

IN THE SUPREME COURT OF FLORIDA

RICHARD LYNCH,

Appellant,

v.

CASE NO. SC01-795

STATE OF FLORIDA,

Appellee.

_____ /

ON APPEAL FROM THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JUDY TAYLOR RUSH
ASSISTANT ATTORNEY GENERAL
Fla. Bar #438847
444 Seabreeze Blvd. 5th FL
Daytona Beach, FL 32118
(386) 238-4990
Fax # (386) 226-0457
COUNSEL FOR APPELLEE

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STATEMENT OF THE CASE AND FACTS

On October 19, 2000, Richard Lynch entered two pleas of guilty to first degree premeditated murder. (R 1070, 1079-80). He also pled guilty to armed burglary and kidnapping. (R 1080). The Honorable O.H. Eaton accepted his pleas and permitted him to waive a penalty phase jury, over the State's objection. (R 1087-88). Penalty phase proceedings were held before the judge and began on January 8, 2001. (R 1).

The State's first witness was nineteen year veteran Seminole County Sheriff's Office patrol deputy, Barry Brady. (R 30). Deputy Brady, who was in uniform and in a marked patrol car, had been "stopped by a group of residents who advised that shots had been fired from the rear" of an apartment building. (R 32). The residents directed him to a specific apartment on "the second floor in the corner on the south end of the building." (R 32). He and a Sanford police officer "both proceeded upstairs, guns drawn" (R 32).

At the second floor, he saw "a bicycle leaning against a metal railing and blood on the floor and various gun casings."¹ (R 33). The "majority of the blood was closer to the stairwell to come downstairs." (R 34). "[D]rag marks of blood" extended "from the staircase back to the corner apartment." (R 34). "[S]hoes or slippers of some type" were also present. (R 34).

¹

The victim's apartment was located on the third floor. (R 208).

The officers banged on the door to the apartment, but no one responded. (R 34-36). It appeared that "something was jamming or blocking" the door "from being open[ed]." (R 36). The officer could not open the door despite pushing on it. (R 36).

Russell Laboy was the next witness. (R 46-47). Mr. Laboy lived across the hall from the victim's apartment. (R 48). The adult victim lived with her daughter and her son. (R 48).

When Mr. Laboy came home between jobs, he saw Lynch in the hallway near Roseanna Morgan's apartment. (R 49-51). Lynch "was looking at his watch," and Mr. Laboy saw "something ugly . . . in his face." (R 51). When Mr. Laboy left approximately 15 minutes later, he saw the thirteen year old girl who lived with the adult victim coming up the stairs. (R 51).

Mr. Laboy's wife, Yahira Morales, was the next witness. (R 53). Although Mrs. Morales was aware that Lynch had visited at the victims' apartment, she did not recognize him in the courtroom. (R 56). She described the man she knew as Lynch as being a slim, white man. (R 57).

Shortly after returning to her apartment from the bus stop with her three children, Mrs. Morales heard "some weird noises very strong at the hallway." (R 61). She looked through the peephole in her door and saw "this man dragging this woman, she was screaming for help. . . . [H]e was holding her by the hands with one hand, and then the other hand he had . . . a gun." (R 61).

"[H]e knocked on the door," and told "the person that was inside the apartment . . . [to] hurry up, open the door, your mom is hurt, and she was still screaming" . . . and "was bloody halfway down." (R 61-62). The woman was screaming "[s]omebody help me, please help me . . . desperately screaming for help." (R 62).

The door opened, and the man "dragged her in . . . still screaming." (R 62-63). After Lynch closed the door, the neighbor "heard . . . three more gunshots" within "[f]ive minutes." (R 63). This neighbor was "shocked" and "very nervous" and "felt fear for me and my kids." (R 64, 65).

Kathy Sanders lived in an apartment on the second floor of the Rosecliff Apartment Complex on the same side of the building as was Rose Morgan's apartment. (R 67). At approximately 5:00 p. m. on March 5, 1999, she heard loud sounds and ran to her balcony. (R 68-69). She saw several children playing in the courtyard and heard "the second shot." (R 69, 70). Thereafter, she heard three more shots within five to seven minutes. (R 71). She went to her front door, peered out, and saw her neighbor, Mr. Huff, on his cell phone; he told her he was calling 911. (R 72). Ms. Sanders heard a woman screaming; the woman "needed help" and was "fearful." (R 72). Shortly thereafter, the SWAT Team escorted her and her family out of their apartment. (R 73). As she waited in the area,

she saw the SWAT Team escort Richard Lynch out of the building.²
(R 74).

On March 5, 1999, Virginia Lynch was married to Richard Lynch.
(R 77-78). A registered nurse since 1986, Mrs. Lynch then worked
in the areas of cardiac, neurology, and surgery. (R 77, 106). She
was employed by Winter Park Hospital. (R 109). She and Lynch had
two sons, Christopher, eight, and Steven, four.³ (R 80).

Throughout February and March 1999, Lynch did not complain of
being physically ill or of having headaches. (R 81). He did not
tell her that he was hearing things and appeared to go about his
normal routine. (R 81). In 1995, Lynch's normal routine consisted
of providing the primary care for the boys.⁴ (R 83, 84, 111, 115).
On March 5, 1999, at approximately 1:30 p. m., Lynch left the house
with his younger son, Steven, to pick up Christopher at school. (R
90). The children arrived home between 3:30 p.m. and 4:30 p.m., but

2

Lynch "acted like he didn't do anything, he smiled, and, you know,
he was very unremorseful for what he did." (R 74).

3

The Lynch's were married in October 1988, but were divorced in
2000. (R 80, 110).

4

He did, however, pay "a lot of attention to the little one more
than usual;" the evidence established that Lynch took this child
with him to visit his mistress. (R 87, 144). He also purchased a
beeper and received an unusual phone message on their answering
machine. (R 87-89).

Lynch did not come back into the house with them. (R 92).

At approximately 5:30 p.m., Lynch called Virginia at home and she heard "... a lady in the background screaming." (R 93). The screaming was "continuous," and the woman was "[v]ery, very upset." (R 93). The woman "said like don't, don't, or something. But she's more screaming than anything else." (R 95). Lynch, on the otherhand, appeared only "a little upset." (R 95). Lynch told his wife that "he loved the boys so much but he has to do something and he's sorry for what he's going to do." (R 93, 94). Lynch ended the conversation when "[h]e hung up." (R 96).

Lynch called her a second time and told her "he'd just shot someone." (R 97). Mrs. Lynch asked her husband, if he shot "the lady that was screaming . . . the lady you were having an affair with? He said, yes." (R 97). "It was very quiet," no screaming, "only him talking." (R 97). Lynch then told his wife that he had written a letter to her, explaining things, and she could find it in the garage; he specified the exact location of the letter.⁵ (R 98-99). Mrs. Lynch called 911. (R 98).

Lynch called his wife a third time and told her that, "he shot another person, the thirteen year old daughter." (R 101). He told her that shooting was an accident. (R 101-102). Lynch also spoke to his wife's sister during this call. (R 102).

⁵

The Letter was written **two days** before these crimes. (R 836).

Mrs. Lynch said that Lynch did not use drugs or alcohol during their marriage, nor did he tell her that anyone in his family was mentally ill much less that he himself suffered from mental illness. (R 105). He never mentioned any physical abuse by his father or mother. (R 105). Neither did he indicate that he had ever seen a psychiatrist or psychologist before, or during, the course of their marriage. (R 106).

Mrs. Lynch described her former husband as looking somewhat different as he sat in the courtroom compared to his appearance on the date of the murders. (R 79). He had "gained some weight, lost some hair," and his hair color was "white now." (R 79). She said that Lynch "had a lot of cameras and lenses," and liked "to go shooting" with the guns from his collection. (R 86). He also had numerous "books and . . . gun magazines" (R 86). Lynch "used to go to the range" to shoot his guns and described himself as a gun "enthusiast." (R 155).

Joyce Fagan, a dispatcher with the Sanford Police Department took Lynch's 911 calls on March 5, 1999. (R 119). The first call came in at approximately 5:43 p. m. This call was recorded.⁶ (R 121). The tape was played for the judge. (R 125).

In the recorded 911 call, Lynch began explaining: "I shot two

⁶

The transcript of the call was entered into evidence. (R 125-182).

people and I didn't mean it. They started to scream." (R 125). He said that Rose "was afraid of me while I carried the gun," and added that he did not have a reputation for violence or any problems with a gun.⁷ (R 125-26). He volunteered that he "didn't molest her daughter," although she was "very pretty," and said that he took Rose's "shoe and her sock off." (R 126, 146). He said that "her daughter was sitting on the floor and she got hit by a bullet" which entered "through her back and out her chest." (R 126). He repeated that he did not mean to hurt Leah, and added that he "didn't want to hurt the mother either but she started screaming" (R 126). While she screamed, he thought of his boys - that he would "never see them again" - and that he would "be on the news tonight." (R 126-27).

Lynch explained to Ms. Fagan that he and his wife had "not been that great intimately for two years," and he "had an affair with this girl . . ." he had killed. (R 127). He described how he "took nude pictures of her" and Rose was upset about him having those, although "[t]hey were just fire wood to me." (R 127-28). He said that "[t]his is going to come as a terrible shock to my wife." (R 135).

Lynch described Rose's husband as an ex-marine and "a sex

7

Lynch well knew of Rose's fear of the gun he carried: "[S]he was telling me she was always afraid of me because I carried the gun." (R 147).

fiend" who was "holding something over her head" to get her to choose him over Lynch. (R 135, 143, 168). Referring to Rose's husband, Lynch exclaimed: "The pig won't have her" (R 148). He complained that Rose's husband had "left nasty messages on my phone," telling him to "stay away from my wife" (R 173). He claimed Rose's husband, a black man, threatened him: "I got a lot of home boys downtown, guys that have been in prison. You don't know what they're going to do to you." (R 173).

Lynch told Ms. Fagan that he shot Rose with "a Glock and then I used a .38 on her." (R 136). He claimed he "wanted to put her out of her misery," so he "shot her in the back of the head." (R 136-37). Lynch blamed the "damn trigger" on the Glock for the murders. (R 137). He said "if you keep your finger on the trigger . . . it repeats and I pressed it again."⁸ (R 140). After shooting Rose, he "dragged her in the apartment." (R 140). He added: "I didn't mean to hurt the daughter." (R 140). He often repeated that shooting Leah was an accident. (R 144). He explained that he was "just holding her for the mother to come home." (R 147).

Lynch told Ms. Fagan that he had bought Rose various things on his credit card, including a car, totaling "about six thousand dollars worth of debt," and he "was afraid my wife would find out."

⁸

He said he did this "so I could talk to her." (R 160).

(R 138-39). He said he "was just trying to get her [Rose] to pay it." (R 139). Rose "was saying she wasn't going to pay it . . .," and that she did not care what Lynch's wife did. (R 142, 164). He added that Rose "drove me to it." (R 143).

Lynch said that his wife "is talking nice to me now but, . . . if she found out, I'd be out on my out (sic) on the street with nothing." (R 144). He was unemployed. (R 144). He flew into "a fit of rage because I was afraid she's not going to pay it."

Lynch said he "had planned of doing myself in, too," but did not, "picturing myself on the news and that suit." (R 145-46). Lynch said that he fired the Glock because he thought he heard the husband coming up the stairs. (R 136, 157). Later, he said he fired "[b]ecause I thought I saw the cops coming here" (R 148, 165). He next claimed he fired "[i]n a moment of rage." (R 148). Then, again claimed he shot Leah accidentally when he "panicked," as he had his "hand on the trigger." (R 148-49). He admitted that Leah "was just terrified" of him and asked "why are you doing this to me?"⁹ (R 165). After he shot the young girl, Leah, she "slumped over. And she was breathing for a while and that's it." (R 175).

9

In fact, Lynch bragged that both Rose and her husband were afraid of him: "[H]e says, you know, Rose is so afraid of you and I'm afraid of you because I can see the bulge on your right hip. She told me you were carrying a gun." (R 174).

Lynch blames his wife of ten years - the mother of his two children - for his having an affair with Rose "because my wife doesn't, she's not sexual." (R 150). His wife gave him "[v]ery little love, very cold, and this girl [Rose] gave me everything." (R 150). Nonetheless, he claimed to be "sorry I put my wife through this and my sister-in-law and everything," (R 156), and claimed he "could have worked it out with my wife." (R 170).

Lynch bemoaned the "terrible trauma" it would be "for me to go through" the aftermath of the murders. (R 161). He was "sorry that I did this to my wife and my family."¹⁰ (R 161). But, "she [Rose] put me in such a situation of mine financially that I bought a lot my guns . . ." (R 161). He opined that the gun dealer would be embarrassed because he had bought the murder weapon (or one of them) from him. (R 161-62). He added that he loves cops. (R 169-70).

Lynch gave yet another version of how, and why, he shot Rose: "[S]he started raising her voice and she said no I'm not going to shut the door and my hand just slipped." (R 170). He recounted how "after the love affair we had, she just dumped me so cold." (R 179). He complained that Rose "made me give all her pictures back;"

¹⁰

Lynch explained that he "even dropped Steven in the house because . . . if things got nasty here . . ., I didn't want . . . anything to happen to either one of them. I dropped them home and then I came over here." (R 166-67).

pictures he was holding "for my fuel for my own hunger for her." (R 180).

Lynch asked to speak with a negotiator. Ms. Fagan told him she had "Stephanie" who was a negotiator, and the negotiator would call him as soon as she hung up. (R 181).

Stephanie Ryan was the Leader of the Crisis Negotiation Team of the Seminole County Sheriff's Office. (R 187). She had worked as the primary negotiator in numerous situations during the previous fifteen to sixteen years. (R 188). Upon arriving at the Rosecliff Apartments on March 5, 1999, Ms. Ryan was briefed by intelligence officers before beginning negotiations with Lynch. (R 189). Subsequently, she called Rose Morgan's apartment, and upon answering, Lynch identified himself. (R 189). She stated that Lynch initially "appeared to be a little anxious, maybe shaky" as he described to her what had happened. (R 190). However, he relayed the events of the day "in a very matter of fact, very just almost rhythmic, almost non-emotional statements" and in an appropriate manner. (R 191-192).

"Spontaneously," Lynch told Ms. Ryan that "he had recently . . . broken off a romantic relationship . . . , and he had received a credit card bill . . . which had angered him, and he felt the need to confront her [Rose] regarding the bill" (R 190). Lynch "spoke specifically about the daughter." (R 192). He "used the term petrified to define what her reactions were" (R

192).

Lynch said "he had obtained a firearm because he felt like there might be . . . a conflict or a confrontation with the young lady's husband. So, he had armed himself and gone to the apartment. (R 192). When he made contact with the daughter, "he displayed the firearm." (R 192). Lynch "said specifically that she was aware of the weapon and she appeared to be frightened, and again he used the term petrified to explain." (R 192-93). Lynch told her that Leah complied with his instructions "out of fear." (R 193). Lynch claimed he shot Leah accidentally because the girl "was in close proximity to her mother when her mother was shot" (R 193).

Regarding shooting Rose, Lynch said he shot her in the leg at the front door of the apartment, dragged her inside, and then shot her in the back of the head. (R 194). When Ms. Ryan inquired as to whether they needed medical treatment, Lynch told her both were dead. (R 195). Ms. Ryan subsequently negotiated the entry of the SWAT team. (R 195-197). Lynch was "[v]ery calm when he agreed to the surrender to authorities." (R 197).

On March 5, 1999, Michael Weippert, a Patrol Sergeant and Team Leader of the SWAT team with the Seminole County Sheriff's Department, responded to Rose Morgan's apartment with his team. (R 207, 211). Richard Lynch and the bodies of Rose Morgan and Leah Caday, were present in the apartment. (R 213). When Deputy Weippert

instructed Lynch to come forward to surrender, Lynch appeared calm and was appropriately responsive. (R 215, 220-221). Subsequently, two SWAT team members escorted Lynch from the apartment. (R 215).

Douglas Bottalico, a crime scene technician with the Sanford Police Department, videotaped the crime scene on March 5th and collected projectiles, casings, firearms and ammunition. (R 222, 226, 228). He observed "blood on the linoleum where it appeared someone had been slid across the floor." (R 229). There was a "... large amount of blood in a corner and what appeared to be blood soaked slippers." (R 229). The technician recovered three firearms from the bedroom area: A .45 Glock, a nine millimeter, and a .38 caliber revolver, together with a black bag containing extra ammunition for all three weapons. (R 231, 239, 243). The bag, with the three weapons inside, weighed "probably twelve pounds, at least." (R 244). The technician removed "a piece of carpet from the apartment." (R 244). All of the evidence collected by the technician, and identified at trial, were accepted into evidence without objection. (R 245-46). Technician Bottalico attended the autopsies of both victims the next day. (R 250). He identified various items of clothing and authenticated photos. (R 250-58). The prosecutor argued that the photos were relevant to counter Lynch's claim that Leah was between him and Rose and was accidentally shot. (R 257). They showed the victims "and how much they bled and where they bled." (R 258). The prosecutor further

argued:

[I]t's extremely important in this case where Leah was when she was shot, and the bloodstain is gonna establish that . . . they want to put her at the front door between the Defendant and Rose. That isn't where it happened according to the bloodstain if she's the one that only bled slightly and the mother is the one that bled greatly." (R 258-59).

The objection was overruled, and the evidence admitted. (R 259).

Utilizing the photos, Technician Bottalico testified that the "first area of blood coming in from the door . . . [is] a very heavy deposit of coagulated blood." (R 267). However, the second area of blood was "a lot less blood" (R 268). Except for these two areas, there was no other blood found in the apartment. (R 267). The first area of blood was heaviest in a "concaved depression in the carpet from what looked to be an impact of some sort." (R 268).

Leah had one area of injury, while Rose had "[n]umerous injuries to her legs and one to her head." (R 271-72). A piece of carpeting from both pools of blood was removed and sent for analysis. (R 273).

Nanette Rudolph was the Firearms Technician in the Orlando Regional Crime Lab with the Florida Department of Law Enforcement who examined the fired projectiles and firearms recovered from the crime scene. (R 284-85, 287). She also examined the clothing of the victims. (R 287). Every cartridge case examined matched one of the three weapons recovered from the crime scene. (R 299). Nine

shell casings and eight bullets were recovered from the apartment. (R 331).

Ms. Rudolph testified that "[t]he single action trigger pull was six-and-a-half to seven pounds." (R 288). The double action trigger pull was eleven-and-a-half to twelve-and-a-half pounds. (R 288, 291).¹¹ The nine millimeter Smith and Wesson model 3913 was a double action trigger; however, even if the hammer was cocked manually, it still took six-and-a-half to seven pounds of force to fire the gun. (R 290-91). The .38 special was a double action trigger only revolver. The trigger pull on it was "ten to ten-and-a-half pounds." (R 292).

Finally, Ms. Rudolph addressed the ".45 auto caliber Glock Model 30 semiautomatic pistol." (R 293). She said "[t]he trigger pull was five to five-and-a-half pounds," and is "a double action trigger pull . . . [d]ouble action only, so it only has one trigger pull." (R 293). She explained that with a semiautomatic, "you have to release the trigger each time before to shoot the next shot."¹²

¹¹

With a single action trigger pull, the hammer already has to be cocked, and a single pull on the trigger just performs one function, which is to drop the hammer. In a double action trigger pull, the single pull and the trigger performs two function[s], which is to cock the hammer and then allow it to fall." (R 289).

¹²

In comparison, "[w]ith a full automatic, you pull on the trigger and as long as you keep the trigger depressed, the gun will function until either the magazine is empty or you release your finger off the trigger." (R 294).

(R 294). Ms. Rudolph testified that where a person tenses up and pulls the trigger on the Glock and keeps it pulled, it only fires "[o]ne" shot. (R 294). To fire it again, "[y]ou have to fully release the trigger," and then "[p]ull the trigger again." (R 294). When Ms. Rudolph tested the Glock, it "functioned properly. There was nothing unusual about it." (R 295). There were seven cartridge cases from the Glock.¹³ (R 299). The bullets taken from Rose Morgan's body included: "[T]wo fired .45 auto caliber jacketed hollow point bullets and one .38 caliber lead bullet and three lead fragments." (R 301). "The two .45 bullets were fired from the Glock pistol."¹⁴ (R 301).

After examining the powder burns from the gun left on Leah's jacket, Ms. Rudolph determined that the gun was fired "at distances greater than contact and less than twenty-four inches." (R 310). Rose's clothing revealed three shots in the right leg and one in the left. (R 314). The gun would have been "[g]reater than one-and-a-half feet and less than five feet at the time of discharge." (R 316).

Rose's pants "were covered in blood;" she also later described

¹³

"[T]here is nine cartridge cases all together." (R 300).

¹⁴

There were nine shell casings and eight bullets in all. (R 331). All of the live rounds of ammo had been fired from the Glock's magazine. (R 332).

them as "soaked in blood." (R 319). In fact, they were "eighty percent covered in blood, some of it thick." (R 319).

Crime Analyst Supervisor Leroy Parker testified to blood stain pattern evidence from which he determined the angle of shots that had been fired in this case. (R 341). His testimony established that some of the gunshots were fired from inside the apartment with the door open. (R 348). From his analysis of the crime scene, Mr. Parker determined that a person was dragged from the door of the apartment, across the "entire linoleum area, and onto the carpet." (R 343-344). The dragged person came to a point of rest and "stayed there for some time and bled continuously," resulting in "a pooling of blood." (R 344-45). The drag marks were "a total distance of seventy-three inches." (R 360).

Towards the center of the room, there was another area of blood stains. (R 345). The area between the pool of blood and the lighter stain toward the center of the room was relatively clear of bloodstains. (R 345). The expert opined that the two blood stains were caused by bleeding from two separate persons. (R 345). There were no other areas where a person had laid and bled for any length of time. (R 346).

Mr. Parker prepared a diagram which showed the "general location where the projectiles most likely were fired from" (R 348). It was admitted into evidence without objection. (R 349). Based on the angle of the wounds to Rose Morgan's legs, the shooter

may have been sitting on the floor and holding the gun low, or Rose's leg may have been elevated when the shots penetrated it.¹⁵ (R 352). Using the diagram, Mr. Parker indicated the probable position of the shooter. (R 361-62).

He also indicated that when at least one other of the shots was fired (possibly the one that killed Leah), the shooter was in an upright position. (R 369). The several diagrams and crime scene photos were used extensively to establish the probable position of the shooter. (R 345-373).

Audrey Pomeroy was an ancillary hospitality aide at Manor Care in Winter Park and worked with Roseanna Morgan in March of 1999. (R 377-378). Rose told Ms. Pomeroy that the guy she had been dating was "stalking her ... following her to and from work." (R 391). The women talked of getting "a restraining order" against Lynch. (R 391). On one occasion, Rose told Ms. Pomeroy that she had left her car at home because she did not want Lynch "to know that I'm working." (R 392).

On March 5, 1999, Ms. Pomeroy was working with Rose when Lynch pulled onto the back of the parking lot. (R 392). Ms. Pomeroy informed Rose of Lynch's presence, told her to stay in the break room, and informed the others on the premises about the situation. (R 392-93). Lynch left. (R 393). Rose, who appeared

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The entrance wounds were lower than the exit wounds. (R 363).

scared, told Ms. Pomeroy that "she didn't want to leave, she didn't want to go home." (R 393). Ms. Pomeroy identified Lynch as the man she had referred to in her testimony, but noted that "[h]is hair is shorter and he's heavier." (R 394).

Sixteen year old Kelley Lawson attended Millennium Middle School with Leah Caday and was her best friend. (R 404-05). The two girls "talked all the time" about "[p]retty much everything." (R 408). She was a frequent visitor in Leah's home. (R 408).

Lynch had been introduced to Miss Lawson as Leah Caday's photographer. (R 409). Leah did not like Lynch and her mom, Rose, dating each other. (R 411). One day shortly after Greg Morgan began to live with Rose and Leah, Lynch called the apartment and Leah answered. (R 412). Thereafter, "Rose told Leah to be careful, that he was dangerous." (R 412). Leah told her friend that she was afraid of Lynch. (R 412). Thereafter when she and Leah played outside, they "were pretty much watched out the window because we were scared he was gonna come." (R 413-14). During this time, Leah was not allowed to speak to Lynch on the phone or to let him inside the apartment. (R 414). Leah told Miss Lawson that she was "scared because she heard that he was threatening them." (R 414).

James Gregory Morgan was Rose Morgan's husband; they were married "[t]hree weeks shy of ten years." (R 418). Rose and James had a nine year old son. (R 419-20). However, James was also a "father" to Leah. (R 420). Rose and Leah "were very close." (R

461).

James was retired from the Marines where he "flew helicopters." (R 418). In August 1998, he took a job working in Saudi Arabia with Kawasaki Helicopters and returned home on February 9, 1999. (R 420, 421). He and Rose separated in "August of 1998," although they continued to have telephone contact. (R 421). He and Rose had been talking of getting back together in December, 1998, and upon his return home, they decided to do so. (R 422-24).

Shortly after they began to talk of possibly getting back together, Rose Morgan told her husband that she had been seeing Lynch. (R 423-424). James spoke to Lynch when he called Rose on February 9th. (R 424). However, Lynch first spoke to Rose, and his tone was "[v]ery angry, mad, as mad as hell." (R 424). Lynch "was very mad at my wife, in disbelief that she could ever conceive the thought of going back to me over him." (R 426). His only reference to James "was . . . that nigger, that nigger. . . . and he said, . . . You're so stupid to go back to that nigger. It was just nasty. It was just mean, mean spirited." (R 426-27).

However, when James took the phone and spoke with Lynch, it was "[a]lmost like a different person. . . . like I was talking to someone else, but it was the same voice." (R 427). James told Lynch that "me and my wife were getting together, and I'd like him to respect that." (R 427). In addition to James and Rose, their

son, daughter Leah, and Leah's friend, Kelley Lawson, were present in the apartment. (R 427).

After that conversation, James

had a talk with my wife and the kids. I knew that day that he was unstable. And I had a talk with them as far as keeping the house, the door closed and don't answer the door for no one, and just told them to be careful. I didn't want anybody to go outside without my permission.

(R 428). He made sure that they, including Leah, knew that Lynch was not welcome in their home. (R 428). In fact, Leah told her father (in Kelley's presence) that she was afraid of Lynch - that "[h]e scared her" (R 429). James and Rose changed the locks on their door. (R 451).

Lynch was always "very nice" to James, telling him "how he loved the Marines . . . and . . . how great Muslims are" ¹⁶ (R 431). Lynch was always "calm" when speaking with James. (R 436, 450). However, one of the first things James noticed about Lynch "was his handgun" (R 431, 466, 467). Rose "was fearful" that Lynch might harm James "because he carried a gun." (R 473).

The primary topic of conversation with Lynch was the nude photos of Rose which James and Rose wanted to get from Lynch. (R 432, 441, 444). However, Lynch used these conversations as opportunities to describe to James "how they had sex and different

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Lynch described James to the detectives as an "ex-Marine," and "a Baptist, now a converted Muslim." (R 547).

sex acts." (R 436). Although James did not want to hear these things, Lynch insisted on discussing them. (R 436). James and Rose suspected that Lynch was trying to "agitate me" and to "provoke me." (R 436-37, 450). On Rose's urging, James "refused to fall prey to it." (R 437). Rose "was afraid for me because she knew he carried a gun." (R 438). Rose "was always fearful of my safety," and "[s]he was more concerned about things happening to me than she was to herself" (R 440). She asked James not to meet with Lynch, but he did because he wanted to get the pictures for her. (R 448).

James saw Lynch pass by Rose's place of employment and by their home. (R 429, 442). Because Rose expressed her fear of Lynch to her husband, it was mutually decided that James would drive her to and from work. (R 430, 431, 440). However, as time passed and they did not see or hear from him, they began to relax and feel that "things were safe."¹⁷ (R 442). However, shortly thereafter, once Rose began driving herself to work, on at least one occasion, Lynch followed Rose home.¹⁸ (R 443-44).

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Moreover, Lynch had "assured me himself that, you know, he would never harm anyone. He loved her so much that, how could I or anybody else even conceive of such a thought. He convinced me." (R 480).

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Rose "didn't want to go to the police because she was (sic) had befriended his wife, . . . I felt that if we had went to the police, or . . . got a restraining order . . . if his wife had found out. she would have left him, he would have been left with

On March 5, 1999, Rose Morgan drove herself to work. (R 453). At approximately three o'clock, James Morgan arrived at Manor Care because he "had a bad feeling about March 5th." (R 453-454). Within minutes, Lynch arrived and parked behind him. (R 453). Lynch approached James and complained about the credit card bills. (R 454). James explained that he had told Rose the things were gifts that she did not need to pay back. (R 454). He again asked Lynch to "leave us alone." (R 454-55). Lynch was, as always, "very calm." (R 455). As Rose exited the building and saw Lynch, she "froze in her tracks." (R 456). James saw "[s]hock, amazement and fear" on her face." (R 456).

James told Lynch that he "might want to consider getting a lawyer because it's obvious she's not gonna give you any money, and I'm definitely not." (R 456). Lynch "drove up about three feet or so in his car and looked over at my wife and just gave her that little look . . . I'm gonna get you type of look." (R 457). Then, he left the scene. (R 457).

Rose "was shaking" and "scared," and James told her "we're gonna take this to the police," and Rose "agreed." (R 458-59). Rose "was obviously in no condition to drive," so she and James ran errands together for "about an hour" before returning to Manor Care

nothing, which would have made him, to me, dangerous at that point . . . So, I felt that as long as he had something to go back to, something to hold on to, his wife, his kids, you know, that things would be better for all of us" (R 452).

for Rose's car. (R 456, 458). At that time, Rose suggested that James pick up their son at day-care, and she would go to the apartment to check on Leah. (R 459-60). They planned to meet up later to go fishing or do some family activity. (R 460, 480-481).

James saw Lynch brought out of the apartment building after the murders. (R 469). He had "[t]he same look," as if he "had done something [he] was very proud of," the same look, a "[s]mirk" that he had seen on his face as he drove past Rose earlier that day at Manor Care. (R 469). James had seen that smirk before when Lynch "knew exactly what he were (sic) doing at all times" and "tried to stick needles in me to provoke me . . . just with the words that he chose . . . mostly sexual in content and stuff." (R 470, 473). It was "[p]art of his demeanor" (R 470).

Sanford Police Detective Kristin Ziegler, along with Ray Parker and Randy Smith, interviewed Lynch after his arrest on March 5, 1999.¹⁹ (R 494). Lynch was calm, "matter of fact, wasn't crying, wasn't hysterical," was coherent, responded well to the questions, and did not appear to be under the influence of any drugs or alcohol. (R 497-98). Lynch "didn't act like he just killed two people, but he was just like . . . just talking to us like over a cup of coffee." (R 503). His demeanor was consistent throughout

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The interview was videotaped and subsequently played for the court. (R 542-640).

the interview, and it did not change when he was removed from the room. (R 503). He never appeared upset or confused, and he appeared to understand everything that was going on. (R 504). He had no difficulty with complying or cooperating with police requests. (R 505).

The officers executed a search warrant of Lynch's vehicle and of his home. (R 517). They seized weapons, guns and ammo, from the home, as well as "[n]umerous magazines on weapon controls and how to use firearms, numerous catalogs on different types of handguns," (R 518-19). There was ammo of the type used in the murders in the home. (R 519). The purpose of this evidence was to show "[t]his is not a person who didn't know anything about firearms. He knew exactly which ones to use, . . . when to use them, . . . and he chose from among his vast collection which ones to bring," contrary to what he said in his statements. (R 524). Moreover, the State argued, it was relevant to whether Leah's murder was an accident, "whether, in fact, he accidentally shot the Glock seven times." (R 527). The prosecutor added: There's other guns he didn't take, there's also a plethora of magazines about guns that are there in his home, which would indicate that he's read and studied guns pretty avidly. Wouldn't that be relevant to the issue of whether he's unfamiliar with this Glock and he's accidentally shooting it off there and killing two people?" (R 528). Judge Eaton replied: "Well, I suspect it would" (R 528).

The videotape of the interview with Lynch was played to the court. (R 538). Lynch told the detectives that he and Rose had a long affair and had recently broken up, on February 9th. (R 547). On March 5th, he had gone to Manor Care at three o'clock in the afternoon and had spoken with Rose's husband. (R 546, 550-551). He opined: "I'm sure he'll [James] say that I had it in my mind all along to do this . . . [b]ecause I had the gun on me in the car . . ." (R 546). Lynch pointed out to the detectives that he could have "shot him right . . . like that . . ." had he wanted to. (R 549). Instead, he asked James to talk to his wife about repaying him for the car he bought for her and cash advances he had taken out on her behalf. (R 554-555). After the conversation at Manor Care,²⁰ Lynch picked up his older son at school and dropped both children off at home before going to the Morgan apartment. (R 556-557).

Lynch told the detectives, "...the gun went off into Leah's back accidentally, while I was trying to put it down, it was very close." (R 543). He blamed the firing on ". . . that damn Glock with that . . . trigger, you know." (R 543).

Lynch knew that the lock on the door to the apartment had been

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The detectives referred to the place of employment where the conversation with James occurred as Cumberland Farms, and Lynch immediately corrected them, advising that it was "Manor Care in Winter Park." (R 551).

changed; he gained entrance when Leah came home where Lynch "was waiting outside there." (R 557-58). He said he told Leah that he wanted to talk to "you, your, ah, mom when she gets home," and that he would wait with her until Roseanna got home. (R 544, 558). Lynch had the guns in a bag, and he showed Leah a gun because "...she was gonna, ah, scream or something, you know, and I just more or less showed it to her to, in...in, ah, you know, to get her to calm down..." (R 545). He explained that if he was some "sort of evil person I could've ah, tied her . . . up and gagged her and done something terrible, if I raped her or something" (R 558). Leah asked him: "[W]hy are you doing this to me," and she asked Lynch to let her go. (R 558, 619). Leah "sat on the floor, she was like ah, very scared . . . ;" (R 558); in fact, she was "just scared to death." (R 619).

At some point, Leah "started talking very loud . . . ," and Lynch told her "just be quiet" (R 559). He took the gun out and "put it . . . I said look, . . . be quiet" (R 559). He held Leah there with the gun for "about ah, half hour, forty minutes" (R 558). Lynch had "the gun on . . . on me . . . ," and he "placed it on the floor." (R 560). However, when he ordered Leah to sit down, he had the gun in his hand. (R 609). He admitted that he was "technically" holding Leah hostage. (R 610). Again, he reminded the officers: "I mean I could've put her down on the floor and raped her and" (R 560). Leah "started getting

upset" as "Rose came in the, ah, the door." (R 563). Lynch was speaking with his wife the second time as Rose began coming up the stairs, and he told her "I'm about to do something terrible." (R 621).

When Rose opened the apartment door with the key, "she saw me there and she stopped" (R 564). Lynch "was holding the gun," and he told Rose, "I'll let Leah go and I'll even, you know, . . . I says I'll put the gun down, if you want we'll, we'll talk if we can just, work . . . work this out and you not say ah, say anything about me being there" (R 563, 564, 568). Lynch said he "was afraid that . . . my wife was going to ah, . . ." and "I would be put out on the street. . . . And she would (sic) be with . . . with him" (R 564-65). Rose told him "it's over" ²¹ (R 611).

Lynch "thought he was coming home or coming up the stairs, or I thought somebody called the, ah, the cops and I made a move with, with the ah, the gun, the gun, the ah, the Glock, .45 and it, it went off, . . . it just went off." (R 568-69). The bullets "hit her...in the leg or the, the body someplace." (R 569). "She fell down outside, before she fell it went off again..." (R 569). Lynch

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He said this did not make him "really that mad, because I already knew it." (R 611). Later, he said he was not all that mad because he believed "there was a chance still there because she had told me previously that she may break up with . . . him." (R 613).

claimed he "was in the floor maybe ten feet inside the apartment and Leah was just crouched there like . . . sitting there cross legged and I was like behind her and she said let . . . let her go and I said you come in and we'll talk, I'll . . . put . . . the gun down" (R 569).

Lynch complained that "it got . . . so fast so quick . . . some people coming up the stairs.²² I didn't know if it was him with a, with a gun and I . . . had the gun up like that and I sort of went to lower it down, to put it down and it went off and it hit her in the leg." (R 570). He claimed that the Glock "went off again and . . ." he "was like in ah, shock or something and I, I went to put it down and it went off into the daughter's ah, back." (R 571). Although Lynch admitted that the child "screamed once" when he shot her mother "four or five times" in front of her, (R 632, 634), he said when he shot the girl, she "just slumped over" (R 571).

After Rose was struck by the bullets, she "said something like, ah, oh Richard, or something" (R 572). He brought Rose inside "because I sort of panicked." (R 572). He claimed to be "very suicidal" (R 572). Later, however, he claimed that at that point, he "was intending to turn my . . . myself" in. (R

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He admitted that his wife had told him during the first conversation from the Morgan apartment that she was going to call the police. (R 620).

582). Nonetheless, after dragging Rose inside and closing the door to the apartment, he shot Rose in the back of the head with his .38 pistol, because he felt “. . .it was like a, a . . . a mercy thing” (R 597-598). It “looked like she was going. She wasn’t breathing.” (R 605). Lynch admitted that he was “mad” at Rose for taking him. (R 606, 608). He also admitted that he had already shot Leah before delivering the killing shot to the back of Rose’s head. (R 614).

Lynch claimed he was “not a, a gun freak or anything like that. I had the other two guns with me today . . . to get ‘em out of the house. . . . I was gonna sell them so I cuold (sic) put something on the credit card” (R 552). He said he had “sold a few guns” previously. (R 552). He also admitted having “a small collection [of guns] at home . . . ,” and that he was “reasonably” knowledgeable in weapons. (R 562, 608, 609). He said he “always feared something like this” (R 562). He was very concerned that the “media” would portray him as “a [f]anatic” (R 562-63).

Lynch claimed he showed no remorse for murdering Rose and Leah because it was like a dream or a nightmare to him. (R 608). However, he said he had remorse “for my . . . my family, my wife and my . . . my little guys.” (R 616).

Regarding the Glock used in the murders, he said he had had it “a year or so.” (R 574). He added: “Ah, I haven’t really ah, shot

it, . . . (R 574). He claimed he had not "shot it at all, believe it or not." (R 575). He added: "[W]ith that damn trigger you know . . ." (R 575). Repeatedly, he returned to this claim: "[T]he damn trigger, which I wasn't fam . . . familiar with . . ." (R 605).

Lynch admitted that he had gone by Rose's apartment "a few times at night . . ." (R 555). He added: ". . . I could've put a fire bomb in their car. I could've thrown something through the window." (R 556).

Lynch said he took the bag containing the three guns, weighing about twelve pounds, up to the third story apartment "because I had the statements to show her." (R 576). He claimed that he pulled the guns out "[j]ust ah, like to let her see that I had it, just to sit down and like be quiet . . ." (R 578). He admitted that he parked his vehicle where Rose would not see it, "because obviously she wouldn't of went up, you know, I was afraid she was gonna panic and flee . . ." (R 587).

Lynch said he had "worked for New York City Transit Authority for six years, driving a bus. (R 580). Before that, in "1982 I was a special patrolman with the city . . ." (R 580). He had told Rose about his patrolman background, and he knew she was afraid of him when he carried a gun. (R 581). He said he had never been arrested or convicted of anything and hoped he would live through jail, stating "I hope none of any of these big black guys get a

hold of me or something." (R 580).

Lynch denied that Rose was screaming, claiming she only "started to raise her voice" when "it all happened."²³ (R 581). He said he "heard steps coming, I didn't know who was coming . . . and she said no, I'm not shutting the, the door you know." (R 581). He acknowledged that Rose told him to get out and that she told him she was "afraid" of him." (R 581). He also admitted that she told him she had broken it off with him "[b]ecause she wanted to ah, to be ah, with him." (R 593).

Lynch told the detectives that he called his wife before Rose arrived, and again after he fired the gun. (R 583). He said that Leah was talking when he was on the line with his wife. (R 583, 585). He also admitted that in the conversation he had with his wife after both victims had been shot, he told his wife that he shot them. (R 624-25). He admitted to Detective Ziegler that he never said anything about it being accidental, "'[c]ause you know what? It wasn't accidental, was it?" (R 625). Later, returning to the accidental shooting claim, Lynch said if it was intentional, he

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Later, however, he said he "heard like scr . . . the initial shots, I heard screams, I knew you know, that the cops were on their way, then I heard the cops, then I was like, I didn't know what I was doing. I put the Glock down because I was afraid it was gonna . . . I thought maybe ah, the SWAT team was gonna come through the door with a battering ram or something and I fired a round . . . I could've fired through the door, . . . that would've made it through the door, but . . . I just wanted to get them back so that I could talk to my wife. . . ." (R 582-83).

"had opportunity to do it before." (R 629-30).

Lynch said he had not been drinking; neither had he taken any dope or cocaine. (R 630). He also admitted that when he carried three guns up to Rose's third floor apartment, he was not planning to shoot himself in front of Rose. (R 631).

Allen McCoy was a patrol officer with the Sanford Police Department. (R 649). He was dispatched to the Rosecliff Apartments on March 5, 1999, at 5:15 p.m. for a "shots fired" call. (R 650). He and Deputy Brady with the Seminole County Sheriff's Department approached the Morgan apartment on the third floor and observed a large puddle of blood in front of the door. (R 651). There were shell casings on the floor, and "it appeared as if something had been dragged through the puddle of the blood." (R 652). After the SWAT team escorted Lynch from the apartment, Officer McCoy searched Lynch for weapons and transported him to the Sheriff's office to be questioned. (R 653-54). A videotape showing SWAT escorting Lynch from the apartment was placed in evidence, and it showed Lynch's "facial appearance" at the time. (R 654-55). The tape was shown to the judge. (R 656).

Dr. Charles F. Siebert was the acting associate medical examiner for Seminole and Volusia Counties. (R 662). He examined their bodies at the scene, looked at the place where the shooting occurred, and learned "what the basic story was of how it happened." (R 663). The next day, he performed the autopsies on

Rose and Leah. (R 664).

Rose was "four foot ten inches tall and weighed one hundred and fourteen pounds." (R 667). Rose had multiple entrance and exit wounds to her legs (mostly her thighs), a gunshot wound to her left hand,²⁴ and two gunshot wounds to her head and neck area. (R 669). One of those entered "her left eye" and "exited the right side of her neck."²⁵ (R 682). The wound to the eye "probably went through her hand before it entered her eye." (R 684). The final gunshot wound was to the back of her head, and was the fatal wound. (R 689, 675, 681-82).

Dr. Siebert testified that although there was a significant amount of bleeding from the leg and hand injuries, Rose would not have lost consciousness as a result of those injuries. (R 686-88). She would, however, have suffered pain from them. (R 686, 717). The doctor said it was possible that Rose might have lost consciousness when the shot penetrated her left eye, "but then again she might not have." (R 687). He also believed that the hand was injured when Rose attempted to block the wound to her eye. (R 690).

Regarding the amount of blood the doctor observed in relation

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This shot was to her "ring finger" on her left hand. (R 680, 681). That wound might have been "a defensive wound." (R 681).

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Given time, this wound might have been fatal "mostly due to blood loss." (R 685).

to Rose, it was "quite a bit of blood." (R 691). A lot of it was on "the lower portion of the shirt." (R 692). Although the injury into the brain would result in almost immediate death, the other wounds would not, and even the wound to the eye "would be more of a slower process where the person would generally bleed out." (R 693, 707).

Regarding the fatal injury to the back of the head, the doctor recovered a bullet from "the front part of the brain." (R 688). The path was "from left to right back to front and slightly upwards." (R 688). She suffered the leg wounds first, then the hand and eye, and finally the fatal wound "to the back of the head." (R 689).

Dr. Siebert also performed the autopsy on Leah. (R 693-94). Leah Caday was a female child, "five foot zero inches and one hundred and ten pounds." (R 694, 695). Leah had a single fatal wound which entered just to the right of the middle of her back. (R 694). The projectile exited the front of her body. (R696, 698). Its path was through the heart itself. (R 698). This was a fatal wound from which the child bled to death internally within "several" minutes. (R 698, 699). The cause of Leah's death was a "[g]unshot wound to the back." (R 700, 706).

The doctor said one "can lose consciousness within ten to twenty seconds" when "there's no blood going to the brain." (R 720). "[I]t is possible" that Leah died in "[l]ess than a minute,"

although that "is pretty quick," but it "would likely have taken . . . several minutes to die." (R 720).

Dr. Siebert testified that Rose was lying in the area "showing the drag mark and then the pooling of the blood against the wall . . ." (R 703). Leah, on the otherhand, was lying in the area near the middle of the room. (R 703). "[T]he majority of the blood" from Leah's wound "would stay within the body itself." (R 703).

The State rested its case. (R 731-32). The defense announced to the court that it planned to prove "essentially three mitigating circumstances." (R 732). These were: (1) Due to mental illness, Lynch was under extreme emotional disturbance at the time of the murders, (2) his capacity to conform his conduct to law was "essentially impaired," and (3) "he has no prior criminal . . . history."²⁶ (R 732-33).

Dr. Jacquelyn Olander is a licensed psychologist testified for the defense. (R 734). She saw Lynch a year after the murders. (R 823). She reviewed jail medical records as well as records from the Sanford Police Department and Seminole County Sheriff's Office prior to meeting with Lynch. (R 824). She conducted a psychological evaluation of Lynch and spent approximately six hours with him. (R 735, 823).

Dr. Olander administered the Kaufman Brief Intelligence test,

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He was arrested in 1977, but the charges were dropped. (R 775).

the Personality Assessment Inventory, the Rorschach Inkblot test, the Psychiatric Diagnostic Interview-Revised, and the Rey Fifteen Item Memory Test. She also did a mental status examination including the Beck Depression Inventory. (R 741). Lynch performed within the normal range on the intelligence measure. (R 745, 833). She opined that he did not malingering, exaggerate, or respond defensively, although he responded inconsistently at times. (R 748). Dr. Olander felt that Lynch was competent to respond to the testing protocol she had chosen. (R 750).

Lynch claimed that he had had problems with alcohol in the past, but not at the time of the offense. (R 751). His responses to the various tests were consistent with depression and schizophrenia. (R 754). Lynch described "horrible feelings as if there was a presence around him, controlling his behaviors" and described feeling "that people's eyes were watching him." (R 756). Lynch had indicated that he was "hearing voices." (R 862). The doctor "did not find Mr. Lynch to be experiencing any auditory hallucinations, but" did "feel that there was a delusional component to his presentation." (R 758).

On March 9, 1999, four days after the murders, a mental health screening was conducted on Lynch at the jail, and he denied experiencing auditory and/or visual hallucinations. (R 863). Similarly, a medical record dated March 11, 1999, also states that Lynch denied to a psychiatrist examining him that he had

experienced any delusions or hallucinations. (R 863-64). A jail record dated April 30, 1999 indicated no evidence of psychosis. (R 865-66). Nonetheless, Dr. Olander found that Lynch was suffering from schizoaffective disorder on the date of the murders based solely on his self-report, a year later, that he heard nondirective voices on that date.²⁷ (R 861-62, 869).

Dr. Olander testified that Lynch was raised by both parents, but his father was the primary care giver and was a strict disciplinarian. (R 761). Although she did not think that Lynch received unconditional love from his father, he certainly did from his mother, whom he regarded as "his protector." (R 886-87). His mother was a caring and kind woman. (R 889). His family described Lynch as "caring" and "kind," but a "very weird and strange individual." (R 764). She described excessive cleaning of hands or automobile as "an example of compulsive behaviors" which caused her to "provide Mr. Lynch with a diagnosis of a personality disorder with compulsive features." (R 765).

Dr. Olander described Lynch's "cognitive features [as] similar to schizophrenics." (R 787). Dr. Olander diagnosed Lynch as having a "schizoaffective disorder," a combination of schizophrenia and a

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Although the doctor wrote that Lynch was hearing the voices of Satan, what he actually told her was "some references to demonic or negative forces." (R 869). The doctor admitted that in the 911 call and in the letter to his wife, Lynch never blames "the devil," but blames Rose, his wife, and Mr. Morgan. (R 871). Neither did he blame "the devil" or "Satan" on the confession tape. (R 871).

mood disorder, and she opined that he was experiencing this behavior at the time of the offense. (R 798, 811). The doctor found him disorganized with his speech, and noted he spoke without emotion; his speech was "robotic in its presentation." (R 814). She felt "he does not have a normal understanding of human relationships," (R 772), and "does not have a very good grasp of reality." (R 788).

However, according to Dr. Olander, Lynch "had significant fear of Rosa's husband." (R 807). He was afraid "that the husband was gonna come into the room at any moment." (R 809).

Dr. Olander "diagnosed Mr. Lynch with anxiety disorder NOS," i.e., "[n]ot otherwise specified." (R 810). She did not speak with any of Lynch's family members prior to forming her expert opinion as to the different mental disorders which Lynch has. (R 825). Neither did she speak to them before her deposition "on November 29th of this year." (R 826). In fact, she only spoke with Lynch's wife, Virginia, two weeks before her trial testimony and the other family members were all within the preceding month. (R 826). Dr. Olander testified that she did not feel that it was necessary to speak with any of Lynch's family or friends before arriving at her diagnosis. (R 827). Neither did she talk to any witnesses, although she reviewed a statement James Morgan gave. (R 827). She did not review the neighbors' statements. (R 828).

The only information that Dr. Olander had indicating that

Lynch was depressed or under stress at the time of the murders came from Lynch's self report. (R 832). She admitted that the simple fact of being incarcerated could account for any depression and stress she might have seen a year later when she interviewed him. (R 831).

Dr. Olander reviewed the letter Lynch wrote to his wife before the murders, although she did not do so until after her deposition and her report diagnosing Lynch. (R 791, 836). She believes that Lynch references suicide in the letter. (R 794). She said that Lynch's directing his wife to give the nude photos of Rose to her parents was "his way of giving the ultimate punishment to an individual." (R 795). She did, however, reluctantly admit that the letter, written two days before the murders, indicated that "Lynch had developed a plan" (R 836). Nonetheless, she claimed that despite directing his wife in this letter to contact the victim's family and give them certain photos and letters "to let them know that this was not a random act of violence, and that they should have some decent closure" was not evidence of homicidal ideation. (R 837).

Dr. Olander did not diagnose Lynch with "organic brain damage." (R 829). She found him to be a "passive individual," although he chose to live "in Florida because he could have a concealed [gun] permit." (R 807, 817). She opined that Lynch's actions were rational just prior to the murders. (R 841-842, 860).

She said Lynch's mental problems developed into psychosis recently to the crimes: "[T]he psychotic processes . . . occurred during that time period surrounding the events" (R 878). She said that the "strong facial expression" when he was brought out of the apartment building after the murders was "absolutely not. No way" indicative of his subjective mood at the time. (R 819).

Dr. Olander testified that during the commission of the crimes, Lynch, "knew what was happening was wrong, he knew it was wrong, absolutely, but he was not in control." (R 907-908). However, Lynch did control Leah with the gun and "he kept her there in the apartment against her will." (R 880). He also used the gun to make Rose talk to him and to control the actions of the police. (R 880). Nonetheless, in her professional opinion, Richard Lynch was under extreme mental and emotional disturbance on March 5, 1999, when he committed the murders, and his capacity to conform his conduct to meet the requirements of the law was substantially impaired. (R 820-821). However, she had to admit that Lynch was able to conform his behavior to the requirements of law enforcement because he had to in order to get out of that apartment alive.²⁸ (R 883-884).

Dr. William Riebsame, a psychologist involved with forensic

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He was also able to follow the directives at the police station, and on the way there; the doctor admitted that this was conforming his conduct to the law. (R 884-85).

psychology, met with Lynch and conducted an examination of him. (R 918, 921). He administered an MMPI, a Rorschach test, a Shipley Institute of Living Scale Test, and a Wide Range Achievement Test. Lynch did not complete the MMPI. (R 935). The incomplete MMPI indicated Lynch had emotional problems of concern and that he was depressed. (R 937). He was a self-centered individual who was prone to worry and required immediate reassurance or support. (R 939). Dr. Riebsame classified Lynch as "a relatively bright man." (R 950).

The doctor reviewed a "significant amount" of information with regard to Lynch, including the transcript of the 911 call made by Lynch, the transcript of his confession/statement made to the police, and the letter written by Lynch to his wife, Virginia. (R 922-923). In addition, he reviewed the police reports as well as the inmate medical records from the jail. (R 923). He also read the report and test data of Dr. Olander. (R 923-924).

Dr. Riebsame said that Lynch "answered his questions in a very detailed manner, elaborating when requested to do so." (R 724). He "gave information about his background, education, work history and relationship history." (R 924). The test results did not indicate a schizophrenic illness, nor a schizoaffective disorder. (R 960). Lynch described his childhood, with regard to his relationship with his father, as "abusive." (R 925).

Lynch gave Dr. Riebsame "somewhat different motivations for

his behavior [the murders] in his interview with me, but his description of the circumstances . . . was very consistent with what he told the police" (R 929). He told Dr. Riebsame that he had planned "to wait for Rose . . . [and] shoot himself in front of her in order to create this traumatic image, and . . . she would . . . not be able to any longer reside in this particular apartment" (R 929). The doctor had read what Dr. Olander wrote in her report, and he "was expecting that he would offer similar information to me, which would suggest a severe mental disorder at the time of the offense," but he did not. (R 930). In fact, he said nothing that indicated that Lynch had "any psychotic thought processes during the course of the crimes." (R 930). Based on his own clinical interview, and his review of all of the extensive information provided to him from various neutral sources, Dr. Riebsame did not find any psychotic thought processes existed with regard to Lynch during the course of his crimes. (R 930).²⁹

Lynch was consistent in emphasizing that the shootings were accidental, although the last shot, he claimed, was a "mercy killing." (R 931). Lynch acknowledged to the 911 operator that there was a moment of rage and that had contributed to the shootings. (R 933). Dr. Riebsame opined that Lynch was "not all

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Dr. Riebsame testified that a sudden onset of psychosis is not likely. (R 978).

together" honest with the 911 dispatcher, and "throughout the conversation he's redirecting the radio dispatcher to his explanation as to what occurred," in an attempt to mitigate his responsibility for his actions in murdering Rose and Leah. (R 933). He explained that in talking "[w]ith the law enforcement officers," Lynch "focused on the financial issues and [that he] just desired to have the conversation with her about them, and then talks about how it all went wrong." (R 934). However, "[w]ith the dispatcher he's suggesting that he had planned to commit suicide and then everything went wrong." (R 934-35).

Lynch did not complete the MMPI, and asked Dr. Riebsame to read him the questions, despite having scored in the college reading level on the sub-test the doctor had given. (R 935). Concerned that the test would not be accurate if he continued after question 73, the doctor terminated that test. (R 936). Nonetheless, with the information gleaned from the MMPI and the mental examination the doctor did as he conducted the test, he determined "that there's certainly some emotional problems . . . he is certainly experiencing depressive symptoms" (R 937). He added that the "test data" show Lynch to be "someone who's very willing to participate in behavior that is not typically socially acceptable. He may be deceptive, he may manipulate or mislead people, he may be involved in activities that other people would

consider inappropriate"30 (R 937). Lynch is "gonna behave in a way that will lead to him being satisfied or being gratified, and he may require very immediate gratification, immediate reassurance or support." (R 938). If he does not think he is getting those things, "he may became (sic) rather angry and resentful" and may become "assaultive or directly behave aggressively towards someone . . . who is just not satisfying him the way he wants to be satisfied, whether it be sexually or emotionally or financially." (R 939). Dr. Riebsame concluded that the MMPI test results indicated an "antisocial type of nature." (R 939).

In regard to the letter Lynch wrote to his wife, Dr. Riebsame testified that "[y]ou can infer from his statement that this will not be a random act of violence, that it's gonna be a purposeful act of violence." (R 945). He added that "the letter suggests he's gonna carry out some purposeful violence in relation to Miss Morgan," and said it implies "a murder/suicide plan." (R 946).

From the extensive information the doctor evaluated, he concluded that Lynch blames everything he regards as bad, or

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Lynch acknowledged his involvement in socially unacceptable activities throughout his lifetime and . . . described how he might deceive people . . . to keep from being discovered" (R 940). For example, he lied on employment applications, had an affair with his wife's sister, and had the affair with Rose. (R 940-41). He also kept "his extensive collection of pornography hidden" from his wife, as well as "his involvement in massage parlors" (R 941).

undesirable, in his life on others. For example, he blames his conduct resulting in the murders on his wife, on Rose, and on Rose's husband. (R 944). His conversations with the 911 dispatcher, and with the detectives, focus on reporting and explaining "about his circumstances that serve to excuse his behavior" in murdering Rose and Leah. (R 947). Throughout, Lynch has been "excusing himself and trying to explain himself to others" with the goal of making himself less culpable for the crimes. (R 964-65).

Dr. Riebsame said that Lynch's actions in planning and acting on that plan do not indicate that he was not (or felt he was not) in control on the day, and at the time, of the murders. (R 947-48). Moreover, Lynch's IQ is 98 "with a hundred being an average score." (R 949). Dr. Riebsame completely rejected schizoaffective illness at the time of the offense, noting that difficulties recalling the details of the murders and the circumstances leading up to them would be the norm were that illness present. (R 963-64). He also explained in detail why he felt Lynch was "faking bad" on the MMPI and probably on other tests done by himself and/or Dr. Olander.³¹ (R 970-74).

Dr. Riebsame reviewed the audio and video tapes of Lynch's

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Dr. Riebsame also said that a person's mental state may deteriorate because they are in prison and under a death sentence, and therefore, the conclusions reached in regard to the mental state at the time of testing may not be reflective of that person's mental state at the time of the crimes. (R 975).

interaction with police on the night of the murders. (R 976). He noted that Lynch "presents himself . . . very coherently . . . follows the questions well, . . . parries the officers in terms of their confrontations of him . . ." and gives "no real indication of extreme emotional distress." (R 976). Had Lynch been suffering from a schizoaffective disorder, the doctor would have expected "some extreme . . . emotional lability (sic) or distress, either a great deal of tearfulness or anxiousness That wasn't the case." (R 976). Dr. Riebsame testified that in viewing Lynch over the approximately one hour and forty-five minute tape, "[h]e was certainly cold" and gave "very detailed responses" to the questions. (R 977). Lynch simply did not meet the diagnostic criteria under the DSM, IV for schizoaffective disorder of any kind. (R 978-79).

Based on all of the information that he received, Dr. Riebsame concluded that at the time of the murders, and the circumstances leading up to it, Lynch knew what he was doing and knew that it was wrong. (R 964). The doctor diagnosed Lynch as having a major depressive disorder, but no psychosis. (R 979). He was under emotional distress at the time of the murders, but not extreme distress. (R 984-85). Moreover, Lynch had the ability to function normally in day-to-day activities. (R 985). In fact, the level of emotional distress Lynch was operating under at the time of the crime was not abnormal, but was "actually expectable." (R 986).

Lynch was self-centered, vengeful, and had a need for immediate self-gratification,³² but he did not lack the capacity to appreciate the criminality of his conduct. (R 981, 987). Moreover, his capacity to conform his conduct to the requirements of the law was not substantially impaired. (R 987). This is evident from the "purposefulness and planfulness evident in what happened and how he carried it out, and in his conversation with law enforcement individuals during and after the events"³³ (R 987-88).

A *Spencer* Hearing occurred on February 6, 2001. (R 1098-1122). James Morgan read a letter to the Court describing the close relationship between Rose and her daughter, Leah, and the effect of their deaths on the entire family. (R 1109-1112). Statements from the Caday family³⁴ and members of their community were read into the record by the State. (R 1112-1116).

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These things are revealed in the letter to his wife, his directive that the nude photos be given to Rose's parents, and in his refusal to let the police do anything for the victims until he's finished talking. (R 981-82).

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In fact, during these events, Lynch did conform his conduct to the requirements of the law and told the 911 dispatch operator about doing so when he "chose a particular weapon" to shoot at the door to scare the police away "expecting that the bullets would not pierce the door." (R 988).

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Roseanna Morgan's family resides in Hawaii. (R 1112).

On April 3, 2001, the court imposed two sentences of death on Lynch. (R 1125-28). The court found the following aggravating circumstances as to Roseanna Morgan: That the capital felony was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification; that the Defendant was previously convicted of another capital felony or of a felony involving the use of threat or violence to the person; that the capital felony was committed while the Defendant was engaged in aggravated child abuse, or kidnaping. (R 1125-26). The court found the following aggravating circumstances as to Leah Caday: That the Defendant was previously convicted of another capital felony or a felony involving the use of threat of force or violence to the person; the capital felony was committed while the Defendant was engaged in aggravated child abuse, burglary, or kidnaping; the capital felony was especially heinous, atrocious, or cruel. (R 1126). The court found the following mitigating circumstances: The crimes were committed while the defendant was under the influence of a mental or emotional disturbance; the defendant's capacity to conform his conduct to the requirements of the law was impaired; the defendant had no significant history of prior criminal activity; the defendant suffered from a mental illness at the time of the offense; the defendant was emotionally and physically abuse as a child; the defendant had a history of alcohol abuse; the defendant had adjusted well to incarceration; the

defendant cooperated with police; the defendant has expressed remorse and the defendant has been a good father and intends to maintain a relationship with his children. (R 1126-27). At the conclusion of the weighing process, the court found that the aggravation outweighed the mitigation for the murders of Roseanna Morgan and Leah Caday. (R 1127). Judge Eaton imposed the death sentence for both murders. (R 1127).

SUMMARY OF THE ARGUMENTS

POINT I: The trial court correctly found the heinous, atrocious or cruel aggravator in regard to the murder of the child victim. The fear and emotional strain experienced by the victim during the approximately forty-five minutes she was held captive by the defendant was great. The sheer terror she had been experiencing escalated as she watched her mother being brutally murdered before her eyes. Under these circumstances, death from a single gunshot through the heart was heinous, atrocious, or cruel. The trial court's finding of this aggravator was well supported by competent, substantial evidence, and it should be upheld by this Honorable Court.

POINT II: The trial court correctly found that the murder of the adult victim was cold, calculated, and premeditated. The defendant planned this murder for at least two days before he carried it out. Other actions he took, such as hiding his vehicle so the victim would not see it and kidnapping her daughter so he could get into the apartment, show careful planning. Moreover, the passage of time once the criminal events began and the cold and calm manner in which the defendant conducted himself are more than sufficient support for this aggravator. Assuming *arguendo* that this can be considered to have resulted from a domestic dispute, that fact did not result in the murder being anything other than a cold and well-calculated act. This murder was not done in a frenzy, panic,

or fit of rage. The trial court's finding of this aggravator was well supported by competent, substantial evidence, and it should be upheld by this Honorable Court.

POINT III: The trial court's sentencing order adequately states his finding of mental/emotional mitigation under the "nonstatutory" circumstance. The oral pronouncements on the record clear up any possible doubt as to the judge's intention in regard to this mitigation. Moreover, any error in regard to the language of the order is harmless. In view of a 12 to 0 jury death recommendation and the wealth of strong aggravation compared to the relatively weak mitigation, there is no possibility that any error contributed to the imposition of the death sentence in this case. Finally, the matter was not raised in the lower court, and therefore, it is procedurally barred on appeal.

POINT IV: The defendant's death sentence for the murders of the two victims are proportionate. There were three strong aggravators found for each murder to be weighed with relatively weak mitigation. Even were there only two aggravators, as the defendant claims, same would be more than sufficient to render the death sentences in this case proportionate. In fact, due to the circumstances of these crimes, were there only a single aggravator for each murder, death would still be appropriate.

POINT V: Florida's capital crimes sentencing statute is not unconstitutional. The challenges raised herein have been

repeatedly rejected by this Honorable Court. Notice of aggravating factors, the finding and weighing of mitigation factors, burden shifting claims, automatic aggravator, and vagueness or inconsistent application of HAC have all been specifically rejected.

Lynch is entitled to no relief.

POINT I

THE TRIAL COURT DID NOT ERR IN FINDING THE
HEINOUS, ATROCIOUS OR CRUEL AGGRAVATOR IN THE
MURDER OF THE CHILD VICTIM, LEAH CADAY.

Lynch complains that the trial judge found that his murder of thirteen-year-old Leah Caday was heinous, atrocious, or cruel. (IB 24). He points to various facts which he says support an opinion contrary to that reached by the trial court. For instance, the medical examiner estimated that the child "lost consciousness within ten to twenty seconds of the wound and died in less than one minute." (IB 24). He says the trial court should have decided this issue "on the single, quick, and fatal shot," rather than "on the thirty to forty minutes where Leah was confined in the apartment with appellant before her mother came home." (IB 26-27). Clearly, that is not the law.

It has long been held that "fear, emotional strain, and terror of the victim during the events leading up to the murder may make an otherwise quick death especially heinous, atrocious, or cruel." *James v. State*, 695 So. 2d 1229, 1235 (Fla. 1997), *cert. denied*, 522 U.S. 1000 (1997); *Swafford v. State*, 533 So. 2d 270, 277 (Fla. 1988), *cert. denied*, 489 U.S. 1100 (1989). See *Preston v. State*, 607 So. 2d 404, 410 (Fla. 1992), *cert. denied*, 507 U.S. 999 (1993)[even an instantaneous death may be HAC where fear and emotional strain contributed to the heinous nature of the crime]. Where victims have seen a loved one murdered before their eyes,

extreme fear and anguish have been attributed to the victim as a matter of "logic," supporting a finding of HAC. See *Francis v. State*, 27 Fla. L. Weekly S2, S10 (Fla. Dec. 20, 2001). See also *Zakrzewski v. State*, 717 So. 2d 488, 492 (Fla. 1998), cert. denied, 525 U.S. 1126 (1999). Moreover, promises that one will not be harmed further do not operate to prevent a finding of HAC. See *Card v. State*, 803 So. 2d 613, 624 (Fla. 2001).

"[T]he victim's mental state may be evaluated . . . in accordance with a common-sense inference from the circumstances." *Swafford*, 533 So. 2d at 277. The "killing itself" will also be evaluated, and where it "occurred in such a way as to show a wanton atrocity," HAC will be upheld. *Id.* Such a wanton atrocity was found where "Swafford fired nine bullets into the victim's body, most of them directed at the torso and extremities." *Id.*

Lynch concedes that "Leah was scared, upset, and nervous during the wait for her mother;" in fact, he told the police so. (IB 27). He also admits that during that wait, Leah "talked loudly," and Lynch "quieted her by showing his gun to her." (IB 27). He adds that Leah knew that her parents had met with Lynch over the past several weeks and "that there was clearly concern about the situation." (IB 27). Nonetheless, he claims that although "Leah was clearly agitated and afraid, she had no awareness of her impending death," and therefore, her murder was not heinous, atrocious, or cruel. (IB 27). Lynch bases this position on his

claim that because he "repeatedly reassured Leah that he simply wanted to talk to her mother," and "attempted to calm Leah throughout the situation," the HAC aggravator was invalidated. (IB 27-28).

The standard of appellate review of the trial court's determination that the murder of the child victim was heinous, atrocious, or cruel is competent, substantial evidence. *Swafford*, 533 So. 2d at 277. The evidence establishing HAC in this case far exceeds that threshold.

In determining that Leah Caday was killed in a heinous, atrocious, or cruel manner, the trial judge wrote:

Leah Caday was confined in the apartment with the defendant for between thirty and forty minutes before her mother came home. During that time she was terrified of the defendant and his gun. After her mother came home she watched in horror while her mother was brutally murdered. Virginia Lynch heard her screaming in the background during the first phone call the defendant made to her. She had time to contemplate her impending death. . . . Fear and emotional strain may be considered as contributing to the heinous nature of the murder, even when the victim's death is almost instantaneous. . . . The heinous, atrocious, or cruel aggravating circumstance may be proven in part by evidence of the infliction of 'mental anguish' which the victim suffered prior to the fatal shot. . . . The actions of the defendant prior to shooting Leah qualify her murder as especially heinous, atrocious and cruel. . . .

(citations omitted) (R 514). Clearly, Judge Eaton applied the right rule of law in regard to the finding of the HAC aggravator, and competent, substantial evidence well supports that finding.

The evidence of the heinous, atrocious, or cruel nature of

Lynch's crimes against the child, Leah, was more than sufficient to meet the competent, substantial evidence threshold. It includes: Lynch's own statements to his wife during the calls he made to her from the victims' apartment, his statements to the dispatcher shortly after killing Rose and Leah, and his statements to the detectives after his arrest on the night of the murders.

Lynch's wife: Lynch's wife, Virginia, testified that while talking to Lynch by telephone the first time he called her that afternoon, she heard a female (later identified as Leah) screaming in the background. (R 93). The scream was "a continuous" one, and the person making the sound was "[v]ery, very upset."³⁵ (R 93). Lynch hung up after about a minute and a half. (R 95). Lynch called his wife a second time, and he told her that he had shot the woman he was having an affair with. (R 97). When he called her a third and final time, "[h]e said that he shot the thirteen year old kid, he shot another person, thirteen year old daughter." (R 101).

Police dispatcher: In the taped conversation between Lynch and the police dispatcher, Joyce Fagan, Lynch said he "shot two people" when "[t]hey started to scream." (R 119, 125). He said that the girl let him inside the apartment, and he "put the gun down on the table, and the daughter . . . says why are you doing

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Although Mrs. Lynch could not make out much of what the screaming woman said, "she said like don't, don't, or something. But she's more screaming than anything else." (R 95).

this to me." (R 165). He said that after he shot her, Leah "slumped over," and she "was breathing for a while" (R 165).

Lynch told Crisis Negotiation Team Leader, Stephanie Ryan, that he terrorized Leah before her death. Lynch "spoke specifically about the daughter," using "the term petrified to define what her reactions were." (R 192). He described how he made contact with Leah when she arrived home from school, displaying the gun to the child. (R 192). Lynch said Leah "appeared . . . frightened," and "again he used the term petrified to explain." (R 192-93). He said the girl complied with his instructions "out of fear." (R 193).

Detectives: In an interview subsequent to his arrest, Lynch told detectives that he knew the lock on the Morgan apartment door had been changed to keep him from having access, and so, he "was waiting outside there" for Leah to come home. (R 557-58). He told Leah he wanted to talk to her mother, and they would wait inside the apartment until Rose arrived. (R 544, 558). Lynch showed one of the guns he brought to Leah because "she was gonna, ah, scream or something" (R 545). Leah asked him: "[W]hy are you doing this to me," and she asked Lynch to let her go. (R 558, 619). Lynch refused, and the girl "sat on the floor" after he ordered her to with gun in hand. (R 558, 609). The child "was like ah, very scared . . . just scared to death." (R 619). When the child became loud, Lynch threatened her with the gun, ordering her to "be

quiet." (R 559). He held the child hostage there with the gun for "about ah, half hour, forty minutes" (R 558, 610). Lynch admitted to the detectives that the child "screamed once" when he shot her mother "four or five times" in front of her. (R 632, 634).

In addition to Lynch's own statements, the record overwhelmingly supports a determination of competent, substantial evidence supporting the finding of HAC. It includes:

Leah's best friend, Kelley Lawson, testified that Leah's mother, Rose, "told Leah to be careful [of Lynch], that he was dangerous." (R 412). Leah told Miss Lawson that she was afraid of Lynch. (R 412). Whenever the girls played outside, they were "watched out the window because we were scared he was gonna come." (R 413-14). Leah was not allowed to speak to Lynch, nor was she allowed to let him inside the apartment. (R 414). Leah was "scared because she heard that he [Lynch] was threatening them." (R 414).

After speaking with Lynch, Rose's husband, James Gregory Morgan, "had a talk with my wife and the kids" during which he told them to keep the door to the apartment closed and not to answer it and to "be careful." (R 428). He made sure Leah knew that Lynch was not welcome in their home. (R 428). Leah told her father that Lynch "scared her" (R 429).

Dr. Siebert testified that once the bullet entered the child's back, she bled to death internally within "several" minutes. (R 698, 699). The doctor did not know when she lost consciousness,

but said it might have been "within ten to twenty seconds" after being shot, but could have been longer. (R 720). The doctor also testified that the injuries to the child's mother began in the extremities and that Rose could see and speak while suffering from these injuries. (R 686-88, 689).

The Morgans' neighbor, Yahira Morales, testified that she heard "weird noises" and looked out her "peephole" and saw Lynch dragging Rose, who was "screaming for help." (R 61). Lynch was holding and dragging Rose by her hands with one of his hands, and in his other hand was a gun. (R 61). Lynch "knocked on the door," and ordered "the person that was inside the apartment . . . [to] hurry up, open the door, your mom is hurt, and she was still screaming" and "was bloody halfway down." (R 61-62). Rose was screaming "[s]omebody help me, please help me . . . desperately screaming for help." (R 62). The door opened, and the man "dragged her in . . . still screaming." (R 62-63). Lynch closed the door, and within approximately five minutes, Ms. Morales heard "three more gunshots." (R 63). Ms. Morales, behind a closed and locked door in the apartment across the hall from the Morgan apartment, was shocked and "felt fear for me and my kids." (R 64, 65).

It cannot be seriously contended that thirteen-year-old Leah was not terrified and in constant fear of her life throughout her contact with Lynch. After being held hostage at gunpoint by a man who the child was already afraid of, the young girl watched as he

coldly murdered her mother, by shooting her in her extremities as she stood in the doorway of the apartment, demanding that he let her daughter go. When the man went out into the hallway to grab the severely bleeding woman he had just shot, the door was shut, presumably by Leah. Lynch was heard ordering the child to open the door because her still screaming mother was badly hurt. This terrified child faced down her own fear of this man and opened the door, in an effort to aid her mother. After dragging the mother inside, Lynch shot her again - this time in the eye. Leah screamed, and Lynch shot her through the back at point blank range. The child slumped forward and drowned in her own blood, conscious for several seconds; a time long enough to support the finding of HAC. See *Francis*, 27 Fla. L. Weekly at S10 [Where the medical examiner said "the victims could have remained conscious for as little as a few seconds and for as long as a few minutes," the defendant's claim that the victim "'may have been instantaneously killed' is not supported by the record."].

Finally, Lynch adds that because he "did not intend for Leah Caday to suffer whatsoever," the HAC aggravator does not apply. (IB 28-29). Again, he is wrong. The facts clearly support the reasonable inference that Lynch intended for Leah to suffer. Certainly, this man of at least average intelligence knew that any normal 13 year old girl would be badly frightened by being held hostage at gunpoint. Indeed, he bragged to the authorities that

the child's thirty year old mother "was afraid of me while I carried the gun." (R 126). Moreover, he knew Leah was "petrified" and complied with his instructions "out of fear," but still refused to let her go - either when the child asked him to or when Rose arrived. The State submits that one who is "petrified" and acts "out of fear" suffers. In any event, Lynch had to know that the child would suffer by seeing her mother brutally murdered before her eyes.

Finally, Lynch claims that the finding of HAC was not proper because he assured the child that he would not hurt her. Lynch knew that Leah was "petrified" of him and refused to keep his alleged promise to let her go when Rose got there. Thus, in the unlikely event that the child had hoped Lynch would let her go as he said he would upon her mother's arrival, his intention to do otherwise was crystal clear when he continued to hold her hostage with his gun after Rose arrived and asked him to let Leah go. At that point, no amount of assurance from him that he would not hurt her would allay the child's fears. Certainly, a reasonable inference from the evidence is that when he began firing 5-6 shots into the body of Leah's screaming mother, after having refused to let the child go, the girl was in fear for her life.

Moreover, that Lynch's first shot killed the girl does not mean that Leah was not in terror of being tortuously killed as her mother was being. Leah watched Lynch fire several shots into her

mother's extremities, drag the bleeding, screaming woman inside, close the door, and shoot her in the eye - all before he shot Leah and then delivered the fatal shot to Rose. From the point where Lynch first shot Rose, some "five to seven minutes" passed before the shot to Rose's eye.³⁶ (R 71. See R 63). Thus, at a minimum this child contemplated her death - in the horrible manner Rose met hers - for at least five to seven minutes before the killing shot was fired into the child's back. Contemplation of such a death is HAC. See *Swafford*, 533 So. 2d at 277. That Leah was killed with a single gunshot did not preclude the trial court from finding the HAC aggravator, nor from this Honorable Court's upholding it. See *Henyard v. State*, 689 So. 2d 239, 254 (Fla. 1996).

Judge Eaton correctly found that the HAC aggravator as to the murder of thirteen-year-old Leah Caday was proved beyond a reasonable doubt. Competent, substantial evidence supports that finding, and therefore, this Honorable Court should uphold the trial court's finding that Leah's murder was HAC. Lynch is entitled to no relief.

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Lynch's counsel related that he first gunned Rose down in the hall, then dragged her into the apartment, and later "shot her in the face," after which he "shot her in the back of the head . . .," (R 809), and certainly the evidence established that.

POINT II

THE TRIAL COURT DID NOT ERR IN FINDING THE COLD, CALCULATED, AND PREMEDITATED AGGRAVATOR IN THE MURDER OF THE ADULT VICTIM, ROSE MORGAN.

Lynch complains that the trial judge erroneously found the cold, calculated, and premeditated (CCP) aggravator in regard to the murder of Rose Morgan. (IB 30). He claims that the murder was not cold or calculated and he had "a pretense of moral justification." (IB 30). The evidence clearly shows to the contrary, and therefore, Judge Eaton's order finding the CCP aggravator should be upheld by this Honorable Court.

The standard of appellate review of the trial court's determination that the murder of the adult victim, Rose, was cold, calculated, and premeditated is whether the trial judge applied the correct rule of law and whether there is competent, substantial evidence to support his finding. *Ford v. State*, 802 So. 2d 1121, 1133 (Fla. 2001); *Alston v. State*, 723 So. 2d 148, 160 (Fla. 1998). The instant record shows that both were met in this case. The evidence establishing CCP far exceeds the competent, substantial evidence threshold.

In determining that Rose Morgan was killed in a cold, calculated, and premeditated manner, the trial judge wrote in pertinent part:

The facts that tend to establish this aggravating factor are: (1) the defendant's letter to his wife in which he asked her to notify Roseanna Morgan's parents about 'the

pain she caused,' that the homicide was not 'a random act of violence' and that she had to 'pay the price;' (2) the defendant carefully packed three firearms in a black bag along with ammunition and took them with him to Roseanna Morgan's apartment; (3) the passage of time between the date of the letter and the killing; (4) the passage of time while the defendant held and terrorized Leah while awaiting Roseanna Morgan's return and (5) the coup de grace.

(R 506). Judge Eaton proceeded to reject the testimony of Dr. Olander to the effect that Lynch went to Rose's apartment to kill himself, not Rose, and accepted the testimony of Dr. Riebsame that Lynch went there to kill Rose and possibly then kill himself. (R 506-507). The court also found that Lynch "was sufficiently in control of his faculties to plan and carry out the murder of Roseanna Morgan" and rejected the defense claim that the mental mitigation holding in *Alameida v. State*, 748 So. 2d 922 (Fla. 1999), cert. denied, 528 U.S. 1181 (2000) precluded the finding of CCP. (R 507).

In *Evans v. State*, 800 So. 2d 182, 192 (Fla. 2001), this Court reiterated the four requirements for proof of CCP, to-wit: The murder was (1) "the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold)," (2) there was "a careful plan or prearranged design to commit murder before the fatal incident (calculated)," (3) the defendant showed heightened premeditation (premeditated)," and (4) there was "no pretense of moral or legal justification." The defendant "can be emotionally and mentally disturbed or suffer from a mental

illness but still have the ability to experience cool and calm reflection, make a careful plan or prearranged design to commit murder, and exhibit heightened premeditation." 800 So. 2d at 143. Even though "the events leading up to the murder may have made Evans emotionally charged, his actions do not suggest a frenzied, spur-of-the-moment attack." *Id.*

"The 'cold' element generally has been found wanting only for 'heated' murders of passion, in which the loss of emotional control is evident from the facts" *Hertz v. State*, 803 So. 2d 629, 650 (Fla. 2001) (quoting *Walls v. State*, 641 So. 2d 381, 387-88 (Fla. 1994)). Where the evidence shows that the defendants actions were "calm and deliberate," this element is established. 803 So. 2d at 650. An opportunity to reflect on a murderous course of action is sufficient to establish this factor. *Id.* Calculation may be found where the defendant chooses "a specific manner and means of death," and heightened premeditation is shown where he has "a significant period of time to contemplate and consider his alternatives." See *Connor v. State*, 803 So. 2d 598, 611 (Fla. 2001).

In *Nelson v. State*, 748 So. 2d 237 (Fla. 1999), *cert. denied*, 528 U.S. 1123 (2000), this Court explained a pretense of legal or moral justification. It "is 'any colorable claim based at least partly on uncontroverted and believable factual evidence or testimony that, but for its incompleteness, would constitute an

excuse, justification, or defense as to the homicide.'" 748 So. 2d at 245. Moreover, "[t]his Court has never approved a 'domestic dispute' exception to imposition of the death penalty.'" *Way v. State*, 760 So. 2d 903, 921 (Fla. 2000), cert. denied, 531 U.S. 1155 (2001) (quoting *Zakrzewski v. State*, 717 So. 2d 488, 493 (Fla. 1998)). See *Dennis v. State*, 27 Fla. L. Weekly S101, S110 (Fla. Jan. 31, 2002) [while "heated passion" may be "antithetical to cold' deliberation," there is no "'domestic dispute' exception to the imposition of the death penalty."].

In his appellate brief, Lynch claims that his case is comparable to *Almeida v. State*, 748 So. 2d 922 (Fla. 1999) where the CCP aggravator was stricken by this Court. *Almeida* is readily distinguishable from the instant case. Almeida had a "history of alcohol abuse and had been drinking on the night of the crime;" in fact, he was "drunk." 748 So. 2d at 933. Lynch had not used drugs or alcohol during his ten plus year marriage to Virginia, and by his own report, he had not been drinking at the time of the murder. (R 105, 497-98, 630, 751).

Moreover, Almeida was "extremely disturbed at the time of the crime" and his ability to "appreciate the criminality of his conduct was substantially impaired." 748 So. 2d at 933. Judge Eaton found that Lynch was "emotionally disturbed," but his

disturbance was "less than extreme."³⁷ (R 515). Likewise, he found that Lynch's "capacity to conform his conduct to the requirements of law was impaired, but not substantially impaired." (R 515).

Further, Almeida's record was "replete with testimony of witnesses attesting to Almeida's lack of impulse control due to his brutal childhood . . .," which included anal rape, severe beatings, and deprivation of food to the point of malnourishment. 748 So. 2d at 933 & 936 n.1. In comparison, Lynch's record established only that his "father was a strict disciplinarian" because he "insisted" that his young son report "to him every half hour if he was playing."³⁸ (R 516).

Finally, Almeida "in his own statement to police. . . described the killing as an impulsive act," and all of the expert testimony at his trial supported that. In the instant case, Lynch had a too ready explanation for everything that would make him look bad in regard to the murder. Everything he did was someone, or something, else's fault, i.e., his wife's, (R 127, 150, Appendix A at 1), James (R 944), Rose's (R 170, 179), or even the Glock's (R 575, 605). He had a ready explanation (several in fact) for why he

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Indeed, the level of disturbance was described by Dr. Riebsame as normal. (R 986).

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As Judge Eaton noted, "[t]he experts disagreed about whether this amounted to emotional and physical abuse but the court considers this mitigating factor to have been established, . . ." and assigned it "little weight." (R 517).

had the guns with him in the third floor apartment, and he even quickly explained away his lack of remorse for the murders, (R 608, 616), and pointed out his remorse for himself, his family, and the gun dealer. (R 156, 161, 161-62). Perhaps, most telling of all, however, is that almost the first thing out of his mouth was that he could have raped the "very pretty" child Leah, but he did not, (R 126, 146), and he repeatedly pointed out how he could have shot Rose and/or James on several other occasions. (R 549, 566). Lynch's record shows that he did not commit an impulsive act; his was a carefully made and executed plan, complete with excuses and explanations which he believed would excuse, or at least significantly mitigate, the horrible crimes. See (R 965-65, 987-88).

Moreover, the evidence in the instant case establishing CCP is very different than that presented in *Almeida*, and does not support relief for Lynch under that case, or any other. It includes:

Two days before he murdered Rose, Lynch wrote his wife a letter. (R 836). Therein, he refers to Rose in the past tense, e.g., "you can see how pretty and sexy she **was**" (emphasis added) (Appendix A at 1). Lynch directed his wife to a letter and card Rose had sent him and told her to "[m]ake copies of the letter and card for me and copies of pics on drive" (Appendix A at 3). He then directed her "to send copies of letter and card and pictures to her family" (Appendix A at 3). He explained:

"I want them to have a sense of why it happened, some decent **closure**, a reason and understanding, . . . I want them to know what she did, the pain she caused, that it was not just a random act of violence." (emphasis added) (Appendix A at 3). Lynch closed the letter written on March 3rd with Rose "must pay the price." (Appendix A at 4). Rose's parents would not need closure, unless he was going to kill her. Clearly, that is exactly what he did.

As Dr. Riebsame testified, a reasonable inference from Lynch's statement that it will not be a random act of violence is "that it's gonna be a purposeful act of violence." (R 945). Moreover, the letter Lynch wrote two days before the crimes "suggests he's gonna carry out some purposeful violence in relation to Miss Morgan." (R 946).

On the day of the murders, March 5th, Lynch drove by Rose's workplace, and upon seeing her exit therefrom, he drove his car up to her and gave her an "I'm gonna get you type of look." (R 457). An hour or so later, after first taking his sons home, Lynch drove to the Morgan apartment, being careful to park his car a good distance away and in a place where Rose would not see it because he knew that if she saw it, she would not go up to the apartment. (R 92, 166-167, 556-57, 587). He took a bag containing handguns from his collection, weighing some twelve pounds, up three flights of stairs to the apartment. (R 231, 239, 243, 244, 576). Lynch

anticipated a conflict.³⁹ (R 192). Moreover, he knew the locks had been changed on the apartment door, and he could not gain access with his old key. (R 557-58). He waited for thirteen-year-old Leah to come home from school, forced her up to the apartment with him at gunpoint, and made her open the door with her key. (R 192, 557-58). Inside, he refused the petrified child's pleas to let her go and held her hostage for thirty to forty minutes, waiting for Rose to come home. (R 192, 558, 619).

Lynch was on the phone with his wife when he heard Rose coming up the stairs, and at the time, he told his wife he was going to do something terrible. (R 621). As Lynch talked to Rose, who was standing in the open doorway, he thought he heard James, or the police, coming up the stairs. (R 568-69). Afraid that his carefully made plan to kill Rose was in danger of being thwarted, he fired numerous shots into Rose's body as she stood in the open doorway demanding that Lynch let Leah go. (R 569).

After firing the first four shots into Rose's extremities, he dragged the badly bleeding and screaming woman inside the apartment. (R 314, 572). At that time, Rose was conscious and was suffering pain. (R 686-88). Some "five to seven minutes" passed after the first shots until the shot to Rose's eye rang out. (R 71. See R 63). Certainly, this was ample time for Lynch to form the

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He told the Crisis Negotiator he feared a conflict or confrontation with James. (R 192).

heightened premeditation to kill Rose - had he not already had it.⁴⁰ See *Ford v. State*, 802 So. 2d 1121, 1133 (Fla. 2001)[where Defendant "had to stop and reload after the first shot," enough time for contemplation supporting CCP was found].

More time passed after the shot to Rose's eye which might have caused her to lose consciousness, but also "might not have."⁴¹ (R 687). After this shot, Lynch shot Leah, and then walked over to Rose, examined her, saw she was not dead, and lifted her head and shot her in the back of her head, killing her. (R 145, 614). When speaking to Police Dispatcher Fagan, Lynch told her he had shot Rose in the back of the head and "had planned on doing myself in, **too**," but did not. (emphasis added) (R 145-146).

The detectives testified that when Lynch spoke with them, he was calm, "matter of fact, wasn't crying, wasn't hysterical," was coherent, responded well to their questions, and had no difficulty complying or cooperating with their requests. (R 497-98, 505). Dr. Riebsame testified that Lynch was not only very coherent and followed the detectives' questions well, he parried with them when they confronted him. (R 976). Moreover, his demeanor was consistent throughout the interview, and it did not change when he

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Of course, his letter written two days earlier shows that he had previously planned the crime. See (R 987-88).

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The doctor said that if Rose was conscious, she would have been able to see, hear, and speak after the shot to the eye. (R 684-85).

was removed from the interview room. (R 503). Similarly, the hostage negotiator testified that Lynch spoke "in a very matter of fact" way when describing the crimes. (R 191-192). James testified that at all times when Lynch conversed with him, he was calm and in control, and often he was trying to "agitate me" and to "provoke me." (R 436-37, 450). Clearly, as Dr. Riebsame testified, see (R 977), Lynch was a cold, calm murderer.

In his initial brief, Lynch claims that "he had no plan other than to commit suicide in Rose's presence" when he went to her apartment. (IB 33). However, in his post-arrest interview with the detectives, Lynch denied that he planned to kill himself in front of Rose.⁴² (R 631). Moreover, as Judge Eaton pointed out, Dr. Riebsame testified that even if Lynch had some thought of suicide, he still planned to kill Rose first. (R 507). Clearly, the evidence supports this. See R 945-46. Lynch told Ms. Fagan, in the context of having delivered the fatal shot to the back of Rose's head, that he planned to do himself, "too." Thus, that he planned to kill Rose is clear on this record.

Likewise, Lynch's claim that "[h]e did not lie in wait for

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Moreover, this denial reveals that his later made claim that when he told his wife on the phone that he was about to do something terrible as Rose came up the stairs he meant to kill himself is false.

Rose" is belied by the evidence. (IB 33). Lynch told the detectives that he parked his vehicle a good distance away from Rose's apartment so she would not see it and refuse to go up to the apartment. (R 587). Moreover, the evidence establishes that when Rose used her key to open the door to her apartment, she found Lynch sitting on the floor about ten feet into the doorway with Leah planted in front of him and between him and Rose with gun drawn. The State submits that a clearer case of lying in wait for Rose could hardly be imagined!

Moreover, his claim that "[a] calculating killer would have fired at the chest or head area" is also absurd. This calculating killer wanted Rose to pay the ultimate price (as he argues in his brief and said in his letter written two days before the murder), and so, he set out to cause her great pain and terror before her death. That's why he shot her at least four times in the extremities, and dragged her bleeding and screaming for help inside, where he conversed with her for several minutes before he shot her in the eye, then shot her thirteen-year-old daughter to death, and finally delivered the "coup de grace" as Judge Eaton termed it (R 506) - the fatal shot to the back of her head! This calculating killer wanted to, and did, exact the ultimate price from Rose, and those actions hardly immunize him from a finding of CCP - rather, they compel it.

Lynch's claim on appeal that he "started shooting only after

Rose refused to reconcile and declined to repay her outstanding debt" does not disprove heightened premeditation. Lynch told the detectives that he was not mad when Rose said it was over because he "already knew it." (R 611). He had repeatedly been told by Rose, and through James, that she believed the things Lynch charged on his credit card were gifts to her and she did not plan to pay for them. Thus, he already knew this, too. These were not matters which could legitimately be said to have caused him to fly into a murderous rage since he already knew both of these things. Moreover, the letter written two days before the murder makes it clear that he planned to kill Rose well before the conversation in her apartment. Rose's parents would hardly need "decent closure," if Rose was not going to be killed. Lynch's killing of Rose Morgan was not a hot-blooded crime of passion; it was a cold, calculated, and premeditated murder!

Finally, Lynch's claim that he has a pretense of moral or legal justification because Rose rejected him "as a lover" and refused "to repay a debt that was rightly hers" is wholly without merit. Since there is no domestic dispute exception to the death penalty, *Way*, 760 So. 2d at 921, Rose's rejecting Lynch as a lover can not qualify as an excuse, justification, or defense to her murder. Neither can Rose's refusal to pay debts Lynch ran up for gifts he gave her during the term of their relationship justify,

excuse, or constitute a defense to her murder.⁴³

This record is clear that Lynch chose a specific manner and means of death - gunshot wounds that began in the extremities, graduated to the eye, and finished (after the murder of the victim's child) with the shot to the back of the head. It is likewise clear that Lynch had a significant amount of time in which to contemplate and consider alternatives. In fact, James had earlier that day suggested one such alternative to him - using the legal system to press his financial claim against Rose. Moreover, based on some information Leah gave him while he held her hostage and begged him to let her go, Lynch considered that Rose might leave James, if he gave the relationship time. However, he had made his decision two days earlier, and he determined to follow through with it, after thirty to forty minutes in which he had nothing to do but think about it.

He had more time to contemplate what he was about to do after he shot Rose in the extremities.⁴⁴ She was clearly alive,

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Moreover, James had earlier that day suggested to Lynch that he hire an attorney if he wanted to try to collect the monies from Rose because she regarded the items as gifts, having been specifically told by Lynch that they were gifts which she would never have to repay. (R 454, 456).

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The evidence established that each time he shot Rose (with the exception of the last and fatal shot to the back of the head), he fired the Glock which required him "to fully release the trigger" and then "[p]ull the trigger again." See R 294. Lynch fired all of the live rounds of ammo from the Glock - seven rounds - before

conscious, and speaking, and her injuries were not life threatening. After dragging her inside the apartment, some five to seven additional minutes passed before he put the bullet into Rose's eye, killed her daughter, and administered the *coup de grace*. The evidence is overwhelming that Lynch contemplated the murder, and thereafter, followed through with his careful, prearranged plan to kill Rose.

The evidence supporting the trial court's finding of CCP far exceeds the competent, substantial evidence standard (as it likewise exceeded the beyond a reasonable doubt standard applied below). Lynch is entitled to no relief from the trial court's imposition of the CCP aggravator.

changing to the .38. See R 332.

POINT III

THE TRIAL COURT'S SENTENCING ORDER ADEQUATELY STATES HIS REJECTION OF THE TWO STATUTORY MENTAL HEALTH MITIGATORS AND HIS FINDING OF MENTAL/EMOTIONAL NONSTATUTORY MITIGATION.

Lynch complains that the sentencing order is unclear as to whether Judge Eaton found the two statutory mental state mitigators. (IB 40). He claims that although the sentencing order may be read in one area as a rejection of the statutory mental mitigators, "in the summary of the mitigating circumstances," the language indicates that the statutory mental mitigators were found. (IB 41). The State contends that the trial judge's intention is clear, although the summary may have been inartfully worded.

In the written order, Judge Eaton addresses the statutory mental state mitigator of under the influence of extreme mental or emotional disturbance and clearly rejects it. He writes in pertinent part:

Dr. Olander believed the defendant was under the influence of extreme mental or emotional disturbance. Dr. Riebsame believed the disturbance to be less than extreme. Dr. Riebsame's testimony is the most credible. The defendant was emotionally disturbed. . . . However, he was able to plan his course of action and carry out all The court gives the emotional disturbance . . . moderate weight.

(R 514-15). Thus, it is clear from the written order that the judge carefully considered the testimony of both mental state experts and decided that Dr. Riebsame was the most credible. Consequently, Judge Eaton found that Lynch was under an "emotional

disturbance" which was "less than extreme," and therefore, did not meet the statutory mental state mitigator. However, he found and weighed the "emotional disturbance" he did find as a nonstatutory mitigator.

In the written order, Judge Eaton also addresses the statutory mental state mitigator of substantial impairment of the capacity to conform conduct to the requirements of the law. (R 515). Again he notes both experts opinions on this factor and clearly rejects this statutory mitigator. He writes in pertinent part:

. . . Dr. Olander and Dr. Riebsame, agreed that the defendant's capacity to conform his conduct to the requirements of law was impaired. They disagree on the degree of impairment. . . . Dr. Riebsame's testimony on this issue is the most credible and is accepted by the court. The fact that the defendant's capacity to conform his conduct to the requirements of law was impaired, but not substantially impaired, is given moderate weight.

(R 515).

Thus, it is clear from the written order that the judge carefully considered the testimony of both mental state experts and decided that Dr. Riebsame was the most credible. Consequently, Judge Eaton found that Lynch's capacity was "impaired," but not "substantially impaired," and therefore, did not meet the requirements for this statutory mental state mitigator. However, he found and weighed the "impaired" capacity he did find as a nonstatutory mitigator.

The law is well settled that in the event of an inconsistency between the written sentencing order and the oral pronouncement,

the oral pronouncement controls. See *Trapp v. State*, 760 So. 2d 924, 926 (Fla. 2001) [mandatory minimum term]; *Tillman v. State*, 759 So. 2d 677 (Fla. 2000) [habitual offender]; *State v. Jones*, 753 So. 2d 1276, 1277 n.2 (Fla. 2000) [violent, career criminal]; *State v. Williams*, 712 So. 2d 762, 764 (Fla. 1998) [special condition of probation]. At sentencing, Judge Eaton stated in pertinent part:

The Court finds the following mitigating circumstances: The crimes for which the Defendant was to be sentenced was committed while he was under the influence of a mental or emotional disturbance and moderate weight is given to that factor. The Defendant's capacity to conform his conduct to the requirements of law was impaired, the Court gives moderate weight to that factor.
. . . .

(R 1126). Thus, the oral pronouncement makes it clear that Judge Eaton found the nonstatutory version of the mental state mitigators and assigned appropriate weight to them.

Moreover, any error in regard to Judge Eaton's order is harmless beyond a reasonable doubt. In *Morris v. State*, 27 Fla. L. Weekly S163, S165 (Fla. Feb. 21, 2002), this Court considered a similar claim. In *Morris*, this Court held that "[a]lthough the trial court's order on this point is confusing," it appeared from the record that the judge found and weighed the mitigation. *Morris*, 27 Fla. L. Weekly at S165. Under such a circumstance "and considering all of the other aggravators and mitigation in the case . . . we conclude that any inaccuracy in the trial court's statements is harmless" *Id.*

Judge Eaton's intent to find and weigh the subject mitigation

as nonstatutory mitigation is clear on the record. Considering that and the wealth of strong aggravation compared to the relatively weak mitigation, any inaccuracy in Judge Eaton's written order is harmless. See *Morris*.

Finally, this matter was not raised in the lower court, and therefore, it is procedurally barred. *Steinhorst v. State*, 412 So. 2d 332 (Fla. 1982). This type of error, if any, does not rise to the level of fundamental error. See *Wise v. State*, 767 So. 2d 1162, 1163 (Fla. 2000).

Lynch is entitled to no relief.

POINT IV

LYNCH'S DEATH SENTENCES ARE PROPORTIONATE.

Lynch complains that his death sentences are disproportionate in this case, apparently because "[t]he killings arose out of a domestic dispute that escalated into tragedy." (IB 44). He acknowledges that this Honorable Court has not "created a 'domestic dispute' exception to death sentencing," but argues that this Court "has, nonetheless, recognized that family relations often create 'intense emotions,'" and suggests that his case should be compared to those domestic cases where the death penalty was invalidated. (IB 45).

The standard of review of proportionality of a death sentence appears to be *de novo*. "This court performs proportionality review to prevent the imposition of 'unusual' punishment . . ." *Sexton v. State*, 775 So. 2d 923, 935 (Fla. 2000). See *Evans v. State*, 800 So. 2d 182, 196 (Fla. 2001). Its purpose "is to foster uniformity in death-penalty law." *Tillman v. State*, 591 So. 2d 167, 169 (Fla. 1991). For this reason, such a review is performed by this Court, even where the defendant does not specifically raise the issue. *Jennings v. State*, 718 So. 2d 144, 154 (Fla. 1998), *cert. denied*, 527 U.S. 1042 (1998).

Lynch admits that the trial court found three aggravating factors for each murder, but claims that there should only be two in each case because of the claims he raises in Point I and Point

II. (IB 47). Thus, he concedes two valid aggravators for each murder. However, he proceeds to trivialize the importance of those aggravators and complains that the trial judge did not weigh his mitigation heavily enough.

Lynch essentially asks this Court to reweigh the mitigation and find that it outweighs the aggravators.

Deciding the weight to be given a mitigating circumstance is within the trial court's discretion, and a trial court's decision is subject to the abuse-of-discretion standard. . . . In the sentencing order, the trial court detailed the evidence presented regarding each circumstance proposed, found each of these nonstatutory mitigators to exist, and afforded them the weight which the court found was appropriate.

(citations omitted) *Cole v. State*, 701 So. 2d 845, 852 (Fla. 1997), *cert. denied*, 523 U.S. 1051 (1998). Judge Eaton's sentencing order states the evidence of each circumstance, found all mitigators proposed (though two were found at the nonstatutory, less extreme level), and afforded them the weight which he felt was appropriate. Lynch has utterly failed to establish that Judge Eaton abused his discretion in regard to the finding, and weighing, of the mitigating circumstances of his case.

This Court's proportionality review focuses on the totality of the circumstances in a case and compares it with other capital cases to ensure uniformity in application." *Mansfield v. State*, 758 So. 2d 636, 646 (Fla. 2000), *cert. denied*, 532 U.S. 998 (2001). See *Robinson v. State*, 761 So. 2d 269, 277 (Fla. 1999), *cert. denied*, 529 U.S. 1057 (2000). This process does not simply tally

up the number of aggravating factors and mitigating circumstances. *Robinson*, 761 So. 2d at 277. Moreover, the manner and method of the murder as carried out by the defendant is relevant to this determination. See *id.* at 278.

In *Robinson v. State*, the defendant killed his girlfriend as she lay sleeping on a couch in his home. The trial judge found three aggravators, to-wit: (1) Committed for pecuniary gain, (2) avoid arrest, and (3) CCP. Both statutory mental mitigators were found, as well as a considerable amount of nonstatutory mitigation. 761 So. 2d at 272-73. Although this man had mild brain damage and both statutory mental state mitigators were found, this Court upheld the proportionality of his death sentence in part because "Robinson knew what he was doing at the time of the murder." *Id.* at 278. This Court explained: "[B]efore killing the victim, Robinson . . . calmly and deliberately waited until she was sleeping and then coldly bludgeoned her to death with a drywall hammer." *Id.* Thus, "Robinson acted according to a deliberate plan and was fully cognizant of his actions on the night of the murder." *Id.* Citing *Spencer v. State*, 691 So. 2d 1062 (Fla. 1996), cert. denied, 522 U.S. 884 (1996), this Court found "that death is proportionate to the facts in this case." *Id.* Robinson's death sentence was affirmed. *Id.* at 279.

The same result is just in the instant case. The record establishes that Lynch knew what he was doing at the time of the

murder. Before killing Rose and Leah, he calmly and deliberately waited for his victims to come under his control into a place where he could murder them. He his car a good distance away for the stated purpose of preventing Rose from seeing it because he knew she would not go up to the apartment if she did. He waited for Leah to come home from school and forced her at gunpoint to accompany him into the Morgan apartment. Then, he held Leah hostage for thirty to forty minutes while he waited for Rose to arrive. The record is clear that he was calm and very deliberate at all of these stages of the crimes, and with the exception of the February 9th telephone conversation with Rose where she first told him she was reconciling with her husband, he was entirely calm and deliberate throughout all of the time and events leading up to the murders.⁴⁵ Thus, the record refutes Lynch's claim that these murders were committed in the heat of a domestic dispute. See *Dennis v. State*, 27 Fla. L. Weekly S101, S110 (Jan. 31, 2002).

Shortly after Rose arrived, Lynch opened fire on her, shooting her in the extremities, causing great pain and loss of blood. Then, he dragged the screaming woman inside where some five to

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Lynch's wife testified that throughout this time, he seemed normal and performed his usual, routine duties. (R 81, 83). James testified that Lynch was always calm with him, and appeared to be calm when he talked to Rose at Winn Dixie and when he talked with James at Rose's workplace on the afternoon of the murders. (R 427, 431, 436, 445, 455).

seven minutes after the first shots ended, three more rang out, and Rose and Leah were dead. These facts alone, without regard to the damning letter Lynch wrote two days before the crimes, shows that he acted according to a deliberate plan and was fully cognizant of his actions at the time of the murders.⁴⁶

Assuming *arguendo* that only the two aggravators conceded by Lynch should be considered, Lynch's death sentences are still proportional. In *Spencer v. State*, 691 So. 2d 1062, 1065 (Fla. 1996), *cert. denied*, 522 U.S. 884 (1996), the defendant killed his wife and claimed that the death penalty was disproportionately applied to him because his murder involved a domestic dispute. Spencer's trial judge found two aggravators, to-wit: HAC and prior violent felony. 691 So. 2d at 1065. He found two statutory mental mitigators and numerous nonstatutory mitigators. *Id.* This Court rejected the domestic dispute exception to the death penalty urged by Spencer, and upheld the death sentence as proportionate. *Id.* Thus, even were there only two valid aggravators (as conceded by Lynch) to be weighed against the single statutory mitigator and the

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The State notes that Lynch pled to premeditated murder of both victims, (R 1080-81), and the evidence well shows that both murders were deliberate, premeditated acts. Indeed, when he told his wife of killing the victims (immediately afterwards) he never indicated that either murder was an accident. Moreover, the positions of the bodies and blood and the conscious effort and deliberate action needed to fire the Glock defeat Lynch's later made claims of accidental shooting.

several nonstatutory mitigators, the case law indicates that Lynch's sentence is proportionate despite his claim that these murders occurred due to a domestic dispute.⁴⁷

Beginning with *Spencer*, this Court has repeatedly pointed out that in the domestic dispute cases where the death penalty was stricken based on proportionality, "substantial mental mitigation was present." *Way v. State*, 760 So. 2d 903, 921 (Fla. 2000). In *Way*, there were three aggravators, prior violent felony, committed during a felony, and HAC, two statutory mitigators, and several nonstatutory mitigators. *Id.* Noting that there was no "significant mental mitigation presented" in *Way*, this Court upheld the death sentence imposed for *Way*'s murder of his daughter against a proportionality challenge based on domestic dispute. *Id.* Only the less extreme mental mitigation was found in Lynch's case, i.e., "emotional disturbance" and nonsubstantial impairment of the capacity to conform his conduct to the requirements of the law. (R 515). Otherwise, the trial court found only "personality disorders" which were "given little weight." (R 516). Such scant mitigation pales in comparison to that in *Way* which was still

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The State points out that Lynch was certainly not in a domestic dispute situation with the child, Leah. His dispute was solely with the adult victim, Rose. Thus, even were this Court willing to credit Lynch's domestic dispute exception to his death sentence in regard to Rose's murder, his death sentence in regard to Leah's murder should not be disturbed.

insufficient to render the death sentence disproportionate.

In *Sexton v. State*, 775 So. 2d 923 (Fla. 2000), the death penalty was held proportional where the defendant murdered his son-in-law. There were three aggravators, CCP, committed during a felony, and avoid arrest, weighed against both statutory mental mitigators and nonstatutory mitigation. *Id.* at 822. Sexton presented considerable evidence of mental impairment, and the trial court "gave great weight to the statutory mitigator of 'under the influence of extreme mental or emotional disturbance.'" *Id.* at 934. In the instant case, Judge Eaton did not find either statutory mental mitigator, and specifically rejected the claim that Lynch was under extreme mental or emotional disturbance at the time of the murders. (R 514-15). Moreover, he gave only "moderate weight" to the nonstatutory mitigator of "emotional disturbance." (R 515). Thus, Lynch's proportionality claim, like Sexton's, should be rejected.

Finally, in his brief, Lynch relies on *Farinas v. State*, 569 So. 2d 425 (Fla. 1990) and *White v. State*, 616 So. 2d 21 (Fla. 1993), *cert. denied*, 510 U.S. 877 (1993) as support for his claim that his death sentence is disproportionate because it arose out of a domestic dispute. (IB 45-46). In *Pooler v. State*, 704 So. 2d 1375, 1381 (Fla. 1997), *cert. denied*, 525 U.S. 848 (1997), this Court explained that the basis for its decision to strike the death penalty in *Farinas* and *White* was that

we struck the cold, calculated, and premeditated (CCP) aggravator on the basis that the heated passions involved negated the "cold" element of CCP. However, our reason for reversing the death penalty in those cases was that the striking of that aggravator rendered the death sentence disproportionate in light of the overall circumstances.

(footnote omitted). This Court made it clear that it has "never approved a *per se* 'domestic dispute' exception to the imposition of the death penalty." 704 So. 2d at 1381. This Court recently reiterated its position on this issue in *Dennis v. State*, 27 Fla. L. Weekly S101, S110 (Fla. Jan. 31, 2002), upholding *Dennis*' death sentence as proportional despite his claim that the "murders were committed in the heat of a domestic dispute."

In the instant case, Lynch contends that the CCP aggravator should not be considered in determining proportionality of his death sentence because "the 'heightened' premeditation . . . as to the murder of Rose . . ." was not appropriately found by the trial court. (IB 47). Thus, in regard to proportionality, Lynch has not challenged the CCP aggravator on the basis that heated passion negated the "cold" element, and therefore, the basis for the holding of the death sentence disproportionate in *Farinas* and *White* is not present in Lynch's case. See *Dennis*, 27 Fla. L. Weekly at S110[domestic dispute is relevant to CCP only where "heated passion" involved were "antithetical to 'cold' deliberation."] Lynch's murder of Rose was cold. The CCP aggravator is valid.

Even if there were only two aggravators, the death sentence

for Rose's brutal murder is still proportionate.⁴⁸ See *Spencer*, 691 So. 2d at 1065. See also *Mansfield v. State*, 758 So. 2d 636, 642 (Fla. 2000) [two aggravators, HAC and committed during felony, weighed against five nonstatutory mitigators was proportionate]; *Blanco v. State*, 706 So. 2d 10, 11 (Fla. 1997) [two aggravators, prior violent felony and committed during a felony, outweighed one statutory mitigator and eleven nonstatutory mitigating circumstances, rendering the death sentence proportionate]; *Hunter v. State*, 660 So. 2d 244, 254 (Fla. 1995), *cert. denied*, 516 U.S. 1128 (1996) [two aggravators, prior violent felony and committed during a felony, outweighed ten nonstatutory mitigators and rendered the death sentence proportionate]. Indeed, even a single aggravator would be sufficient to uphold Lynch's death sentence. See *Ferrell v. State*, 680 So. 2d 390 (Fla. 1996), *cert. denied*, 520 U.S. 1123 (1997) [death sentence proportional based on a single aggravator for defendant who shot live-in girlfriend twice in the head even though he had significant mental mitigation].

In *Ferrell*, the sole aggravator was especially weighty because the prior violent felony bore many of the earmarks of the present crime. In Lynch's case, one of the conceded aggravators is the

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The State submits that the trial court erroneously failed to find HAC as to Rose's murder. See *Swafford v. State*, 533 So. 2d 270, 277 (Fla. 1988). That Rose's murder was heinous, atrocious, and cruel can, and should, be considered by this Honorable Court in the determination of proportionality.

prior violent felony for the murder of the child, Leah. This aggravator is especially weighty because Leah was shot in close proximity to her mother's body and after Rose had been shot at least five times. Moreover, the evidence presented below in regard to the position in which the bodies were found and the force necessary to fire the murder weapon, as well as Lynch's pleas to premeditated murder, established that Lynch did not accidentally shoot Leah. He intentionally murdered the child after first shooting her mother at least five times in her presence. Thus, the prior violent felony is especially weighty and alone supports the proportionality of Lynch's death sentence for Rose's murder.

Ferrell.

Of course, the same is true when considering the proportionality of the death sentence for Leah's murder. There the prior violent felony is Rose's brutal shooting murder in the presence of her child, Leah. Thus, the prior violent felony in Leah's case is especially weighty and alone supports the proportionality of Lynch's death sentence for Leah's murder.

Ferrell.

Lynch is entitled to no relief.

POINT V

FLORIDA'S CAPITAL SENTENCING STATUTE IS NOT
UNCONSTITUTIONAL.

Lynch complains that Florida's capital sentencing statute is unconstitutional on its face and as applied to him. (IB 55). However, he "concedes that many of the pretrial challenges to the constitutionality . . . became moot when appellant pleaded guilty and waived the penalty phase jury." (IB 55). He also admits that "this Court has clearly rejected all of the following arguments." (IB 55).

This Court has repeatedly rejected the challenges made to the constitutionality of Florida's death penalty statute. See *Farina v. State*, 801 So. 2d 44, 55 (Fla. 2001). The failure of the State to provide notice of aggravating factors has been rejected, as has the claim that the statute is unconstitutional both facially and as applied. As this Court pointed out, adequate notice of the aggravating factors is given by Florida Statutes §921.141(5). *Vining v. State*, 637 So. 2d 921, 927 (Fla. 1994), *cert. denied*, 513 U.S. 1022 (1994). See *Hitchcock v. State*, 413 So. 2d 741, 746 (Fla. 1982), *cert. denied*, 459 U.S. 960 (1982).

Regarding the finding and weighing of mitigating factors, this Court has held that same is within the discretion of the trial judge. *Trease v. State*, 768 So. 2d 1050, 1055 (Fla. 2000). While the judge must consider any and all mitigating factors proposed by the defense, the judge is free to accord it no weight, if the judge

believes that to be the appropriate disposition of the matter. *Id.*

Likewise, the burden shifting arguments have been consistently rejected by this Court. *San Martin v. State*, 705 So. 2d 1337, 1350 (Fla. 1997), *cert. denied*, 525 U.S. 841 (1998); *Shellito v. State*, 701 So. 2d 837, 842-43 (Fla. 1997), *cert. denied*, 523 U.S. 1084 (1998). See *Floyd v. State*, 27 Fla. L. Weekly 575, 577 (Fla. Jan. 17, 2002) ["[T]his court has consistently held that the burden shifting argument is without merit."]. This Court has upheld the heinous, atrocious, or cruel aggravator against challenges that it was unconstitutionally vague and/or inconsistently applied. *Card v. State*, 803 So. 2d 613, 628 n.16 (Fla. 2001). Neither is the felony aggravator an unconstitutional automatic aggravator. *Francis v. State*, 27 Fla. L. Weekly S2, S10 (Fla. Dec. 20, 2001); *Blanco v. State*, 706 So. 2d 7, 11 (Fla. 1997), *cert. denied*, 525 U.S. 837 (1998).

Finally, as this Court has long examined each death penalty case for proportionality of the death penalty, Lynch's claims of disproportionate penalties are wholly without merit. He is entitled to no relief.

CONCLUSION

For the reasons set out above, Lynch's conviction and sentence of death should be affirmed in all respects.

Respectfully submitted,

ROBERT A BUTTERWORTH

ATTORNEY GENERAL

JUDY TAYLOR RUSH
ASSISTANT ATTORNEY GENERAL
Florida Bar #438847
444 Seabreeze Blvd. 5th FL
Daytona Beach, FL 32118
(386) 238-4990
Fax # (386) 226-0457

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to: **Christopher S. Quarles**, Assistant Public Defender, 112 Orange Ave., Suite A, Daytona Beach, FL 32114, on this _____ day of March, 2002.

Of Counsel

CERTIFICATE OF COMPLIANCE

This brief is typed in Courier New 12 point.

JUDY TAYLOR RUSH
ASSISTANT ATTORNEY GENERAL