only nonbinding on this Court, it is also not at all persuasive because the majority opinion clearly undermines Appellant's position. It is particularly noteworthy that the majority opinion in Brown is cited by this Court as support for the holdings in both Duncan, 894 So. 2d at 829, and Brooks, 175 So. 3d at 240. The case law clearly does not compel the exclusion of the photograph as a demonstrative aid in closing argument, and the trial court's ruling should remain undisturbed.

Appellant also argues that displaying the photograph memorialized her emotional state and improperly bolstered the State's evidence. (IB 69) Firstly, defense counsel did not

preserve this issue in the trial court for appeal. In order to preserve a particular issue for appellate review, a party must have made the same argument to the trial court that it raises on appeal. Archer v. State, 613 So. 2d 446, 448 (Fla. 1993) (stating that the issue "must be presented to the lower court and the specific legal argument or ground to be argued on appeal must be part of that presentation if it is to be considered preserved"); Woods v. State, 733 So. 2d 980, 984-85 (Fla. 1999) (holding that a boilerplate motion for judgment of acquittal was not sufficient to preserve the issue on appeal because it did not set forth the specific grounds that formed the basis of the issue on appeal); Morrison v. State, 818 So. 2d 432, 455-56 (Fla. 2002) (holding that objections to statutory aggravating factor (aggravator) jury instructions must be specifically objected to at trial in order to be preserved for appeal).

In the present case, defense counsel simply made a general objection to the photograph because it was an improper emotional appeal to the jury. (73:4186) During trial, defense counsel never raised the issue that it bolstered the State's case, memorialized Steward's emotional state, or improperly emphasized any portion of the State's evidence. (73:4185-87) The objection defense counsel made was on entirely different grounds than the

issue raised here and was not sufficient to preserve this issue for appeal.

Secondly, in arguing this issue, Appellant primarily relies on Gormandy v. State, 185 So. 3d 547 (Fla. 2d DCA 2016), a lower court case that is clearly distinguishable from the present case. Gormandy involves a read back to the jury of the testimony of a detective who was one of the state's primary witnesses. Id. at 548-50. The read back included the detective's direct-examination and omitted the relevant cross-examination testimony. Id. 549-550. Unlike Gormandy, the demonstrative aid at issue in the present case is not a read back of a witness's abbreviated testimony, but rather a photograph that was displayed briefly during closing. The photograph in no way misconstrued any witness's testimony or unduly emphasized any piece of evidence. The State's use of the demonstrative aid is akin to simply describing Steward's demeanor during closing, and is clearly permissible here.

Finally, even if the trial court erred in allowing the State to use the photograph during closing argument, the overwhelming evidence of Appellant's guilt in this case would render any error harmless. The trial court's ruling allowing the State to use a photograph of Steward crying as a demonstrative aid should not be disturbed.

ISSUE IV: APPELLANT IS NOT ENTITLED TO RELIEF UNDER HURST v. FLORIDA, 136 S. CT. 616 (2016)

A. Appellant's capital sentences were not imposed in violation of Hurst v. Florida

Appellant asserts that his capital sentences were imposed in violation of his Sixth Amendment right to a jury trial, as interpreted by the Supreme Court in Hurst v. Florida, 136 S. Ct. 616 (2016). Appellant's sentence was imposed in August, 2015 (13:2429), prior to release of the Hurst opinion and the enactment of Chapter 16-13, Laws of Florida. Thus, the trial court conducted Appellant's penalty phase in accordance with the capital sentencing scheme in place at the time. Appellant argues that simply because Appellant was sentenced under the former capital sentencing scheme, his sentence violates the Sixth Amendment, and the violation cannot be harmless. Appellant's argument fails to recognize that the procedural flaws in Hurst did not exist in his case, and thus, no Hurst violation exists.

Appellant's argument fails primarily because the jury unanimously found multiple sentencing aggravators during the guilt phase, specifically that the defendant was previously convicted of a capital felony for the murder of Hughes, and that the defendant was previously convicted of a capital felony for the murder of Rhodes. (10:1924, 1946-47) The trial court later

gave great weight to these aggravators in sentencing Appellant. (13:2408, 2410) Latching onto language from Hurst regarding what findings are made in a sentencing order, Appellant asserts that Hurst mandates jury sentencing by requiring the jury to find not only the aggravators, but that insufficient mitigation outweighs the aggravators. (IB 71) However, the Hurst ruling clearly limits the Sixth Amendment flaw to the fact that Florida's statute allowed "a sentencing judge to find an aggravating circumstance, independent of a jury's factfinding, that is necessary for imposition of the death penalty." Hurst, 136 S. Ct. at 624.

In Hurst, the Supreme Court extended the holding in Ring v. Arizona, 536 U.S. 584 (2002), to Florida's capital sentencing scheme, requiring the jury to find the facts necessary to enhance sentences. Hurst, 136 S. Ct. at 620. Ring required the jury to find at least one aggravator for the capital sentence to comply with the Sixth Amendment. Ring, 536 U.S. at 597, 609. The Ring holding focused on the rule established in Apprendi v. New Jersey, 530 U.S. 466, 490, (2000) that any fact that increases the available criminal penalty must be submitted to a jury and proven beyond a reasonable doubt. As Hurst is an extension of Ring, a jury finding of one aggravator is sufficient to satisfy Hurst as well.

The only facts in Florida's death penalty statute that can increase the penalty to death are aggravators. Consistent with Hurst, this Court has always found that a sentence of death is authorized upon the finding of the existence of an aggravating factor. Zommer v. State, 921 So. 3d 733, 754 (Fla. 2010); State v. Steele, 921 So. 2d 538, 543 (Fla. 2005); State v. Dixon, 283 So. 2d 1, 9 (Fla. 1973). As eligibility is a matter of state law, this Court's determination controls. Ring, 536 U.S. at 603 (recognizing "Arizona's court's construction of the State's own law is authoritative"); Zant v. Stephens, 462 U.S. 862, 870-73 (1983). Accordingly, the suggestion that Hurst requires Florida juries to find there are insufficient mitigating circumstances (mitigators) to outweigh the sufficient aggravators is meritless.

This Court has dismissed Ring claims in cases where a jury had previously found an aggravator. In Ault v. State, 53 So. 3d 175, 206 (Fla. 2010), Ault challenged Florida's death penalty scheme for failing to require unanimous jury findings for aggravators. Id. at 205. This Court rejected the claim because prior and contemporaneous convictions supported several of Ault's aggravators. Id. at 206. At Ault's murder trial, he was convicted of two counts of first degree murder, two counts of kidnapping, two counts of sexual battery on a person less than

twelve years of age, and two counts of aggravated child abuse. Id. at 183. This Court found these prior and contemporaneous convictions were sufficient to satisfy Ring. Id. at 206.

This Court has reiterated this rule in numerous cases. In Salazar v. State, 991 So. 2d 364, 378 (Fla. 2008), this Court held that Ring was satisfied because the prior violent felony conviction aggravator in Salazar's case was based on his conviction for a contemporaneous attempted murder, and the jury's guilty verdict for burglary and attempted murder supported the "during the course of a felony" aggravator. Id. Jones v. State, 845 So. 2d 55 (Fla. 2003), and Davis v. State, 2 So. 3d 952 (Fla. 2008), progress similarly. In Jones, 845 So. 2d at 74, this Court rejected a Ring claim where two aggravators were that Jones was convicted of a prior violent felony and that the murder was committed during the course of a robbery and burglary. The prior violent felony aggravator was supported by a prior conviction, and the other aggravator was charged in the indictment and found unanimously by the jury. In Davis, 2 So. 3d at 966, this Court rejected a Ring claim where the "prior violent felony" aggravator was based on contemporaneous convictions for murder, and the "murder in the course of a felony" aggravator was based on a felony murder conviction.

In the present case, the jury unanimously convicted Appellant of the first degree murder of both Hughes and Rhodes. (R 10:1924) The contemporaneous convictions for the murders of Hughes and Rhodes formed the basis of the aggravators that "[t]he defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person." This aggravator was applied separately to both murders and the trial court gave it great weight in deciding Appellant's sentence. (13:2408, 2410) The jury in this case unanimously found one aggravator for each murder during the guilt phase, much like the facts in Ault and Salazar. As this Court has held repeatedly, such findings satisfy Ring, and by extension, Hurst.

After Hurst, the Supreme Court denied certiorari in three direct appeal decisions where the capital sentences were supported by prior felony convictions, leaving intact this Court's denial of any Sixth Amendment error. In Fletcher v. State, 168 So. 3d 186 (Fla. 2015), the trial court gave great weight to the aggravator that the defendant was previously convicted of a felony and under a sentence of imprisonment, and the aggravator was supported by a prior conviction for burglary. Id. at 193, 200-01. After this Court upheld the trial court findings, the Supreme Court denied certiorari on January 25,

2016, after the Hurst opinion was released. See Fletcher v. Florida, 136 S. Ct. 980 (2016).

Smith v. State, 170 So. 3d 745 (Fla. 2015), and Hobart v. State, 175 So. 3d 191 (Fla. 2015), progressed in a similar fashion to Fletcher; both defendants had convictions for prior or contemporaneous violent felonies that supported aggravators found in those cases. Hobart was convicted of two contemporaneous murders, one of which the trial court used to support the aggravator that he committed another violent felony. Hobart, 175 So. 3d at 198, 203-04. Smith had a prior state robbery conviction and a prior federal bank robbery conviction at the time of the murder, which the trial court used to support the aggravator that he had prior violent felony convictions. Smith, 170 So. 3d at 765. After this Court upheld the trial court findings, the Supreme Court subsequently denied certiorari in both cases. See Hobart v. Florida, 136 S. Ct. 1454 (2016); Smith v. Florida, 136 S. Ct. 980 (2016). Quite simply, Appellant's sentence does not violate Hurst because the necessary facts to support the capital sentence were found by a unanimous jury.

B. Any alleged error in the jury verdict is not a structural error

Appellant argues that the jury's verdict contains a structural error because the trial court, rather than the jury, made written findings that the aggravators outweigh the mitigators, and because the jury was instructed that its recommendation is an advisory recommendation. Appellant begins by quoting Neder v. United States, 527 U.S. 1, 7 (1999), in which the Supreme Court held, "[e]rrors of this type are so intrinsically harmful as to require automatic reversal (i.e., 'affect substantial rights') without regard to their effect on the outcome." However, Hurst itself was not automatically reversed, but was remanded to this Court for harmless error review, Hurst, 136 S. Ct. at 625. This indicates that the Sixth Amendment error in Hurst could not have been structural.

Neder, 527 U.S. at 9-10, further refutes Appellant's claim of structural error where the Supreme Court rejected the argument that a conviction returned after one element of the offense was mistakenly withheld from the jury's consideration presented a case of structural error. Neder explains why Appellant's reliance on Sullivan v. Louisiana, 508 U.S. 275 (1993), is misplaced. Sullivan addressed a defective reasonable doubt instruction, the existence of which corrupted all the

jury's findings. Id. at 281. On the contrary, Neder and Hurst both addressed deficient factfinding. Although Sullivan found that a constitutional error that prevented a jury from returning a "complete verdict" could not be harmless, the Supreme Court reviewed the relevant authority in Neder and determined that reversal was not required where the evidence of the omitted element was overwhelming and uncontested. Neder, 527 U.S. at 19. Because deficient jury factfinding on an individual element does not necessarily corrupt the entire verdict, harmless error analysis is appropriate in such cases. Neder, 527 U.S. at 10-11.

The determination that deficient factfinding under the Sixth Amendment can be harmless is cemented by Washington v. Recuenco, 548 U.S. 212 (2006), where the Supreme Court reversed a Washington state court holding that error under Blakely v. Washington, 542 U.S. 296 (2004), was structural in nature and could never be harmless. Blakely is an Apprendi/Ring decision which requires jury factfinding where a sentence is to be enhanced due to the defendant's use of a firearm. Of course, the Supreme Court remanded Hurst itself to this Court for a determination of harmlessness, noting that "[t]his Court normally leaves it to state courts to consider whether an error is harmless, and we see no reason to depart from that pattern here." Hurst, 136 S. Ct. at 624. Appellant's claim of structural

error is clearly without merit, and harmless error review may be applied to any alleged error in the jury verdict in this case.

C. Any alleged Hurst error is harmless

Harmless error review is not only applicable in this case, but the facts of this case clearly demonstrate that any alleged Hurst error is harmless beyond a reasonable doubt. The Supreme Court has held that violations of the Sixth Amendment right to a jury trial are subject to harmless error. Washington, 548 U.S. at 222. This Court has been consistent in finding that deficient jury factfinding, in violation of the Sixth Amendment, is often harmless beyond a reasonable doubt. Galindez v. State, 955 So. 2d 517, 521-23 (Fla. 2007); Johnson v. State, 994 So. 2d 960, 964-65 (Fla. 2008); see Pena v. State, 901 So. 2d 781, 783 (Fla. 2005) (failure to instruct jury on age requirement was not fundamental error).

Appellant asserts here that this Court should review any Hurst error under the standard of whether the State can prove beyond a reasonable doubt that the error did not contribute to Appellant's death sentences. (IB 74-75) However, the appropriate harmlessness standard is whether it is clear beyond a reasonable doubt that a rational jury would have made the findings in question. Galindez, 955 So. 2d at 522-523.

It is readily apparent from the record that any Hurst error is harmless because the jury unanimously found multiple sentencing aggravators to be proved beyond a reasonable doubt during the guilt phase, specifically that the defendant was previously convicted of a capital felony for the murder of Hughes, and that the defendant was previously convicted of a capital felony for the murder of Rhodes. (10:1924, 1946-47) Additionally, the evidence in this case overwhelmingly supports the eight[6] other aggravators found by the trial court for both murders, including the weighty aggravators that the murder was cold, calculated, and premeditated (CCP), and heinous, atrocious, and cruel (HAC). The aggravators in the case far outweighed the modest mitigation presented. No statutory mitigation was found, and the nonstatutory mitigation that was established was primarily allocated little or no weight by the trial court. (13:2410-27) If presented the opportunity to make specific factual findings regarding all of the aggravators in

[6] In regard to Hughes' murder, the trial court also found the capital felony was 1) committed while the defendant was engaged in the commission of or an attempt to commit robbery; 2) committed for financial gain; and 3) CCP. (10:1946-47) In regard to Rhodes' murder, the trial court also found the capital felony was 1) committed while the defendant was engaged in the commission of or an attempt to commit or flight after committing or attempting to commit any robbery or burglary; 2) committed for the purpose of avoiding arrest; 3) committed for financial gain; 4) HAC; and 5) CCP. (10:1947)

this case, any reasonable jury would find those aggravators to be proven, and to far outweigh the modest mitigation.

No reasonable factfinder could disagree with the weighing decision eloquently outlined in the trial court's sentencing order. No possible constitutional error prejudiced Appellant on these facts. Thus, his capital sentences should be upheld.

D. If resentencing is granted, Appellant should be resentenced under Chapter 16-13, Laws of Florida.

Appellant's reliance on section 775.082(2), Florida Statutes, to require imposition of a life sentence is misplaced because Hurst struck down Florida's process for imposing capital sentences, not capital sentencing itself. In Hurst, the Supreme Court recognized that under section 775.082(1), Florida Statutes, a defendant could only be eligible for a capital sentence upon "findings *by the court* that such person shall be punished by death." Hurst, 136 S. Ct. at 622 (quoting § 775.082(1) (2010). The Supreme Court's holding hinged on the fact that Florida's capital sentencing procedure did not require the jury to make the "critical findings" required to impose a capital sentence, but rather, solely the trial court must find the facts to impose a capital sentence. Id. In contrast, the statute Appellant relies on, section 775.082(2), Florida Statutes, provides that a life sentence must be imposed "[i]n

the event the death penalty in a capital felony is held to be unconstitutional….” § 775.082(2) (2015). (IB 82)

Appellant’s argument fails because Hurst did not hold that capital sentencing itself was unconstitutional; it only invalidated Florida’s procedures for implementing capital sentencing, finding that they could result in a Sixth Amendment violation if the judge makes factual findings that are not supported by a jury verdict. Hurst, 136 S. Ct. at 624. Therefore, section 775.082(2), Florida Statutes, does not apply by its own terms.

Although Appellant suggests that this Court used similar language to require the commutation of all death sentences to life following Furman v. Georgia, 408 U.S. 238 (1972), in Donaldson v. Sack, 265 So. 2d 499 (Fla. 1972), Appellant is misreading and oversimplifying the Donaldson decision. Donaldson is not a case of statutory construction, but one of jurisdiction. Based on our state constitution in 1972, which vested jurisdiction of capital cases in circuit courts rather than the criminal courts of record, Donaldson held that circuit courts no longer maintained jurisdiction over capital cases since there was no longer a valid capital sentencing statute to apply; no “capital” cases existed, since the definition of capital referred to those cases where capital punishment was an

optional penalty. Donaldson observes the new statute (§ 775.082(2)(1972)) was conditioned on the invalidation of the death penalty, but clarifies, "[t]his provision is not before us for review and we touch on it only because of its materiality in considering the entire matter." Donaldson, 265 So. 2d at 505.

The focus and primary impact of the Donaldson decision was on those cases which were pending for prosecution at the time Furman was released. Donaldson does not purport to resolve issues with regard to pipeline cases pending before the Court on direct appeal, or to cases that were already final at the time Furman was decided. This Court's determination to remand all pending death penalty cases for imposition of life sentences in light of Furman is discussed in Anderson v. State, 267 So. 2d 8 (Fla. 1972), a case which explains that, following Furman, the Attorney General filed a motion requesting that this Court relinquish jurisdiction to the respective circuit courts for resentencing to life, taking the position that the death sentences that were imposed were illegal sentences. There is no legal reasoning or analysis to explain why commutation of 40 sentences was required, but it is interesting to observe that this was before the time that either this Court or the Supreme Court had determined the current rules for retroactivity, as

Teague v. Lane, 489 U.S. 288 (1989), and Witt v. State, 387 So. 2d 922 (1980), were both decided later.

By equating Hurst with Furman, Appellant reads Hurst far too broadly. Section 775.082(2), Florida Statutes, exists to provide a remedy where the death penalty itself is found unconstitutional, and therefore is an inappropriate remedy here.

Appellant further argues that the wording of Chapter 16-13 does not express an intent to apply the law to any capital offenses that occurred prior to the law's effective date. A law is presumed to operate prospectively in the absence of clear legislative intent to the contrary. See Old Port Cove Holdings, Inc. v. Old Port Cove Condominium Ass'n One, Inc., 986 So. 2d 1279, 1284 (Fla. 2008). Appellant's argument fails to realize that in this case, there is clear evidence of intent for the new statute to apply to all pending cases. The February 25, 2016, Senate amendment to the proposed legislation deleted the following: "Section 7. The amendments made by this act to ss. 775.082, 782.04, 921.141, and 921.142, Florida Statutes, shall apply only to criminal acts that occur on or after the effective date of this act." Fla. SB 7068, Amend. 163840 (Feb. 25, 2016).

The fact that the Legislature removed proposed language applying the new law prospectively indicates clear legislative intent favoring application to cases that occurred prior to the

law's effective date. The legislative intent is clear because if lawmakers wanted Chapter 16-13 to apply prospectively only, they would not have removed the language in the Senate amendment to the proposed bill. Furthermore, it is clear that lawmakers wanted the new law to have immediate application, versus a date in the future, because Chapter 16-13 was enacted with the language, "This act shall take effect upon becoming law." The language of Chapter 16-13, and actions taken by lawmakers to remove prospective language, clearly demonstrates the Legislature's intent for this new law to apply to cases that occurred prior to its enactment.

Appellant further argues that regardless of the wording of Chapter 16-13, Article X, section 9, of the Florida Constitution, also known as the "Savings Clause," prohibits retroactive application of the new law. These arguments fail upon a review of the application of the Savings Clause and the legislative intent behind the creation of Chapter 16-13.

Article X, section 9, of the Florida Constitution requires that "[r]epeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." The purpose of the Savings Clause is to ensure that the statute in effect at the time of the crime will govern the sentence the offender receives for that crime. Castle v. State,

330 So. 2d 10, 11 (Fla. 1976). However, procedural or remedial changes to the statute are distinct from the substantive changes contemplated by the Savings Clause, and may be applied to a crime that occurred prior to its enactment. Glover v. State, 474 So. 2d 886, 891-92 (Fla. 1st DCA 1985); State v. Pizarro, 383 So. 2d 762, 763 (Fla. 4th DCA 1980). Moreover, where the statute in effect at the time of the crime is found to be unconstitutional, the Savings Clause is inapplicable because its purpose cannot be carried out in a manner that is constitutional. Horsley v. State, 160 So. 3d 393, 406 (Fla. 2015).

In Horsley, this Court faced a question much like the one here, in dealing with a juvenile offender whose life sentence was invalidated by the Supreme Court ruling in Miller v. Alabama, 132 S. Ct. 2455 (2012). Horsley, 160 So. 3d at 394-95. The Florida Legislature responded to the ruling in Miller by passing Chapter 14-220, Laws of Florida, which cured the constitutional defect identified by the Miller ruling. The new law did not contain any language addressing retroactive or prospective application, and it contained an effective date of July 1, 2014. Horsley, 160 So. 3d at 394, (citing Ch. 14-220, Laws of Fla.). This Court concluded that Chapter 14-220 was the appropriate remedy for resentencing all juvenile offenders whose

sentences contained Miller defects, in part because the new law was enacted as a direct response to Miller and was tailored specifically to cure the constitutional defect at issue, making the Legislature's intent very clear. Id. at 406.

Appellant's argument fails because this Court has already decided that when the Legislature passes a law to cure a constitutional error, that law may be used to cure the same error in previously sentenced cases. Much like Chapter 14-220 at issue in Horsley, the Legislature passed Chapter 16-13, a constitutional sentencing scheme[7] that was passed in direct response to the Hurst ruling. Chapter 16-13 is clearly the appropriate remedy to cure harmful Hurst sentencing errors. Additionally, because the Savings Clause only prohibits the retroactive application of substantive changes to the law, it does not prohibit retroactive application of the procedural changes required by Hurst. Thus, Chapter 16-13, Laws of Florida, is the appropriate remedy and should be applied in this case if this Court determines that resentencing is required for any reason.

[7] In determining the constitutionality of Chapter 16-13, this Court should disregard Rauf v. State, 2016 WL 4224252 (Del. June 15, 2016). In that case, the Delaware Supreme Court struck down its state capital sentencing scheme based on a flawed legal analysis that applied an incorrect legal standard for Sixth Amendment errors and is not persuasive authority before this Court.

ISSUE V: THE TRIAL COURT PROPERLY FOUND THAT RHODES' MURDER WAS COMMITTED FOR THE PURPOSE OF AVOIDING ARREST

The trial court found that Appellant killed Heidi Rhodes in order to avoid arrest for the crimes he committed against Hughes. (13:2411-12) Appellant disputes the application of this factor, claiming that the State failed to establish witness elimination was his dominant purpose, and that his motive for both murders was strictly financial. (IB 84-87)

The application of an aggravator will be affirmed where the trial court applied the correct rule of law, and the court's factual findings are supported by sufficient evidence. Buzia v. State, 926 So. 2d 1203, 1209 (Fla. 2006). In this case, the court unquestionably applied the proper legal principle, noting that this factor is satisfied when a defendant's primary purpose is to avoid or prevent an arrest, and finding it proven beyond a reasonable doubt. (13:2412)

The trial court rejected Appellant's claim factually, specifically finding that while the primary motivation for Hughes' murder was pecuniary gain, the dominant motive for killing Rhodes was to eliminate her as a witness to his crimes against Hughes. (13:2411) The court observed that Rhodes did not have any property of significant value, and there was no indication that Appellant ever intended to rob her. (13:2411-12)

Additionally, she knew Appellant, called him by name during the attack, and did nothing to threaten him or provoke his actions. (13:2412) Appellant does not contend these findings are not supported by the evidence, he simply argues they are insufficient to prove the factor.

This Court has repeatedly observed that direct evidence of a defendant's intent is not necessary to establish this factor. Buzia, 926 So. 2d at 1210. While the fact that the defendant was known to the victim is insufficient on its own to support the aggravator, it is a significant consideration. Id. This Court has upheld the application of this factor under circumstances similar to the facts here. See Buzia, 926 So. 2d at 1209-11 (affirming factor on conclusion that defendant had little reason to kill the victim other than to avoid arrest, where victim had been subdued and posed no immediate threat); Looney v. State, 803 So. 2d 656, 676-78 (Fla. 2001) (affirming factor where the defendant knew the victims well and committed the murders after the robbery was already complete); Willacy v. State, 696 So. 2d 693 (Fla. 1997) (affirming factor where victim was defendant's next-door neighbor and had been bludgeoned and restrained, posing no threat).

In Mullens v. State, 2016 WL 3348429 (Fla. June 16, 2016), the defendant shot three people at a convenience store, killing

two of them. This Court reversed the application of this factor as to one victim, the store clerk, who Mullens shot quickly after seeing the clerk with a phone in his hand. However, instead of exiting the store at that point, Mullens searched for another victim in the store. In upholding the avoid arrest circumstance for the second victim, this Court emphasized that the store customer was not resisting Mullens or impeding his progress, had been passive and submissive, and posed no threat to Mullens. See also Farina v. State, 801 So. 2d 44, 54-55 (Fla. 2001) (affirming factor, noting that victims offered no resistance and did not impede the defendant's exit).

The cases cited by Appellant do not compel a contrary conclusion. In Connor v. State, 803 So. 2d 598 (Fla. 2001), the defendant provided another plausible motive for killing the victim, based on his obsession with the victim's mother, and an intention to cause her pain. Here, the only alternative motive suggested is financial gain, but Appellant did not seek or obtain any financial gain from Rhodes. He acknowledges that his interest was only in Hughes' property. (IB 85) The fact that her presence at the scene required her murder to become "an essential step" in fulfilling his pecuniary goal supports the trial court's finding that the primary purpose of her death was witness elimination.

Similarly, in Zack v. State, 753 So. 2d 9 (Fla. 2000), the defendant had a premeditated plan to kill the victim and take her possessions. The victim was not an independent witness to Zack's crimes against another person, so the circumstances did not present a need to eliminate a person solely so she could not be a witness against Zack. However, when the primary goal can be achieved by actions against another victim, the death of a potential witness to that crime is properly subject to this aggravator.

The facts of this case demonstrate more than the victim simply knowing Appellant; Rhodes could incriminate Appellant in Hughes' murder and did not become a victim because she was herself being robbed or sexually attacked. Consalvo v. State, 697 So. 2d 805 (Fla. 1996), is satisfied. Appellant had no personal animosity toward Rhodes, she did not resist or provoke him, and no reasonable intent other than witness elimination can be inferred from the evidence.

Finally, even if this Court reaches a different conclusion with regard to the trial court's findings as to the avoid arrest factor, there is no reason to remand this cause for resentencing since it is clear that any further consideration would not result in the imposition of a life sentence. Wilcox v. Florida, 143 So. 3d 359, 386-87 (Fla. 2014), cert. denied, 135 S. Ct.

1406 (2015) (any errors regarding improper aggravation are reviewed for harmless error). Appellant received a death sentence for Hughes' murder, even though the avoid arrest and HAC factors did not apply. (13:2408-10) His sentence on Rhodes' murder is still supported by five weighty aggravators, and little mitigation exists to overcome the case for death. (13:2410-27) See Davis v. State, 148 So. 3d 1261, 1279-80 (Fla. 2014) (improper finding of avoid arrest aggravator was harmless where five strong aggravators remained and no statutory mitigation had been found). Therefore, this Court must affirm the capital sentence imposed in this case.

ISSUE VI: THE TRIAL COURT PROPERLY FOUND THAT HUGHES' MURDER WAS COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER (CCP)

Appellant also challenges the trial court's application of the CCP aggravator for the murder of John Hughes. Again, the standard of review considers whether the trial court applied the correct rule of law, and whether the court's factual findings are supported by sufficient evidence. Buzia, 926 So. 2d at 1209.

Appellant insists that he did not intend to kill Hughes, only to rob him, and that he simply reacted emotionally and impulsively when Hughes resisted. He claims his spontaneous actions do not merit application of the CCP factor. He admits that he made references before the crime to "getting" Hughes and "whacking him off," but suggests these quips were made in jest and do not prove heightened premeditation. (IB 88-89) However, the significance and meaning of Appellant's statements was an issue of fact, resolved against Appellant by the court below.

In finding this factor to apply, the court below specifically noted Appellant's prior statements, and observed that after attacking and rendering Hughes unconscious, Appellant remained at the scene and waited for Steward and Rhodes to return. Hughes was still alive, and Appellant told Steward to leave the room, incapacitated Rhodes, then called for Steward to bring him his backpack. After getting duct tape from the

backpack, Appellant bound both victims, coldly placed them in the bathtub, and submerged their heads underwater to ensure their deaths. (13:2410)

The facts of this case—planning to rob Hughes, taking a firearm and backpack with duct tape to facilitate the crime, having the opportunity for cold reflection after beating Hughes unconscious, holding the heads of his bound and unresisting victims underwater, and then disposing of the bodies and attempting to conceal other evidence—fully establish that the Hughes' murder was committed in a cold, calculated, and premeditated fashion. The finding of CCP should be upheld.

This Court has upheld the application of the CCP aggravator on similar facts. See Russ v. State, 73 So. 3d 178 (Fla. 2011); Franklin v. State, 965 So. 2d 79, 98-99 (Fla. 2007); Gordon v. State, 704 So. 2d 107 (Fla. 1997) (CCP established where victim was bound and gagged before being drowned in bathtub). This Court has often upheld this factor when the victim was rendered harmless and no longer posed any threat, and the defendant had the opportunity to leave after completing a robbery but instead, stayed and killed the victim. See John Campbell v. State, 159 So. 3d 814 (Fla. 2015); Turner v. State, 37 So. 3d 212, 225-26 (Fla. 2010); Hudson v. State, 992 So. 2d 96, 116 (Fla. 2008); Hertz v. State, 803 So. 2d 629, 649-51 (Fla. 2001).

According to Appellant, Hughes' death occurred over a short span of time, while Appellant was gripped in an emotional frenzy. (IB 89) The evidence does not support this characterization of the crime. Appellant did not testify below, and there was no showing of any emotional frenzy. Steward's testimony depicts Appellant as calm and in control, and does not provide any basis to reject application of the CCP aggravator. Prior to going to Hughes' house on May 7, 2012, Steward believed Appellant was lying to her about where he was planning on going and clearly did not want her to come along. (71:3597) He barked orders at Steward throughout the night (70:3620-23, 3624, 3628), and while she and Rhodes were at the grocery store—and presumably while he was inflicting his first attack on Hughes back at Hughes' house—he called Steward repeatedly to ask where she was and tell her to come back. Steward gave no indication that Appellant sounded distraught or even mildly emotional during any of those repeated phone calls. (70:3620-22) Appellant even brought a firearm and duct tape with him to use when committing the murders. (71:3628-29, 72:3890-91, 3897) The evidence clearly establishes that the murders were pre-planned and carried out with callous indifference.

Appellant cites Middleton v. State, 188 So. 3d 731, 748 (Fla. 2015), and Hamblen v. State, 527 So. 2d 800, 801 (Fla.

1988), but his reliance on these cases is misplaced. There were no prior statements of any intent to "get" and "whack" the victims in either Middleton or Hamblen. In both cases, the physical evidence indicates that the murders came as a reaction to resistance by the victims. Similar facts are not present in this case. Middleton involved a heated, frenzied struggle after the victim physically fought off the defendant. Likewise, the physical evidence at the crime scene in Hamblen corroborated the defendant's story that he shot the victim because she pushed the silent alarm. Similar facts are not present in this case. Appellant did make a self-serving statement to Steward that he did not want to kill Hughes, but he ran. (70:3640) However, even if Appellant did not decide to commit murder until after arriving at Hughes' house, he had a significant amount of time to contemplate his actions and decide how to proceed after beating Hughes unconscious. (70:3616-25) Furthermore, there is no evidence, physical or otherwise, to corroborate Appellant's self-serving justification for killing Hughes. Unlike the instantaneous decisions made in the heat of the moment in Middleton and Hamblen, Appellant had time to reflect on his options after beating Hughes, and he calmly and methodically chose to drown him.

Notably, the trial court here rejected the defense contentions that Appellant committed these murders while under the influence of an extreme mental or emotional disturbance, or was substantially impaired in his ability to conform his conduct to the requirements of law, or was haunted by poor impulse control. (13:2413-15, 2418) He was not under the influence of illegal drugs at the time of the murders. (13:2421)

Appellant cites Patrick v. State, 104 So. 3d 1046, 1067-68 (Fla. 2012), to support his claim that his statements do not provide a sufficient basis for affirming the CCP finding. In Patrick, the defendant and victim were living together, and the defendant claimed that he beat the victim to ward off unwanted sexual advances. The victim's body was discovered bound and beaten in a bathtub. Patrick stole the victim's property, including an ATM card, and this Court noted that Patrick beat the victim because he would not reveal the personal identification number for the ATM. There were no witnesses, and although Patrick told an officer at the time of his arrest that he did not intend to kill the victim, he later told a cellmate that he had planned to take the victim's money and life.

In the instant case, however, there was independent evidence of a plan to rob the victim, and evidence that Appellant spoke of his intention to "whack off" the victim well

before the crime occurred. (70:3615) This is materially different than Patrick's after-the-fact admission of an intent to kill which did not establish the heightened premeditation to support CCP, where no evidence refuted the defendant's claim that the crime consisted of spontaneous acts following the victim's unwanted advances although the murder itself was clearly premeditated. Patrick also notes that there were no additional facts present, such as lying in wait or advance procurement of a weapon, but Appellant came to Hughes' house prepared, as he brought a backpack with duct tape in order to facilitate his crimes. (70:3628-29) After beating Hughes unconscious, he waited for the second victim to return before ultimately killing them both. (70:3623-25) And he made no effort to hide his identity, another hallmark of CCP. Franklin, 965 So. 2d at 99 (finding "all of the hallmarks of CCP" where facts showed advance procurement of a weapon, engaging and isolating the victim, expressing a prior intention to "get" the victim, and failing to use precautions to conceal identity, such as a mask).

The evidence presented below is sufficient to support the trial court's finding of CCP. Even if the CCP factor were stricken, however, remand is not necessary as any possible error is harmless. The death sentence for Hughes' murder is supported

by three other aggravators, and no significant mitigation was found below. See Patrick, 104 So. 3d at 1068 (improper finding of CCP is harmless where there is no reasonable probability that the error affected the sentence). Accordingly, this Court should affirm the sentence imposed for the murder of John Hughes.

ISSUE VII: THE TRIAL COURT PROPERLY EVALUATED NON-STATUTORY MITIGATING CIRCUMSTANCES

Appellant incorrectly argues that the trial court did not properly consider 20[8] of the 44 proposed non-statutory mitigators. Appellant accuses the trial court of "treat[ing] its consideration of those circumstances as an academic exercise in which the mitigation could be summarily addressed and disposed of." (IB 95-96) This characterization is far from accurate. Many of these proposed mitigators overlap with other mitigators, and are fully considered in other areas of the sentencing order. For example, items "2) The defendant lived in L.A. during the Rodney King riots," and "25) The defendant was a victim of a stabbing and robberies during his early drug dealing years when he was first estranged from his family," relate to living and growing up in a violent environment. (13:2416, 2422) This issue is fully considered in items 1) and 4) and is given "little weight" by the trial court (13:2416), thus, this issue does not need to be reconsidered at length under item 25).

Furthermore, several of the proposed mitigators in question were directly addressed by the trial court and properly

[8] The proposed mitigating circumstances Appellant objects to are listed in the sentencing order under Non-Statutory Mitigating Circumstances as items 2), 5), 6), 8), 13), 16), 17), 18), 22), 23), 25), 26), 29), 30), 31), 33), 36), 38), 40), and 42). (13:2416-27)

considered. For example, in discussing item "16) The defendant first encountered racism in pop Warner football when a teammate called him the "n" word and was not punished" the court noted that the other football player was punished, and in any event, "there is no evidence suggesting that race had anything to do with the murders in this case." (13:2419) The trial court very clearly complied with the requirements for weighing this mitigator in its sentencing order.

Whether the evidence presented at trial has established a mitigator is a question of fact and subject to the competent substantial evidence standard of review. The weight the trial court assigns to a mitigator is within the trial court's discretion and is subject to the abuse of discretion standard. Blanco v. State, 706 So. 2d 7, 10 (Fla. 1997). James Campbell v. State, 571 So. 2d 415 (Fla. 1990), established relevant standards of review for mitigators, requiring the sentencing court to expressly evaluate in its written order each proposed mitigator to determine whether it is supported by the evidence and whether non-statutory proposed mitigation is truly of a mitigating nature. Trease v. State, 768 So. 2d 1050, 1055 (Fla. 2000), receded in part from Campbell and held that, though a court must consider all the mitigators, it may assign no weight

to a mitigator that is established in the record. To illustrate, this Court went on to say,

> [W]hile being a drug addict may be considered a mitigating circumstance, see Mahn v. State, 714 So.2d 391, 401 (Fla.1998), that the defendant was a drug addict twenty years before the crime for which he or she was convicted may be sufficient reason to entitle the factor to no weight. See Kormondy v. State, 703 So.2d 454, 457 (Fla. 1997)(The trial judge found that "although the fact of Kormondy's drug addiction is established by the evidence, the Court finds that his addiction is not reasonably established as a non-statutory mitigating factor and gives it no weight.")(vacating the death sentence on other grounds).

Trease, 768 So. 2d at 1055. And while a trial court may not require a nexus between the crime and the mitigation, a court is certainly allowed to assign weight based on the context of the mitigation in the case. Fletcher v. State, 168 So. 3d 186, 218-19 (Fla. 2015) (upholding trial court's little weight assigned to post-traumatic stress disorder and psychological trauma mitigators because Fletcher did not suffer from PTSD at the time of the murder).

A number of cases have been upheld by this Court where the trial court did not surgically dissect every mitigator in exhaustive detail. In Mullens v. State, 2016 WL 3348429 (Fla. June 16, 2016), this Court upheld the trial court's sentencing order that combined several proposed non-statutory mitigators into large groups and then addressed those issues generally.

Mullens, at *12. Mullens objected to the trial court's analysis of the mitigation, claiming the court failed to analyze two of his proposed mitigators. Id. at *11. This Court found that the concepts behind those mitigators appeared to be subsumed by other circumstances that were directly addressed in the sentencing order. Id. at *12. In Gonzalez v. State, 136 So. 3d 1125, 1166 (Fla. 2014), this Court found no error where the trial court combined the mitigators that Gonzalez came from a broken home, suffered from depression and an attention disorder, and was addicted to prescription pain medication. The trial court found this "combination of factors" to be proven as a mitigator, but only gave it "little weight in light of all the evidence presented during the penalty phase proceedings which showed that defendant did not have a deprived childhood but rather a normal upbringing." Id.

As discussed supra, the 20 items of proposed mitigation that Appellant raises were based on common themes, such as good acts (13:2420, 2426), the quality of his family environment (13:2416-22, 2424), and cognitive and psychological function. (13:2417-23, 2425, 2427) Much like the approaches to addressing mitigation in Gonzalez and Mullens, the trial court here either sufficiently discussed each item of mitigation or the general concept behind the specific item of mitigation. The trial

court's discussion and analysis of the mitigation in this case is without error and should not be disturbed.

Appellant further argues that the trial court did not award sufficient weight to items "30) The defendant suffers from executive dysfunction," "38) The defendant suffers from borderline intellectual functioning in the area of perceptual reasoning and a specific learning disorder with impairment in reading," and "15) The defendant has a history of traumatic brain injury." Appellant's argument amounts to a factual disagreement with the court regarding the weight assigned to this proposed mitigation. This Court has clearly stated, "[s]imple disagreement with the weight given by the trial court is not a basis for relief." Fletcher, 168 So. 3d at 218. In Fletcher, the defendant argued that several proposed mitigators should have been accorded great weight, and that the trial court downplayed the mitigation by referring to drug addiction as a "disease of choice." Id. This Court found that there was no legal basis underlying Fletcher's claim and was therefore not entitled to relief. Id.

Much like Fletcher, Appellant gives no legal basis for his argument. The crux of Appellant's argument is that the trial court gave credence to competing expert testimony in evaluating Appellant's history of traumatic brain injury. (IB 97-98)

Appellant also points to the fact that the trial court gave no weight to "30) The defendant suffers from executive dysfunction," "38) The defendant suffers from borderline intellectual functioning in the area of perceptual reasoning and a specific learning disorder with impairment in reading." (IB 97-98) Appellant claims that the court's decision not to go through the lengthy fact analysis for all three mitigators is proof of the court's faulty reasoning. (IB 97) However, even Appellant points out that these two circumstances were tied into Appellant's history of traumatic brain injury. (IB 97-98) The court thoroughly addressed "15) The defendant has a history of traumatic brain injury," and reviewed the expert testimony relevant to the court's decision. (13:2419) The trial court is not obligated to repeat itself at length for each additional mitigator that relates to the same concept or issue. See Gonzalez and Mullens, supra. The trial court conducted a reasoned analysis of the facts in the case relative to Appellant's traumatic brain injury and the related consequences and ailments of such injury. No abuse of discretion exists and the trial court's order should remain undisturbed.

Finally, even if this Court reaches a different conclusion with regard to the trial court's findings regarding mitigation, remand is not necessary because any error regarding mitigation

is harmless. It is clear that any further consideration would not result in a life sentence because the capital sentence for Hughes' murder is supported by four strong aggravators, and the capital sentence for Rhodes' murder is supported by six strong aggravators. The overwhelming severity of these aggravators far outweigh any possible mitigation in this case. See Thomas v. State, 693 So. 2d 951 (Fla. 1997) (holding that trial court's failure to address mitigating evidence of defendant's good character was harmless error in light of massive evidence in aggravation, including defendant's murder of his own mother to keep her from talking to police about victim's death); Singleton v. State, 783 So. 2d 970 (Fla. 2001) (holding court's failure to specifically address claims of mitigation, including defendant's courtroom behavior, his behavior on parole, and his alleged remorse and cooperation with police, was harmless, where those claims did not outweigh the two weighty aggravators found to exist by the trial court).

Although the trial court gave little or no weight to multiple proposed statutory and non-statutory mitigators, it gave little, moderate, or substantial weight to 19 non-statutory mitigators. (13:2416-2427) The trial court concluded, "the aggravating circumstances far outweigh the mitigating circumstances." (13:2428) Providing greater weight to the

mitigators at issue here cannot offset the ten strong aggravators found, thus rendering any error harmless.

STATEMENT REGARDING SUFFICIENCY OF THE EVIDENCE

Appellant does not contest the sufficiency of the evidence supporting the jury's verdict of guilt for the first degree murders of Hughes and Rhodes. Because this Court reviews this issue on direct appeal in every capital case, this statement is offered to assist the Court in that function.

In this case, Tiffani Steward witnessed the murders of Hughes and Rhodes on May 7, 2012. On several occasions prior to the murders, Appellant made threats on Hughes' life in front of Steward, saying he had to "whack him off," or "get" him. At trial, Steward described Appellant's callous and unprovoked beating of Rhodes, during which Rhodes called out Appellant's name, asking what she did wrong. She witnessed Hughes lying unconscious on a bedroom floor that was covered in blood, with blood splattered on the nightstand and wall nearby. She then witnessed him calmly fill the tub with water, tape Hughes' and Rhodes' ankles with a roll of duct tape he brought with him, and submerge their heads under water to ensure their deaths.

Steward's testimony of the murders was corroborated by additional evidence. In the months following the murders, Donna Gee, Takylah Glenn, and Makenzie Roulhac all heard Appellant say he killed two people for his family. Glenn also overheard Appellant having a telephone conversation where he described

beating up and killing a man who owed him money, as well as the man's girlfriend. Glenn also overheard him say that he had to tear down a wall because there was blood on it. Additionally, Cecil Galloway testified to helping Appellant remove a bench seat and carpeting from the rear passenger compartment of Hughes' white Cadillac Escalade. He watched Appellant spray down the entire vehicle with a solution that smelled like bleach. When Galloway asked Appellant why they were doing this, Appellant told him he previously had a body in the vehicle.

Multiple witnesses saw Appellant driving Hughes' white Cadillac Escalade, using his furniture, and displaying his artwork. Surveillance cameras at several businesses captured Appellant using Hughes' bank debit card and depositing checks from Hughes' account that were payable to Appellant. Hughes' DNA testing revealed Hughes' DNA profile on a nightstand that used to be in his bedroom and on his bedroom wall at the edge of the hole in the wall where the sheetrock had been ripped out.

Steward's eyewitness testimony alone would be sufficient evidence to convict Appellant of these murders, but the strong corroborating evidence of Appellant's guilt makes the State's case overwhelming. This Court must affirm the convictions.

STATEMENT OF PROPORTIONALITY

Although Appellant does not contest the proportionality of his capital sentences, this Court is still compelled to conduct a proportionality review. The proportionality review of a capital sentence is not a simple comparison between the number of aggravators and mitigators, but instead focuses on the totality of the circumstances in the case and compares it to other capital cases. Muehlman v. State, 3 So. 3d 1149, 1165 (Fla. 2009). In reviewing proportionality, this Court accepts the jury's recommendation and the weight assigned by the trial judge to the aggravators and mitigators. Id.

When reviewing the aggravators and mitigators in this case in comparison to similar capital cases, it is clear that the capital sentence in this case is proportionate. See Gordon v. State, 704 So. 2d 107 (Fla. 1997) (sentence proportionate where victim was beaten, bound, and drowned in his bathtub; co-defendant given life sentence; court found four aggravators, including the murder was committed during a burglary and robbery, pecuniary gain, HAC, and CCP; and several non-statutory mitigators were given little, some, or modest weight); Hodges v. State, 55 So. 3d 515 (Fla. 2010) (sentence proportionate where victim was bludgeoned and stabbed in her home during a robbery; court gave great or moderate weight to

five aggravators, including pecuniary gain, that the offender was under imprisonment, the offender had a prior violent felony, murder was committed during the commission or attempt of a sexual battery, HAC; the court found three statutory mitigators and numerous non-statutory mitigators); Belcher v. State, 851 So. 2d 678 (Fla. 2003) (sentence proportionate where victim was strangled and drowned in her own bathtub; the court found three aggravators, including that the offender had a prior violent felony, the murder was committed during a sexual battery, and HAC; the court found fifteen non-statutory mitigators, and weighted them from "some weight" to "greater weight"); Spencer v. State, 691 So. 2d 1062 (Fla. 1996) (death penalty proportionate where victim beaten and stabbed; court found two aggravators, including prior violent felony and HAC, also found two statutory mental mitigators and multiple non-statutory mitigators); Gamble v. State, 659 So. 2d 242 (Fla. 1995) (capital sentence proportionate where codefendant sentenced to life; court found two aggravators, including CCP and pecuniary gain; court also found one statutory mitigator and several non-statutory mitigators).

There were four strong aggravators found for Hughes' murder, including 1) the offender had a prior violent felony, 2) the murder was committed for pecuniary gain, 3) the murder was

committed during the commission of or attempt to commit a robbery and/or burglary, and 4) CCP. (13:2409-10) There were six strong aggravators found for Rhodes' murder, including 1) the offender had a prior violent felony, 2) the murder was committed during the commission of or attempt to commit a robbery and/or burglary, 3) the murder was committed for pecuniary gain, 4) the murder was committed to avoid arrest, 5) CCP, and 6) HAC. (13:2410-13) The trial court assigned great weight to all the aggravators.[9] (13:2408-13) Much like Gordon and Belcher, the trial court did not find any statutory mitigators but did find some non-statutory mitigation was established. (13:2413-27) The trial court found that some non-statutory mitigation was entitled to weight, and assigned most of that mitigation little weight. (13:2416-27) In circumstances with similar or greater mitigation, this Court has upheld sentences where far fewer aggravators were found than exist in this case. See Hodges, and Spencer, discussed supra. The totality of Appellant's mitigation pales in comparison to the significance of the ten aggravators in this case, all of which carry great weight. Appellant's capital sentence is proportionate and should not be disturbed.

[9] The trial court noted that because financial gain was the underlying motive for the robbery and burglary, the two pecuniary gain aggravators merge with the robbery and burglary aggravators and are given no additional weight. (13:2409, 2411)

CONCLUSION

Based on the foregoing arguments and authorities, Appellee, State of Florida, respectfully urges this Court to affirm the conviction and sentence of death imposed herein.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

JENNIFER L. KEEGAN
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0105283
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3579 (tel)
(850) 487-0997 (fax)
capapp@myfloridalegal.com
Jennifer.Keegan@myfloridalegal.com
COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of September, 2016, I electronically filed the foregoing with the Clerk of the Court by using the e-portal system which will send a notice of electronic filing to Richard M. Bracey, III, Esq., mose.bracey@flpd2.com, Attorney for Appellant, on this 19th day of September, 2016.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a) (2).

/s/Jennifer L. Keegan
COUNSEL FOR APPELLEE