IN THE SUPREME COURT OF FLORIDA

JONATHAN HUEY LAWRENCE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. SC00-1827

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

ANSWER BRIEF OF APPELLEE

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

STEPHEN R. WHITE
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 159089

OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300 EXT 4579
(850) 487-0997 (FAX)

COUNSEL FOR APPELLEE

TABLE OF CONTENTS

TABLE OF CITATIONS

Federal Cases

State Cases

Federal Statutes

State Statutes and Rules

PRELIMINARY STATEMENT

Appellant, Jonathan Huey Lawrence, was the defendant in the trial court; this brief will refer to Appellant as such, Defendant, or by proper name. Appellee, the State of Florida, was the prosecution below; the brief will refer to Appellee as such, the prosecution, or the State.

The record on appeal consists of three sets of volumes, which will be referenced as follows:

- Transcript of Record (2 volumes): "R-VOL# PAGE#," e.g., "R-II 331";
- Supplemental to Appeal, Transcript of Record (8 volumes): "SR-VOL# PAGE#," e.g., "SR-VIII 1202";
- Transcript (7 volumes): "T-VOL# PAGE#," e.g., "T-IV 512.

"IB" will designate Appellant's Initial Brief, followed by any appropriate page number.

"App." indicates the appendix to this brief.

All bold-type emphasis is supplied, and all other emphasis is contained within original quotations unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Throughout this brief, the State will supplement, clarify and dispute a number of Lawrence's "factual" assertions.

At this juncture, the State disputes, as improper and incorrect, Lawrence's repeated **conclusions** within his "facts" that attempt to minimize his responsibility. For example,

Lawrence states as a "fact" that "Jeremiah Rodgers instigated and undertook the murder of Justin Livingston" (IB 4-5, 14) and that the "Crime Spree [was] Led By Jeremiah Rodgers" (IB 13), when in fact, on April 9, 1998, Lawrence drove Justin Livingston out into the woods (T-IV 452), where Lawrence clandestinely retrieved a knife from his truck's toolbox (T-IV 458) and where he and Rodgers each stabbed Livingston multiple times, killing him (T-IV 453-57). While disavowing a prior intent to kill, Lawrence also told the police that Livingston "bothered [him] real bad" when Livingston came over to his residence several times in the past (T-IV 455). The State will contend that the totality of the facts, detailed in ISSUE I, ISSUE III, and ISSUE IV, infra, and in the ensuing paragraphs concerning the "bulk of the State's case," show that Lawrence was a full participant and collaborator in this murder.

Lawrence concludes (IB 5) that the "bulk of the State's case came from two tape-recorded statements Jonathan made to investigators, which were played to the jury, and physical evidence recovered from the scene and Jonathan's property." The State clarifies, for example, that "Jonathan's property" also included lists written in his handwriting, with entries such as "get her very drunk," "rape ...," "Slice and dice. Disect completely," "Bag up eatibile meats," "... bury ...," (R-II 352, attached to this brief in Appendix B), "Coolers [check mark] ...," "everclear [check mark]," "film for Polaroid cam," "... ziplock bags/big ones [check mark],"

"shovel," "gloves," "380 ...," "flashlights - ?," "get Jeremiah to make phone calls" (R-II 353, attached to this brief in Appendix B).

"Jonathan's property" also included, in his freezer, (T-IV 436-37) a plastic bag containing what appeared to be human tissue matching (T-IV 432-34) the calf-muscle area that Lawrence (T-IV 523, 534, 541) had dissected from the victim's body.

"Jonathan's property" also included a cut-up Polaroid photograph of the dead victim. (T-III 367, 371-72, 375-76) Lawrence told the police that a photograph showed him holding up the foot of the dead victim. (See T-IV 523-24) The State has included as Appendix C to this brief a transcript of Lawrence's statement that focuses on the murder of Jennifer Robinson, the victim in this case.

The "bulk of the State's case" also included, Lawrence's initial statements to the police. When the officer asked Lawrence about the disappearance of Jennifer Robinson, Lawrence responded that "he did not know her nor had he been with her at any time." (T-III 365) Lawrence denied having a Polaroid camera, film for it, or pictures from it. (T-III 365) Later, Lawrence told the police that he took his brother's Polaroid camera (T-IV 523), he and Rodgers purchased film for it (T-IV 521-22), and then Polaroid photos were taken of aspects of the murderous events that followed, including one of Lawrence holding up the foot of the dead victim (See, e.g.,

T-IV 523-24; T-III 371-72). The Sentencing Order notes that Lawrence "even held the dissected leg up for the codefendant to take pictures." (R-II 336).

Thus, the State will argue that Lawrence lied to the police about knowing the victim or having Polaroid pictures/camera, and it disputes Lawrence's conclusion that he "fully cooperated with authorities" (IB 19. See also IB: "Jonathan cooperated with law enforcement"). Indeed, Lawrence's confession (App. C) is replete with examples attempting to minimize his responsibility, which should be contrasted with the other evidence in this case showing his responsibility, as well as his admissions under oath at the plea colloquy, including admitting that he conspired with Rodgers to commit this murder. (T-I)

Further, the "bulk of the State's case" included, within his confession, Lawrence's numerous references to his involvement through the use of "I" and "we." These are detailed in ISSUE III infra and found with Appendix C of this brief.

Concerning the detective's opinion on the relative roles of Lawrence and Rodgers (IB 29), the State clarifies with the Detective's additional testimony:

> Anyway, I said something about an alter ego on Jon Lawrence's part, and I believe that he does have an alter ego when he is with Mr. Rodgers. And I believe that the night that – that Justin Livingston was murdered and also Jennifer Robinson, I believe that Jon becomes the person that he wanted to be, he always wanted to be and couldn't be in society.

> And I believe that he becomes very demanding and forceful and violent. And I think that the evidence speaks for itself.

(T-V 755-56)

When discussing (at IB 15-16) sex with the victim, Lawrence overlooks the evidence that the victim refused sex, but "consented" after she was drunk (T-IV 518, 519, 526) in the woods where she was transported in Lawrence's truck (See T-IV 517, 522-23, 524, 533-34).

Lawrence discusses (IB 31) items found in his property at his residence, including the picture showing the calf muscle circled, his Karate certificate, his high school diploma, literature on serial killers, and articles regarding the KKK. The State adds that the literature included how-to materials on sniping. (T-VII 980 et seq, State's Exhibits #2-#5, R-II 345, App. A) Lawrence's mother testified that he "really enjoyed reading." (T-VI 872)

Jeremiah Rodgers, Lawrence's accomplice, was sentenced to death November 21, 2000. His appeal is pending in this Court under case # SC01-185.

SUMMARY OF ARGUMENT

His G.E.D. in hand, 23-year-old Jonathan Lawrence loved to read and write. The book The Incredible Machine was found among his belongings. The book contained a picture of a female in which the calf muscle was circled. A plastic bag with flesh matching the cut-out area of the victim's calf muscles was found in Lawrence's freezer.

Lawrence had written a note stating, among other things, "Get her very drunk," "rape," slice and Dice. Disect," "bag with Eatable Meats," "bag remains and bury and burn." On May 7, 1998, Jennifer Robinson was taken out into the woods in Lawrence's truck, fed alcohol until she "consented" to have sex with Lawrence and his co-conspirator, Jeremiah Rodgers, shot in the head, dissected, and buried in a shallow grave; the dissection included the victim's calf muscle. Lawrence assisted in moving the body when they heard a motor in the area, and then assisted with burying the victim in a shallow grave.

After telling the police that he did not know the victim and had no Polaroid camera or pictures, Lawrence told them that he cut her and that a Polaroid picture found in his residence showed the dead victim.

Lawrence not only made a to-do list for the murder, he handwrote a list of supplies, which included, for example, "coolers of ice for raw meat," "everclear" alcohol, "film for Polaroid cam," "extra round point shovel," "gloves," and

"380." Several of the items were checked off. Lawrence purchased Everclear just before he and Rodgers took the victim out into the woods in Lawrence's truck. Lawrence and Rodgers bought some Polaroid film prior to the murder. And, Lawrence had another friend purchase for him a 380 pistol within a couple of months of the murder.

Rodgers used Lawrence's 380 pistol to kill the victim here, as well as to shoot Leighton Smitherman as Smitherman sat in his home watching television. Lawrence was convicted of participating in that attempted murder. He was also convicted of participating, with Rodgers, in the killing of Justin Livingston. Lawrence essentially told the police that he found Livingston to be irritating. The murders of Jennifer Robinson and Justin Livingston, and the attempted murder of Smitherman all occurred within a 39-day period, transpiring in the sequence of the Smitherman attempt, Livingston murder, and this murder of Robinson.

Although Lawrence's statements to the police about this murder attempted to paint Rodgers as primarily responsible, its numerous "I"s and "we"s indicated a fully collaberative effort. Lawrence's murderous to-do and supply lists were in **his** handwriting; they even included a note to "get Jeremiah to make phone calls." Lawrence supplied the murder weapon and transportation, fully participated in the planned events at the scene of the murder, possessed the book with the calf

muscles circled, and stored the victim's calf muscles, which he cut out of her, in his freezer. He lied to the police.

Confronted with these and other facts, Lawrence pled guilty and admitted to this murder and the conspiracy to commit it, essentially admitting to planning this murder with Rodgers. A lengthy penalty phase ensued, and it is the subject of this appeal.

These and other facts show overwhelming CCP and extreme prior violent felony aggravation. Thus, Lawrence's **ISSUE IV** attempt to attack CCP is meritless, and his full and voluntary collaboration and participation with Rodgers in this murder render his **ISSUE III** claim that the trial judge erroneously rejected the substantial domination mitigator is likewise meritless. Although he presented some substantial mitigation, its emphasis on his mental problems was attenuated by the murderous facts here, his lies to the police, his detailed statements, his G.E.D., his detailed planning and its execution, and included no hallucinations during these murderous events. Thus, the trial judge was correct in finding that the aggravation outweighed the mitigation, and **ISSUE I** attacking proportionality is meritless. This case merits the death penalty.

ISSUE II attempts to extend Lawrence's mental problems into the courtroom. It is based on Lawrence's self-report to counsel and the trial court that he was having "hallucinations" in one general period of the trial, but when

the trial judge queried Lawrence, he discovered that Lawrence's complaint essentially distilled to Lawrence's displeasure at hearing his taped statement to the police and remembering the murderous events. Armed with this knowledge, with prior competency reports, and with his personal observations of, and interactions with, Lawrence over many court sessions, including a lengthy plea colloquy, the trial judge did not sua sponte order that the jury penalty phase be halted, Lawrence be examined yet again, and an evidentiary competency hearing be conducted. Lawrence has failed to demonstrate that the trial court erred under any justifiable standard of appellate review.

ISSUE V's complaint about a statement the trial judge made in his Sentencing Order indicating that there was some conflicting evidence about whether Rodgers shot Robinson is entirely inconsequential because, for sentencing, the trial judge accepted the fact that Rodgers was the triggerman. **ISSUE V** also complains about an inconsequential matter of slightly different wordings in the trial court's weighing of the age mitigator ("little" orally and "some" in written order), but the bottom-line is found in the trial court's reasoning: The mitigator was not worth much weight, no matter how the label for it is parsed.

ISSUE VI is based upon Apprendi. This claim is meritless, as this has Court already held.

In conclusion, to the degree that issues were preserved, none of them have any merit. Lawrence's death sentence should be affirmed.

ARGUMENT

ISSUE I

IS LAWRENCE'S DEATH SENTENCE PROPORTIONATE?[1] (Restated)

Lawrence's sentence of death (R-II 331-53, attached as App. A & B)[2] followed a jury recommendation of 11 to 1 (T-VI 963-64, R-II 312) and a Spencer[3] hearing (T-VII 972-1003).

In ISSUE I, Lawrence challenges his death sentence as disproportionate, but the evidence establishes extreme aggravation in this case. Lawrence is a serial killer, who, within 39 days, participated in the separate episodes of (1) the attempted murder of Leighton Smitherman, (2) the murder of Justin Livingston, and (3) this murder. The two murders and the attempted murder were based upon facts showing premeditation, rather than felony-murder. Literature on serial

---

[1] Because much of the following discussion provides a basis for other issues, especially III and IV, the State's treatment of this issue is rather lengthy.

Concerning the State's rephrasing of the issue, the State will dispute in the following pages the significance of mental disorders influencing Lawrence's "behavior during the criminal episode" (IB 35). In light of the totality of the evidence in the case, the trial court found that the impact of mental mitigation was "diminish[ed] and "not predominant" (R-II 340, 342-43).

[2] The State respectfully submits the trial judge's well-reasoned Sentencing Order, and Lawrence's murderous to-do lists attached to it, as part of the appendix to this brief (App. A & B, respectively).

[3] Spencer v. State, 615 So.2d 688 (Fla. 1993).

killers such as Ted Bundy, how-to promote anarchy, and books concerning snipers including a training manual and a book containing the title "Whispering Death," were found among Lawrence's belongings.[4]

Moreover, concerning the instant murder, Lawrence meticulously preplanned getting a female victim drunk, raping her, killing her, cutting her up, bagging the "eatabile" meats, and burying/burning her other remains, and he fully participated in executing this plan by providing his truck for driving the victim to a remote area, having sex with the victim when he knew she wanted no sex before she was drunk, cutting out her calf muscle and placing it in his freezer, assisting in burying her, and then lying to the police to cover up the crime.

The totality of the evidence not only supported the trial judge's finding that the "defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person" (R-II 332-33) and that he committed the murder in a cold, calculated, and premeditated manner (CCP), but also supported his conclusion that the impact of mental mitigation, although significant, was "diminish[ed] and "not predominant" (R-II 340, 342-43). The trial court allocated "great weight" to the prior murder and

---

[4] A book on the Klu Klux Klan was also found in the truck, but there is no evidence that this was a racially motivated killing.

attempted murder (R-II 349), "great weight" to CCP (R-II 350), and "considerable weight" to the two mental mitigators (R-II 343).

The State now elaborates.

A. Standard of Review.

Although the "the circuit judge ... has the principal responsibility for determining whether a death sentence should be imposed," Spencer v. State, 615 So.2d 688, 691 (Fla. 1993), this Court conducts "proportionality review in capital cases, 'the purpose of which is to foster uniformity in death-penalty law,'" Knight v. State, 746 So.2d 423, 437 (Fla. 1998), quoting Tillman v. State, 591 So.2d 167, 169 (Fla.1991).

The State agrees that proportionality review is not a matter of simply counting aggravating and mitigating circumstances in a case (IB 35),[5] but instead, involves also considering the facts of the case and the weights the trial court placed upon the aggravators and mitigators. See, e.g., LaMarca v. State, 26 Fla. L. Weekly S149 (Fla. March 8, 2001).

Bates v. State, 750 So.2d 6, 12 (Fla. 1999), summarized the process:

> Our function in a proportionality review is not to reweigh the mitigating factors against the aggravating factors. As we recognized in our first opinion in this case, that is the function of the trial judge. *Bates*, 465 So.2d at 494 [Bates v. State, 465 So.2d 490 (Fla.

[5] See, e.g., Rogers v. State, 26 Fla. L. Weekly S115, *19 (Fla. March 1, 2001).

> 1985)]. Rather, the purpose of proportionality review is to consider the totality of the circumstances in a case and compare it with other capital cases. *Terry v. State*, 668 So.2d 954, 965 (Fla. 1996). For purposes of proportionality review, we accept the jury's recommendation and the trial judge's weighing of the aggravating and mitigating evidence.

The determination of facts and their weight is a trial court matter because the trial court observes the witnesses, their demeanor, physical appearance, gestures, voice intonations, and the like.[6] Accordingly, Blackwood v. State, 777 So.2d 399, 413 (Fla. 2000), held its death sentence proportional: "In light of this evidence, we cannot conclude that the trial court abused its discretion in determining that the HAC aggravator outweighed the mitigators."

---

[6] See, e.g., Trease v. State, 768 So.2d 1050, 1055 (Fla. 2000) ("relative weight given each mitigating factor is within the discretion of the sentencing court"; trial court discretion includes its determination that "in the particular case at hand that it [a mitigating factor] is entitled to no weight for additional reasons or circumstances unique to that case").

See also, e.g., Melbourne v. State, 679 So. 2d 759, 764-65 (Fla. 1996) (emphasized deference to trial court concerning jury selection issues due to appellate court's disadvantage of having only "cold record" compared with the trial court's ability to observe "demeanor of those involved" and to "get a feel for what is going on" in the courtroom); U.S. v. Raddatz, 447 U.S. 667, 679, 100 S.Ct. 2406, 2414, 65 L.Ed.2d 424(1980)(quoting Lord Coleridge; "language, ... confidence or precipitancy, ... calmness or consideration"; without these observed indicators, the written word is a "dead body"); Sanford v. State, 687 So.2d 315, 317 (Fla. 3d DCA 1997) ("careful consideration of the credibility of the witnesses cannot be adequately accomplished by a mere reading of the cold trial transcript"), rev. denied 697 So.2d 512 (Fla. 1997).

In applying this process to the instant case, the death sentence imposed upon Lawrence is proportional.

B. The "great weight" of the aggravating circumstances vis-a-vis the mitigation here.

As Blackwood illustrates, one aggravator can be sufficient to uphold a death sentence. There, HAC was extreme. Here, CCP and prior violent felony were each extreme.

The trial court's greatest weight was given to the aggravators that are generally regarded as already having extremely significant weight. Their significance here is compounded by the extreme and extraordinary facts of this case. The mitigation pales in comparison.

The trial judge allocated "great weight" to the prior murder and attempted murder (R-II 349), great weight to CCP (R-II 350), and "considerable weight" to the two mental mitigators, while characterizing them as not predominant (R-II 340, 342-43). These weights, their nature, and the facts underlying them render the death sentence here proportional to other cases.

1. CCP.

This Court recognizes the extreme seriousness of the CCP aggravator. See Larkins v. State, 739 So.2d 90, 95 (Fla. 1999) (HAC and CCP "are two of the most serious aggravators set out in the statutory sentencing scheme"; neither was present; two

statutory mitigators "under the influence of extreme mental or emotional disturbance" and substantial impairment of "capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct" and "nonstatutory mitigating factors").

First and perhaps foremost, supporting CCP is that

- Lawrence pled to, and admitted under oath to, conspiring with Jeremiah Rodgers to kill the victim (T-I 2-28).[7]

See Jackson v. State, 704 So.2d 500, 504-505 (Fla. 1997) (came back with gun, dropped her keys, ...; upheld CCP); Echols v. State, 484 So.2d 568, 574-75 (Fla. 1985) (conspiracy to commit murder in order to obtain control of the victim's estate supported CCP); Fotopoulos v. State, 608 So.2d 784, 792-93 (Fla. 1992) (victim lured into woods under ruse, "staged like a production"; upheld CCP). See also Archer v. State, 673 So.2d at 19-20 (Fla. 1996) (upheld CCP; "a contract murder, which is by its very nature cold"); Hoskins v. State, 702 So.2d 202, 210 (Fla. 1997) (CCP "[g]enerally ... reserved for execution or contract murders or witness elimination type murders").

---

[7] Lawrence in open court and under oath (T-I 14) personally endorsed as correct the prosecutor's rendition of facts (T-I 15), which included conspiracy to commit this murder (T-I 7-8). At that time, Lawrence also personally acknowledged that he was pleading guilty to conspiracy to commit first degree murder (T-I 15) and that he actually did what the State had charged (T-I 18, 25).

Additionally, Lawrence under oath (T-I 14) admitted to many other facts that support the death penalty here when he endorsed as accurate (T-I 15, 18, 25, 32) the prosecutor's rendition of facts supporting his plea of guilty to first degree murder, conspiracy to commit first degree murder, and other charges:[8]

> The State would be able to prove and establish that on May 7 of 1998 the defendant and co-defendant ... Jeremiah Rodgers combined, confederated, and conspired to murder Jennifer Robinson.
>
> The evidence would be present in the note written by the defendant which went into great detail about their plans that night.
>
> In essence, part of the note indicated a list of things to obtain: Coolers of ice, Everclear, 2 scalpels, film for Polaroid camera, gallon size Zip-Lock bag, washrags and rope, a 380.
>
> A 380 was used to murder Jennifer Robinson.
>
> Flashlights. And also a note that indicates to get Jeremiah to make phone calls. Get her very drunk, yell in her ears. Slice, dice, and dissect, bag with eatable meats, bag remains and bury.
>
> [O]n ... May 7 of 1998 Jennifer Robinson was taken by Jeremiah Rodgers and met up with Jon Lawrence where they went to a remote part of Santa Rosa County where she was shot by Jeremiah Rodgers once in the head. Which killed her.
>
> Jon Lawrence's truck was used to transport her to that particular location, and his truck had with it a shovel and those implements which were later used to desecrate her body.
>
> The autopsy would show that she was shot one time in the head. She was killed by that single shot. And that subsequently both the defendant and the co-defendant – the defendant specifically Jon Lawrence – basically removed her right calf muscle and then burned the remains of the fat, the calf muscle.
>
> That the co-defendant, Jeremiah Rodgers, also dissected and removed part of her scalp and incised it.

---

[8] The plea of guilty was not part of any agreement by the State, and Lawrence fully understood that the result could be a sentence of death. (T-I 13-34) Also, see discussion in ISSUE II infra.

> Additionally, the evidence would show that Jon Lawrence purchased Everclear and/or a purchase of Everclear was used and given to the victim in the case. And her blood alcohol would be about .138.
>
> In addition, the gun that was used in this particular case belonged to the defendant, Jon Lawrence, and was purchased by him through another person.
>
> Those would be the facts that the state would establish; that the defendant conspired with the co-defendant to murder her. And also that he was a principal to the murder. And that alcohol was given, and also that there was the abuse of a dead human corpse.
>
> She was under the age of 21 at the time, Judge ... .

(T-I 7-8)

Further, compelling evidence of facts underlying CCP was introduced in the penalty phase and Spencer hearing that followed Lawrence's plea of guilty.[9] The prosecutor's factual basis spoke of Lawrence's (T-IV 557-58) handwritten notes, which were admitted into evidence (State's Exhibits #7A & # 7B, attached to the brief as App. B; T-III 372-75) and which the trial judge attached to his Sentencing Order (App. A). Lawrence's notes included his to-do list and list of supplies[10] for their killing the victim, which they executed:

- Lawrence planned "Film for Polaroid cam" (R-II 353, App. B), and he actually stole his brother's Polaroid camera (T-IV 523, App. C), he and Rodgers purchased film for it (T-IV 521-22), and then Polaroid photos were taken of aspects of the murderous events that followed, including

---

[9] For additional discussion of CCP, see ISSUE IV infra.

[10] Lawrence admitted that he made the list "probably before Jennifer" and "after Justin." (T-IV 535-36)

one of Lawrence holding up the foot of the dead victim (See, e.g., T-IV 523-24, App. C; T-III 371-72)[11]; Lawrence put the camera in his pickup truck (T-IV 522-23, App. C), which was used to transport the victim into the woods to the murder scene (See T-IV 517, 522-23, 524, 533-34);

- Lawrence's planned list of supplies also included "gloves" (R-II 353, App. B), and Lawrence actually stole gloves from a hospital about two weeks prior to the murder (T-IV 526-27. Also, see plastic bag with disposable hospital-type gloves found in Lawrence's pickup truck, State's Exhibit #22, T-IV 427);[12]
- Lawrence listed "everclear" (R-II 353, App. B) and wrote "get her very drunk" (R-II 352, App. B), and he actually purchased Everclear the day before the murder (T-IV 531, App. C)[13] and the victim got very drunk when she was with

---

[11] The Sentencing Order notes that Lawrence "even held the dissected leg up for the codefendant to take pictures." (R-II 336).

[12] Lawrence said they wanted the gloves "just for fingerprints on the bullets when we were riding around shooting" (T-IV 526, App. C). Later in the statement, he said that he "just felt like taking" some when he "just happened to be down there in one of them empty rooms" (T-IV 527).

[13] Lawrence claimed that he bought it because Rodgers "wanted to try some more" (T-IV 531-32, App. C). Later in his statement, he admitted that strawberry wine, which was also on his list, "tastes real good to mix with the Ever Clear" (T-IV 535).

Lawrence and Rodgers that night (T-IV 518, 519, App. C; .138 blood alcohol, T-IV 434);

- Lawrence wrote that, after ensuring that she was drunk, "rape" the victim (R-II 352, App. B), and he and Rodgers did each had sex with her after she was drunk, whereas prior to her drunken state, she had refused sex (T-IV 518, 526, App. C);[14]
- Lawrence wrote the next step as killing the victim (R-II 352, App. B), and, after getting her drunk and both having sex with her, Rodgers did shoot her in the head,[15] killing her (T-IV 431-32, 521, 524-25);[16]
- Lawrence's supply list included a "380" (R-II 353, App. B), and he had another person buy a 380 about a couple of months before this murder (T-IV 444-45, 532 App. C), and Rodgers used Lawrence's 380 to kill the victim (T-IV 437-41). See also 380 live round cartridge found along side of V's body, T-IV 420; box for Lorcin 380 gun in a

---

[14] Thus, while it may be debatable whether these facts fit the technical definition of Sexual Battery under Section 794.011, Fla. Stat., Rodgers intent was to get the victim drunk so he could have sex with here, then kill her.

[15] Lawrence wrote of a much more morbid means of killing her (See R-II 352, App. B), which would have constituted HAC; Lawrence should not be heard to complain that Rodgers' method reduced the victim's suffering.

[16] In light of the other evidence in the case summarized in this issue and ISSUE III infra, Lawrence's pre-trial statements that he did not know that Rodgers would kill the victim and that they were going to take the victim home (T-IV 526, 539-40) were incredible.

drawer under Lawrence's bed in the residence, State's Exhibit #8, T-III 376);

- Lawrence wrote that the next step as "slice and dice, disect completely" (R-II 352, App. B), and Lawrence did cut off the two muscles that substantially constitute her calf muscle (See T-IV 523, 533-34, 432-33, 433-34, 558);[17]
- Lawrence's plan was to "bury" the victim (R-II 352, App. B), and the victim was, in fact, partially buried in a wooded area off of a path (T-IV 412. See also T-IV 415, 418);
- Lawrence's checklist included a shovel (R-II 353, App. B), and, after Rodgers shot the victim, according to Lawrence, "we looked in the ... tool box to to find a shovel"; Lawrence said that he wanted to "dig" a little hole for her; (T-IV 523, App. C); a shovel was recovered from Lawrence's pickup truck (State's Exhibit #23, T-IV 428);
- Lawrence wrote on the list "flashlights" (R-II 353, App. B), and a "halogen spotlight ... was found on the

[17] The medical examiner testified that the big muscles that give the calf its shape were removed from the victim. (T-IV 432-33) The expert witness compared muscle tissue recovered from Lawrence's freezer with the incision in victim's leg and opined that it had characteristics of human muscle and that shape and cuts of the muscle were consistent with having been removed from the victim's lower leg (T-IV 433-34). Another expert found human blood on the muscle tissue in Lawrence's freezer. (T-IV 558)

passenger floorboard of the truck" (State's Exhibit #24, T-IV 428-29);

- Lawrence wrote "bag with eatibile meats" (R-II 352, App. B) and his supply list included big ziplock bags and "Coolers of ice for raw meat" (R-II 353, App. B), and a bag with what appears to be the victim's calf muscle was found in Lawrence's freezer in a plastic bag (T-IV 436-37).

In addition to the execution of this handwritten detailed plan, CCP was further corroborated through Lawrence's

- Possession of a book, The Incredible Machine, in which the calf muscle of a female was circled (State's Exhibit #4, T-VII 988-99), which, as discussed supra, is the very area that Lawrence extracted from the victim's body;[18]
- Multiple times washing his truck of the smell of the murder (T-IV 533-34, App. C);
- Lies to the officer that he did not know Jennifer Robinson and that he had not been with her at any time (T-III 365);

[18] Also, Lawrence pled guilty to the charge of mutilation of the victim's body. (T-I 2, 7-8, 33-34).

This book as well as the literature on serial killers and sniping was introduced at the Spencer hearing. (T-VII, R-II 345, App. A)

- ! Use of his knowledge of the area as a life-long resident[19] of Santa Rosa County when the victim was driven in his truck to a remote wooded location,[20] where she was fed alcohol, sexually taken advantage-of in her drunken condition, killed, and partially buried;
- ! Misleading statement to the officer that, although he knew what a Polaroid camera was, he did not have one, had no film for one, and had no pictures from one (T-III 365-66), when in fact he had stolen one from his brother (T-IV 523, App. C) and had Polaroid film (State's Exhibit #9, T-III 376-77) and Polaroid pictures at his residence (T-III 367), including a cut-up one (T-III 375-76) of the dead victim (T-III 371-72).

Accordingly, the trial judge discussed the elements of CCP, and then astutely evaluated the facts of this case (R-II 333-38, App. A). Also, see additional facts discussed in this issue under section "3. Mitigation," infra.

---

[19] Lawrence's sister testified on cross-examination that Lawrence has lived in the area his whole life and Rodgers was not from the area. She also indicated that Lawrence has done a lot of camping in the woods and has ridden around there a lot. (T-V 773) Lawrence's mother testified that he went squirrel hunting with his brother and father. (T-VI 878) Lawrence told the police that Rodgers had no family in the area and had no reason to "stick around" and that he (Lawrence) did not want to venture very far because of his Mom and Dad's situation there. (T-IV 532-33, App. C)

[20] Arguendo, although unnecessary here, these facts support the avoid arrest aggravator. See Hall v. State, 614 So.2d 473, 477-78 (Fla. 1993) (collecting cases; "secluded wooded area *** body dragged further into the woods").

There was compelling evidence supporting CCP. See also Gore v. State, 26 Fla. L. Weekly S257, *10 (Fla. 2001) ("this Court previously has affirmed findings of CCP under similar circumstances"), parenthetically summarizing Wuornos v. State, 644 So.2d 1000, 1008-09 (Fla. 1994) ("affirming trial court's finding of CCP where evidence established that defendant lured victim to an isolated area, killed victim, and proceeded to steal victim's property, and defendant had previously killed multiple victims in similar manner"); discussion of ISSUE III and ISSUE IV infra.

2. Prior Violent Felony.

The other aggravator here, prior violent felony conviction, is generally "strong aggravation," Bryant v. State, 26 Fla. L. Weekly S218 (Fla. Apr. 5, 2001). See also Ferrell v. State, 680 So.2d 390, 391-92 (Fla. 1996), (only aggravator was "a second-degree murder bearing many of the earmarks of the present crime"; "we have affirmed the penalty despite mitigation in other cases where the lone aggravator was especially weighty"); Lindsey v. State, 636 So.2d 1327 (Fla. 1994) (contemporaneous first degree murder and prior second degree murder); Lemon v. State, 456 So.2d 885 (Fla. 1984) (prior conviction of assault with intent to commit first-degree murder for stabbing a female victim). Here, it was fully entitled to the "great weight" the trial judge afforded it (R-II 349).

The prior-violent-felony aggravator attains even greater significance due the situation here of serial killings/attempted killing within a 39-day period, See LaMarca ("proportionality is supported by the fact that LaMarca committed the instant murder soon after being released from prison"):

- On March 29, 1998, Lawrence and Rodgers drove around and Lawrence provided Rodgers the gun used to shoot Leighton Smitherman in the back as he watched television in the supposed safety of his home (State's Exhibit #10 [gun], #8 [box for gun]; III 340-44, 376, IV 444-45, 532-33);[21]
- On April 9, 1998, Lawrence drove Justin Livingston out into the woods (T-IV 452), where he (Lawrence)[22] **clandestinely retrieved knives** from his truck's toolbox (T-IV 458) and where **he and Rodgers each stabbed** Livingston multiple times, killing him (T-IV 453-57);
- The instant May 7 offense.

Lawrence was integrally involved in all three murderous incidents.

Regarding the March 29 shooting of Smitherman, Lawrence had a friend surreptitiously purchase for him the 380 gun that was

---

[21] Lawrence admitted that "we stopped at that guys house," and then he attempted to justify the shooting by adding, "to just kinda scare him and uh he shot at him." (See T-IV 532, App. C) Noteworthy is that the shell casing was recovered close to Smitherman's window. (T-III 343)

[22] Lawrence said that Rodgers retrieved a knife from the truck when Livingston was walking away. (T-IV 459)

used to shoot Smitherman in the back (See T-IV 440-41). At the time of the trial, Smitherman still had the bullet in his body, which had entered at the base of his neck one inch to the left of his spine. (III-344)

On April 9, eleven days after Smitherman was shot, Lawrence **and** Rodgers knifed Livingston to death. Lawrence said that "the last two" times that he stabbed Livingston were "kinda real deep and he kinda rolled to the side and I pulled the knife out." (T-IV 455) Lawrence **and** Rodgers then thought about what to do next and Lawrence got a blanket out of the truck's toolbox, and Lawrence covered up Livingston. (T-IV 455). Lawrence said that the blanket would make it "easier to carry him and not really get a whole lot of blood on us." (T-IV 456) They then left in Lawrence's truck and, with Lawrence driving, returned to Livingston's body (T-IV at 457). Together, they buried Livingston (T-IV at 457).

Neither Lawrence (T-IV at 455) nor Rodgers (T-IV 451) liked Livingston, and Lawrence drove Livingston out into the woods after Rodgers made "hand signals with his fingers running across ... neck" (T-IV 451).

At some point between killing Livingston and the instant murder (See T-IV 535-36), Lawrence handwrote the supply list, which included "Coolers of ice for raw meat," "everclear," "film for Polaroid ca," "ziplock bags," "shovel," "gloves," "380," "flashlight." (R-II 353, App. C. See also to-do list at R-II 352, App. C)

On May 7, 28 days after fully participating in the killing of Justin Livingston, Lawrence participated in the murder of Jennifer Robinson, where the list of supplies and to-do list, both handwritten by Lawrence, provided the wherewithal and blueprint for the murder, as discussed above.

In sum, and as amplified in ISSUE III infra, within 39 days, Lawrence was a full participant, just as Rodgers was, in the three murderous episodes. It is difficult to conceive of a more weighty set of facts supporting such a serious aggravator.

3. Mitigation.

Lawrence's full participation in non-hallucinating, goal-directed behavior, as detailed in the foregoing pages, belie Lawrence's position that the weight of the mitigators render death a disproportionate sentence. For example, Lawrence was able to –

- Manipulate the system by orchestrating another person to secure a gun for him;
- Understand the significance of assuring that there would be no fingerprints on the bullets when he and Rodgers were "riding around shooting" (T-IV 526);
- Clandestinely obtain a knife immediately before he stuck it into Livingston "kinda real deep";
- Write lists and follow through on them;

- Clandestinely steal his brother's Polaroid camera, used to photograph Lawrence holding up the victim's leg he dissected;
- Attempt to wash his truck of the smell of the murder;
- Lie to the police about his knowledge of this murder;
- Provide a detailed account of this murder (T-IV 510-43, App. C), as well as an account of the Livingston murder (T-IV 451-63), while manipulatively attempting to minimize his personal culpability by repeatedly stating that he did not know of Rodgers' murderous intent; and,
- Find remote locations in the woods where he participated in the killings of Livingston and Robinson.

Moreover, the impact of Lawrence's mental condition on the sentence here was also attenuated by Lawrence's ability to –

- Enjoy reading (T-VI 872. See also literature on serial killers, sniping, KKK, female anatomy, ... found in Lawrence's truck, T-VII 980 et seq, State's Exhibits #2-#5, R-II 345, App. A);
- Obtain his GED (T-I 14, T-VI 873, T-VII 984);
- Evaluate shoplifting as not worth the risk of getting caught (T-IV 527, App. C);
- Sketch or identify relative locations of persons and wounds on diagrams regarding the Livingston murder (See T-IV 454, 456, 457, 460-63), including clarifying that "a few roads on the left are missing" (T-IV 457);

- Cover up footprint tracks at the scene of the Livingston murder (T-IV 457);
- Volunteer that his intent to rape, kill, and dissect the victim was "bad" and "pretty sick" (T-IV 540-41);
- After Ms. Robinson was killed, know to "g[e]t on out of there" when he and Rodgers "heard a boat motor real close" (T-IV 521);
- Show the police the sites for the murder and burial of the victim here (T-III 397-98);
- Have a truck and a trailer (See "my house" at T-IV 522, 523, 533; See also "your trailer" at T-IV 534, 539; "my little ... Ford Ranger" at T-IV 452, "my truck" at T-IV 457);[23]
- Obtain a driver's license (T-V 773-74);
- Practice a martial art at age 10 (See photographs in Defense Exhibit #12; karate certificate in State's Exhibit #2, T-VII 984); and,
- Hide his drinking from his mother.[24]

Accordingly, the trial judge astutely analyzed mental mitigation at length. (See R-II 338-43, App. A) He concluded that "the entirety of evidence diminishes the substantiality

---

[23] Also, Lawrence's half-sister testified that Lawrence had a license and drove a truck and lived by himself in a trailer a couple of months prior to the murders. (T-V 773-74)

[24] Compare mother's testimony at T-VI 869 with Lawrence telling Dr. Bingham that "he began consuming alcohol while in middle school" at SR-VIII 1202, and life circumstances including "alcohol use and consumption" at T-V 665-66.

of the influence" of mental or emotional disturbance (Id. at 340) The

> influence of his mental disturbance was significant but not predominant. Likewise, Lawrence's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired, but this impairment was not a predominant factor. Despite the presence of both mental mitigators, there is not a predominant causal connection or relationship between Lawrence's mental or emotional disturbances and this senseless murder.

(Id. at 342-43) The trial judge's order reasoned that "there was no competent evidence of delusional thinking nor of auditory hallucinations adequately connected to the crimes themselves." (Id. at 341)

The trial judge pointed to the facts belying a causal nexus between Lawrence's mental condition and this murder: Lawrence's efforts to conceal the murder, including burying the body, washing his truck, and cutting up a Polaroid photograph of the victim, and lying to the police when initially questioned. The Order also, for example, pointed out that Lawrence attempted to conceal his involvement in the Smitherman attempted-murder and participated in the Livingston murder where it would not be seen. Lawrence knew he was a convicted felon and so had a friend purchase a gun for him. Lawrence assessed that shoplifting at the mall was not worth it. The Order footnoted (note 8) Lawrence's ability to recall details. (Id. at 341-42, App. A)

4. Comparative Cases.

The State has already introduced a number of cases that assist the analysis. For example, Larkins, 739 So.2d at 95, stressed the seriousness of the CCP aggravator, and Bryant, 26 Fla. L. Weekly S218, and LaMarca stressed the general strength of the prior violent felony aggravator, which LaMarca suggested can be yet-further compounded by the new felony coming close on the heels of activity associated with other criminal activity, there release from prison due to another crime.

A fortiori, under the facts of this case, CCP was extreme to the point where Lawrence made to-do and supply lists, and prior violent felony was extreme to the point where Lawrence participated in three separate murderous episodes within 39 days.

Blackwood v. State, 777 So.2d at 405, demonstrates that extreme aggravation can be sufficient to uphold the death penalty, even where there is only one aggravator, there HAC, and even where there is some significant mitigation:

> The trial court found one statutory mitigator (no significant history of prior criminal conduct), which it gave "significant weight", and eight nonstatutory mitigators: (1) emotional disturbance at the time of the crime (moderate weight); (2) capacity for rehabilitation (very little weight); (3) cooperation with police (moderate weight); (4) murder resulted from lover's quarrel (no specific weight given but considered this factor to the extent that the killing was borne out of a prior relationship and was fueled by passion); (5) remorse (some weight), (6) appellant is good parent (some weight); (7) appellant's employment record (some

weight); and (8) appellant's low intelligence level (some weight).

The instant case involves extreme facts underlying two very serious aggravators and significant mitigation. Blackwood rejected a proportionality attack. A fortiori, it should be rejected here.

Spencer v. State, 691 So.2d 1062, 1065 (Fla. 1996) (cited by the trial court here, R-II 343, App. A), affirmed a death sentence for killing of a spouse. It involved aggravators and mitigators similar to those here: prior violent felony and HAC, whereas here prior violent felony is coupled with CCP, which Larkins placed at the same level of seriousness. Spencer's prior violent felonies were aggravated assault, aggravated battery, and attempted second-degree murder, whereas here they are all at the level of participating in premeditatedly trying to kill two other people and succeeding on one of those occasions. Spencer, as here, involved two statutory mental mitigators, i.e., extreme mental or emotional disturbance and impaired capacity to appreciate the criminality of conduct, as well as a number of nonstatutory mitigating circumstances.[25] Here and in Spencer, mental mitigation was reduced by the defendant's ability to function

[25] Spencer's nonstatutory mitigating factors included "drug and alcohol abuse, paranoid personality disorder, sexual abuse by his father, honorable military record, good employment record, and ability to function in a structured environment that does not contain women." 691 So.2d at 1063.

and plan, and, indeed, here, planning included Lawrence's lists.

Spencer, 691 So.2d 1065, compared its facts with Lemon v. State, 456 So.2d 885 (Fla. 1984), which also applies here: aggravators of prior violent felony conviction and HAC, here CCP. As here,

> the *Lemon* court found the mental mitigating circumstance of emotional disturbance, but 'indicated that there was some question as to the degree of the defendant's emotional disturbance, i.e., whether it was extreme.' *Id.* at 888. Accordingly, the court determined that this mitigating circumstance did not outweigh the aggravating circumstances. *Id.*

Spencer, summarizing at 691 So.2d 1065-66.

The trial court's citation (R-II 343, App. A) to Robinson v. State, 761 So.2d 269, 272-73 (Fla. 1999), also assists. There,

> (1) the murder was committed for pecuniary gain; (2) the murder was committed to avoid arrest; and (3) the murder was cold, calculated and premeditated. The trial court also found two statutory mitigating factors: (1) Robinson suffered from extreme emotional distress (some weight) and (2) Robinson's ability to conform his conduct to the requirements of the law was substantially impaired due to history of excessive drug use (great weight).

Here, the aggravators, especially given the facts of this case, discussed above, are at least as serious as Robinson's. There, the trial court found numerous nonstatutory mitigation, including

> (1) Robinson had suffered **brain damage** to his frontal lobe (given little weight because of insufficient evidence that brain damage caused Robinson's conduct); (2) Robinson was under the influence of cocaine at the time of murder (discounted as duplicative because cocaine abuse was

> considered in statutory mitigators); (3) Robinson felt **remorse** (little weight); (4) Robinson believed in God (given little weight); (5) Robinson's **father was an alcoholic** (given some weight); (6) Robinson's **father verbally abused family members** (given slight weight); (7) Robinson suffered from **personality disorders** (given between some and great weight); (8) Robinson was an **emotionally disturbed child, who was diagnosed with ADD**, placed on high doses of Ritalin, and placed in special education classes, **changed schools** five times in five years, and had **difficulty making friends** (given considerable weight); (9) Robinson's **family had a history of mental health problems** (given some weight); (10) Robinson obtained a **G.E.D.** while in a juvenile facility (given minuscule weight); (11) Robinson was a **model inmate** (given very little weight); (12) Robinson suffered **extreme duress** based on fear of returning to prison because where he was previously raped and beaten (given some weight); (13) Robinson **confessed to the murder and assisted** police (given little weight); (14) Robinson admitted several times to having a drug problem and sought counseling (given no additional weight to that already given for history of drug abuse); (15) the **justice system failed** to provide requisite intervention (given no additional weight to that already given for history of drug abuse); (16) Robinson successfully completed a sentence and parole in Missouri (given minuscule weight); (17) Robinson had the ability to adjust to prison life (given very little weight); and (18) Robinson had **people who loved him** (given extremely little weight).

Here, the other mitigation was similar to Robinson's. The trial judge gave some weight to Lawrence's age of 23 (R-II 346, App. A); little weight to Lawrence's caring and giving relationship with his family (Id. at 346-47); considerable weight to Lawrence's sick and disturbed home life while he was growing up, his diagnosis of "ADD," and his inability to cope in prison (Id. at 347-48); little weight to remorse (Id. at 348), some weight to finally cooperating with the police (Id.), little weight to pleading guilty or no contest to the three murders (Id.), little weight to Lawrence's offer to

testify against Rodgers (Id. at 349), and little weight to model behavior as an inmate (Id.).

Pope v. State, 679 So.2d 710, 712, 713 n. 1 (Fla. 1996), involved "two aggravating circumstances, two statutory mitigating circumstances, and three nonstatutory mitigating circumstances." Pope, as here, involved prior violent felony and another aggravator. As here, the murder was premeditated. Here, the two aggravators were about as extreme as they could possibly be. Here and in Pope, mitigation included extreme mental or emotional disturbance and substantial impairment of capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. Both cases involved some nonstatutory mitigation that the trial court weighed.

Zakrzewski v. State, 717 So.2d 488 (Fla. 1998), upheld a death sentence where the trial judge found aggravators of prior violent felony (contemporaneous murders), CCP, and HAC and gave significant weight to the mitigators of "no significant prior criminal history and "under the influence of extreme mental or emotional disturbance." Concerning nonstatutory mitigation, the trial court gave substantial weight to two mitigating factors, significant weight to three mitigating factors, and little weight to eight factors. Moreover, as to one of the murders, HAC was erroneously found, yet harmless because of "CCP and the contemporaneous murders"; concerning that murder, Zakrzewski reasoned:

> As to Sylvia's murder, in light of our previous analysis regarding HAC, only two aggravators were properly established (CCP and the contemporaneous murders). Nevertheless, based on the weight of these two aggravators, we do not find that the death sentence is disproportionate for the murder of Sylvia.

717 So.2d at 494. Here like Zakrzewski, the aggravators were CCP and prior violent felony, but, a fortiori, here the prior violent felonies were three, serial, murderous episodes. In Zakrzewski, the planning occurred within a day as he cooled off and staged a machete for his later use. Here, Lawrence made his killing to-do list and supply lists and, some days prior to this murder, collected supplies. Here and in Zakrzewski, there were two significant statutory mitigators, including extreme mental or emotional disturbance. There, "the death penalty was proportionate," as it is here.

Like here, serious aggravation outweighed statutory mental mitigators and other mitigation in Hildwin v. State, 727 So.2d 193, 194 (Fla. 1998) (HAC, previously convicted of prior violent felonies, under sentence of imprisonment; "some weight" to under the influence of an extreme mental or emotional disturbance at the time of the murder and "capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired; "some weight" to five nonstatutory mitigators, including "history of childhood abuse, including sexual abuse by his father," "history of drug or substance abuse," "organic brain damage," "ability to do well in a structured environment

like prison," and "mental illness ... readily treatable in a prison setting"; "proportionate to other cases where we have upheld the imposition of a death sentence," collecting cases). Hildwin held death proportionate, as it is here.

Sexton v. State, 775 So.2d 923, 936-37 (Fla. 2000), upheld a death sentence and considered the "egregious" facts underlying the aggravators of "CCP and avoiding arrest aggravators." There, the trial judge gave "great weight to the statutory mitigator of 'under the influence of extreme mental or emotional disturbance.'" Here, the trial judge afforded less than great weight to the statutory mitigation, and, as in Sexton, the trial judge's well-reasoned and record-grounded analysis is entitled to deference.

In contrast, Lawrence discusses (IB 36) Cooper v. State, 739 So.2d 82 (Fla. 1999), which did not involve participation in three serial murders/attempted murder within a 39-day period, and, here, unlike there, CCP is to the extreme of writing to-do and supply lists in the context of conspiring to murder the victim. Regarding mitigation, there, unlike here, the defendant had "no significant history of prior criminal activity," Id. at 84 n. 5. Further, there, mitigators included "mental retardation," whereas here Lawrence's IQ testing yielded 1998 scores of verbal 85 (low-average), performance 106, with a full-scale IQ of 92 (average); the expert ultimately concluded, due to the possibility of "performance bias," that Lawrence's "overall Full Scale I.Q. is in the low

average range." (SR-VIII 1203) Similarly, a February 1996 report indicated "a full scale IQ score of 90 (25th percentile)," which is in "the lower end of average range of intellectual abilities" or "low average to average range of intellectual abilities" (Id. at 1259). In Cooper, the defendant was "paranoid schizophreni[c]," whereas here, although there was evidence of schizophrenia, "there was no competent evidence of delusional thinking nor auditory hallucinations connected to the crimes themselves" (R-II 341, App. A). There, the defendant was 18 at the time of the crime, whereas here Lawrence was 23 (Id. at 346). There, unlike here, the defendant's father physically brutalized him. There, unlike here, the father

> on one occasion rammed Cooper's head into the refrigerator. Cooper's aunt testified that the father frequently whipped and beat Cooper and threatened the children with a gun. And a second sister testified that the father would frequently pull out his gun and threaten the children and that on one occasion he actually put the gun to young Cooper's head.

739 So.2d at 84. Also, there, unlike the 11-1 vote here, the jury recommendation was 8-4. This case is quite dissimilar from Cooper.

Larkins v. State, 739 So.2d 90 (Fla. 1999), is the first case in Lawrence's string-cite (IB 37), but there, unlike the instant cases's three murderous episodes within 39 days, the prior violent felony was almost 20 years earlier, and the aggravators there, unlike here, included neither CCP nor HAC:

> We note that the most serious aggravator, the prior violent felony aggravator, was predicated upon two convictions which were committed almost twenty years before the murder in the instant case, and the defendant apparently led a comparatively crime free life in the interim. We also note that neither the heinous, atrocious, or cruel nor the cold, calculated, and premeditated aggravators are present in this case. These, of course, are two of the most serious aggravators set out in the statutory sentencing scheme, and, while their absence is not controlling, it is also not without some relevance to a proportionality analysis.

Id. at 95 (footnote omitted). Moreover, there, the murder was committed more as an impulse during a robbery, not out of the mind-set constituting extreme CCP present in the instant case.

Also, see Miller v. State, 770 So.2d 1144, 1146, 1150, 1151 (Fla. 2000) ("prior violent felony conviction ... homicide was committed during an attempted robbery and for pecuniary gain (merged)"; several mitigators, including, for example, "suffered emotional distress over the death of his sister and a close cousin-little weight" and "frontal lobe deficiency that affects inhibition and impulse control-modest weight"; "death sentence in this case is proportionate"); Shellito v. State, 701 So.2d 837, 844-45 (Fla. 1997) (aggravators of prior violent felony and commission during a robbery; slight weight to "Shellito's father was an alcoholic and that Shellito did not do well in school; that he had been placed in a special education class; and that he had been in several treatment and diagnostic facilities without any specific diagnosis of mental illness or other disabling conditions"); Knight v. State, 721 So.2d 287 (Fla. 1998) (plethora of evidence concerning

defendant's mental problems, but some of it conflicting; abusive childhood; "Even uncontroverted opinion testimony can be rejected, especially when it is hard to reconcile with the other evidence presented in the case"; "no error in the court's rejection of Knight's proffered statutory mental mitigators"; "judge found and weighed the proffered nonstatutory mitigation, including the fact that Knight suffered from "some degree of paranoia"; "death sentences are proportional to other cases where sentences of death have been imposed"), citing Rolling v. State, 695 So.2d 278 (Fla. 1997) (affirming death sentences for multiple murders despite defendant's significant statutory and nonstatutory mental mitigation, including family's history of mental illness and defendant's physically and mentally abusive childhood), and Henyard v. State, 689 So.2d 239 (Fla. 1996) (affirming two death sentences despite trial court's finding of both statutory mental mitigators and nonstatutory mitigation involving defendant's stunted emotional level, low intelligence, impoverished upbringing, and dysfunctional family); Johnson v. State, 660 So.2d 637, 641, 648 (Fla. 1995) (jury recommendation of 8-4; prior violent felony, financial gain, and HAC outweighed several mitigators, such as "deprived upbringing," "excellent relationship with other family members," "cooperated with police and confessed," "age," "no significant history of criminal activity before 1988," "suffered mental pressure not reaching the level of statutory

mitigation"; "death is proportionately warranted"); Heath v. State, 648 So.2d 660 (Fla. 1994) (affirmed defendant's death sentence based on presence of two aggravating factors of prior violent felony and murder committed during course of robbery, despite the existence of the statutory mitigator of extreme mental or emotional disturbance); Kokoraleis v. Gilmore, 131 F.3d 692, 697 (7th Cir. 1997) (reasoned, under facts more deviant than in the instant case, a killer can "can be abnormal without being mentally impaired").

ISSUE II

DID THE TRIAL COURT REVERSIBLY ERR BY FAILING TO STOP THE TRIAL, HAVE NEW MENTAL EXAMINATIONS OF LAWRENCE DONE, AND HAVE AN EVIDENTIARY HEARING UPON LAWRENCE'S COMPLAINT THAT HE WAS "HALLUCINATING"? (Restated)

Lawrence repeatedly asserts that he was having "hallucinations" during the trial. He, therefore, contends that the trial judge should have stopped the trial, ordered new mental examinations, and then conducted a full-blown evidentiary hearing on the matter. The State disagrees because of the totality of the record, especially the fact that Lawrence's use of the term "hallucinations" was a misnomer.

As a preliminary matter, the State notes that the trial judge did stop the proceedings and conduct multiple hearings pertaining to Lawrence's competency. (See T-IV 419-20, 464-69, 501-505) Thus, ISSUE II amounts to a complaint about the form of those hearings. As such, ISSUE II is not preserved.

Turning to the merits, the question is whether the trial court, given the totality of facts, should have stopped the trial when Lawrence complained of "hallucinations" and ordered new mental examinations.

Concerning appellate review of the merits, the State disputes Lawrence's assertion (IB 50-51) that the abuse of discretion standard is inadequate. Lawrence's argument assumes that facts indicating a reasonable doubt as to competency simply present themselves to the trial court and the appellate court on the cold written words of the appellate record. The State certainly agrees that there are extreme cases where the cold record can mandate fresh competency evaluations, such as, where a defendant attempts suicide during the proceedings and there is no reason for believing that it is a ploy, such as for delay. See Drope v. Missouri, 420 U.S. 162, 167, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975) (inter alia, "petitioner, who had been in the hospital for three weeks recovering from a bullet wound in the abdomen."

However, a per se rule that trial proceedings must cease upon a mental health complaint by a defendant with a history of mental problems would invite defendants to manipulate and abuse the judicial process.

For the vast majority of cases, review must include room for the trial judge's judgment beyond the cold record. The determination that the proceeding should be halted, further inquiry made, and the defendant re-examined depends upon the

trial judge's observations of many factors not apparent on the cold record, such as demeanor, physical appearance, gestures, voice intonations, and the like. In this sense, evaluating the subtleties of the defendant's courtroom behavior for signs of incompetency is much like the fact-finder assessing the believability of a lawyer or witness. See Drope, 420 U.S. at 179 ("demeanor during trial may be such as to obviate 'the need for extensive reliance on psychiatric prediction concerning his capabilities'"). Cf. Melbourne; Raddatz; Sanford.

Tempering the assessment of these factors is the assistance of mental health professionals and other external indicators. Thus, the trial court may have background information that includes mental health professionals' reports formulated in the past, and appellate review of a trial court's failure to further inquire and/or order new evaluations can be informed with the reports that were available to the trial court. In essence, their existence is part of the totality of circumstances for the trial court as well for the appellate court's review of the trial court's actions and inactions.

Therefore, the trial judge's failure to order new mental health examinations can be informed by his/her observations of the defendant on any occasion, the context of those observations, such as any prior observations by the judge, any prior mental health evaluations, and any other background information bearing upon competency, such as prior abuse of

the system. Some of this information is in the cold record and some of it is not. Consequently, appellate review should be deferential but nevertheless, upon proper presentation of the issue on appeal, examine the totality of circumstances surrounding a trial judge's failure to order a re-examination to determine if it is clearly erroneous. If the appellant cannot show clear error, the appellant is not entitled to relief. Indeed, the clearly erroneous standard is tailor-made for fact-intensive determinations. See Henry v. State, 613 So.2d 429, 431 (Fla. 1992) ("sufficiency and propriety of the predicate for a dying declaration is a mixed question of law and fact, and a trial court's determination of the issue will not be disturbed unless clearly erroneous"); Trushin v. State, 425 So.2d 1126, 1132 (Fla. 1982) ("question of whether the consideration for the promise is "anything of value" is a question for the trier of fact and unless clearly erroneous").[26]

Thus, the first step of Lawrence's proposed two-step process (IB 50) begs the question: When must the trial judge initiate a new competency inquiry? Perhaps he is suggesting that every time any defendant with a serious mental health history cries "hallucination," all proceedings should stop in

---

[26] The abuse of discretion standard has been recognized as applicable in Florida. See, e.g., Hardy v. State, 716 So.2d 761, 764 (Fla. 1998) (stating that a trial court's competency decision will be upheld absent a showing of an abuse of discretion).

their tracks and await a new mental health examination and evidentiary hearing with live testimony. If he is not suggesting this course, then he implicitly admits that it is a matter of considering all of the facts in the case. If all the facts in the case should be considered, the trial judge should not be forced to leave his/her personal observations at the door. There should be room in the system for this personal-observation.

In sum, the clearly-erroneous standard recognizes the need to assure that further competency inquiries are pursued when palpably justified, such as Drope's situation, while also recognizing the need for the judicial process to proceed without unjustified delay. This standard is itself reasonable and not unconstitutional. See U.S. v. Hinton, 218 F.3d 910, 912 (8th Cir 2000) (district court's factual determination of competency will be affirmed unless clearly erroneous); U.S. v. Branham, 97 F.3d 835, 855 (6th Cir. 1996) (because a district court's determination of competency is a factual finding we apply a clearly erroneous standard of review).

U.S. v. Morgano, 39 F.3d 1358, 1373-75 (7th Cir. 1994) (case citations and footnote omitted), is instructive because it blends various standards of appellate review, but none of them put the fate of the orderly judicial process in the per se hands of a defendant's self-label of "hallucinations":

> The starting point in all this is the notion that a criminal defendant is presumed to be competent to stand trial and bears the burden of proving otherwise. Though

> the decision not to order a Sec. 4241(a) hearing is an exercise of the district court's discretion, reviewed only for an abuse of that discretion, "the failure to grant such a hearing in the face of sufficient evidence to establish reasonable cause to believe that a defendant is mentally incompetent is a violation of due process" in and of itself. The district court's factual findings regarding competency are disturbed only if clearly erroneous. The exact quantum of evidence necessary to establish "reasonable cause" is difficult to describe with any certitude, though the reasonableness aspect of the inquiry clearly places the focus on the facts viewed objectively (what a reasonable person would think of the facts) rather than analyzing the subjective propriety of the district court's decision.
>
> ***
>
> Perhaps unsatisfied with the statements of Petros' attorney and the affidavit offered by Petros, the district court decided to question Petros (after securing his attorney's permission) at the hearing. Under oath, Petros admitted he understood the nature of the charges and proceedings pending against him yet baldly and self-servingly asserted he did not know the difference between right and wrong. This latter revelation is, however, quite irrelevant to the inquiry mandated by Sec. 4241(a), which focuses on whether the defendant "is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." 18 U.S.C. Sec. 4241(a). Even adding Petros' testimony to the hesitance expressed by his attorney regarding whether Petros truly understood the proceedings, it was not an abuse of the district court's discretion to conclude reasonable cause to question Petros' competency did not exist. Cumulatively, the evidence, including the testimony and statements offered by Petros and his attorney, as well as the observations made by the district court of Petros' demeanor when testifying, supports the court's decision that no reasonable cause existed to believe Petros did not understand the charges against him or was unable to assist in his defense.

See also Mason v. State, 597 So.2d 776, 779 (Fla. 1992) (after a hearing, a matter of whether "[c]ompetent substantial record evidence supports the circuit court's conclusion").

In any event, here the trial court's actions were reasonable, not clearly erroneous, and not otherwise justifying any relief.

On May 12 and 14, 1998, and Lawrence provided to the police two detailed statements of his murderous actions. (T-IV 451-63, 515-42) Although manipulative at times, there was no indication of hallucinations while making the statements.

On March 24, 2000, Lawrence pled guilty to the charges in this case. The trial judge conducted a lengthy plea colloquy with Lawrence. (T-I 14-32) Defense counsel noted during the plea proceeding that Lawrence "was evaluated sometime back by Dr. Larson and Dr. Bingham[27] and found to be competent." (T-I 12) Lawrence told the trial court that he had completed his GED, that he had not taken any drugs within the past 23 hours, and that he was not then under treatment "for any mental or emotional illness while ... in jail." (T-I at 14-15) Lawrence's answers to the trial judge's questions switched from "no" to "yes" and vice versa in patterns indicating that he understood the proceedings. (See T-I 14-15, 19-28) When asked whether the decision to plead guilty was his or his attorney's, Lawrence responded, "It is mine"; he responded similarly when asked about his mother. (T-I 24) Lawrence's mother also testified at the guilty plea proceedings. She

[27] These doctors' reports can found at SR-VIII 1200-1206 and 1207-11.

indicated that she had been in regular communication with Lawrence (T-I 29) and stated:

> I think he has accepted this as his decision and he understands that this is the best way to go.

(T-I 30)

On March 27, 2000, only three days after the foregoing extensive plea proceedings, the jury penalty phase began. (T-III 278) On March 30, 2000, the jury penalty phase was completed. (T-VI 889-996)

After the closing arguments in jury penalty phase, the trial judge inquired of Lawrence at length. (See T-VI 957-61) Lawrence indicated that, except when he removed himself from the courtroom while the tapes of his confession were played, he was able to "understand what's going on, and hear what's going on, without being bothered by the voices" and had no hallucinations or delusions. (T-VI 957) He also indicated that he was satisfied with counsel's representation of him. (T-VI 959-60)

On April 13, 2000, the trial court conducted the Spencer hearing. At that hearing, Lawrence personally testified. (T-VII 990-94)

On August 15, 2000, the trial judge sentenced Lawrence to death. (R-II 373-97)

During all of these events, Lawrence did not disrupt the proceedings with bizarre behavior, and the State has found

nothing in the record indicating that he attempted suicide during that time.

In the foregoing context of the trial court's numerous observations of, and interactions with, Lawrence, the sole basis for this claim appears to be Lawrence's self-reports on March 27, 2000, that he was having "hallucinations" and "flashbacks." (T-IV 419, 464-65) The trial judge explicitly inquired into the nature of these "hallucinations" and "flashbacks," essentially clarifying that Lawrence did not want to hear himself on the taped confessions (T-IV 467, 469, 504), it made him uncomfortable (T-IV 468, 504), and it was stimulating unpleasant memories of the murder (T-IV 467). Accordingly, Lawrence on appeal has failed to demonstrate anything implicating his capacity to understand the proceedings and to assist counsel, i.e., implicating competency. The trial court handled the matter carefully, astutely, and committed no error.

Moreover, Lawrence's explicit statement of satisfaction with his attorneys at the end of the penalty phase indicates that at that point that he did not feel that they betrayed him by allowing the proceedings to continue when he was having any disabling mental difficulties.

Returning to the standard of review discussion, the trial court here was able to observe Lawrence extensively. The trial court even directly interacted with Lawrence extensively and on several occasions. As background, the trial court had the

benefit of two mental health evaluations showing Lawrence competent to proceed. Given the totality of this record, Lawrence has failed to show that the trial judge's failure to stop the proceedings was clearly erroneous or even unreasonable as an abuse of discretion.

Wuornos v. State, 676 So.2d 966, 970-71 (Fla. 1995), involved behavior far more unusual than the self-report here:

> ... Wuornos contends that her behavior during the penalty phase was sufficiently 'irrational' that the trial court erred in not ordering a new competency evaluation. We have read the record of the proceeding and do not find that Wuornos' conduct reached a level that should have triggered renewed evaluation. Wuornos' statements, while profane and disruptive, nonetheless were rationally organized toward a goal of conveying several impressions: that she was being mistreated by guards, that she could not receive a fair trial, and that she had been unfairly subjected to more trials than male serial killers such as Ted Bundy, among other matters. It is clear from the overall exchange that, although angry, Wuornos was capable of understanding what was happening and of interacting in a meaningful way in the proceedings. Only if she showed a lack of such capacity, we believe, would the trial court be obligated to order a renewed competency evaluation.

Here, as in Wuornos, there was no showing that the defendant was "[in]capable of understanding what was happening and of interacting in a meaningful way in the proceedings."

The State respectfully submits that ISSUE II should be rejected. See also James v. State, 489 So.2d 737, 739 (Fla. 1986) ("possibility of organic brain damage, which James now claims he has, does not necessarily mean that one is incompetent or that one may engage in violent, dangerous behavior and not be held accountable ... many people suffering

from varying degrees of organic brain disease who can and do function in today's society... no merit").

ISSUE III

DID THE TRIAL COURT REVERSIBLY ERR BY DENYING THE DEFENSE REQUEST TO ADMIT RODGERS' NCIC ARREST RECORD AND DID THE TRIAL COURT REVERSIBLY ERR BY REJECTING A SUBSTANTIAL DOMINATION MITIGATOR? (Restated)

In the face of a well-reasoned trial court order and compelling evidence showing that Lawrence's ability to assert himself, such as,[28]

- Lawrence's self-assertion to the police exhibited through his lies to them about not knowing the victim and not possessing Polaroid-camera items;
- Rodgers' small size (5' 7", 150 pounds, Defense Exhibit #1, copy attached to IB);[29]
- Lawrence's conniving procurement of the murder weapon, stealing the camera used to take photos of the murder victim, including one of him holding her leg that he had just dissected;
- Lawrence's furnishing his truck for transporting the victim;

---

[28] See citations to the record in ISSUE I; Lawrence's statements at T-IV 451-63, 515-42.

[29] Lawrence is about two years older than Rodgers. Compare Rodgers' DOB of 4/19/77 on Defense Exhibit #1 with Lawrences's DOB of 4/12/75 at T-IV 451. See also R-II 346: Lawrence age 23 on 5/7/98.

- Lawrence's knowing the local woods as a life-long resident versus Rodgers' newcomer status; and
- along side of Rodgers, Lawrence's actively knifing Justin Livingston to death 28 days prior to this murder,

Lawrence asserts that he is entitled to a new penalty phase because the trial court did not find that Rodgers substantially dominated him. ISSUE III also contends that the trial court erroneously excluded "record evidence of Rodgers' criminal history, which was relevant to the statutory mitigator of whether Jonathan may have been under the substantial domination of Rodgers." Neither claim entitles Lawrence to relief.

A. Exclusion of Rodgers' NCIC arrest record.

ISSUE III claims violation of a variety of constitutional provisions, but it fails to point out where he preserved such claims by presenting them to the trial court. Indeed, a review of the transcript (at T-V 686-91 and T-V 710-12, cited at IB 53) reveals no such argument presented to the trial court. Therefore, constitutional claims were not preserved. See Hamilton v. State, 678 So.2d 1228, 1230 (Fla. 1996) ("Because the defense did not object to this particular statement on hearsay grounds, that issue now is procedurally barred"; "irrelevant that on initial appeal we found similar [but preserved] hearsay from a state social worker inadmissible"); Archer v. State, 613 So.2d 446, 447-48 (Fla. 1993)("specific

argument or ground to be argued on appeal"); Hill v. State, 549 So. 2d 179, 181-82 (Fla. 1989) ("The constitutional argument grounded on due process and *Chambers* was not presented to the trial court. Failure to present the ground below procedurally bars appellant from presenting the argument on appeal."); Steinhorst v. State, 412 So. 2d 332, 338 (Fla. 1982)(at trial, defense argued credibility as ground for cross-examination whereas on appeal defendant argued development of a "a viable defense theory"); Tillman v. State, 471 So.2d 32, 35 (Fla. 1985)("Here defense counsel merely proffered the testimony and argued its relevance. Trial defense counsel did not present to the court the specific argument relied upon here that the testimony came within an exception to the hearsay rule").

Moreover, defense counsel apparently failed to include the excluded evidence in the record on appeal, thereby failing to perfect the record for this claim for review. See Robinson v. State, 610 So.2d 1288, 1290 (Fla. 1992) ("Robinson has not shown that the jurors noticed, or were affected by, the shackles. We therefore find no merit to this issue"); Beech v. State, 436 So. 2d 82, 85 (Fla. 1983)(since appellant failed to show where record on appeal established reversible error, "the presumption of correctness stands"; rejecting due process argument); Times Pub. Co., Inc. v. City of St. Petersburg, 558 So.2d 487, 491-92 (Fla. 2d DCA 1990) ("On appeal, it is the obligation of the appellant to demonstrate error on the part

of the trial court"; "The Times concedes that it did not request that the notes or copies thereof be sealed and actually made a part of the record. The trial court's determination involved a factual finding as to whether the notes constituted public records. In the absence of a record reflecting the material reviewed by the trial judge, we cannot review the trial court's findings"). Lawrence cannot be heard to complain (IB 54 n. 20)[30] about the absence of the excluded portion of the paper when it was in the hands of his counsel, who failed to submit for review by this court.

Concerning the arguments made to the trial court that the "record of the dominating person is relevant" (T-V 688, 711-12) and indications of what the excluded evidence contained, the exclusion of the evidence is not a basis for relief here.

The admissibility of evidence is within the sound discretion of the trial court, and the trial court's ruling will not be reversed unless there has been a clear abuse of that discretion. See Ray v. State, 755 So. 2d 604, 610 (Fla. 2000); Zack v. State, 753 So. 2d 9, 25 (Fla. 2000); Cole v. State, 701 So. 2d 845 (Fla. 1997); Jent v. State, 408 So. 2d

[30] Lawrence in the same footnote (IB 54 n. 54) also complains about envelopes that had been emptied, but he fails to even suggest any prejudice. Indeed, if he felt that these items could be significant, he should have checked to determine whether they were used in the case of his accomplice Jeremiah Rodgers, now on appeal in this Court in Case #SC01-185, or, if unsuccessful in resolving the matter there, timely moving to supplement the record pursuant to the duty of an appellant. See Fla. R. App. P. 9.200(e),(f).

1024, 1039 (Fla. 1981). As such, Lawrence bears the burden on appeal of establishing that the trial court's ruling was unreasonable. See Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980) (to establish an abuse of discretion, Appellant must show that the trial court's ruling was "arbitrary, fanciful, or unreasonable").

On appeal, the trial court's ruling is entitled to affirmance if it was correct for any reason. See Dade County School Board V. Radio Station WQBA, et al., 731 So.2d 638, 644-46 (Fla. 1999) (collecting authorities); Murray v. State, 692 So.2d 157, 159 n. 2, 159-60 (Fla. 1997) (trial court summarily denied motion to suppress; "the trial court reasonably could have denied Murray's motion to suppress because" of consent); Caso v. State, 524 So. 2d 422, 424 (Fla. 1988) ("conclusion or decision of a trial court will generally be affirmed, even when based on erroneous reasoning, if the evidence or an alternative theory supports it").

At a capital penalty phase, "rules of evidence may be relaxed during the penalty phase of a capital trial, but they emphatically are not to be completely ignored," Johnson v. State, 660 So.2d 637, 645 (Fla. 1995).

Here, it appears that the excluded evidence consisted of N.C.I.C. entries that did not even necessarily reflect convictions. (See T-V 688-90) Thus, Lawrence sought to show that he was dominated by another person through arrest or other entries of that other person without proof of any nexus

to this case. He failed to show that the arrest records in any way reflected what Rodgers actually did in his past. He failed to show the timing of those events in relation to this case, such whether any dates on them even reflected an alleged event date rather than, for example, an arrest date. He failed to show how the nature of any of Rodgers' past behavior in other situations would affect Rodgers' relationship with Lawrence here. He failed to show that he even knew[31] of those events when he participated in this murder or when he participated in the Livingston murder or he participated in the attempted murder of Smitherman. As such, the records were irrelevant and nothing more than an inadmissible attempt to introduce bad character evidence. See §§ 90.404, 90.405, 90.608-610, Fla. Stat. And, especially given the irrelevant nature of the records, their probative value would have been outweighed by their unfair prejudice and misleading nature. See 90.403, Fla. Stat.

Moreover, there was no offer of proof showing that these N.C.I.C. entries were accurate, the procedure by which they appeared on that sheet, or how they otherwise authentically reflected entries in a reliable database. See Johnson, 660 So.2d at 645 (penalty phase records; "Johnson's counsel

---

[31] Contrary to Lawrence's so-called "Hobson's choice" argument (IB 58-59), establishing relevancy may at times entail the defendant choosing to testify. His choice presents no constitutional infirmity. See State v. Raydo, 713 So.2d 996, 1000 (Fla. 1998).

attempted to introduce these records without authenticating them, which is required under the evidence code. Sec. 90.901-902 *** Moreover, the trial court found that the records were not complete in themselves and required interpretation to be understood by the jury").

Further, in contrast to the nebulous nature of the records, the other evidence, described in ISSUE I supra, ISSUE IV infra, and in this issue infra, showing Lawrence integrally involved in this murder, renders the exclusion of these records harmless. Thus, the State also disputes Lawrence's assertion (IB 60) that it is "impossible" to determine harmless error.

Moreover, Lawrence turns appellate review upside down and inside out. He failed to include the excluded evidence in this record on appeal, but now Lawrence claims (IB 60) that "the State can not prove the error [of its exclusion] to have been harmless." Of course, Lawrence bore the responsibility for completing the record on appeal with documents available to him, and he should not profit from his failure. He created whatever void there is in the record, which also voids any claim supposedly based upon it.

B. Trial court's rejection of the substantial domination mitigator.

Rogers v. State, 26 Fla. L. Weekly S115, *12 (Fla. March 1, 2001), explained the over-all process of mitigation evaluation:

> The standards of review of a trial court's finding of mitigating circumstances are as follows: (1) whether a particular circumstance is truly mitigating in nature is a question of law and subject to de novo review by this Court; (2) whether a mitigating circumstance has been established by the evidence in a given case is a question of fact and subject to the competent substantial evidence standard; and (3) the weight assigned to a mitigating circumstance is within the trial court's discretion and subject to the abuse of discretion standard.

Thus, the standard of appellate review is whether "substantial competent evidence to support the trial court's rejection of [this] proposed mitigator[]," Valdes v. State, 626 So.2d 1316, 1324 (Fla. 1993). See also, e.g., Rose v. State, 26 Fla. L. Weekly S210, *16 (Fla. April 5, 2001) ("trial court's decision to reject the statutory mitigators was supported by competent substantial evidence"); Johnson v. State, 660 So.2d 637 (Fla. 1995) (trial judge rejected "statutory mitigator of extreme mental disturbance"; "competent substantial evidence supporting this determination").

The State disputes Lawrence's suggestion (at IB: 59-60) that the trial court must "consider[] all the evidence," emphasis in IB original) regardless of whether it is admissible. Lawrence relies upon James v. State, 695 So.2d 1229, 1237 (Fla. 1997), and James cited to Provenzano v. State, 497 So.2d 1177 (Fla.1986). Rather than supporting Lawrence's position that even inadmissible evidence must also

be considered, both of those cases continued their analyses with discussion of the received evidence that was actually relevant to the proposed mitigator. To accept Lawrence's argument would vest defense counsel with absolute discretion to submit for introduction into evidence anything, regardless how irrelevant or misleading, with the threat of per se reversing the trial court if admission and the proposed mitigator are refused. The role of judge at gatekeeper of evidence would be erroneously nullified, See Johnson, 660 So.2d at 645, as would the judge's sentencing fact-finder role.

Here, the trial court's mode of analysis was correct, and there was competent evidence to support the trial court's rejection of the substantial domination mitigator. Here, the "trial court conduct[ed] the proper inquiry," and it is therefore "within its power to determine whether mitigating circumstances have been established by a preponderance of the evidence," Bryant v. State, 26 Fla. L. Weekly S218 (Fla. April 5, 2001), quoting Knight v. State, 746 So.2d 423, 436 (Fla. 1998), citing Foster v. State, 679 So.2d 747, 755 (Fla. 1996).

Lawrence argues (IB 61-62) that the trial court really did not analyze whether he was dominated, but instead "focused entirely on" minor participation. However, the trial court correctly observed, under the facts of this case, that substantial domination and relatively minor participation were "interrelated" (R-II 343, App. A). To the degree that Lawrence

actively and personally participated in events surrounding the murder, without any indication what he was doing or saying was pressured by Rodgers, the evidence contradicted substantial domination. Lawrence was an active, willing collaborator in this murder, not substantially dominated by Rodgers. Thus, the trial court interweaves analysis pertaining to, and facts belying, substantial domination throughout its discussion, such as: "Lawrence failed to establish that Rodgers substantially dominated him"; other than aspects of Lawrence's self-serving confession, "no direct evidence that Rodgers dominated Lawrence"; (Id. at 344) Lawrence's books on anarchy, serial killers, sniping and snipers supporting Lawrence's "active[]" participation; and, Lawrence's membership in the KKK pre-dating Rodgers' arrival in the area (Id. at 345).

Indeed, the trial court discussed the importance of Lawrence's anatomy book showing **his initiative** in the murderous events:

> The State also introduced into evidence the human body book, The Incredible Machine, which was recovered from the toolbox on Defendant's truck. Several sections in this book were marked with a pen including a picture of the muscle structure of a female body with the calf section marked. The possession of this book, along with the other evidence introduced (e.g., admission that he cut the leg and the calf muscle was found in his freezer), indicate that Lawrence **initiated** and carried out this aspect of the plan.

(R-II 345, App. A, discussing evidence at T-IV 523, 534, 541, App. C, and State's Exhibit #4, described by a witness at T-VII 988-99)

Concerning a lack of coercion, Detective McCurdy testified:

> Q Detective McCurdy, during the course of your interview of Jonathan Lawrence at any time did the defendant tell you or -- tell you that he was forced by the co-defendant, Jeremiah Rodgers, by threat or use of force to engage in the crimes that he is charged with?
> A No, sir. he did not.

(T-IV 471)

Further, the trial court discussed and properly evaluated opinion evidence that Lawrence was easily led and aspects of Lawrence's statements that were self-serving (Id. at 343-44), but concluded that Lawrence "failed to establish that Rodgers substantially dominated him or that he acted under extreme duress" "by anyone" when he participated in this murder (Id. 343-44, 344 n. 9).

The trial court pointed to details of Lawrence's active participation in the murder, such as his to-do and supply lists that he wrote "after he had been involved in two other violent crimes with Rodgers," Lawrence's furnishing the murder weapon and a majority of the items used in the murder, Lawrence's familiarity with "remote areas of Santa Rosa County," and Lawrence not withdrawing assistance even after the murder had been committed. (R-II 344)

Indeed, the trial court wrote:

> Although Lawrence indicates in his taped confession that he wrote the note **at Rodgers' direction**, he continually **contradicts** this implication with his extensive use of the term 'we.' In fact, Rodgers' and **Lawrence's collaboration** is best illustrated in the following statement: "[y]eah, he'd just tell me just bad things to write down. **I'd think of a few and write stuff down**.' In addition, one of the instructions on the notes

> is '**get Jereimaih to make phone calls**.' **This statement does not appear to be written at Rodgers' instruction nor is it characteristic of a dominant/submissive relationship**.

(R-II 344, App. A)

Thus, the trial court indicated that it had fully reviewed Lawrence's statement. (T-IV 515-42, App. C) The trial court's use of the above excerpt was proper as an illustration of many statements supporting Lawrence's active and voluntary role in the murderous events. As much as Lawrence attempted to qualify the events with Rodgers' involvement and with his (Lawrence's) surprise that his (Lawrence's) plan was actually executed,[32] he repeatedly implicated himself as a fully willing participant. First, as the trial court correctly pointed out (R-II 344), Lawrence responded to the police:

> Officer: Did he participate in the subjects here ma- getting you to write 'em?
>
> Lawrence: Yeah, he'd just tell me just bad things to write down. **I'd think of a few and write stuff down**. ***

(T-IV 539)

At another point, when going down the supply list, Lawrence clarified his active role in originating the ideas in the notes:

> ... I guess **I write down** some weird things sometimes. Even plan things then throw papers away and then nobody do it. Just real stupid things. Except this time it just just happened."

---

[32] Lawrence's denial of complicity in the plan is resolved by his plea of guilty, and admission, to this premeditated murder and conspiracy to commit this murder. (See T-I)

(T-IV 536) A little later, Lawrence said:

> It's kinda like **we** was just uh it's almost like **we** was planning some real sick thing. Just didn't think **we'd** ever really do it. It's it's just real messed up. [Questioned about the list being for taking Jennifer out there] It's like **I planned** to do somein but I didn't think we'd do it. Do that to her. **We** just make up stuff like that. Real bad things.

(Id. at 539) The officer then asked Lawrence if **he and Rogers** made that up, and Lawrence responded, "Yeah just ... and then just throw it in the garbage." (Id. at 539) Lawrence reiterated, "bad plans **we** come up with and then just don't do it later. Except this time it actually happened." (Id. at 540) "**We** was always planning things. Something like that just talking." (Id. at 541) And again: "**We** just think of bad stuff like that ... ." (Id.)

The trial court also pointed out that one of the Lawrence's entries on his list of supplies was to "**get Jeremaih to make phone calls**" (R-II 353, App. B). Lawrence explained, "**We** was **we** was probably planning somin just to be planning." (T-IV 537, App. C)

Additional examples of "we," as well as "I," include the following:

- "**I** got" the rubber gloves "a couple of weeks before that at a hospital" (T-IV 526, App. C); the gloves were "just for fingerprints on the bullets when **we** were riding around shooting (Id.); when asked, "**You** didn't want your fingerprints on the bullets," "uh, no" (Id.);

- "**I** gave a other friend of mine some money to buy" the gun at Mike's Gun Shop in Pensacola off 29 (Id. at 532)
- Regarding a Polaroid camera, which was also on the supply list and which was used to take pictures, including one of Lawrence holding up the victim's dissected leg, "**I** just went down there and got it without him knowing it ..." (T-IV 521, App. C);
- "**I**" didn't want the camera lying around where my brother would notice that "I took it from him" (Id. at 523);
- "**We** just needed some film ..." (Id. at 536);
- "**I** was gonna pay for" film for the Polaroid camera, and "he said he had a couple a dollars or enough" and paid for the film (Id. at 522);
- "**I** stuck" the camera in my truck (Id. at 522-23)
- "**we** heard ... a motor boat real close so **I** helped him load her up and we got on out of there" (Id. at 521. See also Id. at 525: "**We** heard the boat motor ...");
- "**we** looked in the ... tool box too to find a shovel" to bury the victim (Id. at 523);
- "**I** was gonna try to dig a little hole for her. **I** just didn't know what else to do with her" (Id. at 523);
- "**I** just cut her leg" (Id. at 523); "her leg that **I** cut" (Id. at 534); "... **I** still cut her leg" (Id. at 541);
- That hand holding the foot of the victim in the picture is "**mine**" (Id. at 523); "**I** was holding it with my left hand" (Id. at 524);

- Concerning the smell on him from dissecting the victim's leg (Id. at 533-34), "**I** stopped at uh a Tom Thumb Store but they didn't have a water hose so **I** went down to my house and just tried to wash the smell off a bit. Then **I** re-washed it when **I** got back off work." (Id. at 533)

Thus, the State disputes Lawrence's assertion that his experts' opinions were not refuted. They were refuted by the foregoing evidence, on which the trial court could rely in rejecting the mitigator. Wuornos v. State, 644 So.2d 1000, 1009-1010 (Fla. 1994), citing Walls v. State, 641 So.2d 381 (Fla.1994), concerning expert opinion on "borderline personality" disorder, wrote:

> To that end, qualified experts certainly should be permitted to testify on the question, but the finder of fact is not necessarily required to accept the testimony. As we stated in Walls, even uncontroverted opinion testimony can be rejected, and especially where it is hard to square with the other evidence at hand, as was the case here.

Foster v. State, 679 So.2d 747, 755-56 (Fla. 1996), reasoned and held:

> During the penalty phase, Foster presented expert testimony that he was under the influence of extreme mental or emotional disturbance and that his capacity to conform his conduct to the requirements of law was substantially impaired. Foster claims that since this expert testimony was uncontroverted, the trial court should have found this statutory mitigator.

Foster, citing Provenzano v. State, 497 So.2d 1177 (Fla. 1986), indicated that the trial court, in its discretion, can reject expert testimony: "expert testimony alone does not require a finding of extreme mental or emotional disturbance."

Provenzano, 497 So.2d at 1184, similarly rejected a claim that was based upon "testimony of various psychiatrists who testified that Provenzano was suffering from some form of emotional disturbance." Citing to Pope v. State, 441 So.2d 1073 (Fla. 1983), and pointing to the trial court's review of the evidence, Provenzano upheld the trial court's rejection of that mitigator: "this testimony alone does not require a finding of extreme mental or emotional disturbance."

The State submits that the trial court's citation to Valdes, 626 So.2d at 1324, is on point. There, the trial court rejected two statutory mitigating factors pertinent here: "that Valdes acted under the substantial domination of Van Poyck at the time of the murder and that he was an accomplice whose participation was relatively minor." Valdes pointed to the "substantial competent evidence" standard of review, and, there, the evidence of domination included a separate witness who had actually seen the defendant interact with other person:

> [T]he evidence offered to support Valdes' claim of substantial domination by Van Poyck was Valdes' former girlfriend's testimony that Valdes went with Van Poyck the morning of the murder to do him a favor, that they had moved to Fort Lauderdale to get away from Van Poyck, and that Van Poyck was dominant over Valdes.

Like here, the evidence showed that the defendant fully participated in events surrounding the murder, including providing the murder weapon. While Lawrence did not force the victim to go anywhere, the murder was executed according to

the detailed plan that Lawrence wrote and fully participated in concocting, including securing the gun, getting the victim drunk, having sex with her (characterized as "rape" in the note), killing her (albeit via a much more morbid method than actually used), and burying the body. Moreover, Lawrence fully participated in the sex and burying and then tried to cover up his involvement by lying to the police about knowing the victim. See facts cited in ISSUE I supra. In spite of Lawrence's protestation of surprise at the gunshot, he **acted** in concert with Rodgers, much like "Valdes and Van Poyck **acted** in concert during the entire episode." And just as Van Poyck's major participation in Valdes did not "not mean Valdes' participation was minor," Rodgers' major participation here does not mean that Lawrence's was minor.

Bonifay v. State, 680 So.2d 413, 416-17 (Fla. 1996), affirmed the trial court's conclusion that the mitigator of "the defendant's capacity to conform his conduct to the requirements of the law" did not exist or was entitled to "little weight." Bonifay distinguished Larkins v. State, 655 So.2d 95 (Fla. 1995), because the trial court's order, as here, expressly addressed the testimony regarding this mitigator. Bonifay's testimony included the following, many of which are in the record here: "problems in school," "extremely overactive and disruptive," "lot of behavior problems," "Ritalin" usage, "expelled"; psychologist found "19 point difference" in verbal and performance IQ scores, "indicat[ing]

... some cognitive disorder, such as attention deficit disorder"; "school identified in about the fifth grade that Bonifay had an attention deficit disorder and placed him in an emotionally handicapped classroom for a number of years"; "impulsive behavior"; "dysthymic disorder, referring to depression"; "personality disorder, referring to a personality functioning that is unstable, exhibiting mood swings, possible irrationality, difficulty maintaining good relationships, and susceptibility to being easily guided by another"; "negative self-image as a result of his disruptive home environment, which included his biological father's abuse of him and his mother"; "feels rejected"; some indications of "history of suicidal ideation and perhaps two or three attempts or gestures"; good at "problem solving" and reads well; "no psychosis or major mental illness." Bonifay held:

> We find no error with the trial court's findings as set forth in the sentencing order regarding this mitigator. While the trial court did not specifically mention the term 'organic brain damage,' the court's discussion about Bonifay's attention deficit disorder refers to Bonifay's organic brain damage. The trial court expressly evaluated the evidence presented on this mitigator ... . The trial court's determination regarding the establishment and weight afforded to this mitigator is supported by competent, substantial evidence; consequently, the sentencing order is sufficient.

Thus, even though Bonifay's order was flawed, unlike here, it merited affirmance. Here and there, the trial court assessed the evidence and reached a conclusion. ISSUE III merely disagrees with it, but this is not a basis of relief.

Rose v. State, 26 Fla. L. Weekly S210 (Fla. 2001), affirmed the finding that "Rose was not under the influence of extreme mental or emotional disturbance at the time of the offense." There, as here, the defendant claimed that evidence supporting the mitigator was "unrebutted," there, including

> his out-of-wedlock birth, his troublesome childhood, his low IQ, his diagnosis of a borderline personality disorder, his neurological impairments, brain damage, and the evidence of intoxication on the night of the murder.

Reasoning that "uncontroverted opinion testimony can be rejected, especially when it is hard to reconcile with the other evidence presented in the case." There, as here, other evidence conflicted with the evidence of the mitigator.

See also Bryant v. State, 26 Fla. L. Weekly S218 (Fla. April 5, 2001) ("Although Bryant is technically correct in his argument that the trial court misstated defense witness Gaines' testimony, this misstatement does not undermine the conclusion that the mitigator was not established by the greater weight of the evidence"); Ford v. State, 26 Fla. L. Weekly S602 (Fla. September 13, 2001) (upheld, based upon "supported by competent substantial evidence," trial court finding that mitigators of learning disabled and developmental age of fourteen were proved but entitled to no weight "based on extensive testimony by other witnesses showing that Ford functions well as a mature adult"; trial court's other mitigators harmless based upon their "minor and tangential position in the present record ... vast aggravation, including

multiple execution-style murders ... weight to numerous other mitigators").

Cf. Thompson v. State, 548 So.2d 198, 203-204 (Fla. 1989) ("mental subnormality or impairment alone does not render a confession involuntary"; held that applying the "totality of the circumstances" test, "other substantial evidence suggesting that this subnormality was not so severe as to render" statements inadmissible); Orme v. State, 677 So.2d 258, 262-63 (Fla. 1996) (rejected claim that the defendant "too intoxicated with drugs to knowingly and voluntarily waive his right to silence"; trial court accredited officer's testimony that defendant "coherent and responsive" in the face of conflicting evidence); Viovenel v. State, 581 So.2d 930, 932 (Fla. 3d DCA 1991) (state offered evidence in the form of lay testimony to prove Viovenel sane and state effectively impeached the testimony of Viovenel's experts; trial judge, sitting as the trier of fact, resolved the conflict in the evidence in favor of Viovenel's sanity; permitted to reject the expert testimony and to give more weight to the lay testimony).

In sum, as the trial court found, Lawrence was a full-fledged, voluntary collaborator with Rodgers in this murder and failed to prove substantial domination:

> Regardless of who was the leader, the evidence demonstrates that Lawrence's involvement was active, significant and voluntary. He was a major participant, not a minor accomplice. *See Valdes v. State*, 626 So.2d 1316, 1324 (Fla. 1993) (characterizing codefendant as

> the major participant in a criminal episode does not mean defendant's participation was minor). [footnote omitted] There is insufficient evidence to establish Mr. Rodgers substantially dominated Lawrence or that he was under extreme duress. Therefore, Lawrence has failed to establish by the greater weight of the evidence the presence of these two aggravators.

(R-II 346, App. A)

Moreover, for all of the foregoing reasons, as well all of the facts establishing death as a proportionate sentence, any complaint that Lawrence has about the trial court's analysis is harmless and not the basis of giving him a new penalty proceeding. See Gore, 26 Fla. L. Weekly at *10 n. 10 ("trial court's description of the final moments of the homicide was based upon speculation"; "harmless in view of the other strong evidence supporting the trial court's multiple findings that support the CCP aggravating circumstance").

ISSUE IV

DID THE TRIAL COURT REVERSIBLY ERR BY FINDING CCP? (Restated)

Most of ISSUE IV can be conceptualized as grounded upon the ISSUE III: Because Lawrence is a mindless robot doing what Rodgers tells him, i.e., because Rodgers is dominating him, Lawrence could not have engaged in CCP. Rodgers alone formed the premeditation to murder the victim, and Rodgers' shooting of the victim was nothing but a surprise to Lawrence. Lawrence argues that the limited capacity of his mind did not provide him the wherewithal for CCP. He argues that he was able to

perform simple tasks, like a mouse fortuitously finding cheese, and not capable of planning this murder.

Lawrence is wrong on all counts. Lawrence **and** Rodgers participated in the planning and murdering of Jennifer Robinson. The State has discussed CCP at length in ISSUE I, especially section B 1, and discussed substantial domination at length in ISSUE III, so the discussion here will be brief.

The standard of appellate review is whether there was substantial competent evidence supporting the trial court's finding. See, e.g., Gore v. State, 26 Fla. L. Weekly at *9 ("trial court's ruling on an aggravating circumstance will be sustained on review as long as the court applied the right rule of law and its ruling is supported by competent substantial evidence in the record").

To dispose of this issue, one need look no further than Rodgers' plea to conspiracy to commit **this murder**. Lawrence under oath admitted that he agreed in advance to commit this murder. See ISSUE I, section B 1; Echols; Fotopoulos; Archer; Hoskins. Further, Lawrence under oath agreed (T-I 15) to the prosecutor's statement that Lawrence wrote the note that "went into great detail about **their** plans that night" (T-I 7). Lawrence was no aimless mouse.

Even independent of Lawrence's plea to conspiracy to commit this murder and independent of his in-court admission that the notes reflected the "details" of "their" plans, the evidence was sufficient for CCP.

Lawrence (IB 67) attempts to characterize his role of writing the notes as simply writing down what Rodgers told him. As discussed in ISSUE III, he is wrong. For example, Lawrence's detailed confession (App. C) indicates a mental wherewithal far exceeding a mindless mouse. Lawrence had the presence of mind, before providing many of the details concerning Jennifer Robinson's murder, to lie to the police about not knowing her and to lie to the police about knowing nothing about Polaroid paraphernalia. The trial court correctly pointed out (R-II 344) that Lawrence's attempt to mitigate his responsibility was foiled when Lawrence told the police:

> Officer: Did he participate in the subjects here ma- getting you to write 'em?
>
> Lawrence: Yeah, he'd just tell me just bad things to write down. **I'd think of a few and write stuff down**. ***

(T-IV 539. See also ISSUE III, supra, for numerous other examples in Lawrence's statement of Lawrence's active role)

Lawrence cites (IB 68) to Besaraba v. State, 656 So.2d 441 (Fla. 1995), but Besaraba, inter alia, involved no in-court admission to conspiring to kill the victim, no to-do list and supply list written in the defendant's own hand. Here, unlike Besaraba, Lawrence not only "concocted a careful plan to kill," 656 So.2d at 446, this victim, but also wrote it down and even checked off some of the items.

The State also notes that a finding of statutory mental mitigation does not preclude CCP. See Sexton v. State, 775

So.2d 923, 936-37 (Fla. 2000) (upheld a death sentence and considered the "egregious" facts underlying the aggravators of "CCP and avoiding arrest aggravators"; trial judge gave "great weight to the statutory mitigator of 'under the influence of extreme mental or emotional disturbance'"); Cruse v. State, 588 So.2d 983, 992 (Fla.1991) (finding that the defendant's advance procurement of weapon and ample time for reflection supported CCP notwithstanding finding that defendant acted under extreme mental or emotional disturbance); Zakrzewski v. State, 717 So.2d 488, 492 (Fla. 1998) (CCP upheld; "Zakrzewski asserts that because he was under extreme emotional distress at the time of the murders, it was impossible for him to commit the murders in a cold, calculated, and premeditated fashion").

For these reasons, the extensive and well-reasoned discourse in the trial court's order (App. A), and the reasons discussed in ISSUE I and ISSUE III supra, there was competent, substantial evidence supporting the trial court's finding of CCP, and ISSUE IV is without merit.

ISSUE V

DID THE TRIAL COURT REVERSIBLY ERR BY RELYING ON FACTS DEHORS THE EVIDENCE OR BY RENDERING AN ORDER THAT WAS UNRELIABLY VAGUE IN ASSIGNING MITIGATION? (Restated)

Lawrence's claim (IB 68-70) that the trial court relied on Rodgers' assertion that Lawrence shot the victim is, to put it bluntly, a non-starter. The trial court mentioned Rodgers' allegation in passing, but it was clear in the trial court's order that the trial court accepted Rodgers as the shooter when evaluating the aggravation and mitigation.[33] Thus, the footnote targeted here itself states that the trial court "has accepted as true" the fact that Rodgers shot the victim (R-II 334 n. 2). The comment footnotes text that states: "Rodgers stealthily shot Jennifer Robinson in the head without provocation" (Id. at 334). The trial court's comment was entirely inconsequential. Compare Bryant, 26 Fla. L. Weekly S218 ("Although Bryant is technically correct in his argument that the trial court misstated defense witness Gaines' testimony, this misstatement does not undermine the conclusion that the mitigator was not established by the greater weight of the evidence").

Similarly, Lawrence's parsing of the trial court's words concerning the age mitigator is entirely insignificant. In the written order, the trial court concluded that this mitigator

---

[33] Accordingly, the State's factual basis for Lawrence's plea indicated that Rodgers shot the victim. (T-I 7)

was entitled to "some weight" (R-II 346, App. A), and in open court orally indicated that it was entitled to "little weight" (R-II 389-90). Orally and in writing, the trial court specified how it was weighing this mitigator:

> The Defendant was twenty-three at the time of Robinson's murder. Although the evidence introduced at trial tends to indicate that Lawrence's mental and emotional maturity was less than his chronological age, he was mature enough to take responsibility for his actions and appreciate the consequences flowing from them. There was no evidence of a mental or emotional maturity equivalent to a minor child of sixteen or less.

The trial court's reasoning clarified that whether the mitigator be dubbed "little" or "some," it was not a significant factor in the calculus of its weighing aggravation versus mitigation, and for that reason, this claim is also not very significant.

Because both of these matters are inconsequential, they are harmless. Compare Gore, 26 Fla. L. Weekly at *10 n. 10 ("trial court's description of the final moments of the homicide was based upon speculation"; "harmless in view of the other strong evidence supporting the trial court's multiple findings that support the CCP aggravating circumstance").

Moreover, neither of these matters was preserved by timely bringing them to the trial court's attention. After reading the sentence on August 15, 2000, the trial judge asked, "Anything else from counsel?," and defense counsel responded, "No, Your Honor." (R-II 397) The sentencing order was filed that same day (See R-II 331), but there is no indication of a

complaint to the trial judge in the record between then and the Notice of Appeal filed September 5, 2000 (R-II 364). (See R Index on introductory pages. See also SR Index) See, e.g., Carmichael v. State, 715 So.2d 247, 249 (Fla. 1998) ("Under his proposed scenario, however, a defendant could sit silently on this right throughout the jury selection process, await the trial's conclusion, and then--in the event of an adverse outcome--raise the issue on appeal for the first time. The price of such an 'ambush'--i.e., a new trial--is prohibitively steep in terms of resources and delay--and basic fairness"); Lopez v. Singletary, 634 So.2d 1054, 1058-59 (Fla. 1993) (habeas claim that "(3) the avoid arrest aggravator was improperly found"; "allegations in these claims that appellate counsel was ineffective for not raising these issues have no merit because trial counsel did not preserve them for appeal"); Freytag v. C.I.R., 501 U.S. 868, 111 S.Ct. 2631, 2647 (1991)(Justices Scalia, O'Connor, Kennedy, and Souter concurring in part and concurring in the judgment; "'sandbagging': suggesting or permitting, for strategic reasons, that the trial court pursue a certain course, and later--if the outcome is unfavorable--claiming that the course followed was reversible error").

ISSUE VI

DOES APPRENDI V. NEW JERSEY APPLY TO CAPITAL CASES? (Restated)

Lawrence contends that Apprendi v. New Jersey, 530 U.S. 466 (2000), should apply to Florida's capital sentencing and requires both specific jury findings regarding aggravators and an unanimous recommendation of death. It does not. As this Court has repeatedly held, Apprendi does not affect capital sentencing schemes. Furthermore, Apprendi does not address what the jury must find or jury unanimity. Appellant mistakenly equates aggravators to elements. Aggravators are not elements. Rather they are guides to determining whether to impose the death penalty. Thus, contrary to Lawrence's position, as a matter of law, he was not deprived of any of the litany of rights he lists in his brief.

At the outset, the State notes that any assertion of international law (IB 91-92), in addition to being meritless, was unpreserved. Similarly, it appears that Lawrence did not file a motion for "jury only" sentencing asserting, based upon the Sixth Amendment right to a jury trial, due process, or the judge as final sentencer. Therefore, these claims are procedurally barred it here. See, e.g., Gore v. State, 706 So.2d 1328, 1334 (Fla. 1997) (argument attacking jury instruction not the same as the one on appeal; appellate issue "was not properly preserved for review"); Phillips v. State, 705 So.2d 1320, 1322 (Fla. 1997) (regarding "instruction on

the disrupt/hinder aggravator"; "objection to the applicability of a jury instruction does not preserve a claim that the instruction was vague or overbroad").

Appellant has no standing to raise an Apprendi challenge to his sentence. Only a capital defendant whose jury recommended life has standing to raise an Apprendi claim. This is not a jury override case. Cf. Mills v. Moore, 786 So.2d 532 (Fla. 2001) (discussing Apprendi in the context of a jury override case). Here, the jury recommended death 11 to 1. Here, the issue of the appropriate penalty was submitted to jury and proved beyond reasonable doubt just as Apprendi requires. The judge's agreement with the jury does not create an Apprendi concern. Thus, appellant has no standing.

Arguendo, as a matter of law, Mills v. Moore, 26 Fla. L. Weekly S242, S243-44 (Fla. Apr. 12, 2001), cert. denied, 121 S. Ct. 1752 (2001), and Mann v. Moore, 26 Fla. L. Weekly S490, 786 So.2d 532 (Fla. July 12, 2001), have rejected Lawrence's position. The State tenders them as controlling precedent and Mill's rationale as sound. Put another way, the trial court, in using standard jury instructions that have been repeatedly upheld, did not "palpabl[y] abuse ... [its] discretion," Phillips v. State, 476 So.2d 194, 196 (Fla. 1985) (affirmed trial court's use of then-current standard instruction on alibi). See also Stephens v. State, 26 Fla. L. Weekly S161 (Fla. March 15, 2001) ("burden of demonstrating that the trial court abused its discretion in giving standard instructions").

Thus, the Apprendi Court itself specifically stated, 530 U.S. at ___, 120 S.Ct. at 2366, that Apprendi does not apply to capital sentencing procedures that have been declared constitutional, as here. Apprendi does not affect capital sentencing schemes. See Card v. State, SC00-182, n.13 (Fla. October 11, 2001), citing Apprendi and Mills v. State, 786 So.2d 547, 549 (Fla. 2001) (holding rule announced by the United States Supreme Court in Apprendi that any fact increasing penalty for a crime beyond prescribed statutory maximum be submitted to jury and proved beyond reasonable doubt did not apply to Florida's capital sentencing scheme).

The Apprendi Court distinguished Walton v. Arizona, 497 U.S. 639, 110 S.Ct. 3047, 111 L.Ed.2d 511 (1990), on the basis that the defendant was convicted of a capital crime even before the judge found any aggravating factors; the judge's findings merely aided in the selection of an appropriate sentence within a range of penalties that already included capital punishment. The Apprendi Court's discussion of Walton forecloses Lawrence's challenge.

Furthermore, aggravating circumstances are not elements.[34] Lewis v. Jeffers, 497 U.S. 764, 782, 110 S.Ct. 3092, 3103, 111 L.Ed.2d 606 (1990)(explaining that although aggravating circumstances are not elements of any offense, the sufficiency

---

[34] While aggravating circumstances are not elements, they must be proved beyond a reasonable doubt in Florida. See, e.g., Rogers v. State, 26 Fla. L. Weekly S115 (Fla. March 1, 2001).

of the evidence to support them will be reviewed under the rational fact-finder standard established in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Walton, 497 U.S. at 648, itself explained that aggravating circumstances are not separate penalties or offenses; rather, they are standards to guide the choice between the alternative verdicts of death and life imprisonment. The Walton Court specifically rejected the suggestion that aggravating factors were sentencing considerations in Florida but in Arizona they were elements of the offense. This is a fundamental flaw in Lawrence's Apprendi argument, i.e. he mistakenly equates aggravators to elements. Furthermore, the Walton Court's rejections of aggravators as elements in either Florida or Arizona belies Lawrence's Espinosa v. Florida, 505 U.S. 1079, 112 S.Ct. 2926, 120 L.Ed.2d 854 (1992) and Lambrix v. Singletary, 520 U.S. 518, 117 S.Ct. 1517, 137 L.Ed.2d 771 (1997), based attacks.

Lawrence asserts that the jury must agree on the particular aggravators and must return special verdicts reflecting exactly what aggravators they found. However, Apprendi does not address special findings by the jury. Furthermore, just as a defendant may constitutionally be convicted of a crime without the jurors agreeing on the particular theory underlying that crime, a defendant may constitutionally be sentenced to death without the jurors agreeing on a particular aggravator. See, e.g., Schad v. Arizona, 501 U.S. 624, 111

S.Ct. 2491, 115 L.Ed.2d 555 (1991)(holding that state may constitutionally submit two murder theories to jury without requiring unanimity on either theory); Johnson v. State, 750 So.2d 22, 27 (Fla. 1999)(noting that "[w]e have repeatedly held that a special verdict form demonstrating which theory the jury based its verdict on is not required"). All that is required for a jury recommendation of death is that the majority of the jurors agree that death is the appropriate punishment. Indeed, even for guilt, a unanimous verdict is not constitutionally mandated. See, e.g., Schad v. Arizona, 501 U.S. 624, 630, 111 S.Ct. 2491, 2496, 115 L.Ed.2d 555 (1991) (rejected argument that "that the Sixth, Eighth, and Fourteenth Amendments require a unanimous jury in state capital cases, as distinct from those where lesser penalties are imposed"); Johnson v. Louisiana, 406 U.S. 356, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972) (upheld 9-3 jury verdict).

Appellant's reliance on Richardson v. U.S., 526 U.S. 813, 119 S.Ct. 1707, 143 L.Ed.2d 985 (1999) is misplaced. Critical to the Richardson Court's holding was the determination that each individual violation was an element. Aggravators are not elements. Nor does Apprendi address jury unanimity. Furthermore, this Court recently has reaffirmed it prior holdings that a jury's recommendation does not need to be unanimous. See Card v. State, SC00-182, n.13 (Fla. October 11, 2001)(observing that this "Court consistently had held that a capital jury may recommend a death sentence by a bare majority

vote citing Thompson v. State, 648 So.2d 692, 698 (Fla. 1994); Evans v. State, SC95993 (Fla. October 11, 2001)(rejecting yet again a claim that a non-unanimous jury recommendation is unconstitutional in a case with a jury vote of eleven to one), citing Sexton v. State, 775 So. 2d 923 (Fla. 2000). Thus, Apprendi does not apply to Florida's capital sentencing; does not require specific jury findings or jury unanimity.

In sum, Apprendi concerned what a state must prove to obtain a conviction, not the penalty imposed for that conviction. It does not affect prior precedent with respect to capital sentencing procedures. Therefore, ISSUE VI is meritless.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm Appellant's sentence od death.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Chet Kaufman, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, by MAIL on October 12th, 2001.

Respectfully submitted and served,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

_____

By: STEPHEN R. WHITE
Attorney for State of Florida

Assistant Attorney General
Office of the Attorney General
Pl-01, the Capitol
Tallahassee, Fl 32399-1050
(850) 414-3300 Ext 4579
(850) 487-0997 (Fax)

Florida Bar No. 159089
[AGO# L00-2-1129]

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

_____
Stephen R. White
Attorney for State of Florida

[D:\Brief temp\00-1827_ans.wpd --- 10/16/01,7:39 AM]

IN THE SUPREME COURT OF FLORIDA

JONATHAN HUEY LAWRENCE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. SC00-1827

INDEX TO APPENDIX

Appendix A

Appendix B

Appendix C