IN THE SUPREME COURT OF FLORIDA

CHRISTOPHER OFFORD,

Appellant,

v. CASE NO. SC05-1611

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA

ANSWER BRIEF

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PRELIMINARY STATEMENT

Appellant, CHRISTOPHER OFFORD, the defendant in the trial court will be referred to as appellant or by his formal name. Appellee, the State of Florida, will be referred to as the State. The transcripts of the penalty phase and sentencing hearings will be denominated by reference to the Roman numeral affixed to the particular volume, followed by the page number.

STATEMENT OF FACTS AND OF THE CASE

On the morning of July 31, 2004, Christopher Offord brutally murdered his estranged wife Dana "Suzy" Noser with a claw hammer shortly after they had engaged in consensual sexual intercourse. Thereafter, he confessed his crime to several acquaintances and was arrested later that same day. On March 23, 2005 he pled guilty to the murder.[1] Although he formally waived his right to trial, a penalty phase hearing took place and the jury recommended, by a 12-0 vote, that Offord be sentenced to death. On July 18, 2005 a *Spencer*[2] hearing was convened, wherein Offord testified – and conceded – that he was aware, as he was murdering Noser, of the wrongfulness of his actions. Ultimately, the trial court concurred with the jury's recommendation and sentenced Offord to death, finding one statutory aggravator -- the crime was Heinous, Atrocious, and Cruel (HAC). Offord now brings this appeal, arguing his sentence constitutes a disproportionate punishment for his crime.

A. Penalty Phase Hearing

[1] A technical problem with the recording equipment required that Offord reenter his guilty plea on May 26, 2005.

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

The State first called Sally McGaughey to testify (V. 31). McGaughey was a bartender at Joe's Corner Pub (Joe's) and recalled seeing Offord and Noser together on July 31, 2004. McGaughey stated she believed the couple left Joe's shortly before closing time, which was 4:00 a.m. (V. 32). McGaughey testified she saw Offord drink three or four beers (V. 33). She noticed the couple appeared slightly acrimonious towards one another, and remembered Offord made a comment that Noser had been drinking heavily and had awoken him earlier that morning (V. 33). McGaughey also saw Offord playing pool (V. 33-34). McGaughey noticed Offord appeared slightly agitated but there was nothing out of the ordinary in his demeanor (V. 34). On cross-examination, Mcaughey stated that she did not believe Offord was intoxicated when he left Joe's (V. 35).

The State then called Martie Brown. Brown was working as a waitress at the Waffle House in the early morning hours of July 31, 2004. Brown testified that although Offord and Noser were not her regular customers, she waited on them (V. 37). Brown provided that Offord did not appear to be intoxicated (V. 37). From Brown's perspective, the couple was exceedingly affectionate with one another – kissing and caressing each other's faces (V. 38). Brown also recalled that Offord left his money at his home, so he and Noser briefly left the restaurant holding hands, and returned within five minutes after presumably retrieving some cash (V. 38). Brown maintained the couple appeared very playful and did not sense any conflict between them (V. 39). Brown noted Offord paid the bill, and he and Noser drove off -- Offord was driving (V. 39). Brown felt as though Offord was acting completely normal that morning (V. 40).

The State then called Nancy Owens. Owens was working as a waitress at the Waffle House on the morning of July 31, 2004 (V. 41). Noser was a regular customer of Owens (V. 41). Owens testified that she had seen Offord dining with Noser two or three times prior to that morning (V. 41). Owens, as with Martie Brown, observed Noser and Offord leaving the restaurant, and return moments later (V. 42). Owens did not witness anything unusual, particularly any conflict, between the couple that morning (V. 42).

The State next called David Leisher. Leisher was a cook at a restaurant in Panama City named Pineapple Willy's (V. 44). Leisher testified that he first met Offord in March of 2004 at a Value Lodge, where Leisher resided with his wife (V. 44). Offord told Leisher that he had just moved to Panama City from Texas, and had run out of money (V. 44). Seeking to assist

Offord, Leisher allowed Offord to move in with him (and his wife Lisa) for two months (V. 45). Leisher testified he helped Offord secure employment (V. 45). Leisher stated that he drove Offord to work, although Offord was only employed for a few weeks (V. 45). Offord also told Leisher that he (Offord) had mental health issues (V. 46). Leisher stated that he never saw Offord taking any medicine; he never noticed any "major problems" with Offord; and he never recalled Offord complaining about hearing voices (V. 46).

Leisher noted that Offord only lived with him for a short period of time, then moved in with Noser. Leisher observed that Offord and Noser had, on occasion, some disagreements (V. 47). Leisher also testified that prior to actually murdering her, Offord had confided he wanted to kill Noser (V. 47). Offord made this statement only a short time after he had married Noser (V. 47).

Leisher stated that at approximately 7:00 a.m. on July 31, 2004, Offord knocked on his apartment door (V. 47). Offord told Leisher that he had killed his wife (V. 47). Offord, from Leisher's vantage point, appeared to be lucid and cognizant of his surroundings as he confessed his crime (V. 48). Leisher remembered that morning Offord seemed most concerned with locating his wallet and his I.D., which he needed to receive his Social Security benefits on the first of every month (V. 48). Offord also told Leisher that he killed Noser by repeatedly hitting her face and body with a hammer (V. 48). Leisher stated that as Offord was recounting what he had done, he was not acting abnormally (V. 49).

The State next called David Leisher's wife, Lisa, to testify. She provided that Offord first met her husband in the courtyard of the Value Lodge, where, as noted, the Leishers resided (V. 52). David Leisher asked Lisa if she would be willing to allow Offord to stay with them for a period of time (V. 52). She agreed (V. 52). Lisa testified that on the morning of July 31, 2004, between 7:00 a.m. and 7:30 a.m., Offord knocked on their apartment door (V. 53). She said that she opened it slightly, and Offord told her that he had finally killed Noser (V. 53). Lisa then told Offord to step inside the apartment. Offord did so and proceeded to tell in graphic detail what had transpired earlier that morning. Offord told the Leishers that he had broken Noser's neck, knees, and back with his hammer blows (V. 53). Offord also told the Leishers that he had struck Noser with his fist and had kicked her (V. 53).

Lisa was aware that Offord was supposed to be taking medicine for his mental health issues but she never saw him take any medication during the time Offord lived with them (V. 55). Lisa testified she heard Offord make threats in the past that he wanted to kill Noser (V. 55). Lisa maintained that Offord did not appear to be worried about anything that morning (V. 56). She also seemed to recall that Offord mentioned kicking Noser's prone body several times while looking for his wallet (V. 56)

On cross-examination, Lisa was asked why she or her husband did not immediately contact law enforcement; she responded by asserting that she did not entirely believe Offord because he often told outrageous stories (V. 57). Lisa also recalled statements by Offord –- made early in July 2004 -- suggesting that he wanted to kill Noser (V. 58). On redirect, Lisa stated that on the morning of July 31, 2004 Offord never mentioned voices had compelled him to kill Noser (V. 59).

The State next called Arthur Stencil, who was employed as a bartender at a Panama City bar called J Krash's (V. 60). At approximately 6:45 p.m. on July 31, 2004, Stencil saw Offord, who Stencil recognized because he was a regular bar patron (V. 61). Stencil said Offord looked emotionally distraught and was standing near the bar door (V. 62). Offord told Stencil he had killed Noser, indicating he had hit her with a hammer and believed he had broken her neck (V. 62) Stencil then alerted someone to watch Offord while Stencil called 911 (V. 63).

Thereafter, Stencil got a notepad and transcribed Offord's confession (V. 63). Offord stated that at 2:30 a.m. on July 31, 2004, he and Noser went to Joe's Corner Pub; the couple, after a few stops, then went to the Waffle House at approximately 4:30 a.m.; they then went to Offord's duplex were they had sexual relations; subsequently, the pair had an argument and Offord proceeded to violently attack her (V. 63). Offord also told Stencil that he had repeatedly stabbed Noser (V. 64). Stencil observed that Offord was lucid (V. 64). Stencil noted that Offord was aware what he had done was very wrong and that he would face a significant punishment (V. 64). Offord never mentioned to Stencil that voices had compelled him to commit the crime (V. 65).

On cross-examination Stencil testified that according to Offord the argument that precipitated the murder involved the fact that Noser wanted to have sex with Offord for a second time that morning but he was not interested (V. 66). Stencil also stated he had met Noser on a few occasions, once when Offord was very intoxicated and needed a ride home, and once when she came

to the bar asking Stencil to help her place a drunk Offord into her car (V. 66). Stencil also testified Offord had not been at the bar in the preceding three weeks.

The State next called Billy Yohe to testify (V. 75). Yohe was a patron at J Krash's on July 31, 2004 (V. 75). Yohe noticed Offord walk into the bar at about 6:45 p.m. and have a conversation with Arthur Stencil. Stencil then motioned to Yohe, asking Yohe to keep an eye on Offord while Stencil contacted authorities (V. 75-76). Yohe walked over to Offord, asked Offord how he was doing, and Offord told Yohe that he had killed Noser (V. 76). Offord told Yohe that he had beaten his wife with a hammer and had stabbed her repeatedly with a knife (V. 76). When Yohe asked how Offord knew his wife was dead, Offord responded that Noser had not made any motion in the preceding few hours (V. 76). According to Yohe, Offord recalled, earlier that morning he (Offord) and Noser first went to Joe's Corner Pub, then left to get something to eat, and finally went to Offord's duplex where the couple had consensual sexual relations. Offord told Yohe that the couple had an argument, wherein Noser had wanted to be intimate with Offord for a second time, he did not, and this precipitated an argument leading to Noser's murder (V. 77). Yohe averred that as Offord was telling his account he was not acting strangely (V. 77).

Thereafter, the State called David Dodson, who was working as a cook at the Waffle House during the morning hours of July 31, 2004 (VI. 84). Dodson testified that he saw Noser and Offord eating together, holding hands, and "snuggling" with one another (VI. 85). Dodson even recalled Offord made a bawdy joke (VI. 85). According to Dodson, Offord generally appeared in a good mood; he was not intoxicated; and he was acting like any other normal patron (VI. 86).

The State next called Byron Baldwin, who was an investigator with the Panama City Police Department (VI. 87). Baldwin articulated his job responsibilities (VI. 87). He stated that he facilitated crime scene investigations by examining for any physical evidence, and insuring that any evidence recovered was transported to FDLE for analysis (VI. 87). Baldwin testified he arrived at Offord's residence on July 31, 2004 (VI. 87). After the search warrant arrived, he entered the residence and took a series of digital photographs (VI. 88). He then noticed what appeared to be a person wrapped in a blanket (VI. 89). Baldwin observed blood splattered on the walls and he saw a hammer lying on the floor (VI. 89) He also noticed a knife on the floor, and some of the Noser's teeth were also discovered

(VI. 92). According to Baldwin, given the amount of blood that had seeped through the apartment's carpet, it was evident that Noser had bled profusely.

Following Baldwin's testimony, the State called Detective Joseph Cherry of the Panama City Police Department. Cherry was assigned to the Noser investigation (VI. 115). As part of Cherry's investigation he spoke with Arthur Stencil and Billy Yohe (VI. 117). Cherry also interviewed individuals at Joe's Corner Pub, the Waffle House, and the Leishers (VI. 117-18). Cherry stated that he first interviewed Offord at 8:15 p.m. on July 31, 2004 (VI. 118). Cherry testified Offord was fully cognizant as to who Cherry was and why he was interviewing Offord (VI. 118). It did not appear to Cherry that Offord was under the influence of any controlled substance (VI. 118). Offord was read his *Miranda*[3] rights at 8:31 p.m. (VI. 119). Cherry then proceeded to interview Offord. A videotape of this interview was played for the jury (VI. 122).

During the interview, Offord stated that he was schizophrenic, that he ran out of medicine, and that killing Noser was the byproduct of having simply lost control (VI. 125). Offord told Cherry that he had only been living in Panama City for a period of a few months (VI. 126). Offord stated that he was sorry for what he had done, but he was compelled by voices he was hearing in his head (VI. 127). Offord informed Cherry that he met Noser at a Panama City bar called J Krash's, and had married Noser after knowing her four days (VI. 128). Offord told Cherry that he wanted to work consistently, but because of his mental condition, it was difficult for him to concentrate -- as he had a tendency to hallucinate (VI. 129). During the course of the interrogation, Offord told Cherry that a Panama City doctor had recommended he (Offord) check himself into Chattahoochee Mental Hospital (VI. 129). Offord told Cherry during the interrogation that once, when he was attempting to get treatment at Bay Behavioral Hospital, Noser called him "30 times every day" and her excessive concern agitated him (VI. 129).

Offord then explained – the first of several times that evening – what had occurred earlier that morning; noting the first thing he did before he struck Noser was to place duct tape on her mouth (VI. 132). Offord told the detective that prior to placing the duct tape on Noser, Offord and Noser had sexual

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[3] *Miranda v. Arizona,* 384 U.S. 436 (1966).

intercourse (VI. 132). He said that the idea to kill his wife came to him shortly after having intercourse with her (VI. 133). Offord stated that after he and Noser were intimate she asked Offord, by his estimation, ten times to lay back down with her; Offord told Noser she needed to "shut up"; then Offord grabbed the duct tape and a steak knife and proceeded to stab her repeatedly (VI. 133).

Offord related he had gotten off work at Granny's Kitchen at approximately 10:30 p.m. on July 30, 2004 (VI. 134). Noser had picked him up from work and dropped him off at his apartment sometime before 11:00 p.m. (VI. 134). Offord then went to bed (VI. 134). He was then awoken at 3:00 a.m. on July 31, 2004 by Noser knocking on his door (VI. 135). According to Offord, Noser had been drinking (VI. 135). He was angry with Noser for waking him at that hour, given he would have to return to work in twelve hours (VI. 135). Offord stated that he got dressed, and drove with Noser to Joe's Corner Pub, where he had a few beers (VI. 135). Offord estimated that he was at Joe's sometime between 3:30 a.m. and 4:00 a.m., and stayed there no longer than ten minutes (VI. 135). Thereafter, the couple went to the Waffle House at about 4:30 a.m. (VI. 136).

After eating, Offord and Noser left to go to Offord's apartment, arriving at 6:00 a.m. (VI. 136). Offord stated that within twenty minutes the couple had sexual relations; and thereafter, Offord took a shower (VI. 136). Offord averred that once he got out of the shower, Noser started demanding he lay down with her (VI 137). Apparently Offord demurred, and this made Noser angry (VI. 137). Offord then went into the front room of his apartment to calm down, and this is when, he asserted, he began hearing voices telling him that he should kill Noser (VI. 137).

Offord stated he then went into the kitchen area where he got a steak knife and a strip of duct tape, returned to the bedroom, and proceeded to sit next to Noser while she was lying in bed (VI. 137). Offord said that Noser continued to berate him for refusing to at least lay down with her (VI. 138). Offord then placed duct tape across her mouth, tried to muffle her with a pillow, punched her in the face, (VI. 139), then proceeded to stab her in the face (VI. 138). He then grabbed a nearby claw hammer, and started "ripping her apart" (VI. 138). He began to hit Noser with the hammer along her face, knees, legs, and arms (VI. 139). Offord estimated his rampage took place sometime between 6:00 a.m. and 7:00 a.m., and that immediately afterwards he turned on ESPN because he wanted to

see highlights of a Mike Tyson fight from the previous evening (VI. 140).

Offord believed that it was approximately 7:30 a.m. when he turned on ESPN (VI. 143). He then took another shower(VI. 143). After which, he stated that from 8:00 a.m. to 10:00 a.m., he searched for his wallet (VI. 143). He found his wallet, which was located in Noser's purse; then he proceeded to drink whiskey. (VI. 144). Offord also stated that while Noser was lying on the ground, he continued to periodically hit her with the hammer (VI. 144-45).

Offord admitted to punching Noser with a fist ten times, he believed he hit her with a hammer fifty times, (VI. 145), and estimated kicking Noser twenty times (VI. 146). Offord then recanted his assertion that the dispute was caused by Noser's desire to again have sexual relations; in actuality, she simply wanted to cuddle with Offord, (VI. 147), but, Offord did not want to because he was wanted to drink and watch some TV (VI. 148). Angered by what he perceived to be Noser's taunting, he went to the kitchen to get a knife then went to the bathroom to get duct tape (VI. 148). He walked into the bedroom, (VI. 149), sat at the foot of the bed (VI. 149), placed the duct tape across her face, (VI. 150), and used a pillow to muffle her wails (VI. at 151).

Offord stated he and Noser got married after knowing each other for only four days (VI. 151). Offord told Cherry that as his relationship with Noser progressed it devolved into a purely physical relationship (VI. 152). Offord believed he and Noser had been divorced for about two weeks prior to the murder; though, he conceded that the couple remained intimate, and that Noser drove him everywhere he needed to be (VI. 152).

Offord was again asked about the manner in which he killed Noser. He admitted that Noser's eyes were not closed when he put the duct tape around her mouth, and, in fact, she was talking to Offord, begging for her life (VI. at 153 - 54). According to Offord, Noser repeatedly begged for Offord to stop. Id. Offord responded by telling Noser, "shut up, bitch" over and over again, first striking her with the kitchen knife (VI. 154). Thereafter, he spotted a claw hammer and proceeded to use the claw portion of the instrument to "dig[ ] in her face with it" (VI. 154). He stated that he hit Noser with the hammer in succession all over her body, specifically targeting her knees, thighs, stomach, arms, and neck (VI. 154). Offord gave thought to either cutting up Noser's body, or to pouring paint thinner on her – but then decided against it (VI. 155). He averred that,

some three hours after killing Noser, he wrapped her body up in a blanket (VI. 156). Offord also told Cherry that he briefly left his apartment that morning, at approximately 8:00 a.m., to go to his friends David and Lisa Leisher's apartment at the Value Lodge (VI. 156). He recalled the Leishers mentioning they did not want to get involved (VI. 157).

Offord conceded he had contemplated killing Noser on several occasions prior to the morning of July 31, 2004 (VI. 158). He stated he had never given thought to using a hammer to hurt Noser, it just happened to be in close proximity when he was in his fit of rage (VI. 159). Offord also told Noser he had thought about killing other people in the weeks prior to actually murdering her (VI. 159). He admitted that following the murder of Noser, he pondered committing suicide; and, to this end, he took twenty Xanex pills immediately after killing her (VI. 160). Offord provided he took the Xanex pills (while drinking whiskey), briefly after he had returned from confessing to the Leishers (VI. 160).

He asserted that he had recently began employment at Granny's Kitchen the previous Monday, and nothing work-related had transpired to trigger the murder (VI. 161). He stated that on the morning of July 31, 2004 he was initially angry with Noser because, after she dropped him off from work, she went barhopping and subsequently arrived at his doorstep – very drunk – at 3:00 a.m. (VI. 161). Offord said he was mad she had gone drinking without him (VI. 161), and consequently insisted they go out drinking together (VI. 162).

Offord stated that when he was muffling her with a pillow, Noser attempted to tell Offord she loved him, (VI. 162), but he responded to her pleading by calling her a "lying bitch" (VI. 163). He asserted that sometimes he would remove the pillow from her face to hit her (VI. 163 -64). He said he stabbed her approximately ten times in her face and once in her chest (VI. 164). He provided that after the murder, he went to the Leishers, then to Noser's house to look for his wallet (VI. 167). The wallet was not in Noser's home, thereafter, he returned to his own apartment and was able to locate his wallet, (VI. 167), in Noser's purse (VI. 171).[4]

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[4] In actuality, he found her purse in the trunk of her car, he grabbed the purse dumped its contents on the floor of his apartment, and that is how he was able to secure his wallet (VI. 172).

Offord again asserted that he had told Noser on several occasions prior to the murder that he had thoughts of killing her (VI. 168). According to Offord, his statements apparently did not concern Noser because she continued to be intimate with him, and she continually told Offord that she was in love with him (VI. 168).

Officer Cherry then told Offord that he was going to interview him a second time – for more specificity. During his second interview, Offord told Officer Cherry that he was hallucinating when he killed his wife, and voices compelled him to do it. (VII. 180). He stated that he worked at Granny's Kitchen and got off at 10:30 p.m. on July 30, 2004 (VII. 180). Noser picked him up from work and dropped him off at his apartment around 11:00 p.m. (VII. 180). She then came back to his apartment four hours later at 3:00 a.m on July 31, 2004 (VII. 181). Offord admitted that he was slightly upset Noser woke him (VII. 181). Noser informed Offord that she had been drinking all night (VII. 181). Offord then got dressed – he upset that she had gone drinking without him – and told Noser that she was going to come out drinking with him (VII. 181). The couple left, they went to Joe's Corner Pub for approximately 20 minutes – where Offord had a couple of beers – then they went to the Waffle House (VII. 181).

After the couple had breakfast they returned to Offord's home sometime between 5:30 a.m. and 6:00 a.m. (VII. 182). The couple then proceeded to have sexual intercourse, after which Offord showered (VII. 182). He was annoyed by Noser because she insisted that Offord "cuddle" with her, which he did not want to do. Id. He then went to the kitchen of the apartment, whereupon he grabbed a knife and some duct tape (VII. 183). He returned to the bedroom -- where Noser was laying down (VII. 183). She continued to insist Offord lay next to her, which made Offord angrier (VII. 183). Offord then took a piece of duct tape, put it over Noser's mouth, and began to hit her with his fist (VII. 183). When she began to resist, Offord grabbed a pillow to muffle her, and began to stab her in the face and chest (VII. 183-84). Offord stabbed Noser with such force the knife bent (VII. 184). While Noser was being stabbed she cried out to Offord that she loved him and would do anything for him if he would simply stop (VII. 184). Offord stated he then reached for a claw hammer located on the opposite side of his bed (VII. 185). He grabbed it, and using the claw portion, began to hit Noser repeatedly (VII. 185). When Noser's body was prone and no longer moving, he kicked her several times in her

face. Id. He then took a shower, because he was covered with Noser's blood (VII. 186).

Next, he tried to wrap her body in a blanket with duct tape. Id. He stated that he had contemplated pouring paint thinner on her, but thought better of it (VII. 186). He noted that he was taking Haldol, Cogentin, and Illrotin, for schizophrenia and a bipolar disorder (VII. 188). He estimated that he hit Noser forty times with a hammer, stabbed her ten times with a knife, hit her with his fist ten times, and kicked her about twenty times (VII. 188-89). Offord then, pursuant to Cherry's questioning, proceeded to recount the gruesome ordeal again (VII. 189-93).

Offord thereafter informed Cherry that he was on Social Security disability because of his mental health issues, and reiterated that he believed he was compelled to commit the murder because he was hearing voices in his head (VII. 193). He also stated that he had previously had thoughts of killing individuals, but did not act on them because it would result in his being placed in Bay Behavioral Hospital (VII. 194). Offord said that he was not thinking about the wrongfulness of his actions until after he had actually killed Noser, (VII. 194-95), and that his only explanation was he simply lost control of his emotions (VII. 195). The tape ended (VII. 196).

Cherry was briefly cross-examined. Cherry was asked: (1) whether Noser's seven year old daughter was present in Offord's apartment during the murder (she was not); (2) about the contours of the Baker Act – which permitted law enforcement to involuntarily hospitalize a mentally unstable individual; and (3) about Offord's statement to Cherry that he had contemplated grilling Noser's body (VII. 197-200).

The State next called Dr. Charles Siebert, a medical examiner from Panama City. Siebert stated he arrived at Offord's residence at 9:50 p.m. on July 31, 2004 (VII. 203). He observed that Noser had been wrapped in a blanket (VII. 203). The body was transported out of the apartment, still wrapped in the blanket (so as to preserve evidence), and was taken to the Medical Examiner's Office where an autopsy was performed (VII. 203 - 04). Noser's cause of death was listed as blunt head trauma (VII. 204). Siebert stated that the majority of injuries to Noser's face were caused by the claw portion of the hammer (VII. 207 - 08).

Describing the brutality of the attack, Dr. Siebert noted Noser's eyeball had ruptured from being struck so many times, and her nose had nearly been detached (VII. 209). Dr. Siebert

estimated Noser may have been struck in her face about thirty times (VII. 211). Dr. Siebert estimated Noser was struck approximately fifteen times in her right knee, and nine times in her left knee (VII. 212). Dr. Siebert guessed, based on the nature of Noser's bruising, she may have lived between fifteen and twenty minutes during the attack (VII. 214). He believed that Noser may have been hit with the hammer close to sixty times (VII. 215).

Dr. Siebert had difficulty discerning how many times Noser was stabbed, stating the only stab wound he could positively determine was found along her chest (VII. 215). That being said, Dr. Siebert acknowledged it was difficult to discern individual stab wounds because Offord had used a claw hammer and therefore many of her facial injuries could have been caused by the hammer rather than by the knife (VII. 215). However, Dr. Siebert testified that there were perhaps four or five knife wounds to her face – though he conceded that the wounds could have just as certainly come from the hammer (VII. 215). When asked whether he believed Noser had suffered, he stated that he believed she had, given the fact she did not sustain any significant injuries to her brain; therefore she was likely conscious for the majority of the attack (VII. 216).

On cross-examination, Dr. Siebert provided he did not believe Noser's knife wounds led to her death (VII. 217). Siebert answered affirmatively when asked whether he believed the "face," as opposed to the claw portion of the hammer would have caused greater injury to Noser (VII. 218). Siebert also testified Noser died due to blunt force trauma to her face, which in turn caused her brain to swell, and caused her heart to stop breathing (VII. 218 – 19). Siebert conceded that it was at least possible that some of Offord's earliest hammer blows caused Noser to become unconscious. (VII. 219).[5] Dr. Siebert stated that Offord was erroneous in his belief that he had fractured Noser's kneecap (VII. 221).

Thereafter, Offord brought forth two witnesses. First, he called clinical psychologist Jill Rowan, who specialized in treating the mentally ill (VII. 223 - 24). Rowan delineated her background, noting that she worked at Florida State Hospital for five years in the forensic unit, where she dealt primarily with

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[5] Siebert also stated that Noser's blood alcohol level was .10 grams per deciliter, and that Florida's legal driving limit was .08 (VII. at 220).

mentally ill male patients who had been deemed incompetent to stand trial (VII. 224). Rowan testified she first interviewed Offord in November of 2004 (VII. 225). Following her interview with Offord, she found him to be mentally competent (VII. 226).

Rowan was then asked whether Offord had received any mental health treatment while he was being held at the Bay County Jail Annex (VII. 226). Rowan indicated from her notes it appeared that while being housed at the Bay County Jail Annex, Offord had been receiving mental health treatment from "Dr. Gibson" (VII. 226). Rowan's notes, gleaned from Dr. Gibson observations, indicated that Offord was a schizophrenic with a substance abuse problem (VII 226). Rowan asserted that Offord's mental illness fell into three categories (VII. 226). First, she noted, Offord has a mood disorder – which manifested itself in a range of emotions, from depression to manic energy (VII. 226-27). The second category of Offord's mental illness, according to Rowan, was substance abuse, noting throughout his entire life Offord had abused drugs such as cocaine and methamphetamine (VII. 227). The third category of Offord's mental illness is a personality disorder, which is reflected in how an individual reacts to everyday life (VII. 227). Rowan explained that with a personality disorder, an individual may be able to manage an aspect of their mental illness – such as using antidepressents to treat depression –- and yet still, because of a personality disorder, the individual may have difficulty with interpersonal relationships (VII. 227).

Rowan testified that Offord had been receiving treatment for mental issues since his childhood in Texas (VII. 227). She also noted that four times in 2004 prior to being arrested for Noser's murder, Offord had been admitted to Bay Behavioral Hospital – once in February, March, April, and July (VII. 227). Her records also indicated that Offord was taking Haldol because of his psychotic thinking (VII. 228). From her notes, Rowan observed that Dr. Gibson doubted the efficacy of Haldol in treating Offord for his mental health issues (VII. 228). Nevertheless, Dr. Gibson still prescribed the drug to Offord (VII. 228).

Rowan also analyzed records from Offord's final admission to Bay Behavioral Hospital on July 4, 2004 (VII. 229). Records indicated Offord sought admission because he was depressed and was abusing alcohol and crack cocaine (VII. 229). Offord was diagnosed with alcohol and cocaine dependency as well as schizophrenia (VII. 229). He was placed on medication, and was urged to stay longer to get more treatment, but checked himself

out early (VII. 229-30). Rowan confirmed that because Offord had voluntarily committed himself, he was free to leave the hospital, whereas if he had been involuntarily committed, he would not have been so easily allowed to leave the treatment facility (VII. 230). According to Rowan, in notes from Offord's July 4, 2004 admission, he told medical staff members that if Noser ever came to his therapy sessions he would choke her; moreover, Offord told the staff that because Noser called him so often while he was seeking treatment, he felt like killing her (VII. 230).

Rowan acknowledged Offord has been diagnosed with schizophrenia and mood disorders (VII. 230). Rowan then proceeded to explain Offord's mental health history. She observed that records suggested he began to have difficulties as a youth, exhibiting truant behavior as early as five years old (VII. 232). At ten years old he was diagnosed with a conduct/aggression disorder (VII. 232). Records indicated he was placed in a state hospital in Texas at eighteen after being transferred from a county jail due to an impulse control disorder and substance abuse problem (VII. 232). Rowan noted Offord had been hospitalized at nineteen after it was determined that he was incompetent to stand trial for an unrelated crime (VII. 232). At the age of twenty-four, while incarcerated, Offord engaged in self-mutilation (VII. 232).

Rowan further testified Offord's medical records indicated he has a history of auditory hallucinations, which is a symptom of schizophrenia (VII. 233). Rowan stated, Offord's medical history suggested he would be prescribed psychotropic drugs while hospitalized; thereafter, when he would leave the hospital he would discontinue using his prescribed medicine and would return to using street narcotics and alcohol; this pattern would eventually necessitate rehospitalization because his schizophrenia would reoccur (VII. 233). Rowan also stated that a note contained in Offord's records from North Florida Hospital considered Offord to be "institutionalized" because he had spent a large portion of his life either incarcerated or in psychiatric care facilities, and therefore his prognosis for success in the outside world was poor (VII. 234).

Rowan was asked whether Offord's records indicated he could ever function as a normal and productive citizen (VII. 235). She said Offord had never done so (VII. 235-36). Rowan observed Offord was receiving Social Security Disability Benefits because Texas had determined he was incapable of caring for himself (VII. 238). Rowan opined Offord was "institutionalized," meaning

that he felt more comfortable in either a prison, a hospital, or a treatment facility, rather than on his own (VII. 238). She testified his institutionalized character was borne out by the fact he had been admitted into hospitals approximately twenty-four times related to his mental health issues (VII. 239). Rowan asserted Offord could potentially be controlled, if he were imprisoned for the rest of his life, provided he did not have access to anything with which he might be able to harm himself (VII. 239 - 40).

On cross-examination Rowan conceded that giving Offord only anti-psychotic medication and incarcerating him for rest of his life would not be proper because Offord would still constitute a danger to others (VII. 241). Rowan also acknowledged that a major problem in Offord's life was his recurrent pattern of substance abuse, wherein while hospitalized he would no longer have suicidal thoughts, nor would he hallucinate; however, once he left an institutional setting he would instantly return back to using street narcotics (VII. 243 - 44). Thus, according Rowan, Offord would exacerbate his schizophrenia – for which, records indicate, he was biologically predisposed – by abusing street narcotics (VII. 244). Rowan also conceded that according to Bay Behavioral's records from Offord's April 4, 2004 admission, doctors noted Offord's major problem appeared to be substance abuse (VII. 245).

On redirect examination, Rowan testified that Offord's medical records indicated he has been troubled by mental health issues since at least five years old, and that he was first institutionalized at six (VII. 246). Rowan agreed that Offord's hospitalizations as a youth were not tied to substance abuse, and his problems with substance abuse began to occur when he was teenager (VII. 246-47).

Offord next called Nancy Watson, a licensed clinical social worker from Panama City, to testify (VII. 248). She interviewed Offord at the Bay County Jail Annex (VII. 248). Watson stated that in preparation, she reviewed Offord's medical records, spoke with his mother, and talked with his careworkers (VII. 249). Watson stated Offord was born in Texas, and his biological parents divorced when he was five years old (VII. 250). There was some indication Offord may have been sexually and physically abused by his biological father; moreover, there was some evidence his biological father may have been an alcoholic (VII. 250).

Offord's mother told Watson that as a young child he had difficulty getting along with his peers, and was often teased

and rejected by them (VII. 251). Offord's mother told Watson that Offord chased and threatened her with a butcher knife when he was six years old (VII. 251). Offord's mother informed Rowan that he was first institutionalized at six years old (VII. 251).

Watson also testified Offord is estranged from his family (VII. 251). Watson provided that although Offord's mother still loved her son and had spent hundreds of thousands of dollars on his medical care, she no longer wished to have a relationship with him (VII. 252). Offord's mother also told Watson it was unusual for him to have left Texas to move to Panama City, given he had never left Texas before (VII. 252).

Watson further opined, an evaluation of Offord's medical records and mental health history indicated he began: 1) to use drugs heavily at thirteen; 2) having auditory hallucinations at fourteen; and 3) consuming alcohol heavily at seventeen (VII. 252). All of this information was considered in determining Offord's eligibility for disability benefits (VII. 252-53).

At the close of Offord's presentation of mitigation evidence each side brought forth closing arguments (VIII. 274 – 303). On June 2, 2005 the jury returned a recommendation that Offord be sentenced to death by a vote of 12 to 0 (VIII. 314).

B. *Spencer* Hearing

On July 18, 2005 a *Spencer* hearing was held. The State called Amy Sweat, Noser's sister, to the witness stand (III. 3). Sweat testified that Noser was loved by her family and the most tragic consequence of Offord's actions was that Noser's seven year old daughter had lost her mother (III. 3).

Offord then testified. He stated he left Fort Worth, Texas to get away from his family (III. 7). He averred that while living in Texas he was under the care of medical professionals, and he was taking his prescribed medicine (III. 8). When he left for Florida, he did not bring any medicine with him (III. 8). He testified his only source of income was Social Security Disability benefits that he received on the basis of his mental impairment (III. 9).

He first met Noser at J Krash's (III. 9). Offord said Noser was cognizant of his mental problems, and had attempted to help him by insuring he received proper medication and treatment (III. 10). Offord was acquainted with Noser only four days before they got married, and the marriage progressively deteriorated in a short period of time (III. 11). Offord conceded that throughout the marriage he was drinking alcohol and using drugs (III. 11).

Offord also stated he believed he was divorced[6] from Noser because deputies came to his apartment to serve him with papers in connection with Noser's petition for dissolution of the marriage

(III. 12). He admitted to being upset his wife filed for divorce (III. 12 - 13). Offord also admitted he had given thought to killing his wife prior to July 31, 2004 – especially when she made him upset (III. 13).

He could not say with certainty drugs or alcohol fueled his rage toward his wife, although he readily conceded that he had not been sober very often while living in Panama City (III. 13). He claimed that he sought help for his alcohol dependence at Bay Behavioral Hospital at least three times because he was using the vast majority of his Social Security benefits on alcohol (III. 14).

He stated that the murder of his wife was not premeditated (III. 15). On that morning he was awoken by Noser, who had been drinking and was very intoxicated (III. 15). He stated that he was upset Noser had awoken him, but nevertheless, the two were on good terms even though he had not intended to see her that

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[6] Apparently this was not entirely true, as the couple was not officially considered divorced at the time of Noser's

morning (III. 16).

Offord averred that on the morning of her murder, he and Noser first went to J Krash's (III. 16). Thereafter they briefly went to Joe's Corner Pub, then went to eat at the Waffle House (III. 17). Offord testified that while at the Waffle House, he and Noser were in a jovial mood (III. 18). He stated the argument precipitating her death involved his being annoyed at Noser's insistence that they "cuddle" (III. 19). He testified he could not have asked Noser to leave his duplex even he wanted her to because she was paying his rent (III. 19).

He testified that he finally decided to kill Noser because he had been thinking about it for three weeks (III. 19 - 20). Offord also asserted that he told several individuals he was having thoughts of killing his wife, including: friends, the medical staff at Bay Behavioral, and Noser herself (III. 20). He admitted his personal interactions with Noser were stressful, and that when he becomes stressed he has hurt people -- including himself (III. 20-21). When asked why he could, or would, not stop harming Noser, he opined that he knew that he was going to going to jail in any case, so he figured he might as well "get something out of it" (III. 21). He maintained that

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murder.

he was cognizant that he was killing Noser when he was hitting her with the hammer, stating that if she survived, he would likely have spent the rest of his life in jail (III. 22). He testified that he has previously contemplated committing suicide (III. 23).

He noted that he only takes his prescribed medicines intermittently, in part because he does not believe that they are effective (III. 24). He maintained he is able to fool any doctor that has attempted to treat him (III. 24). For example, he noted many of his hospitalizations in Texas were actually instances when he was homeless and needed a roof over his head (III. 24). He also averred that he was able to fool doctors at the Social Security Administration into believing he was mentally disturbed (III. 24-25).

Offord recounted his last hospitalization at Bay Behavioral Hospital in early July 2004 when he was trying to rehabilitate from his alcohol and crack cocaine dependency (III. 25). He stated that Noser called Bay Behavioral at least "45 times a day" in an attempt to reach him (III. 25). He testified that her incessant phone calls were very upsetting (III. 25). He also told the medical staff he was going to kill Noser, although they did not believe him (III. 25).

Offord noted that Noser never actually visited him while he was at Bay Behavioral, but did help him when he was released (III. 25-26). He stated that once he left the hospital, Noser was very kind and assisted him getting housing (III. 26). In fact, Noser was responsible for purchasing the duplex that Offord was living in (III. 26). During the last three weeks of her life, he would see Noser every day (III. 26). Noser and Offord would also do things together such as grocery shopping; however, Offord soon found that he became greatly annoyed with Noser to the point where simple conversations became difficult to tolerate (III. 26). He asserted he never told Noser that he wanted to end their relationship because he still needed her financial support (III. 26). Finally, Offord told the judge he believed that he warranted the death penalty (III. 26).

C. Sentencing Hearing

Offord was sentenced on August 3, 2005. The trial court found one aggravating factor: his crime was heinous, atrocious, and cruel (HAC) (IV. 4). Given the brutality with which the felony was carried out, the court determined the HAC aggravator had been established beyond a reasonable doubt (IV. 4-5).

The Court also found two statutory mitigating circumstances: (1) Offord was under the influence of extreme

mental or emotional disturbance (IV. 5-6); and (2) Offord was so impaired that he could not appreciate the criminality of his conduct nor conform his conduct to the requirements of the law (IV. 7-8).

First, the court found that Offord was under the influence of extreme mental or emotional disturbance when he committed the murder (IV. 5). The court recognized Offord had a long history of mental health problems (IV. 5). The court also observed that Offord told arresting officers he had been compelled to commit his crime because voices told him to do so (IV. 5). Conversely, the court recalled Offord made absolutely no mention during the *Spencer* hearing that auditory hallucinations played a role in his killing Noser (IV. 5). The court further noted Offord mentioned that he was adept at fooling doctors, and that he might feign mental problems if he found himself without a roof over his head (IV. 5).

The court reviewed Offord's mental health history, noting testimony was presented that Offord has been diagnosed with a spate of mental disorders, including schizophrenia, substance abuse, and a personality disorder; and that Offord has been dealing with mental health issues, in large measure, since he was young child (IV. 5). The court noted that Offord could

provide no explanation as to why he committed such a brutal crime, simply testifying he had "lost it" (IV. 6). The court also recalled during his *Spencer* hearing testimony, Offord provided that the reason he did not desist from mortally wounding Noser was because he was aware if she survived he would likely be serving an exceptionally long sentence – perhaps life – thus, there was no incentive to refrain from continuing with the attack (IV. 6).

In the court's review of Offord's mental health history -– specifically, his April 2004 admission to Bay Behavioral -- his treating doctor at the time found that while he diagnosed Offord with schizophrenia, this diagnosis was principally based on Offord's past medical history (IV. 6). In the treating physician's estimation, Offord's most significant mental health issue was perhaps – substance abuse (IV. 6). Moreover, the court noted Offord had expressly told members of the medical staff at Bay Behavioral that he was having thoughts of killing his wife, and that her incessant calling was annoying to him (IV. 6). The court similarly recognized that Offord was not under the influence of alcohol when he murdered Noser and -- in the hours preceding her murder -- Offord and Noser's interactions were generally amicable (IV. 6). Thus, as there

was no proverbial trigger which caused Offord to brutally murder Noser, the court found the "under the influence of extreme mental and emotional disturbance" statutory mitigator should only be accorded "some" weight (IV. 6).

Second, the court considered as a mitigator whether Offord was so impaired that he "could not appreciate the criminality of his conduct nor conform his conduct to the requirements of the law" (IV. 7). The court noted that at the *Spencer* hearing Offord never asserted that he was compelled by auditory hallucinations (IV. 7). Moreover the court observed that Offord stated he would sometimes check himself into mental hospitals as a means to curb his purchasing and consumption of alcohol (IV. 7). The court further recalled that on the night of the murder, Offord said he was upset simply because Noser insisted that they cuddle after having sexual relations (IV. 7). Therefore, the court gave this mitigator – regarding whether he was capable of conforming his conduct to the requirements of the law -- "moderate" weight (IV. 8).

The court then briefly reviewed two non-statutory mitigators: (1) marital discord between Offord and Noser; and (2) Offord's long history of substance abuse (IV. 8).

First, the court considered the volatile nature of the

marriage and that Noser had filed a petition for the dissolution of the marriage some four days before she was murdered in according marital discord only "little" weight (IV. 8).

Second, the court considered Offord's history of substance abuse and his concession that he had used significant quantities of drugs and alcohol during his brief time in Panama City (IV. 8). However, the court also noted that Offord was not intoxicated when he murdered Noser, therefore the court accorded the non-statutory mitigator of drug and alcohol abuse "very little" weight (IV. 8).

The court recognized that Offord had dealt with mental health issues throughout his life, but despite this, the court found his mental issues provided no rationalization for the brutal murder of Noser (IV. 9). Accordingly, the court determined the HAC aggravator outweighed the mitigating factors and determined that Offord should be sentenced to death (IV. 9).

SUMMARY OF ARGUMENT

The single issue presented is whether Offord's death sentence is proportional. The circumstances set forth in this case demonstrate that Offord's sentence is entirely appropriate. As has often been observed, because of the finality of the punishment, an individual may only be sentenced to death in the

most aggravated and least mitigated circumstances.

In the instant case, Noser suffered a prolonged and tortuous death in which she was struck with over fifty blows from a claw hammer, and was repeatedly stabbed, punched, and kicked with violent force. Medical expert testimony was presented suggesting Noser lived between fifteen and twenty minutes during the attack before she died. Thus, notwithstanding Offord's mental health issues, they do not legitimate the heinous murder of Noser – especially given the relatively benign circumstances precipitating her death. Similarly the record evidences the fact that Offord was cognizant of the wrongfulness of his conduct as it was occurring.

Moreover, this Court has never set forth an absolute prohibition against sentencing an individual to death who has had a long history of mental health issues – especially with a crime as gruesome as this. A determination regarding whether an individual should be sentenced to death is a nuanced inquiry focusing on, among other things, the totality of circumstances presented, the egregiousness of the crime, the existence of applicable aggravators and mitigators, whether the accused was cognizant of the wrongfulness of his actions as they were taking place, and whether a death sentence has been imposed in similar

contexts.

Based on a review of applicable case law, the record in this matter is clear, Offord's gruesome murder of Noser qualifies as amongst the most aggravated and least mitigated; therefore imposition of a death sentence -- irrespective of his particular mental health issues -- was proportionate and entirely warranted.

STANDARD OF REVIEW

The trial court found one aggravating factor in its determination that Offord should be sentenced to death; the murder of Noser was Heinous, Atrocious, and Cruel (HAC).[7] The lone issue on appeal is whether Offord's death sentence is proportional. This Court approaches the question of a death sentence's proportionality by thoughtfully and deliberately analyzing the totality of circumstances presented and comparing them with similar capital cases to determine whether the death penalty has been imposed in like contexts. *Johnston v. State*, 863 So. 2d 271, 286 (Fla. 2003) (citation omitted).

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[7] The terms incorporating the HAC aggravator, Heinous, Atrocious, and Cruel, are terms of art, wherein "heinous means extremely wicked or shockingly evil; that atrocious means outrageously wicked and vile; and that cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others." *State v. Dixon*,

Similarly, this Court accords deference to the trial court's findings regarding the applicability of an aggravator – provided the findings are supported by the record. *See., e.g., Reynolds v. State,* 2006 Fla. LEXIS 888, at *73 (Fla. May 18, 2006). This Court does not simply compare the aggregate total of aggravators and mitigators to determine the appropriateness of a death sentence. *See Terry v. State*, 668 So. 2d 954, 965 (Fla. 1996); accord *Lynch v. State*, 841 So. 2d 362, 377 (Fla. 2003). To the contrary, this Court assesses whether the trial court correctly applied the relevant law governing the aggravator, and, whether the trial court's findings as to the particular aggravator were supported by competent substantial evidence. *See Alston v. State*, 723 So. 2d 148, 160 (Fla. 1998).

ARGUMENT

I. SENTENCING OFFORD TO DEATH IS PROPORTIONATE PUNISHMENT FOR HIS CRIME AS IT IS AMONGST THE MOST AGGRAVATED AND LEAST MITIGATED

A. The HAC Aggravator -- the only statutory aggravator found by the trial court -- provides ample grounds for the trial court's sentencing determination

Offord raises a single assertion in opposition to the trial court's determination that he should be sentenced to death. He

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283 So. 2d 1, 9 (Fla. 1973).

contends that in light of the evidence presented -- specifically, his history of mental illness -- sentencing him to death is not a proportionate sentence for his crime. Of course, Offord's argument disregards Florida case law, his concessions made during the *Spencer* hearing, the actual findings of the trial court, as well as the competent substantial evidence supporting those findings.

Before delving too deeply into the question of whether Offord's death sentence was proportional, the basis for his sentence must be better understood. Such understanding is important because the trial court's determination that the HAC aggravator outweighed Offord's mental mitigation evidence provided the necessary basis for his death sentence.

This Court has stated the HAC aggravator is applicable to those murders where the victim is tortured, *i.e.*, wherein the perpetrator's actions were so wanton, remorseless, and egregious as to exemplify a seeming "desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another." *Guzman v. State*, 721 So. 2d 1155, 1159 (Fla. 1998)(citation omitted). Moreover, this Court has also recognized that in order to apply the HAC aggravator, the victim must be cognizant of her imminent death. *Way v. State*, 760 So.

2d 903, 919 (Fla. 2000); see also *Swafford v. State*, 533 So. 2d 270, 277 (Fla. 1988) (observing that the applicability of the HAC aggravator must be assessed from the victim's vantage point "in accordance with a common-sense inference from the circumstances"). Plainly stated, "the HAC aggravator focuses on the means and manner in which death is inflicted and the immediate circumstances surrounding the death." *Brown v. State*, 721 So. 2d 274, 277 (Fla. 1998).

The primary instrument Offord used to kill Noser was a claw hammer. According to the medical examiner's autopsy, Noser may have been hit with the hammer some sixty times. Moreover, Offord readily acknowledged that he attempted to brutalize Noser; and it was further estimated by Dr. Siebert that Noser may have lived as long as twenty minutes during the attack. *See Francis v. State,* 808 So. 2d 110, 134 (Fla. 2001) (crediting a medical expert's estimation as to how long the victim lived).

Similarly, this Court has noted where evidence is presented indicating the victim was beaten to death, this establishes a prima facie case for the HAC aggravator. *See, e.g., Buzia v. State,* 926 So. 2d 1203, 1212 (Fla. 2006) (collecting cases); see also *England v. State,* 2006 Fla. LEXIS 942, at * 31 (Fla. May 25, 2006). And given the fact the HAC aggravator may be

applicable in instances where the victim is conscious for only a matter of seconds, *Rolling v. State,* 695 So. 2d 278, 296 (Fla. 1997), the fact that Noser lived for as long as fifteen to twenty minutes certainly supports, beyond a reasonable doubt, the appropriateness of this aggravator. *See Allan v. State,* 662 So. 2d 323, 331 (Fla. 1995) (finding the fact the victim may have lived between fifteen to thirty minutes after being attacked supported the HAC aggravator beyond a reasonable doubt).

The facts of this case further support the application of the HAC aggravator because Noser was cognizant Offord intended to kill her. *See Owen v. State,* 862 So. 2d 687, 698 (Fla. 2003)(crediting the trial court's finding that the HAC aggravator was appropriate based on the fact that the victim was aware that she was going to die and was placed in great fear). The record reflects Noser repeatedly begged for her life when she was being attacked;[8] in fact, Offord recalled Noser telling him that she loved him and would do anything for him if we would

[8] While not suggesting the fact that Noser begged for her life is dispositive in this Court's determination as to the appropriateness of the HAC aggravator, *see Bonifay v. State,* 626 So. 2d 1310, 1313 (Fla. 1993), because Noser endured a prolonged and torturous death, this strongly evidences the appropriateness of this aggravator. *See Ochoa v. State,* 826 So. 2d 956, 963-64

simply stop.

The common-sense inference one draws from the record is that Noser recognized she faced imminent death if she did not find a means to thwart Offord's unremitting violence. She attempted to appeal to the fact that at some point they shared a loving relationship. Unmoved, Offord denigrated her pleas and continued to furiously hit her. Moreover, when Noser's lifeless body appeared to be gasping for its last breaths, Offord again repeatedly hit her with a hammer and kicked her.

Finally, the trial court correctly found the HAC aggravator was applicable given, among other reasons, the ferocity with which Noser was murdered. *See, e.g., Butler v. State,* 842 So. 2d 817, 834 (Fla. 2003) (acknowledging that the brutality with which the victim was murdered was a factor in its determination that Butler's death sentence was appropriate and proportional). Accordingly, the trial court's determination that the HAC aggravator outweighed all mitigating evidence, including Offord's long mental health history, was correct and should be affirmed by this Court.

B. Offord's Death Sentence is fully consonant with Florida case law and is therefore proportional

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(Fla. 2002).

This Court has often acknowledged proportionality review is a necessary element in Florida's capital litigation jurisprudence so as to insure the death penalty is imposed only in the most aggravated and least mitigated circumstances. *See Kramer v. State,* 619 So. 2d 274, 278 (Fla. 1993); see also Fla. Const. Art I, § 17. Therefore, any analysis regarding the propriety of the imposition of the death penalty in a particular case entails review of similar cases to insure the death penalty has, or has not, been imposed in like contexts. *See Schoenwetter v. State,* 2006 Fla. LEXIS 668, at *45 (Fla. April 27, 2006); *Stewart v. State,* 872 So. 2d 226, 229 (Fla. 2003).

Offord relies on several cases which he asserts stand for the irreducible proposition that in capital cases when mental mitigation evidence presents itself – i.e., a long history of mental health issues – a death sentence must be reduced to life imprisonment. See Initial Brief of Appellant, at p. 27-28. Offord misstates the effect a defendant's history of mental illness has in capital cases, as this evidence relates only as *potentially* mitigating evidence; however, as this Court has acknowledged, overreliance on mental mitigation evidence is entirely inappropriate given that it can readily be outweighed by relevant aggravating factors. *Orme v. State,* 677 So. 2d 258,

263 (Fla. 1996) (citing *Michael v. State,* 437 So. 2d 138, 142 (Fla. 1983)).

Secondarily, Offord makes much of the fact that the trial court found a single aggravator applicable to his sentence determination, and on this basis argues his sentence should presumptively be reduced to life. See Initial Appellate Brief, at p. 26. While it is indeed true that this Court has, on some occasions, reduced a death sentence to life on the basis that only a single aggravator was found, *see, e.g, Sinclair v. State,* 657 So. 2d 1138 (Fla. 1995); in instances where the sole aggravator found is one of substantial import --i.e., the HAC aggravator –- the imposition of a death sentence has been deemed proportionate. *See, e.g.,Boyd v. State*, 910 So. 2d 167 (Fla. 2005) (holding that Boyd's death sentence was proportionate even though questions were raised about his mental competency and only the HAC aggravator was found); *Butler v. State,* 842 So. 2d 817 (Fla. 2003) (upholding Butler's death sentence – based exclusively on the HAC aggravator – wherein Butler brutally murdered his ex-girlfriend while his six year old daughter was present in the home); *Blackwood v. State*, 777 So. 2d 399 (Fla. 2000) (finding Blackwood's death sentence proportional despite the fact that the only applicable aggravator was the HAC);

Cardona v. State, 641 So. 2d 361 (Fla. 1994) (concluding that the HAC aggravator, standing alone, outweighed mitigating evidence given that the victim –- an infant -- suffered a tortuous death).

As this Court has plainly recognized, the HAC aggravator is amongst "'the most serious aggravators set out in the statutory sentencing scheme.'" *Dessaure v. State,* 891 So. 2d 455, 473 (Fla. 2004) (quoting *Larkins v. State,* 739 So. 2d 90, 95 (Fla. 1999)). Accordingly, the fact that the trial court found one aggravating factor is not the *sine qua non* as to the propriety of Offord's death sentence; and, as discussed below, this Court's proportionality review entails a more nuanced analysis than Offord appears willing to acknowledge.

1. Florida case law supports the trial court's determination

To reiterate, this Court has never articulated the proposition, as Offord suggests, that in circumstances where a defendant suffers from a mental illness and/or has spent most of his life institutionalized, he must invariably have his death sentence commuted to life. *See, e.g., Rhodes v. State,* 638 So. 2d 920, 927 (Fla. 1994) (noting that although Rhodes -- who spent the majority of his life in either mental hospitals and

prisons -– had established "substantial mental mitigation," his death sentence was proportionate); *Wickham v. State,* 593 So. 2d 191, 195 (Fla. 1991) (Barkett, J. dissenting) (criticizing the majority for affirming the death sentence of a capital felon who although forty years old when he committed the murder, had only spent "two or three years outside of institutions since he was ten years old"); *see also Johnston v. State,* 863 So. 2d 271 (Fla. 2003)(upholding death sentence despite Johnston's long history of mental health problems and dissociative disorder); *Francis v. State*, 808 So. 2d 110 (Fla. 2001) (determining that while Francis had a history of mental issues no showing was made that these problems directly caused him to murder his victims); *Evans v. State,* 800 So. 2d 182, 196 (Fla. 2001) (affirming the determination of the trial court which found that "although . . . there was substantial evidence that Evans suffers from some sort of mental impairment, that mental impairment did not affect *Evans'* ability to plan and direct this murder"); *Robinson v. State*, 761 So. 2d 269 (Fla. 1999); (holding that sentencing Robinson to death -- who had killed his female victim with a claw hammer and had a history of mental and substance abuse issues -– was proportional); *Medina v. State,* 690 So. 2d 1241, 1251-52 (Fla. 1997) (Anstead, J., concurring in part, dissenting

in part) (acknowledging that Medina – who, it should be noted, was executed slightly more than a month after this case was published – had an extensive history of mental illness, had resided in a Cuban mental asylum, and was diagnosed as a paranoid schizophrenic).

Offord's reasoning is untenable and would certainly make it difficult for the State to ever succeed in capital prosecutions given the prevalence of mental health mitigation in penalty phase proceedings. To the contrary, this Court has observed that it is duty-bound to look to the totality of circumstances in order to assess whether an individual's sentence was proportional. *See Urbin v. State*, 714 So. 2d 411, 416-17 (Fla. 1998).

Therefore, as this appeal turns solely on the proportionality of Offord's death sentence, it is somewhat necessary to look with exacting detail to those Florida cases which most comport with the facts presented in Offord's case.

(a) Booker v. State, 773 So. 2d 1079 (Fla. 2000)

In *Booker v. State,* 773 So. 2d 1079 (Fla. 2000), this Court confronted facts very similar to those presented in Offord's case, wherein the imposition of a death sentence was affirmed although the accused had a very long history of mental problems.

Booker was originally sentenced to death in 1978 for the sexual assault and murder of a ninety-four year old victim. Following a series of legal machinations not relevant here, Booker was resentenced and another penalty phase hearing was conducted in 1998. Id. at 1083.

During the penalty phase, evidence was propounded indicating that Booker had a terrible childhood and his schooling was itinerant. Expert medical testimony indicated Booker began abusing drugs and alcohol perhaps as early as thirteen years old, and he was hospitalized for psychiatric evaluation at sixteen. Moreover, while commissioned in the Army, Booker struggled with alcohol, was diagnosed with schizophrenia, and was required to take psychotropic medication to deal with his mental issues.

Following his discharge from the Army he continued to have difficulties. He was briefly hospitalized after seen wielding a knife in the middle of a public street. Moreover, he was later incarcerated in Florida in the early 1970's for an unrelated crime; and during this period of incarceration he experienced hallucinations and was required to take medication to prevent seizures.

A medical expert who testified at Booker’s 1998 penalty

phase hearing concluded that at the time of the murder, Booker was: (1)under extreme mental or emotional disturbance, and (2)unable to appreciate the criminality of his conduct. On cross-examination, the medical expert testified that Booker's mental problems did not prevent him from understanding the wrongfulness of his actions. Moreover, there was some belief that Booker was a malingerer, and had told inconsistent stories regarding his recollection of events. Id. at 1085.

The jury eventually recommended that Booker should be sentenced to death. This recommendation was followed by the trial court. The trial court found four statutory aggravators, including the HAC, two statutory mitigators, and nine non-statutory mitigators but ultimately held that despite the spate of mental mitigation evidence presented, Booker's death sentence was proportional.

A comparison between the facts presented in *Booker* and Offord's cases are instructive. Both men had a long history, dating to their youth, of mental illness and substance abuse. However, the record also indicates that in both cases each man understood the wrongfulness of his actions as he was murdering a particularly vulnerable female victim. Therefore *Booker* clearly stands for the proposition that a capital felon's mental

infirmities, standing alone, do not exculpate his crimes no matter how severe they might be – provided the record supports a determination that the felon was cognizant of the wrongfulness of his actions as they were taking place.

(b) Rimmer v. State, 825 So. 2d 304 (Fla. 2002)

This Court, moreover, has specifically upheld the imposition of a death sentence in instances where an individual charged with murder – like Offord – suffers from a schizoaffective disorder. In *Rimmer v. State,* 825 So. 2d 304 (Fla. 2002), the accused was charged with, among other things, the murder of two individuals at an electronics store. He was eventually found guilty. During the penalty phase, testimony was presented from medical experts opining that Rimmer suffered from schizophrenia, though one expert could not render a definitive opinion as to whether Rimmer's mental illness supported any statutory mitigator found in Florida's sentencing scheme. The trial court found several aggravating factors, no statutory mitigators, and five non-statutory mitigators – which included the fact that Rimmer suffered from schizophrenia. Id. at 311. The trial court ultimately concurred with the jury's recommendation and sentenced Rimmer to death.

In its proportionality review, this Court commented on

evidence brought forth during the *Spencer* hearing, and penalty phase proceedings -– which suggested that Rimmer suffered from schizophrenia. This Court observed that while expert testimony did indicate the existence of a schizoaffective disorder, no opinion could be rendered as to whether this finding compelled any statutory mitigator. Additionally, this Court recalled the testimony of another expert from Rimmer's *Spencer* hearing who testified no showing had been made that Rimmer, at the time of the offenses, was suffering from any extreme or emotional disturbance. Id. at 332.

In the instant case, recall, testimony was brought forth regarding the nature of Offord's mental illness. While it was not controverted that Offord had a history of mental health issues, it would by no means be accurate to suggest that these issues were the principal cause of his barbarous actions – as he had contemplated killing Noser for three weeks. There was no evidence that he was intoxicated. Additionally, Offord's testimony during his *Spencer* hearing made no mention of auditory hallucinations.[9] Instead, Offord simply suggested he could no longer endure what he contended were Noser's bothersome ways,

[9] Offord also never mentioned to David Leisher, Lisa Leisher, Arthur Stencil, or Billy Yohe that he was compelled by auditory

and simply “lost it.” Further, it must be remembered that during his *Spencer* hearing Offord stated he was fully cognizant of what he was doing, and he continued with the brutal attack because he knew irrespective of whether Noser survived, there was a strong likelihood that he was facing a substantial term of incarceration.

(c)Jeffries v. State, 797 So. 2d 573 (Fla. 2001)

As noted, an uncontroverted determination by medical experts that a capital felon suffers from schizophrenia does not render the felon’s death sentence infirm. In *Jeffries* v. State, 797 So. 2d 573 (Fla. 2001), the accused, along with an accomplice, brutally robbed and murdered an elderly female victim. Jeffries, along with his cohort, were arrested in Georgia weeks later. Id. at 577. He was eventually tried and found guilty of first degree murder and armed robbery.

During the penalty phase Jeffries represented himself. While the State did not present live witness testimony – relying instead on victim impact statements – Jeffries presented, *inter alia*, the testimony of three medical experts who addressed his extensive mental health issues – specifically discussing his schizophrenia. Id. at 576.

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hallucinations.

One expert averred that Jeffries was a "paranoid schizophrenic," but, nevertheless understood right from wrong at the time he murdered the victim. Id. A second medical expert provided that Jeffries suffered from "paranoia and schizophrenia." Finally, the third expert also testified that Jeffries was a schizophrenic. Id.

The jury ultimately recommended, eleven to one, that Jeffries should be sentenced to death. The trial court concurred with the recommendation,[10] finding that the record established two statutory aggravators: (1) the murder was committed in the commission of a robbery; and (2) the HAC. Among the most pertinent mitigators found by the trial court was that: (1) Jeffries' capacity to understand the criminality of his conduct had been compromised; and (2) he had an extensive history of mental and substance abuse problems.

On appeal Jeffries argued the trial court had improperly disregarded his mental mitigation evidence, and that his death sentence was not proportional. In rejecting Jeffries' averments, this Court articulated that the trial court was well within its discretion to sentence Jeffries to death despite the

[10] The trial court also sentenced Jeffries to life for the armed robbery conviction.

fact during the penalty phase hearing he presented uncontroverted testimony from three medical experts that he was a schizophrenic.

This Court recognized that so long as the record provided a basis for rejecting the mitigation evidence, the trial court was under no mandate to unquestionably rely upon it. Id. at 582. The Court observed that two of the medical experts concluded that *at the time of the murder*, Jeffries was not suffering from any psychotic symptoms. Thus, according to this Court, the trial court had a reasoned basis for determining that Jeffries' mental mitigation evidence did not outweigh the clearly established statutory aggravators. Id. at 582-83.

In the instant case, Offord testified on his own behalf as to the events of July 31, 2004. He asserted that he was entirely cognizant that he mortally wounding Noser as he was hitting her, and that the ultimate result of his actions would be incarceration. Consequently, the record confirms that Offord was aware of right from wrong on the night of Noser's murder and the trial court had a reasoned basis for rejecting Offord's contention that his history of schizophrenia should mitigate his death sentence.

(d) Rogers v. State, 783 So. 2d 980 (Fla. 2001)

Finally, the result reached in *Rogers v. State,* 783 So. 2d 980 (Fla. 2001), should obtain in the instant case. Rogers left a bar with the victim under the auspices that he needed a ride home. The victim was never seen alive again and was found a few days later in a motel room, having died as a result of two stab wounds. Rogers was arrested and subsequently convicted for the murder.

During the penalty phase, issues related to Rogers' troubled life were brought forth in mitigation. Two medical doctors testified regarding his mental health history. One doctor provided that Rogers suffered from a spate of mental issues, including "brain damage, a mental illness, and a rare genetic disease called porphyria, which impacts the central nervous system." Id. at 995. The expert provided that as a consequence of Rogers' psychotic disturbance, he had, among other things, a tendency to hallucinate, and delusional thinking. Moreover, psychological testing provided that Rogers suffered from schizophrenia. Id.

A second expert also found that Rogers suffered from porphyria brought about by alcohol abuse; that he had experienced significant head trauma; and that his capacity to conform his conduct to the dictates of the law was severely

compromised. Id. at 996.[11]

The trial court ultimately determined that Rogers' mental mitigation evidence did not obviate his culpability. The court found two statutory aggravators applicable: (1) the HAC; and (2) the murder was committed for pecuniary gain. The trial court found one statutory mitigator, Rogers' capacity to appreciate the criminality of his conduct or to conform his conduct to the dictates of law was compromised. This mitigator was accorded only some weight. As for non-statutory mitigation, the trial court considered, among other things, Rogers' troubled childhood, his previous work history, and his relationship with his family. Following the jury's recommendation, the trial court ultimately concluded that Rogers should be sentenced to death.

On appeal, Rogers brought forth ten grounds of error, including that the trial court failed to properly consider Rogers' mental mitigation evidence, and that his death sentence was disproportionate. This Court determined that the trial court had properly considered Rogers' mitigation evidence pertaining to his extensive mental health issues, his substance

[11] Of note, neither expert found Rogers was under the influence of any extreme mental or emotional disturbance at the

abuse problems, and his very difficult childhood.

This Court observed that although the trial court did not accord as much weight as Rogers would have preferred, the record clearly established that his mitigation evidence was properly considered; consequently the trial court did not abuse its discretion. Moreover, Rogers' death sentence was deemed proportional.

The foregoing demonstrates that the weight a trial court accords mental mitigation evidence is largely within its own discretion, and absent some abuse of that discretion, the trial court's determination should be upheld. In the instance case, the trial court carefully considered Offord's mitigation evidence related to his extensive mental health problems. The trial court also weighed the testimony proffered by expert witnesses and from Offord himself. These findings were ultimately included in the trial court's sentencing order.

Accordingly, to the extent that Offord believes that the trial court failed to properly consider his mitigation evidence -- as *Rogers* demonstrates -- this ground of error must be rejected. Similarly, to the extent that Offord maintains that his history of schizophrenia requires, *ipso facto*, he be

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time he murdered the victim.

sentenced to life – *Rogers* evidences that, again, this line of reasoning is wanting.

2. The Cases Cited By Offord are Inapposite

The State respectfully takes issue with the cases relied upon by Offord, which he asserts stands for the proposition that a death sentence is invariably disproportional when an individual presents evidence of a mental illness. The cases cited by Offord involve circumstances where neither the HAC, nor the CCP aggravators, were found applicable; and perhaps most pointedly, in the remaining cases he relies upon, the individual accused of murder had their faculties debilitated *at the time of the murder* because they: (1) were suffering from extreme mental or emotional disturbance which uncontrovertibly caused their conduct; (2) were under the influence of either drugs or alcohol; and/or (3) were too young to appreciate the wrongfulness of their actions. The State believes the cases relied upon by Offord are entirely distinguishable from the facts presented in the instant case, and therefore are inapposite in any determination as to whether Offord's sentence is proportional.

(a) Robertson v. State, 699 So. 2d 1343 (Fla. 1997)

In *Robertson v. State*, 699 So. 2d 1343 (Fla. 1997), this

Court confronted whether an individual with a long history of mental health problems could permissibly be sentenced to death. Robertson was found guilty of, *inter alia*, premeditated murder in the strangulation death of his female victim. During the penalty phase, the jury recommended that Robertson be sentenced to death by a vote of eleven to one. As for mitigation evidence, the trial court considered his age (nineteen), his impaired capacity, his terrible childhood, his long history of mental illness, and his borderline intelligence. The trial court gave this mitigation evidence little weight and sentenced Robertson to death.

Robertson raised several grounds of appeal, including that his death sentence was disproportionate. This Court found that in light of the substantial mitigation evidence presented, Robertson death sentence was not proportional, finding: 1) Robertson was only nineteen; 2) he was under the influence of drugs and alcohol at the time of the murder; 3) he was raised in an abusive home; 4) he had long history of mental illness; and 5) he possessed borderline intelligence. Id. at 1347. This Court summarized its reasoning regarding the disproportionateness of Robertson's sentence as follows: "It was an unplanned, senseless murder committed by a nineteen year old,

with a long history of mental illness, *who was under the influence of alcohol and drugs at the time."* Id. (emphasis added).

Two critical factors found persuasive in *Robertson* are simply not present in the instant case. First, Offord was twenty-nine years old at the time of murder (clearly not a teenager), thus, no suggestion can be made that he was too young to appreciate the nature of his conduct. Second, at the time Offord killed Noser, he was not under the influence of any alcohol or drugs.[12] Thus, given that *Robertson's* youth and intoxication at the time of the murder were among the panoply of dispositive factors that led this Court to conclude that his death sentence was disproportionate, this case should not constitute persuasive authority in the instant matter.

(b) Larkins v. State, 739 So. 2d 90 (Fla. 1999)

Another case relied upon by Offord, *Larkins v. State*, 739 So. 2d 90 (Fla. 1999), is equally inapposite. Larkins was found

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[12] Offord also suggests in his brief he is mentally retarded. Initial Brief of Appellant at p. 29. Nowhere in the record is there evidence that Offord's IQ falls two standard deviations below the mean on a state-sanctioned IQ test. *See, e.g., Zack v. State*, 911 So. 2d 1190, 1201 (Fla. 2005) (articulating the necessary requirements for determining whether a capital felon is mentally retarded under Florida law). Thus, a number of the factors that persuaded this Court in Robertson, are simply not

guilty in the shooting death of a convenience store employee. At the conclusion of the penalty phase the jury recommended that Larkins be sentenced to death and the trial court concurred. The trial court also found two statutory aggravators: 1) Larkins had previously been convicted of a violent felony; and 2) the crime had been committed for pecuniary gain.

As for statutory mitigators, the trial court found that: 1) the murder occurred while Larkins was under the influence of extreme mental or emotional disturbance; and 2) his capacity to appreciate the criminality of his actions was severely impaired. Moreover, the trial court found eleven non-statutory mitigators, including that Larkins had experienced problems in school to the extent that he dropped out in either the fifth or sixth grade; generally speaking, he had low intellectual functioning; he had persistent mental problems that were brought about by his drug and alcohol use; and he had consumed alcohol on night of the murder – and, perhaps, was intoxicated.

On appeal, Larkins raised several grounds of error; but, only his assertion that his sentence of death was not proportional was addressed by this Court. Among the factors found most influential was expert medical testimony presented in

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present in Offord's case.

mitigation during the

penalty phase. The expert discussed that Larkins suffered from organic brain damage; his memory was severely impaired; brain damage impeded his ability to control his emotions; his intellectual functioning was low; and he had a history of drug and alcohol abuse. The expert concluded that *at the time he committed the murder*, Larkins was "under the influence of extreme mental and emotional disturbance and his ability to control his actions . . . [was] impaired." Id. at 94. This Court found the expert's testimony compelling.

Among the other factors germane to this Court's determination that Larkins' death sentence was not proportional, was that neither the HAC, nor CCP aggravators were present. This Court conceded that although the absence of these "two most serious aggravators" was not dispositive, the converse was equally true – their absence could not be ignored – and therefore had to be considered in its proportionality review. Id. at 95.[13]

In contrast to this Court's analysis in *Larkins*, in the

[13] The Larkins Court also observed that expert medical testimony was presented suggesting that Larkin had a personality disorder, wherein seemingly insignificant actions by others could trigger his rage.

instant case, the applicability of the HAC aggravator is uncontroverted – as Offord has made no argument to the contrary. Moreover, nothing in the record – such as expert testimony – unequivocally suggests that he was under the influence of an extreme and emotional disturbance which impaired his abilty to control his emotions at the time of Noser's murder; nor does the record evidence that Offord was intoxicated. Thus again, the consequential factors that influenced this Court in *Larkins*, do not manifest themselves in Offord's case.

(c) Deangelo v. State, 616 So. 2d 440 (Fla. 1993)

Deangelo v. State, 616 So. 2d 440 (Fla. 1993), proves equally problematic to Offord's contention that his death sentence was disproportionate. In *Deangelo*, the appellant was found guilty of the strangulation death of a female acquaintance. By a vote of 7 to 5, the jury recommended that Deangelo be sentenced to death. The trial court concurred with the jury and imposed a sentence of death, finding only one statutory aggravator: CCP. However, this Court found itself persuaded by "significant mental mitigation," including evidence of extensive brain damage, and a bipolar disorder. Id. at 443. This Court concluded that imposing the death penalty in an instance where only one aggravator was found was inappropriate,

observing that in cases where one aggravator had been found sufficient to support a death sentence, only minimal mitigation evidence had been presented; whereas in Deangelo's case, the mental mitigation evidence presented was plainly dispositive.

The State believes *Deangelo*, *supra,* should be deemed unpersuasive. Principally, any fair proportionality review must look to the means by which the murder at issue in the instant case was effectuated, and thereafter, compare those facts with *analogous* cases. *See Tillman v. State*, 591 So. 2d 167, 169 (Fla. 1991) (observing that proportionality review is necessary so as to prevent imposing a death sentence in similar factual circumstances where this Court previously has not done so); *see also Butler, supra, at* 832-33 (noting that in its proportionality review this Court looked to cases with similar aggravators and mitigators).

The gruesome nature of the facts in the instant case, thus, plainly distinguishes it from *Deangelo*. Even though the victim in the *Deangelo* case was strangled manually and with a ligature, this Court expressly found that the HAC aggravator was *not* applicable. Conversely, Offord attacked Noser with a claw hammer about her face, torso, and knees some fifty times; Noser was also repeatedly stabbed, beaten, and kicked.

Therefore the brutality with which Offord murdered Noser not only heightens the aggravating nature of his crime – but, more importantly, differentiates it from *Deangelo*. *Cf. Taylor v. State*, 855 So. 2d 1, 32 n. 33 (Fla. 2003) (rejecting cases relied upon by *Taylor* in support of his argument that his death sentence was disproportionate, as his most "supportive" cases involved facts that were less egregious, involved less aggravation, and had more mitigation).[14]

(d) Kramer v. State, 619 So. 2d 274 (Fla. 1993)

Another case relied upon by Offord, *Kramer v. State*, 619 So. 2d 274 (Fla. 1993), again, does not speak to the issues presented in the instant case, nor does the case support

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[14] Moreover, the jury recommendation in *Deangelo's* case was 7 to 5, while in Offord's case the jury recommended a sentence of death 12 to 0. The State, of course, is not suggesting that when a jury recommends death by a 7 to 5 vote the accused's subsequent death sentence is somehow infirm, *see, e.g., Mungin v. State*, 689 So. 2d 1026 (Fla. 1995); on occasion, however, this Court has credited a jury's unanimous verdict as amongst its legitimate reasons for upholding a death sentence. *See generally, e.g., Geralds v. State,* 674 So. 2d 96, 104 (Fla. 1996) ("having carefully scrutinized the record in this case, *including the jury's unanimous recommendation of death* . . . the trial court would still have found that the aggravating factors . . . substantially outweighed the mitigating evidence") (emphasis added). Thus, the fact that the jury's recommendation in Offord's case was unanimous –- even in the light of the presentment of mental mitigation evidence -- should in all likelihood be a consideration in this Court's determination as to the proportionality of Offord's death sentence.

Offord's contention that his death sentence is disproportionate. Kramer was found guilty in the beating death of a victim. The victim had apparently been struck by a rock, as his cause of death was blunt head trauma. The jury recommended a sentence of death and the trial court agreed. Among the aggravators found by the trial court was the HAC aggravator, and that Kramer had previously been convicted of a violent felony. The trial court also found some mitigators present, including, Kramer's ability to conform his conduct to the requirements of the law was compromised at the time that he committed the murder – as he had been drinking heavily that night.

On appeal, this Court ultimately concluded Kramer's death sentence was not proportionate – noting among other things, Kramer's history of substance abuse problems and mental issues. This Court deemed the altercation that precipitated Kramer's murdering of the victim as nothing more than a violent fight between two highly intoxicated individuals; consequently, this Court found such circumstances were not unique within the context of Florida's capital litigation jurisprudence, and therefore the death penalty was not warranted.

Two issues are most apparent. First, the facts in *Kramer* involved an individual charged with murder whose capacity to

conform his conduct to the dictates of the law was severely compromised, *at the time of the murder*, by his intoxication. Second, this Court took pains to note that the reason it believed that *Kramer's* death sentence was not proportional was the fact that the circumstances surrounding the victim's death were akin to a routine street fight.

In contrast, the record presented in the instant case fails to present any evidence that Offord was *conclusively* experiencing extreme or emotional disturbance at the time he committed the murder. Recall, he made no mention to the four individuals to whom he confessed – the Leishers, Stencil, and Yohe – that auditory hallucinations compelled his actions. At his Spencer hearing, again, he never stated he was hallucinating. Moreover, the record does not evidence that he was under the influence of drugs or alcohol.

Finally, however one characterizes the murder of Noser, it can not be described as a "conventional" murder. The record suggests that Noser was brutalized, and lived for as long as twenty minutes during the attack. Therefore, the State believes the circumstances presented in *Kramer* are not sufficiently analogous to those in the instant case as to draw any proportionality guidance.

(e) Fitzpatrick v. State, 527 So. 2d 809 (Fla. 1988)

In *Fitzpatrick*, an individual with a history of severe mental health problems attempted to take some real estate office employees hostage. As police arrived on the scene, gunfire was exchanged, and a police officer was killed. Fitzpatrick was convicted of murder, and during the penalty phase the jury recommended that Fitzpatrick be sentenced to death. This recommendation was followed by the trial court.

On appeal, several issues were raised, but this Court principally considered whether Fitzpatrick's death sentence was proportional. This Court relied on the uncontroverted testimony of several medical experts who found that Fitzpatrick suffered from severe mental disturbance; he had a mental age between 9 and 12 years old; and he was schizophrenic. Moreover, in contrast to the overwhelming mitigation evidence presented related to his mental problems, neither the HAC nor CCP aggravators were found applicable. Consequently, this Court could not deem the facts of the case as amongst the most aggravated and least mitigated because, among other reasons, neither of the weightiest statutory aggravators were present.

As noted, this Court in *Fitzpatrick* was influenced by the *absence* of the HAC aggravator; alternatively, the circumstances

in the Offord case plainly indicate the applicability of this most serious aggravator. Therefore, for the purposes of proportionality review, *Fitzpatrick* provides little basis for reliance.

(f) Nibert v. State, 574 So. 2d 1059 (Fla. 1990)

Nibert v. State, 574 So. 2d 1059 (Fla. 1990), upon which Offord relies, again simply does not advance his cause. In *Nibert*, the accused was charged in the brutal stabbing death of an acquaintance. Evidence was presented relating to Nibert's mentally and physically abusive childhood, and his lifelong alcohol problem. *No* evidence was presented by the State to refute Nibert's mitigation evidence. The jury recommended Nibert be sentenced to death by a vote of 7 to 5. The trial court followed this recommendation, finding only the HAC aggravator relevant.

On appeal this Court considered an array of mitigating evidence that was presented. Of note, the Court considered the fact that it was uncontroverted that *on the day of the murder*, Nibert had been drinking very heavily; in fact, evidence indicated that Nibert was drinking as he was attacking the victim. The foregoing was found persuasive because in similar circumstances, this Court acknowledged, when an individual is

under the influence of intoxicants *at the time of the murder*, this factual circumstance strongly supports two statutory mitigators: "(1)extreme mental or emotional disturbance and (2) substantial impairment of a defendant's capacity to control his behavior." Id. at 1063 (citations omitted). Thus, given the extensive evidence presented which suggested that Nibert was severely impaired by alcohol on the night of the murder, Nibert's death sentence was deemed disproportionate.

Again, given the dissimilarities between the facts presented in the *Nibert* case, and those found in the instant case, it is quite a leap to suggest that any guidance can be drawn from *Nibert*. Principally, Nibert's intoxication played substantive role in this Court proportionality review. In the instant case, nothing suggests Offord was intoxicated. Moreover, the evidence in Offord's case certainly is disputable as to whether he was experiencing any mental problems at the time of the murder to such an extent as to have compromised his capacity to control his conduct. The facts suggest that he had been thinking about killing Noser for sometime. And note, according to Offord's *Spencer* hearing testimony, Noser's murder was precipitated by the fact that Offord grew agitated with her repeatedly imploring him to return to bed. His capacity to

control himself was certainly not overwhelmed, and *Nibert, supra,* has no applicability.

(g) Hawk v. State, 718 So. 2d 159 (Fla. 1998)

Finally, in *Hawk v. State*, 718 So. 2d 159 (Fla. 1998), the appellant, who was deaf, was convicted for the murder of one individual, and the attempted murder of another. During the penalty phase evidence was brought forth detailing that Hawk was stricken by meningitis when he was three years old, which eventually resulted in his deafness; moreover, he had been physically abused by his father; and evidence suggested that he had been abusing drugs and alcohol since his was sixteen (Hawk was nineteen at the time of the murders). The jury recommended that Hawk be sentenced to death. During the sentencing hearing, additional evidence was brought forth drawing a causal nexus between *Hawk's* childhood meningitis and his subsequent mental illness/brain damage. The trial court sentenced Hawk to death as to the murder conviction, and sentenced him to a thirty year term as to the attempted murder conviction.

In reducing his death sentence to life, this Court looked to the uncontroverted medical expert testimony which explained at length the nature of Hawk's mental infirmities, and *directly* related these problems to his childhood meningitis. Added to

this, this Court implicitly noted that Hawk's youth was a consideration in its determination to reduce his sentence. See id. at 164 n. 12 (comparing Hawk's case to analogous cases wherein the Court had vacated a death sentence on the basis that the accused had presented substantial mental mitigation evidence, as well as -- in three of the four cases cited –- making note of the accused's youth at the time of crime).

It is noteworthy that in *Hawk,* evidence was presented during his trial indicating that he had consumed drugs and alcohol before the murders and had informed authorities that he had absolutely no recollection of his actions. In Offord's case, his detailed confession to Detective Cherry belies any assertion that drugs, alcohol, or mental instability compromised his ability recollect the events of July 31, 2004. Second, whereas *Hawk's* age served as mitigation evidence, the same is not true in the instant case -- as Offord was almost thirty years old when he murdered Noser. Third, Offord was not intoxicated; while Hawk had consumed so much alcohol he could no remember what he had done. Fourth, it cannot be said, unlike in Hawk's case, that the mental mitigation evidence presented during Offord's penalty phase hearing was uncontroverted. To the contrary, while evidence was propounded that Offord suffered

from a spate of mental illnesses, there was conflicting evidence presented as to whether Offord's mental problems were the catalyst for the murder of Noser. Consequently, *Hawk* fails to support Offord's general averment that his death sentence is improper.

3. Summation of Proportionality Review

The State respectfully believes this Court's precedent establishes beyond peradventure that a capital felon's history of mental illness does not presumptively invalidate his death sentence -- especially when the HAC aggravator is deemed applicable. Consequently, the cases which Offord relies upon in support of his averment that his death sentence is disproportionate are inapposite. Offord's most supportive cases are entirely distinguishable, because in almost every instance, the accused, *at the time of the murder*, was either: (1) a youth; (2) intoxicated by drugs or alcohol; or (3) enveloped in the throes of mental illness which unquestionably caused the murder. *See, e.g.*, *Robertson, supra* (nineteen at the time of the crime and under the influence of drugs and alcohol); *Kramer, supra* (intoxicated at the time of the murder); *Nibert, supra* (heavily intoxicated at the time of the murder such that Nibert was actually drinking *as* he was killing the victim); *Hawk, supra*

(nineteen at the time of the crime; intoxicated to the extent Hawk apparently had no recollection of events; and an uncontroverted nexus drawn between childhood meningitis, subsequent brain damage, and resulting crime). In the remaining cases Offord relies upon, the HAC aggravator – one of the most serious statutory aggravators (and which was found in Offord's case) – was not deemed applicable. *E.g.*, *Larkins*, *supra* (HAC aggravator not found); *Deangelo, supra* (same); *Fitzpatrick, supra* (same).

Therefore, the State believes, again with all due respect, that the cases Offord avers to do not provide sufficiently analogous circumstances from which to draw upon; nor do these cases constitute binding authority that should not be deferred to by this Court its proportionality review. In turn, the cases supportive of the State's position – i.e., that Offord's sentence is cognizable – certainly represent the fact that a diagnosis of schizophrenia, or a long history of mental infirmities, does not automatically exclude a capital felon from being eligible for the death penalty.

CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm the trial court's imposition of a sentence of

death against Christopher Offord.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ANSWER BRIEF has been furnished by U.S. Mail to Nada M. Carey, 301 South Monroe Street, Leon County Courthouse, Suite 401, Tallahassee, FL 32301 this 17th day of August, 2006.

Ronald A. Lathan, Jr.
Attorney for the State of Florida

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New font 12 point.

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