

IN THE SUPREME COURT OF FLORIDA

WILLIAM FRANK DAVIS,

Appellant,

v.

Case No. SC06-1868

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

This brief will refer to Appellant as such, Defendant, or by proper name, e.g., "Davis." Appellee, the State of Florida, was the prosecution below; the brief will refer to Appellee as such, the prosecution, or the State. The following are examples of other references:

"III 470": p.470 of volume III of the 29-volume record on appeal certified by the Duval clerk's office on January 22, 2007; citation to the Supplemental Record will include the designation "Suppl";

"SE #14": State's Exhibit #14;

"IB 64": p.64 of the Initial Brief dated as served by U.S. Mail on January 8, 2008.

Unless the contrary is indicated, bold-typeface emphasis is supplied; cases cited in the text of this brief and not within quotations are underlined; other emphases are contained within the original quotations.

STATEMENT OF THE CASE AND FACTS

Pursuant to Fla.R.App.P. 9.210(c), the State includes a statement of the case and of the facts in its answer brief.

Case.

The indictment alleged that on or between August 20, 2003, and August 21, 2003, Davis murdered Loretta Ann Wren and Alice Jean Albin by "cutting, slashing or stabbing" each of them to death. (I 10) The two-count indictment was filed on October 2, 2003. (Index page I of IX) Extensive motion litigation and discovery ensued. (See I 14 to III 359)

On March 17, 2006, the defense filed a notice that it intended to rely upon the defense of insanity. (II 287-88)

The following summarizes subsequent key events in the case:

May 1, 2006 Jury selection began (VII 4);

May 4, 2006 Trial jury, sworn (XIV 1246); attorneys' opening statements, given (XIV 1258-80); evidentiary portion of the trial began (XIV 1281);

May 9, 2006 Davis testified in the guilt phase, (XVIII 2141-XIX 2246), and the defense presented no other evidence (See, e.g., XVIII 2133-35; XIX 2246-50);

May 9, 2006 For the guilt phase, defense counsel's first closing argument (XIX 2322-48), prosecutor's closing argument (XIX 2349-2409); and, defense counsel's second closing argument (XIX 2411-26);

May 10, 2006 Jury verdict of guilty as charged for both counts of the indictment, followed by polling of jury; the jury explicitly found Davis guilty under theories of premeditation as well as felony murder; (XX 2495-2500; III 404-407)

May 11, 2006 Penalty phase began (XX 2513);

Davis testified in the penalty phase (XXIII 3113-46), and additional evidence was presented (XX 2589 et seq.);

May 13, 2006 For the penalty phase, prosecutor's argument to the jury (XXIV 3244-89) and defense counsel's argument to the jury (XXIV 3290-3328);

May 13, 2006 Jury, by a vote of nine to three, recommended death as to each count, followed by polling of jury (XXIV 3353-58);

June 2, 2006 Spencer hearing and hearing on motion for new trial (XXVI); State and defense filed sentencing memoranda (Suppl I);

July 12, 2006 Judge ordered presentence investigation (XXVII), which the parties, on July 27 & 28, 2006, discussed with the trial judge (XXVIII);¹

¹ The State contemplated supplementing the record on appeal with the presentence investigation, but the trial judge found that it presented

August 15, 2006 Judge followed jury's 9-3 recommendations and sentenced Davis to death (XXIX; III 470 et seq.).

The trial judge rendered an 83-page sentencing order providing the reasoning for his findings. (See III 470-IV 552) For each victim, he found and weighed four aggravating circumstances: heinous, atrocious, and cruel (HAC), "given great weight" (III 488-92, 497-500); cold, calculated, and premeditated, "given great weight" (III 492-95, 500-503) [CCP, contested in ISSUE I, IB 64-80]; prior violent felony due to the other murder in this case, "great weight" (III 487, 496); and, committed during a burglary, "great weight" (III 487-88, 496-97).

The trial judge found three statutory mitigating circumstances: no significant criminal history, "little weight" (III 504-506); under the influence of extreme mental or emotional disturbance, "some weight" (III 506-IV 513); and, age, "some weight" (IV 519-20).

The trial judge rejected the statutory mitigator of substantial impairment of the ability to appreciate criminality or conform his conduct to the requirements of the law (IV 515-19)[the subject of ISSUE II], but he considered evidence of, found, and weighed various aspects of Davis' mental health, status, and impairment (See IV 528-35; 535; 535-36, 536, 536-40, 540-41, 541-43, 543, 548).

The trial judge also found and weighed several additional non-statutory mitigators, such as receiving an award for math while in the job corps,

nothing new. (See IV 549)

reliable employee, loved by his friends and family. (See IV 513-49)

The judge agreed with the jury's 9-3 recommendation of death sentences on each murder count and sentenced Davis accordingly. (IV 550-51)

Facts.

The murdered victims were Loretta Wren, age 16 and 111 pounds (XV 1565), and her mother (XIV 1282-83, 1288-89), Alice Albin, age 47 and 117 pounds (XV 1531-32, 1284).²

The victims' trailer was "[a]bout three streets over" (XIV 1291) or about 500 to 600 yards (XIV 1329-30) from the two-bedroom, one-bath trailer where Davis lived with James Armstrong and Armstrong's then-girlfriend, Heather Hurley, who was Davis' cousin (XIV 1302-1304, 1338).³ Davis occupied one of the bedrooms by himself. (XIV 1341)

For his use of the trailer as his home, Davis paid rent and a share of the utilities. (XIV 1304) Davis had a job at a car dealership, and he "kept his end of the [rental] deal financially." (XIV 1341) Armstrong and Hurley had keys to the trailer made for Davis, but the new keys "never wanted to work right," so when Davis needed a key, he "[u]sually borrowed Heather's [Hurley's] as long as she was with" Armstrong. (XIV 1305-1306) The trailers were in the Dearpointe mobile home park. (XIV 1301)

² When Davis was arrested on August 22, 2003, the report shows his weight at 210 pounds, a muscular build, and his age of 20, with a DOB of 10/7/1982. (I 1) Photographs of Davis were also introduced into evidence. (See, e.g., SE #13; XIV 1419, 1421-22)

³ Although the State will refer to this trailer as Armstrong's, Hurley's, or Davis', it actually was purchased by Kathy Guy, who was Hurley's mother. (XIV 1339-40)

Armstrong described the relative locations of his and the victims' trailers and how to traverse the 500 to 600 yards between the trailers:

It's a pretty good distance, we pretty much live at the front of the park and they were in the back *** [To get to the victims' trailer,] it's kind of little twist and turn, then you make a left to go down, I believe one lane and then make a right.

(XIV 1329-30)

Prior to August 20, 2003, Armstrong had an "idea" who lived in the victims' trailer. He knew that Amy Ware, when Davis had his relationship with her, lived there and knew that Ware's family lived there. (XIV 1345-46)

On August 21, 2003, Davis told Armstrong that the previous night he scuffled with someone at the victims' trailer, took a knife away from him, and suggested to Armstrong that they go down to check on the victims. In the events that followed, the murdered victims were found, the police were called, the murder scene was processed, witnesses were interviewed, an autopsy conducted, and Davis, interviewed and arrested. The State elaborates, beginning with a description of the murdered victims' injuries.

The medical examiner, Dr. Valerie Rao, testified concerning the injuries inflicted upon each of the victims. (VX 1525 et seq.)

Alice Albin was killed by "[s]harp force injuries." (XV 1531) There were 18 stab wounds in addition to other injuries on her body. (XV 1538) Dr. Rao elaborated on some of the wounds, using photographs: A wound "went through her mouth and cut the side of her tongue." (XV 1542) A cut that went from the "side of her face all the way behind ... her right ear" and hit bone (XV 1543) A glancing blow to the scalp on the right side of her forehead, which would have bled a lot. (XV 1546) A stab wound to the head

that "fractured the bone that's sitting right underneath ... which is the temporal bone." (XV 1547-48) Two stab wounds to the chest. (XV 1548, 1549-50) An incision wound⁴ to her right arm. (XV 1550) Her left arm had a "very long wound" and indicated "two right there," a puncture mark, and an abrasion. "[S]he has quite a few sharp force injuries on her left arm." (XV 1551) SE #80 showed a "slash, that's a pretty extensive wound." (XV 1551) There was bruising or abrasions in the areas of her left eye (XV 1542), her cheek (XV 1547), scalp (XV 1547), chest (XV 1548). Viewing Ms. Albin from the back, she had an abrasion and "two very deep extensive sharp force injuries on her arm"; they are "very deep wounds" that went into the muscle. (XV 1551-53)

There were defensive wounds on both of Ms. Albin's hands (XV 1553-54), but no defensive wounds on her legs (XV 1558). She had no visible trauma to her sexual organs. (XV 1558)

Alice Albin was alive during all of the stabbing, slashing, and cutting injuries to her, and she was aware of what was happening and in pain when they were inflicted. (XV 1550, 1557, 1562, 1562-63) The doctor could not specify the order of the injuries. None of the injuries was fatal alone. (XV 1556) Death would not have been instant. It was the "collection of all of the injuries from which she bled pretty severely, she aspirated blood into her lungs so that is the mechanism of death; that is how she died."

⁴ The medical examiner explained that an "incision wound" is not very deep. (XV 1550)

(XV 1557)

Loretta Wren, like Albin, she was killed by "[m]ultiple sharp force injury." (XV 1565) She had been stabbed or cut 16 times over various parts of her body. (XV 1566) She had cutting, stabbing, puncturing, or slashing wounds to her chest (XV 1569), left arm (XV 1569), back or left side of the chest (XV 1575). A stab wound to Ms. Wren's chest was about an inch deep. (XV 1570) SE #96 showed a "puncture mark." (XV 1569)

One stab wound entered Ms. Wren's left chest cavity, fractured her ninth rib, entered her left lung, causing the lung to collapse, and penetrated to the area next to her spine. (XV 1576) Another wound was lower and fractured the 10th rib and injured the left lung. (XV 1576-77)

Incise wounds were near her upper lip, which actually cut to the bone (XV 1566-67), on her arm (XV 1569, 1571, 1575), on her hip (XV 1571), and on the back of her neck (XV 1575-76). SE #99 showed

her right hand, you have incise wound here, you have an incise wound there, and you have a little puncture mark there, defense wounds. (XV 1572) Her left hand contained a puncture and an incise wound. A wound on that hand went "all through the web [between her index finger and her middle finger] coming onto the palm side." (See SE #101) And her little finger on that hand was injured. (XV 1572, 1573) The injuries to Ms. Wren's hands would have been "very painful." (XV 1572-73)

The medical examiner described injuries to Ms. Wren's legs:

Q State's Exhibit 103, what does that photograph show?

A These are her legs. And you can see this is her left and this is her right. She's got a stab wound that goes from above her left knee all the way up, she's got -- you'll see in the other photograph

which this streak goes up. This is all with a sharp weapon, she has one on the side, she has one on her right leg and one on her right thigh.

Q You mentioned another photograph, State's Exhibit 104, does that show that better than the last photograph?

A Yes. You're looking at the same injury but you're looking at the entire pattern, the crisscross. So you have one wound going up this way, you have another wound coming up this way, and one going across. So they're separate injuries, not one injury because if it was one injury you with have to look for a weapon that has configuration like that to give that you as one blow, but this is not.

Q ... this right here, State's Exhibit 104, that I'm pointing here, how does that relate to the other things that are on top?

A This is a very deep wound compared to the rest. The other is like a drag mark with the whatever sharp weapon. So here you have the fat that's exposed in the depth of that wound so this is a real deep wound compared to these other extensions.

Q State's Exhibit 105, what does that photograph show?

A Okay. This is showing her right leg. And here you have one sharp force injury, one sharp force injury. And that is the injury that goes down to her tibia which is the bone, the shin bone, so that's going down into the tibia, rather extensive.

(XV 1573-75) Looking at the back of her legs:

She has an incise wound that's going up the back of her leg and she has another incise wound on her legs, so she has two on her left leg.

(XV 1577. See also XV 1577-78)

State's Exhibit #97 showed an incise or slash wound. (XV 1570-71) Abrasions or bruises were on her neck (XV 1566, 1568), mandible area (abrasion and bruising, XV 1567-68), below her collar bone (very deep abrasions, XV 1569), hip (XV 1571), right leg beneath the knee (XV 1580), shin (Id.), back of the right thigh (Id.), and groin (Id.). Abrasions to Ms. Wren's neck could have been caused by grabbing her neck by the hand,

but it did not suggest that she was strangled. (XV 1568-69)

There was no evidence of trauma to Ms. Wren's sexual organs. (XV 1580)

The medical examiner summarized Ms. Wren's defensive wounds:

She had both on her hands and on her legs and she grabbed the knife pretty severely such that the cut went right through her web. So she has defensive on her hands and if she was laying on the ground, you know, she sustained the defensive injuries that could qualify for defensive injuries even on her lower extremities. So she was alive, she tried to war[d] the blows off.

(XV 1579) Her injuries were consistent with putting up a fight. (XV 1583)

Like her mother, none of the injuries alone was fatal to Loretta Wren. The doctor could not specify the order that the wounds were inflicted. Death would not have been instantaneous, and, although Loretta Wren was dying during one of the leg injuries, she was otherwise alive and aware what was happening when the injuries occurred. (XV 1578, 1579, 1583, 1584)

The State now elaborates on events leading up to and flowing out of the murders, details of the investigation, Davis' multiple false statements, and additional details adduced at the trial.

Amy Ware was the daughter of victim Alice Albin and the sister of victim Loretta Wren. (XIV 1288-89) In the summer of 2003 (XIV 1288, 1296), Davis met Amy Ware at the swimming pool and a relationship ensued. (XIV 1289, 1306) During the relationship, Ware was living in her mother's trailer, where her mother, Alice Albin, her sister, Loretta Wren, and her two-year-old nephew, "Aubrey," lived at the time and at the time of the murders. (XIV 1283-84, 1288-89) Davis knew the location of the trailer where Ware's mother and sister lived. (XIV 1290-91) Ware spent the night at Armstrong's trailer about once or twice, (XIV 1307), and Davis and Ware had

sex about three times (XIV 1289. See also XIV 1307). Davis told Ware that he loved her (XIV 1290). Davis thought the relationship was "serious." (XIV 1290) Although Ware viewed her relationship with Davis as "nothing real serious," (XIV 1289) Ware told Davis that she loved him too. (XIV 1290) About a few weeks (XIV 1296) up to perhaps a couple of months (XIV 1307) into the relationship, when Ware indicated that she was moving away to North Carolina, Davis "seemed upset" (XIV 1292). Armstrong characterized Davis' reaction as "bummed out that she was gone but nothing too extreme" (XIV 1308); Armstrong indicated that Davis seemed to get over it in about a week and he believed that soon afterwards Davis started seeing other young women or girls (XIV 1342). However, Davis was quiet and "essentially kept to himself." (XIV 1341. See also XIV 1344)

Armstrong testified that Davis is not retarded and "[h]e's not really a people person." (XIV 1358-59)

According to Armstrong, at "some point," Davis also had a "relationship" with Ware's mother, victim Alice Albin. (XIV 1327)

Ware did not observe any harsh words between Davis and her mother or sister and saw no sign of animosity between Davis and Ware or members of her family. (XIV 1296-97)

About a week after Ware moved (XIV 1295), Ware telephoned Davis; Davis "seemed distant and upset," Ware was surprised by his tone, and the conversation lasted only about "a minute or two" (XIV 1293).

On August 20, 2003, in the late afternoon, a relative of the victims telephoned them from Arizona, chit chatted, joked around with them, and

detected nothing unusual. (XIV 1283-86)

On August 20, 2003, at about 6 or 7pm, Davis' mother dropped him off at Armstrong's trailer (XIV 1309), where Davis lived (XIV 1302-1305). Davis seemed to be in a good mood and intervened in a verbal dispute between Armstrong and Hurley by trying to calm both sides down. Armstrong and Hurley made up that night and went to their bedroom. (XIV 1309-1310. See also XIV 1344) While in their bedroom watching TV with Hurley, Armstrong heard Davis leave and, about 15 minutes later, return to their trailer. (XIV 1311) Armstrong heard Davis "rustling around in the drawers silverware." Davis left the trailer again. Asked how long Davis was gone this second time, Armstrong "guess[ed]," "I really don't know. I'd say 15 minutes or so." (XIV 1311)

Upon Davis' return to the trailer that second time, Davis asked Armstrong if he could borrow Armstrong's flashlight; "he said he walked up to the store and lost some money along the way[;] he needed to go try to find it." Armstrong told Davis that he could take the flashlight, and Davis left. (XIV 1312)

While Davis was coming in and out of the trailer, Armstrong and Hurley were in their bedroom and Armstrong had only heard Davis, but when Davis came back in again after borrowing the flashlight, they had gotten up "to get something to drink" in the kitchen. (XIV 1312-13) Upon this last return at about 11pm to midnight (XIV 1315), they saw Davis for "[o]nly a split second" as Davis went about 15 feet from door-to-door. (XIV 1313, 1317) Armstrong explained:

Q You actually had left the bedroom area?

A Yes, sir.

Q Did you then observe that time the defendant?

A Yes. ... Only for a split second. ... It was only for a short time, he kind of made himself hard to see.

Q And tell us about that.

A Well he came in, he positioned the front door - his bedroom door, once you open the front door you're able to slide straight into his bedroom and that's kind of where he made a beeline for when he first walked in.

Then he come out wearing a towel and carrying a towel in his hand, went and took a shower. He came back by and went back to his room.

Q Now, before he came back out, that is, the defendant came back out with a towel after he had taken a shower, you mentioned you saw him, did you ... actually see his face or what part of his body did you see?

A Everything, his whole body. He just basically walked by me about three or four feet from me. The trailer is only so big.

Q Was it quickly or was it, you know, slow or how fast would you describe it?

A Maybe a little bit of a hurried pace, but he wasn't running or anything.

Q In terms of what you observed on him, the clothing, were you able to observe enough to be able to state whether he had any blood or anything on his clothing?

A No, sir.

Q When he came back out of the shower he did not have the clothes on that he had when he went in?

A He didn't have the clothes on when he went to the shower, he had already gone to his bedroom and gotten into a towel and then had the other towel in his hand.

(XIV 1313-14. See also XIV 1357) In response to Armstrong's question, Davis indicated that he found his money. (XIV 1315-16)

Next, because Hurley planned to go out with her father the next day, she approached Davis' bedroom door to ask Davis to return her "house key" (key to the trailer). As she approached Davis' bedroom door, Davis "slammed the door back in her face and she yelled for the key at that point." Davis "kind of just slung" the door open "just enough for his arm to come through," threw the key on the couch, and closed his bedroom door again. (XIV 1316) When Hurley noticed that two stuffed frogs were missing from her key chain, she told Davis that "she wanted her frogs back"; Davis then "threw the frogs on top of the TV and went back in his room." (XIV 1316-17)

For the little time when Armstrong saw Davis that night and during the communications from Davis that night, Armstrong observed no indications that Davis was intoxicated. (XIV 1318) Davis was not crying then. (XIV 1358)

Armstrong and Hurley never went into Davis' bedroom that night or early the next morning. (XIV 1317)

The next day, August 21, 2003, Hurley left with her family, and, at about 10 or 11am, Armstrong was putting on his shoes to leave when Davis, who was now crying (XIV 1328, 1344), told Armstrong a "story." Armstrong testified:

Q And tell us what happened when you came into contact with the defendant at that time?

A I was sitting down putting on my shoes, William walked out, sat down catty-corner to me on the adjacent couch. He had told me a story.

Q All right. Tell us exactly what you recall him saying, sir.

A He told me that he was down at the trailer in question, the place where it happened. He said he was down there the night before.

And that he was hanging out with the lady, and said that she had received a phone call, that it was from her ex-boyfriend or something along them lines. And somehow they had gotten into an argument over the phone and he told me that she said something about, you know, I got my new boyfriend or I've got my new man here or something like that, and somehow I guess the guy had gotten jealous and came to the trailer with supposedly a knife.

Q All right. Let me interrupt you a second. When you say you guess, I want you to relate exactly what the defendant told you.

A Okay. He said that her ex-boyfriend had come to the trailer with a knife. And that they had a scuffle and that he had taken the knife from the guy.

Q He being the defendant had taken the knife?

A William had taken the knife from the guy.

(XIV 1320-21. See also XIV 1343) Davis said that he "had a struggle with the guy with the knife trying to take it from him." (XIV 1328) Armstrong continued:

A And said, you know, that he took it [the knife] out, threw it wherever. He had a big slice across the inside of his hand. That's how he explained the cut.

Q Did he show you that cut?

A Yes, sir, he did.

Q What else did he tell you?

A He asked me to go down there and check on the girls. *** I knew there was only two -- two females and the baby, so I went down there and I checked on them.

(XIV 1320-21) That morning, Armstrong saw Davis with a towel on the same hand as the previous night. (XIV 1357-58) Davis described the "guy" who supposedly came to the victims' trailer with a knife the prior evening as kind of tall, long hair. (XIV 1327)

When Armstrong asked Davis why he did not call the police, Davis responded because he was "nervous, he didn't know what to do." (XIV 1328)

Davis went with Armstrong in Armstrong's truck to "check on the girls." No one inside responded when Armstrong beat very hard on the front door of the victims' trailer. Davis asked Armstrong to look through the window, and Armstrong walked away from the door instead. Armstrong did not want to look into the window of a trailer where women were living. Davis then looked through a window, excitedly stated "my God," ran down the steps, and told Armstrong to look. Armstrong looked through the window on the front door, saw the victims' bodies on the floor in the living room, and called 911. (XIV 1321-23, 1345, 1347-49, 1359) Armstrong told Davis to go back to their trailer, and Davis walked back home. (XIV 1324, 1349)

The police arrived at the murder scene early in the afternoon. (XIV 1324, 1350, 1400 et seq.) The responding officer, S.C. Crawford, looked through the victims' front door window and saw blood on the walls and a blanket on the floor with some hair coming out from underneath it. (XIV 1404) The officer found no open or unlocked doors or windows. (XIV 1405-1406) The fire department forced open the front door of the victims' trailer. The officer entered and observed "a lot of blood" in the kitchen, two dead bodies on the floor of the living room, with one of the bodies covered by a blanket, with the exception of an exposed foot, and there was a large amount of blood at the bodies. There also was blood on the door, "on the carpet as you walk in," and on a drawer. (XIV 1406-1410) A majority of blood spatter or cast off blood was concentrated in the kitchen area. (XV 1519)

After the police entered the victims' trailer, they heard movement and

noise in a back bedroom and found a small child lying on the floor there. (XIV 1410-11) The two victims and the small child were the only people inside the trailer when the officer entered. (XIV 1412-13)⁵

On the way back to his trailer to get his ID and get Davis, Armstrong encountered Davis, who was with his aunt (Kathy Guy) on the way to returning to the victims' trailer. (XIV 1325)

"They" (a female and two males, including Davis) got the attention of Officer Terrill Singletary, who was outside of the victims' trailer by that time. The female made the first verbal contact with Singletary. They approached the area of the crime-scene perimeter tape, and Singletary walked over towards them. (XIV 1417-18; XV 1433-34) Singletary noticed a "towel ... wrapped around his [Davis'] hand and on that towel was some blood." (XIV 1418-19. See also XV 1434) The towel covered a laceration injury to Davis' hand, depicted in SE #14. (XIV 1422) Davis said he has a cut on his hand. (XV 1434) Singletary noticed additional injuries, including on Davis' hand (SE #15), the back of Davis' hand (SE #16), Davis' forearm (SE #17), and lower leg (SE #18). (XIV 1422-23)

Davis indicated that he wanted to speak with Officer Singletary and started to talk about "a boyfriend at the trailer." Singletary stopped Davis and explained that "homicide detectives like to investigate their own cases," to which defense counsel interposed a sustained objection. (XIV

⁵ The police secured the crime scene, that is, the victims' trailer (XIV 1413, 1413-14, 1416-17; XV 1433) and took additional precautions to protect it (See, e.g., XV 1443).

1424-25. But see XV 1433 where defense counsel refers to Singletary mentioning homicide detectives several times) Davis was crying, and he did not cause Singletary any problems. (XV 1434)⁶

Officer Singletary having seen Davis' hand and Davis attempting to speak with Singletary, the police followed up with interviews of Davis.⁷ On August 21, 2003, beginning at about 4:45pm, Detectives Gary Stucki and Mark Romano Mirandized and interviewed Davis at the Police Memorial Building. (XVI 1658-65) Per police procedures at the time, they intended to conduct an oral interview, which would be incorporated in a homicide report, followed by a videotaped "recap." (XVI 1664-65)

Davis told the detectives that he worked at an auto sales shop on 103d street, completed the 10th grade, and originated from Baltimore, Maryland. He was 20 years old. (XVI 1666; XVI 1774-75) He provided the police the name and phone number of his mother. (XVI 1667)

They asked him if he had "any mental problems of any kind," and he said, "no." (XVI 1667)

When Detective Stucki asked Davis an open-ended question of what happened last night, Davis responded that he walked to the victims' trailer from his residence between 11pm and midnight on August 20, 2003. Davis

⁶ At the end of Singletary's testimony, at side-bar the prosecutor informed the judge that he intended to ask Singletary whether Davis ever expressed any concern about the child inside, expecting the officer to answer that "the defendant never even asked about the safety of the child," but the judge sustained the defense's objection. (XV 1435-36)

⁷ The police also interviewed Armstrong (XIV 1325-26), whom they separated from Davis (XIV 1351).

referred to the victims "as mother and daughter or sister." He knew them through his "ex-girlfriend" Amy who no longer lived there." (XVI 1668) Davis said that he met Amy two to four months ago, and Amy moved away. (XVI 1669)

The daughter answered the door and invited him in. "[T]hey sat around for awhile watching TV in the living room and talking" with the mother and daughter. (XVI 1668, 1669) After about an hour, the mother said that she needed to bathe a small child there, so he walked back to his trailer. (XVI 1669) Davis said he spent about 20 minutes at his trailer getting something to drink or eat then returned to the victims' trailer. (XVI 1669-70)

The daughter again invited Davis inside, they talked briefly in the living room, "then the mother asked him to come into her bedroom and he spent some time in there talking with the mother." (XVI 1671)

Davis said he talked with the mother for about an hour in the bedroom. (XVI 1671) When the detectives asked Davis what he and the mother talked about in the bedroom, Davis responded that they "were talking about his ex-girlfriend Amy." (XVI 1676-77)

While Davis was talking with the mother "about Amy, his ex-girlfriend, ... all of a sudden they heard screaming coming from the other part of the trailer." (XVI 1671)

He said he heard the daughter screaming. He said that he and the mother ran out of the bedroom and into the kitchen area where he observed a white male stabbing the daughter. *** [T]hey ran in there and ... the daughter kept repeating please Mr. Jordan.

(XVI 1672) "[T]he daughter kept repeating [']why.[']" (XVI 1677) The only thing Davis heard from the assailant⁸ was "grunting noises." (XVI 1677)

Davis said that he tried to help the daughter. The assailant, a white male in his late 30's (XVI 1672), had on yellow gloves and had a saute knife in one hand and a bread knife in the other hand. The saute knife broke. (XVI 1673-74) The assailant turned on him, "that's when he got stabbed in his right hand, said he then ran through the trailer with the suspect chasing him." (XVI 1672) Davis was in almost every room with the assailant. (XVI 1676) At one point, Davis wrestled with the assailant on the bed in the mother's bedroom. (XVI 1673) Davis saw the assailant stab the mother once. (XVI 1675)

Davis said he was "able to get some towels, fight with him, kicked him a few times [including in the groin], and eventually he was able to ... escape the trailer." (XVI 1673) "[W]hen he ran out of the house, the "white male was still in the house." (XVI 1676) The entire incident lasted "about a good 20 minutes." (XVI 1677-78) Davis ran back to his trailer and took a shower because he was hot. (XVI 1674)

Davis said that, when he returned to his residence, he did not tell anyone at his trailer what happened because the assailant "inside told him not to tell anybody because he knew where the defendant lived." (XVI 1675)

⁸ To distinguish the white-male attacker in Davis' first story to the police, the State generally refers to that attacker as the "assailant" although the detective's testimony regarding Davis' first statement to the police frequently refers to him as the "suspect."

Davis said he "didn't sleep all night." (XVI 1676)

Davis said that night he was "wearing a jersey, green shorts and ... sneakers ..." Davis said that the clothing was in his bedroom. (XVI 1675-76)

The detectives asked Davis "to go through his story again." Davis "started with the second time he went back to the trailer." He reiterated hearing the daughter screaming while he was in the mother's bedroom, but he added that after they ran out of the bedroom towards the daughter, "when he and the mother arrived at the kitchen the white male grabbed the mother," then the daughter also grabbed the white male assailant. At that point,

while in the process of helping him or the two victims, the white male stabbed him in the right hand. Said he was able to push himself away from the white male and took off running through the trailer and that's when the white male was chasing him around. *** [H]e initially ran to the bathroom, suspect was chasing behind him.

(XVI 1679) Davis said he grabbed some towels in the bathroom, and the assailant tried to stab him again. Davis then corrected his story by stating that he went in the "mother's bedroom prior to going in the bathroom" and "prior to going in the bathroom he actually went into the child's bedroom" and "after that I ran into the daughter's bedroom." (XVI 1679-80) He was in the daughter's bedroom "when he was able to kick the white male and he ran out the front door of the trailer." (XVI 1680)

Davis ran back to his trailer, told no one of the incident even though Armstrong and Hurley were "still up," took a shower, and cleaned off his shoes. When Davis finished with his story, it was about 5:40pm. (XVI 1681-82)

At about 6:20pm Detective Stucki told Davis that an attorney was in the

police building for him. The detective told Davis it was his decision, and Davis responded to tell the lawyer "to hit the fu----- road." (XVI 1685-86)

At 7:30pm, the detectives requested that Davis tell his story again, starting with the second time he went back to the victim's trailer, to make sure they had it all down correctly. (XVI 1686-87) Davis reiterated that he watched TV awhile with the daughter, then he went to the mother's bedroom and talked with her about Amy. (XVI 1687) He said when he and the mother ran into the kitchen, he observed the assailant "stabbing the daughter by the kitchen counter" and the daughter "f[e]ll to the ground." He saw the assailant stab the daughter three times. The daughter was stabbed with a saute knife with a black handle. The assailant then stabbed the mother twice in the stomach with the same knife. The assailant had two knives and cut his (Davis') hand, breaking the knife. (XVI 1688-89) Davis then ran into the mother's bedroom and covered the assailant with the covers from the bed, then ran to the child's bedroom. (XVI 1689-90) Davis saw the child there and closed the door. Davis ran to the bathroom, and the assailant "came in the bathroom behind him" and stabbed him in the left hand with a bread knife. Davis then protected himself by grabbing some towels, kicked the assailant in the groin, causing the assailant to fall down. (XVI 1690-91) Davis then went into the daughter's bedroom, where he and the assailant "struggled on the ... floor" for about five minutes. (XVI 1691) At that point, he thought that one of the gloves that the assailant was wearing "snapped" off. Davis ran out of the front door and straight home while the assailant was probably still in the daughter's bedroom. (XVI 1691-92) He

said that "Jimmy [Armstrong] and Heather [Hurley] were still up watching TV at the time, and he showered. (XVI 1692)

The detective asked Davis if he touched the knives, and he said he "touched both of them" when the assailant was stabbing him. (XVI 1693)

The detective asked why he went the victims' trailer, and Davis said that "he had seen the daughter earlier in the day, she drove by in a car, she was by herself and she ... asked him to come by." He left and came back because the mother was bathing the child during that time. (XVI 1693-94)

Davis denied having any relationship with either the mother (Ms. Albin) or the daughter (Ms. Wren). (XVI 1694)

Davis said that before that night, he had last been in the victims' trailer "shortly after Amy had moved away." He said he had dated Amy for about "a month and a half." (XVI 1694, 1695)

At this point, the detective asked Davis to describe the assailant, and Davis

described him as a tan male that was wearing black shoes, blue jeans and a red hat. Said he thought the white male was in his late 30s and he had short hair.

(XVI 1695)

Davis said he did not see the assailant touch anything in the victims' trailer. (XVI 1695)

The detective, having already interviewed Armstrong, then asked Davis why he needed a flashlight, and Davis paused and then said that "he had dropped \$5 ... walking to his house." He said he never found the \$5. (XVI 1696) The detective then confronted Davis with his statement to Armstrong

that he did find his money by the store and asked Davis why he did not call the police, to which Davis responded, "everybody is different." (XVI 1696)

At this point, Detective Stucki told Davis that he did not think Davis was telling the truth. He asked Davis if he thought we would find any of his DNA on any of the knives in the victims' trailer, and Davis responded "I told you I touched the knife, I touched the handles." Stucki asked Davis how he could touch the handles of the knife if the assailant was holding them in his hands; Davis did not respond. (XVI 1697)

Stucki then asked Davis again why he did not call the police, to which Davis responded that he "was in shock." (XVI 1697) The detective told Davis that his story was not credible, and Davis responded, "let God judge it." (XVI 1698)

Stucki asked what really happened, and Davis said "I was stabbed, I bled everywhere." (XVI 1698) Stucki again asked why he did not call the police, and Davis responded that he should have. (XVI 1698) Detective Stucki said all he wanted was the truth and that his story did not match the evidence, and Davis indicated that he has said over and over what happened. (XVI 1699) Stucki told Davis that it looks like you killed those two women and you are trying to hide it. The detective asked whether Davis is saying that he fought someone with two knives for 20 minutes and got stabbed only twice, and Davis said, "Yes." Stucki asked Davis why he went home when Armstrong was calling the police, and Davis responded, "I do stupid stuff." (XVI 1699-1700)

The detectives then told Davis that his story is not believable, and

Davis looked at Detective Romano and asked, "do you think I'm lying too?," and Romano responded, "absolutely." (XVI 1701, 1822. See also XVI 1805-1806)

Stucki told Davis to tell the truth, and Davis said, "Just give me a recorder." About a minute later Stucki brought in a tape recorder and turned it on. (XVI 1701-1702) While Stucki retrieved the tape recorder, Detective Meacham, unknown at the time to Stucki, started recording the interview on a VCR tape through a hidden camera. The audio and video tapes were introduced into evidence as SE #120 and #121, respectively, (XVI 1703-1707; XVI 1827-XVII 1835) and they are included among the evidence transmitted to this Court.

The videotape (SE #121) was played for the jury, and the court reporter recorded the words in the audio, noting some inaudibles. (XVI 1710-22)

Davis said he was "sorry" he "lied." (XVI 1712) Among the things he said at this juncture are the following: "it's like a different me with a knife." "I watch people have everything they wanted in their life when they died." "I really couldn't tell you why I did it. I'm sorry for it." "People that knew me ... would never thought maybe I did it cause I wanted to die." "I know what I did was wrong." "I actually didn't even cry about it until we started before recording this tape. It's just different when you have everything you want." "It's weird cause I would think crazy ... think ... just cause it's raining outside something is going to happen to the world or something, I don't know why." (XVI 1713) He continued:

Think about it. We have a war every couple centuries. I think evil isn't going to stop, that's not to say it's not an excuse for what I

did. I know people think I've probably got to be a monster to do this, but I ain't no monster. You know, don't really think about God said thou shall not kill but yet we go across seas and kill for wars, (inaudible) think that. They kill, they going to hell for it. Cause they're trying to feed their family. I know I don't want to die. Just some[]times I feel like I wanted to die. That's not an excuse for killing them. I know I made a lot of people sad in this world. I mean, what I did a couple days ago. (Inaudible) how they are going to feel like.

I wasn't high when I did it. That's the real shock. If I was high then (inaudible). It's like real (inaudible) I'm sorry for what I did. Some people see me and I wasn't crying or whatever. It's like I never thought I could actually did, some[]times (inaudible) thinking about it. I had in my mind that I didn't do it. I had to look at my hand, I knew I did it. I knew I was going to get caught. It just took a while for it to come up. Not used to telling somebody you murdered somebody. Sorry I did it.

Some people say will he do it again? No, I wouldn't do it again. I probably would never get that chance to (inaudible) probably never get another chance. I might die for what I did.

*** I know I fucked up. But then I just kept going thinking I'd get away with it. I knew damn well I wouldn't get away with it.

*** I thought the son of God (inaudible) would guide me in the right direction, but I guess I didn't get saved that day. I even told my ... cousins it's not thinking about being saved, acting like you're saved, knowing you're saved. I know I'm saved. (Inaudible) God Bible says thou shall not kill and I did it.

(XVI 1714-16)

Davis acknowledged that he knew the people whom he killed. And then following exchange occurred:

THE DETECTIVE: This is the mother and little sister of a girlfriend you knew by the name of Amy, right?

THE DEFENDANT: Yes, sir.

THE DETECTIVE: This happened in the same trailer park that you live in?

THE DEFENDANT: Yes, sir.

THE DETECTIVE: Anything else you want to add?

THE DEFENDANT: Just want to kind of -- I was real mad cause I ain't really did fall in love, you know what I'm saying. Just fucked up. I never thought I would fall in love, you know what I'm saying. I guess now (inaudible) how I felt. Just fucked up (inaudible) but I am sorry. And (inaudible) just keep it to yourself. (Inaudible).

(XVI 1717-18). On redirect examination, the prosecutor asked Stucki if he recalled Davis saying "sort of, kind of, I was just real mad because I never really fall out of love, ... I never thought I'd fall in love," to which Stucki responded, "yes." The detective believed that Davis was referring to his ex-girlfriend, Amy. (XVI 1807, 1808) On recross, Stucki said that he assumed that Davis was talking about Amy (XVI 1815), but on further redirect Stucki acknowledged that three or four questions before that, he asked Davis about the mother and sister of a girlfriend by the name of Amy (XVI 1816).

Apparently in one of the court-reported "inaudibles" towards the end of SE #121, Davis asked about whether he will get the death penalty. (See XVI 1722-23)

The detectives then did a "recap" interview of Davis. The purpose of a "recap" was to "get a video recorded statement." (XVI 1727) (As noted above, Stucki and Romano did not realize that Meacham had videoed the interview described in the foregoing paragraphs and introduced into evidence as SE #121.) The video of the recap interview was introduced as SE #122, played for the jury, and included in the record on appeal. (XVI 1728)

et seq.)

In the recap interview, when asked for a reason why he killed the victims, he said, "I just did it." (XVI 1731) The interview continued:

THE DETECTIVE: Let me ask you this, when you walked over, when you went over there did you go over there to do it? You said earlier that you had been thinking about it, yeah, you did?

THE DEFENDANT: I don't know where it came from.

THE DETECTIVE: How long had you been thinking about it?

THE DEFENDANT: That's the point I just up and did (inaudible) no thinking about it.

THE DETECTIVE: Well, you said on the tape, I mean, were you -- when you went back to the house is that when you were thinking about it after being over there that first time or were you even over there the first time?

THE DEFENDANT: I was only there once.

(XVI 1731) A little later in the recap interview, the detective asked about Davis' thinking when he was "going over there to her," and Davis responded:

(Inaudible) that's the hard to explain part. When I went over there (inaudible) think I was going to do. It was like I wanted (inaudible) think I wanted to because I did it but, I mean, you start something like that you know something you have stopped, I mean.

(XVI 1733) Yet a little later in the recap interview, Davis acknowledged that that he was at his house when he "decided to do this" and then said that when he walked over there he "didn't know if [he] was going to do it."

(XVI 1742)

The detective asked "What type of weapons did you take with you?," and the interview continued:

THE DEFENDANT: One knife.

THE DETECTIVE: One knife, which knife did you take?

THE DEFENDANT: (Inaudible).

THE DETECTIVE: What did that knife look like?

THE DEFENDANT: Saute knife.

(XVI 1732) Davis described the handle of the knife that he brought to the victims' trailer as black. (XVI 1733. See also XVI 1809-1810)

Davis said he knocked on the door and the daughter answered. She said, "hi Will," and Davis asked about her sister (Amy Ware). He said he had the knife where he could reach it, and continued: "I guess you could say, not like where she could see it." (XVI 1734. See also XVI 1794-95, 1810) At that point, after asking Wren "a couple of questions," he "just went in there and just did it." (XVI 1734)

The detective clarified his understanding of the situation at the door and continued the interview:

THE DETECTIVE: Just kind of barged in. Who did you stab first?

THE DEFENDANT: The daughter.

THE DETECTIVE: Where were you at when you first stabbed her?

THE DEFENDANT: The doorway.

THE DETECTIVE: Right there by the front door. Did you chase her around anywhere, did she try and run?

THE DEFENDANT: Went to the kitchen.

THE DETECTIVE: When she went into the kitchen did you chase her in there?

THE DEFENDANT: Yeah.

THE DETECTIVE: Where was her -- had you seen her mom up to this point?

THE DEFENDANT: Mom was -- came in there, her mom just came around the corner (inaudible) I can't remember if she said anything or not.

THE DETECTIVE: How many times -- and like I said, I know this is tough, man, re-living this, how many times do you think you stabbed the girl?

THE DEFENDANT: Too many times.

THE DETECTIVE: How many?

THE DEFENDANT: Too many.

THE DETECTIVE: Do you remember where you stabbed her?

THE DEFENDANT: I just (inaudible).

THE DETECTIVE: Like I said, I know this is tough, man, did she -- did she -- was she saying anything while this was going on, the girl, what was she saying to you?

THE DEFENDANT: She kept asking me why.

THE DETECTIVE: When you were stabbing her was she on the floor?

THE DEFENDANT: Yeah.

THE DETECTIVE: And I guess the mother came in at some point into the kitchen.

THE DEFENDANT: Yes.

THE DETECTIVE: What happened when she come in?

THE DEFENDANT: I just went to her next.

THE DETECTIVE: And started stabbing her? Were you still using that knife that you brought there?

THE DEFENDANT: It had broke.

THE DETECTIVE: When did that knife break?

THE DEFENDANT: One time I had it stabbing the daughter and it broke and it stabbed me.

THE DETECTIVE: It broke while you were stabbing her and that's when you cut yourself, is that the big cut there when you did that? So what did you stab the mother with?

THE DEFENDANT: (Inaudible) process of stabbing her I can't remember if I looked -- I can't remember -- I can't remember how -- how the drawer came down or what, it just came down and (inaudible) another one.

THE DETECTIVE: What did that knife look like?

THE DEFENDANT: It was one before that like a (inaudible) knife stab with it.

(XVI 1735-37. See also XVI 1810-12)

Davis said that he used the saute knife on the daughter and "I think the bread knife I used on the mom, the thing went all the way through her."

(XVI 1738) Like the daughter, he said he stabbed the mother "too many times." The mother did not say anything and fell down "by the doorway facing the kitchen." (XVI 1738) After stabbing the mother, Davis said he did not stab the daughter any more. (XVI 1739)

Davis walked around the "side" because he "was all bloody." He tried to wash his hands in the bathroom and tried to clean up the kitchen floor with towels. (XVI 1739) He moved the mother and daughter back in the living room and "covered them up." (XVI 1739-40. See also XVI 1813)

Davis looked in the baby's bedroom and saw that he might be sleeping and "shut the door back." (XVI 1742) Davis said that if he had known that the child was there, "if I remember I probably wouldn't have did it." (XVI 1741) After about 15 minutes, Davis left the victims' trailer, locking the front door behind him, and he walked back to his house. (XVI 1740-41; XVI 1814)

When asked why he needed the flashlight, this time Davis responded: "To see if I had a trail of blood coming back to the house." (XVI 1740) He elaborated:

I just wanted to see if there was any blood in the driveway or in the doorway or down the street and I didn't see any.

(XVI 1741. See also XVI 1814)

Stucki asked Davis if he is crazy:

THE DETECTIVE: But you were thinking about it? You're not crazy in the head, are you? I mean, I know -- I know that's after saying that early this morning, you know, but --

THE DEFENDANT: I wasn't.

THE DETECTIVE: Before you walked over there this morning ain't nobody ever said Will Davis was crazy, did they? You didn't think you were crazy, did you?

THE DEFENDANT: Until I did what I did.

(XVI 1742-43) Davis said he was not drunk, but "that's why I'm crazy" and a little later said, "(inaudible) sick." (XVI 1743) Davis denied being treated for any medical problems. (XVI 1743)

Davis buried the knives at the corner of "the house under the tires." (XVI 1740) He said he buried two broken knives there. (XVI 1745) He said that he wore Reebok shoes, which he put "with the clothing I was wearing" in the woods near his house. He said that the clothes and shoes could be located by taking a right at 103d, going until there is a "big cut," which "might be the second cut." They should be over near some palm trees that can be seen "in the distance." (XVI 1744-45)

About 15 minutes after completing the recap interview (Compare XVI 1743 with XVI 1746), the detectives resumed interviewing Davis because in the interim Detective Barker had told them "some things about the scene." They wanted to clarify the location of the clothing and knives. This follow-up interview was not videotaped. Like the first interview, Stucki asked questions while Romano took notes. (XVI 1746, 1820, 1822-23) Detective Stucki testified:

Q All right. Tell us what you asked and how he answered?

A We went back to talking about the incident again, asked him since he said he went over there only the one time in the second statement, asked him what time he went over there, he said it was between midnight and 1:00 o'clock in the morning.

I again asked him if he tried to clean up inside the victim's trailer. The defendant told us that he actually wore extra clothing with him cause he knew he was going to get his clothes bloody, and he wanted to be able to change inside the victim's apartment or trailer. He said he actually took a bag with him to put the bloody clothing in.

Q What next did you ask him and what did he say?

A Asked him about the knife again that he took over there, he said he took the one knife. Then we started talking about the knives, where were they buried once he returned back to his trailer. He again said they were buried under some tires behind his trailer. He said -- we asked him about the clothing again, he said he had put the clothing in a bag and initially sat it behind the trailer. He went inside his trailer, took a shower. After taking the shower is when he went back outside, got the clothes and walked around the front of the trailer park and hid the clothes in the woods.

Q Now in terms of the clothes, are those the bloody clothes he was wearing at the time of the murders?

A That was my understanding, yes.

Q What did he say then, sir?

A He told us where the clothes were. Said that the clothes were inside a little bag and that was inside -- the clothes were in a trash bag that was inside a little hand bag.

Asked him how long it took him to move the clothes from behind his trailer to the woods and get back to his trailer, he said it took about 20 minutes.

Q Did he specify exactly where the clothes were?

A Yeah, he told us -- told us on tape when -- when we clarified he pretty much gave us specific directions to where we were able to find it.

Q All right. What happened next in terms of your interview with him?

A Went back to why, why this happened, asked him why he killed the victims. He said that he was not mad at them.

I asked him if it had anything to do with his relationship with Amy, the victim's daughter and sister, he said it didn't have anything to do with that.

I asked him why then. The defendant replied it's like a force, I can't explain it. Then he immediately followed up with I knew them.

I asked the defendant if he just wanted to kill somebody that he knew. The defendant stated you wouldn't understand. I said try me. The defendant said it was just something he wanted to do.

I then asked him about the force, I said, but this force, you said it was like a force, is that like somebody talking to you? And the defendant replied, no, I'm not crazy, it was just something I was thinking about doing, you wouldn't understand.

Then my partner, Detective Romano, asked him if anybody was with him when this happened. He said he was by himself.

We asked him if he had told anybody other than me and my partner about what happened. And he said, no, that he had only told his roommate Jimmy earlier in the day that he was there when the incident happened.

(XVI 1746-49. See also XVI 1788-89)

On cross-examination, Stucki said that Davis "teared up some." (XVI 1783) Stucki acknowledged that Davis said that he made a lot of people sad by what he had done. (XVI 1784) He said he felt like God had left his body. (XVI 1787) Davis said that "this" did not have anything to do with the break-up with Amy Ware and that he had no animosity toward the victims. (XVI 1798) On redirect, Stucki said that in the first interview Davis did not mention being possessed or mention being crazy. (XVI 1802) Davis denied committing the murders for the first two hours of the interviews at the police building. (XVI 1803) During the second interview, which lasted about two hours, Davis did not mention a demon making him kill the victims. (XVI 1805)

The State now summarizes the crime scene and evidence found there,

Davis' trailer, and Davis' bloody clothing and knives found where Davis indicated to the police.

Detective William Barker described the victims' trailer:

Q Could you describe the crime scene when you arrived just briefly?

A Yes, sir. It was a bloody crime scene. In the access to the trailer through the front door leads into the kitchen. There was blood on the kitchen floor, looked like apparently blood where somebody --

MS. HANANIA: Objection, Your Honor, on speculation.

THE COURT: Don't speculate, sustained.

THE WITNESS: There was a bloody towel on the kitchen floor. There was blood in the kitchen sink, there was a bunch of utensils and knives in the kitchen sink, there was a broken meat cleaver blade on the kitchen floor, broken glass, coffee pot lid.

Moving into the living room the victim closest to the kitchen is going to be Alice [Albin], she was covered with a comforter, a blanket and a sheet.

(XVI 1845) Loretta Wren was face down, and the blanket covered Alice Albin, who was face up. (XVII 1853-54. See SE #10; XVII 1848) The material covering Albin matched materials from Albin's master bedroom. (XVII 1854)

The TV was on, with low volume, the overhead light was on in Loretta Wren's bedroom, and there was a nightlight on in baby Aubrey's bedroom. The common bathroom's light was on, and "in the kitchen the light and the hood fan" were on. (XVII 1856)

Several photographs of the crime scene were introduced and used by witnesses in their testimonies. (See, e.g., SE #10 through SE #12, SE #19 through SE #54; XIV 1407-1413; XV 1444-68) In addition to showing the victims (E.g., XV 1450-51), photographs inside the victims' trailer showed, for example:

The blanket or comforter that was covering one of the victims (SE #29; XV 1454-55);

Blood on the carpet at two different areas, which were collected as evidence (SE #23, #27; XV 1451-52, 1454);

Blood spatter on the front door (SE #33; XV 1455-56);

Blood spatter and blood wipes in the kitchen (SE #41; XV 1463; XVII 1864);

A broken kitchen drawer (SE #25; XV 1453; XVII 1858);

A knife blade recovered in the living room, which had been under the comforter or blanket (SE #10, #24, #29; XV 1448-49, 1452-54);

The kitchen floor with a bloody towel (SE #34, #35; XV 1456, 1460);⁹

On the kitchen floor, a meat cleaver-like blade (SE #41, #42; XV 1463, 1487);

The kitchen sink, which contained "a broken knife, blade and handle" (SE #37, #38, #39; XV 1461-63, 1488);

The kitchen, including "an area where one of the kitchen drawers had been removed" (SE #52; XV 1467);

Shoe prints made with blood (SE #50; XV 1466).

On cross-examination, the evidence technician pointed to a television, computer, purse, and camera in the victims' trailer that were not stolen. (XV 1517-18) He said that Loretta Wren's bedroom did not appear to be "tossed." (XV 1520-21)

Items recovered as evidence from the victims' trailer included the following:

A knife blade that was with the comforter covering Alice Albin (SE #55; XV 1468, 1470, 1472);

⁹ The evidence technician indicated that SE #34 showed the kitchen floor where "it appeared to be somebody was trying to clean up," which drew a sustained objection. (XV 1456)

Knife handle with a broken blade recovered from the victims' kitchen sink (SE #56; XV 1469, 1470, 1472-73; XVII 1936);

Meat cleaver or knife blade from the victims' kitchen floor (SE #57; XV 1469, 1470, 1524. See also SE #41 & #42 photos discussed at XV 1463);

Broken knife handle from kitchen sink (SE #58; XV 1470-71, 1473);

Pieces of the kitchen drawer and related items (SE #59, composite; XV 1473-76).

(See also additional exhibits discussed at XV 1476 et seq.) The evidence technician used a diagram to show the layout of the victims' trailer and various items of evidence. (See SE #70; XV 1484 et seq.)

Unsuccessful attempts were made to find Davis' latent fingerprints on various objects. (See XV 1490-91; XV 1596-1607; XVI 1646-56)

The meat cleaver blade found on the victims' kitchen floor contained blood with Davis' DNA. (SE #57; XVII 1996-99, 2048)

A light switch from the kitchen in the victims' trailer contained blood matching Davis' DNA. (SE #61, FDLE #24, XV 1481-82; XVIII 2079, 2096-97)

The victims' DNA was found on various other bloody items from their trailer. (See, e.g., SE #55, XVIII 2095-96, 2101-2102; #56, XV 1452-56, 1469, 1470, 1473-74, XVII 1931, 1999, 2016-17)

Armstrong consented to the police searching his yard and his trailer when he was there. Davis consented to searching his bedroom. (XIV 1329; XVI 1749-50)

The police found part of a broken knife (SE #159; XVII 1936, 2004-2005, 2007) in a pocket of khaki shorts (SE #152; XVII 1882, 1889-90, 1892, 1916, 1918) found in a bedroom of Davis' trailer. There was a blood stain on the shorts, which contained DNA matching Davis. (XVII 1916, 2006-2007, 2018;

XVIII 2049-50)

The knife-part (SE #159) from the Khaki shorts was once part of the same knife as the handle with a partial blade that police recovered from the victim's sink (SE #56). (XVII 1936-38) It took an undetermined amount of force to break that knife. (XVII 1939)

The knife-part (SE #159) from the Khaki shorts contained blood matching victim Loretta Wren's DNA (XVII 2007-2008; XVIII 2052), and the handle with a partial blade that police recovered from the victims' sink (SE #56) contained blood matching Alice Albin's DNA (XVII 1995, 2047. Compare XVII 2016-17 with XVII 1931-32, 1936).

A blood-spotted white T-shirt (SE #154) was found in Davis' trailer near the khaki shorts. (XVII 1889-90, 1892, 1919) The blood on the T-shirt (SE #154) contained Davis' DNA. (XVII 2001, 2049)

The police found Davis' bagged bloody jeans and Reebok shoes and the knives Davis buried under tires where Davis had indicated. (See XVII 1841, 1842, 1880-92 where exhibits described & numbered, 1905 et seq.)

The tread, size, shape and manufacturer logo of the shoes (SE #151; XVII 1888, 1893) recovered from the bag Davis hid in the woods identically matched the bloody shoe prints photographed in the kitchen of the victims' trailer (SE #69; XV 1482-83, 1484). The recovered shoes "could have made the impressions found at the crime scene." (XVII 1955-60) This particular model shoe was not one of Reebok's more popular models. (XVII 1961)

The bloody blue jeans (SE #150) contain victim Alice Albin's DNA. (XVII 2003-2004, 2018, 2048)

The DNA matches were generally at magnitudes of one in trillions or better, that is, the probability of the DNA coming from someone else was generally one in trillions or less. For example, regarding Ms. Albin's blood stains on Davis' blue jeans SE #150, FDLE #38) recovered in the bag that Davis brought to the victims' trailer and then hid in the woods:

Based upon the results of 13 STR loci the frequency of occurrence for the profile obtained from exhibit 38 for unrelated individuals found in the population is approximately again **white including Caucasian one in 920 trillion**; blacks, one in 35 quadrillion; Southeastern Hispanic, one in three quadrillion.

(XVIII 2048)

Another example is the blood matching victim Loretta Wren's DNA on the knife blade (SE #159; FDLE #39) found in the Khaki shorts from the bedroom in Davis' trailer:

[B]ased upon the results of the 13 STR loci from frequency of occurrence of the major DNA profile obtained from exhibit 39 A for unrelated individuals in the following population is approximately **white including Caucasian, one in 99 quadrillion**; black including African American, one in 2 quintillion; and Southeastern Hispanic, one in 30 quadrillion.

(XVIII 2051-52).

Yet another example is the handle with a partial blade that police recovered from the victims' sink (SE #56, FDLE #29) and that was formerly part of the same knife as the blade found in the khaki shorts. The handle with partial blade contained blood matching Alice Albin's DNA at "**one in 920 trillion**" odds. (XVIII 2047)

Davis' DNA was identified in the blood stain on the khaki shorts (SE #152, FDLE #39) at odds of "**one in two quintillion**" for blacks, including African American, and about **one in 99 quadrillion** for whites, including

Caucasians. (XVIII 2049-50)

Still another example is a blood sample recovered from the victims' trailer, which was identified as Davis' DNA with a frequency of **one in 43 quadrillion** African Americans and about **one in 15 quadrillion** Caucasians. (XVIII 2091-92)

A butcher knife and a pair of scissors were missing from Armstrong's knife block. (XIV 1335)

No semen or sperm were found within the sex crimes kits from Alice Albin (XVII 1990) and Loretta Wren (XVII 1991).

The State rested its case-in-chief. (XVIII 2106)

Defense counsel's opening statement had conceded that Davis killed the two victims but contended that Davis "was suffering from delusions that he was possessed by the devil." (XIV 1271-72) Accordingly, in the guilt-phase of the trial, Davis testified at length. (XVIII et seq.)

Davis testified that his DOB is 10-7-82 and described various aspects of his and his family's background. (XVIII 2142-46, 2147-48) At the time of the murders, Davis held a job at Starr Auto Sales:

I did auto body work, all the way from detailing inside the cars, you know, I did a little bit of training on mechanic work, stuff like that.

(XVIII 2148) While he told the detectives he completed the 10th grade (XVI 1774), Davis testified at trial that he did not complete that grade (XVIII 2143).

He testified concerning his living and rental arrangements with his cousin and Jimmy Armstrong. (XVIII 2145-47)

Davis described how he met Amy Ware and his month-long relationship with her. He said it was nothing more than "physical." On cross-exam, Davis said that he "cared for her as a person." (XVIII 2208) She ended the relationship when she moved away. (XVIII 2149-51. See also XVIII 2207-2208) He knew that Loretta Wren was Amy Ware's sister. (XVIII 2161) He said that prior to August 20, 2003, he had no trouble or arguments with Loretta. They were on a hello ("hi") basis, although one time he and Loretta were at a "little cookout" on base at the same time. (XVIII 2161-62) He said that he had previously been at the victims' trailer. (XIX 2239)

At trial, Davis provided another version of what happened the night of August 20, 2003. He testified that he was "watching music videos and I just seen myself get up ... go to the kitchen, and grab a knife." (XVIII 2155, 2208-2209) He said he had no control over himself. (XVIII 2156) He said he was "possessed by a force, an evil one." (XVIII 2163) He never had "any feeling like that" previously. (XVIII 2156-57) He reiterated that he has never been possessed before or after these events. (XIX 2237) He said that when he was previously at the victims' trailer, he was not possessed. (XIX 2239)

Davis said he did not know why the evil force did not tell him to kill Heather Hurley and Jimmy Armstrong, and he said that killing Ms. Albin, Amy's mother, and Ms. Wren, Amy's sister, had nothing to do with his prior relationship with Amy and her breaking up with him. (XVIII 2209) He said when he told the detectives that he was real "mad," he was indicating that he was "crazy and insane," (XVIII 2233) and when he told them that he was

in love, he was referring to a girl with whom he works, but he has never dated this girl. (XVIII 2233-34)

Davis admitted to passing four to eight trailers to get to the victims' trailer. (XVIII 2210) He identified Ms. Wren's car outside of Ms. Albin's trailer in SE #2. (XVIII 2211-12)

He had on his blue jeans with khaki shorts underneath that he said he used as underwear. (XVIII 2157-58) He denied bringing a change of clothes, but instead, claimed "[t]hat's how I wear my clothes." (XVIII 2234) He went to "Alice and Loretta's house with it," that is, the knife. (XVIII 2157) He had the knife in his pocket, and he sat down on their front-door steps. He said he did not know why he sat down then. "All I could do was see and hear." (XVIII 2158-59) Davis reiterated that he had never experienced anything like this previously. He estimated that he sat there for a minute. (XVIII 2159) On cross-exam, he said that the minute is his speculation. (XVIII 2211)

Davis testified that he heard, "I dare you to do it." He knocked on the door. Loretta answered. Davis asked Loretta if she had seen her sister and asked her for her sister's phone number. Loretta said "no" and then "I went toward her with a knife" because "I was possessed by a force, an evil one." (XVIII 2158-63. See also XVIII 2190-91, 2212-13; XXIII 3142) Ms. Wren did not invite him in. (XVIII 2213)

Davis said he saw himself "stab two of my friends" and did not know why he did it. (XVIII 2164) He stabbed Ms. Wren, and she ran into the kitchen. (XVIII 2214)

Davis noticed that his hand was cut due to the knife breaking while stabbing Loretta. This was the knife he had brought to the victims' trailer. (XVIII 2167) He uncontrollably got another knife that had come from the kitchen drawer that broke when "Loretta bumped into it or something like that." (XVIII 2168. See also XVIII 2214-15)

At one point Alice Albin came out while Ms. Wren was on the kitchen floor alive and in pain, and Davis "switched over" to Ms. Albin. (XVIII 2216-17) He stabbed Ms. Albin more than once. He said, "I see myself continue stabbing her" Ms. Albin fell on the "kitchen floor hallway to the entrance." He stabbed "her on the back and she just fell." "She had to be in pain." (XVIII 2217-18) He "believe[d]" that the second knife "broke on Alice." (XVIII 2219) He said he did not go back to Ms. Wren at that point. (XVIII 2218-19)

Davis testified, "I can honestly say that I do remember using three knives." (XVIII 2168) On cross-exam, he said he was "not sure to even speak on a third knife." (XVIII 2219) Later, he reiterated that he remembered two knives breaking. (XIX 2240)

Ms. Albin did not say anything, and Ms. Wren kept "telling me why" as he stood over her stabbing her. (XVIII 2194-95, 2196) He acknowledged that he stabbed Ms. Wren so hard that he broke one of the knives into her ribs. (XVIII 2195) He said that he stabbed Ms. Wren in the legs because "I had no physical control." (XVIII 2198)

Davis said he saw himself stab each of the victims more than once. (XVIII 2206)

He saw himself move the victims from the kitchen to the living room. (XVIII 2164) He started to clean up the kitchen floor. (XVIII 2165)

Davis testified that after he moved the bodies and he was standing over Loretta and Alice in the living room, the evil force left his body and his spirit went with it so he was having an "out-of-body experience" (his word). (XVIII 2165-66) He then wiped off door knobs, "clean[ed]," "just trying to clean up stuff." (XVIII 2166) On cross-exam, Davis testified that he "was still possessed when I was cleaning the floor." (XVIII 2201. See also XVIII 2220) He went to the bathroom to clean up; he said he did not know why. (XVIII 2219-20)

At some point, Davis said he covered up both victims. (XIX 2240, 2244)

He saw himself see a little kid asleep when he opened a door within the trailer. (XVIII 2167) He shut that door. (XVIII 2169) He did not know whether he was still possessed when he found the child. (XVIII 2170) On cross-exam, Davis admitted to knowing before that night that the boy was in the trailer. (XVIII 2221) He did not know why he was not forced to kill the boy. (XVIII 2222)

Davis said he put the knives in a "grocery bag" he got from Loretta's room, and he denied having a black bag. (XVIII 2168-69)

Davis said he recalled turning off a light in the living room but he does not know why. (XVIII 2220-21)

The victims were not moving when Davis left their trailer. (XVIII 2205) Davis testified that "I remember seeing myself" lock the victims' door as he left. (XVIII 2202, 2205-2206)

Davis said he never wore gloves that night. (XIX 2241)

He walked back to his trailer. He dropped the "yellow plastic bag" "at the end of the trailer," went inside; Jimmy and Heather were in the living room, and Davis went to his room. (XVIII 2170) He took a shower because he was hot. (XVIII 2171)

On cross-examination, Davis testified: "Let me rephrase that, at some point - majority of the time all I could do was see and hear." (XVIII 2200) He said he did not "feel" as he was stabbing the victims and as the knife broke, but he could feel when he was hot and wanted to take a shower. (XVIII 2200)

When he returned to his trailer, Davis said he noticed his hand bleeding. (XVIII 2223) He "just knew" he needed to use the flashlight to "look[] for blood on my sidewalk and in front of my driveway." He "just knew" this was "why" he needed the flashlight. (XVIII 2183, 2223)

Davis denied ever taking the black bag out of the trailer. (XVIII 2178) At some point during the night, he said that he took "materials" into the woods. (XVIII 2179) On cross-exam, Davis said he got the black bag "out of my room when I walked back over there to my home before I took a shower." When asked about getting rid of his bloody pants, Davis said, "I seen myself take the clothes down there, sir." (XIX 2235)

He went to sleep when it was still nighttime and awoke when it was daylight. (XVIII 2172) He said that he did not know if what he remembered from the night before was actually true, but the cut on his hands and the "knives that was laying on the hamper" reminded him it was true. (XVIII

2172) He had visions of the little boy and the blood on the wall. (XVIII 2173)

Davis testified that he first became aware that he was possessed when he woke up the next morning. (XVIII 2163)

Davis then told Jimmy that "we need to go check something out" and admitted lying to Jimmy "about it because I didn't know this was actually true or not." (XVIII 2174) He went down there to determine if "they were actually dead." (XVIII 2224) He said he knew the specific trailer to check out because "it was like a dream. I recognized who they were." (XVIII 2224)

He and Jimmy went to the victims' trailer; he wanted Jimmy to look through the window and Jimmy refused, and then after Davis looked in the window, Jimmy looked in. (XVIII 2174-75) Jimmy called the police and Davis said he followed Jimmy's direction to return home. (XVIII 2176-77)

After initially lying to Jimmy about what happened, he never told Jimmy about the force taking over him. (XVIII 2225, 2226)

Davis said that out of respect to his cousin, he removed the knives from their trailer. (XVIII 2178) Davis buried the knives, slid the tires on top of them, and poured gasoline on top so his cousin's or the neighbor's dog would not "mess with them." (XVIII 2177-78. See also XIX 2236)

Davis told "Aunt Kathy Guy" the "same lie" he told Jimmy. He also never told her about being "possessed" or having an "out-of-body experience." (XVIII 2227) She told him that he needed to tell this to the police. (XVIII 2180, 2225) Davis testified that he went with the police officer because "I wanted to let somebody know what happened." (XVIII 2181) Davis said he lied

to the detectives, because "they won't believe the truth." He said that they would not believe it because when he "was on the street," he would not have believed it. (XVIII 2181. See also XVIII 2184, 2225) He said he finally told the detectives the truth when,

I looked at Romano and he told me he did not believe me. I wanted to tell the truth.

(XVIII 2182) Davis continued with additional testimony concerning the police interviews. (XVIII 2184 et seq.) At one point, Davis testified that after he "kept answering them and he kept asking me again" "I told him what he wanted to hear." (XVIII 2185) He told the detectives where to find the buried knives. (XVIII 2187)

Davis testified that he had not been using drugs or alcohol during the events. (XVIII 2154, 2179) Later, he testified that he was "high thinking about it" because, more than a week prior to the murders, he was on marijuana when he watched "Chain Saw Massacre." (XVIII 2186) He said that he thought someone, including himself, would have to be high to do something like that. (XVIII 2186, 2193-94)

Davis testified that he feels "terrible," "ashamed" about what happened to the victims. (XVIII 2188)

On cross-examination, Davis said he was not having an out-of-body experience nor did he hear voices while he testified on direct exam for a little over an hour. (XVIII 2189)

In addition to testifying at trial, the trial judge addressed Davis several times during the trial, and Davis was responsive. There was no sign of "demons" or "out-of-body experiences." (See XIV 1364-65; XV 1514-15;

XVIII 2133-35, 2139; XIX 2247-50; XXII 2834-35; XXIII 3109, 3132-35; 3152-53, 3178-83; XXVI 3398-99) For example, the trial judge conducted a colloquy of Davis after he testified to confirm that he did not want to call any more witnesses.

After the jury returned its verdicts of guilty as charged on May 10, 2006, (XX 2495-96) the next day the penalty phase began in front of the jury (XX 2513 et seq.).

Several victim impact statements were tendered. (XX 2589-2612)

For its **penalty phase** jury evidence, the defense called several witnesses. Those giving lengthy testimony included Dr. Harry Krop (XXI 2632-2722), Dr. Richard Dudley (XXI 2723-89), and Dr. Phillip Yates (XXII 2853-2910). For ISSUE I and ISSUE II, Davis focuses on aspects of these experts' testimonies. (See IB 72-78, 82-83) In arguing that competent, substantial evidence supports the trial court's determinations concerning CCP and impaired capacity, the State will address the expert evidence upon which Davis' issues relies when it discusses those issues infra.

Davis also called several lay witnesses during the penalty phase. Manuel Mata has known Davis since Davis was a young boy. (XXI 2795) Davis worked for Manuel Mata finishing dry walls and at his car lot, including the day prior to his arrest in this case. (XXI 2795-96) Mata said that he was surprised to hear of Davis' arrest because "we think highly of him." (XXI 2796) At the car lot, Davis washed cars and helped out, but he was capable of doing "more complicated work." (XXI 2796-97) Davis was a "good kid," "reliable," and Mata trusted him "to do important things around the

car." (XXI 2797-98) On cross-exam, Mata testified:

Q He worked the day before he was arrested, correct?

A Yes.

Q And when he was working that day he appeared fine, didn't he?

A Yes.

Q Nothing wrong with him?

A Nothing wrong with him.

Q Wasn't acting like he didn't know what was going on or anything?

A No.

(XXI 2799) Mata did not know if Davis got into trouble at school. (XXI 2799)

Armida Mata, age 28 (XXI 2803), Manuel Mata's daughter, testified. She testified that Davis was a "very good worker" and he "was always nice to us." (XXI 2804) After elaborating some (XXI 2804-2805), on cross-exam, she testified that Davis worked until 6pm on August 20, 2003 (the day before he was arrested), and Davis acted normal. (XXI 2805-2806) She indicated that she was "[s]lightly aware that Davis had a relationship with a lady named "Amy." (XXI 2806) Amy was his girlfriend and Amy picked him up from work at night. At some point, Amy stopped coming to pick him up. She indicated that Davis "[s]lightly" talked about the end of his relationship with Amy and "no hard feelings." She said that Davis still "talked to her [Amy's] mother and the sister and that their relationship was still friendly." (XXI 2807) The witness was not aware of Davis having another girlfriend after Amy. (XXI 2809)

Manuel Mata worked for his father as supervisor in the drywall

business. (XXI 2810) He said that Davis "was a laid back, cool guy." (XXI 2811) Davis' demeanor as an employee was "humble." (XXI 2813) Davis came over for "like" Thanksgiving dinner. (XXI 2812) Davis played soccer with the witness. Davis did not talk about his girlfriend. Davis was being assisted with improving his reading and writing skills, but Davis "didn't have the initiative to go to college, stuff like that." (XXI 2812-13)

Portia Wicker worked with Davis, who he said was pleasant, polite, and never used a curse word. (XXI 2816-17) Davis was "shy, reserved," not violent. (XXI 2818) Davis did not cheat on his time, and he did not worry about Davis stealing valuables. (XXI 2818-19) The witness did not socialize with Davis. (XXI 2820) Davis "[a]bsolutely" acted normally on August 20, 2003. Davis never talked about the devil being in him or being possessed. (XXI 2821)

Shirley Roberts was one of Davis' special education teachers. Initially, Davis was disruptive, but she built a relationship with him and he became more respectful and a likeable person. He was a loner and sad. (XXII 2912-13, 2916) Other kids made fun of Davis' biracial background. (XXII 2914-15) Sometimes Davis would get angry but would soon calm down. He was disruptive around the other kids. (XXII 2917)

Ruth Rider taught Davis in first and sixth grades. (XXII 2920-21) Davis had trouble learning simple words and the smallest concept. He was an unhappy kid. (XXII 2921-23) In sixth grade, Davis still had difficulty with reading. (XXII 2923-24) The older Davis became, the less successful he was academically and the more he acted out. (XXII 2925) On cross-exam, she

testified that on special ed's scale, Davis made a C in language arts science and social studies and Bs in reading and math. (XXII 2926) She also noted that her records reflect: "defiant to adults, rude to class[]mates and insists on having his own way." (XXII 2928) On redirect, she said that this was not unusual behavior for special learning kids because "they were in there with emotionally handicapped kids picked up the behaviors of the emotionally handicapped ... children." (XXII 2929)

Sheila White testified as someone who knew Davis and as a friend of his family. She said she noticed learning problems similar to her son, Tristan. (XXII 2932-34) She said Davis was "well mannered," a "good kid." Davis' mother "hen pecked" him in the sense because, essentially, she was over-protective, so she did not think that Davis could be on his own. However, she has not seen Davis in six years. (XXII 2935-37) Tristan White testified that he was good friends with Davis, but he lost contact with Davis in high school. Tristan is a semi driver and does maintenance on them. (XXII 2938-39) Davis stayed to himself and so did Tristan. Tristan was teased a lot in school, and Davis told him, "if I had trouble with anybody he'll help me out, but it was a pretty bad school." Davis was "real cool," "a nice guy," and "shared stuff" with Tristan. (XXII 2940)

Thurmond Davis, Davis' uncle, testified. (XXII 2944) He spent time with Davis, for example playing sports together. He did not keep in as close touch with Davis after Davis was about age 18 and did not know about Davis' school behavior, such as whether Davis engaged in fist fights. Davis was a "normal kid." He did not see any impact from Davis' parents' divorce on

Davis. Davis' mother loved Davis, and Davis may have been closer to her than his dad. She "spoiled him like any mother would do because that was her only son, her only child" Davis was a "nice guy." (XXII 2945-52)

Bonita Roberto, Davis' uncle, testified that he has known Davis for all of Davis' life, but he (Roberto) "wasn't around the whole time he was growing up." Davis was "[j]ust a normal kid" and treated Roberto "fine." (XXII 2953-56)

Martin Sosa testified through an interpreter. He has been married to Davis' mother for about 10 years. He has worked with Davis at Mata's drywall company. Davis was an "[a]verage" worker. Davis treated him well. Davis was not aggressive, but he received discipline reports from school, which his wife (Davis' mother) took care of. Davis' mother was the main disciplinarian in the family. (XXII 2958-63)

Toni Rodriguez, Davis' aunt, testified. She saw Davis' mother beat Davis like her father beat her and her siblings, including with a spatula or spoon. "There was a time when she was a little, you know, overwhelming with it." She did not see the incidents but saw the "results afterward." She saw the mother "shake" Davis, but not hit him with her fist. Davis' mother would call Davis the n-word, "[n]ot often," a few times even though she was married to an African American for 15 years. She did not know how Davis' mother felt inside about Davis being biracial, but later she acknowledged that she got the "impression" that sometimes the mother was embarrassed by it. At one point, she told her mother about Davis' mother's treatment of Davis, and about three months later Protective Services

visited Rodriguez and stated that "somebody called and said that I was doing to my son ... the same thing I told my mother that happened to William [Davis]." She "believe[d] that Davis' mother made that call to be vindictive. She thought that Davis was upset by his parents' divorce. (XXII 2972-82, 2988-89)

When asked on cross-examination whether Davis was a discipline problem, she said, "No, I don't think so, not at the age that he was." (XXII 2987) But when asked whether he was ever a discipline problem, she testified: "After his dad moved out he was a little, had a discipline problem. I guess he rebelled, he wasn't happy." She said that Davis fought with her son, Pete, and then "turn around and be friends again." One time Davis smacked Pete "in the head with a pine cone" and "dug" into his cheek. Another time, when Davis was about 10 or 11 years old, she heard Pete crying upstairs because Davis was trying to "suffocate him" with a bean bag chair. Davis said he was only playing around, but Pete was scared and had turned "blue, purple." She told Davis' mother "that wasn't normal." Davis was always bigger than Pete. (XXII 2987-92, 2996)

Gary Guy, Davis' uncle by marriage to Kathy Guy, who was Davis' mother's sister, testified. (XXII 2997-99) He said that his impression from his wife was that her father was an alcoholic and gave them a "good butt whipping." (XXII 3006-3007) There was one "vengeful" incident in which Davis' mother and Kathy Guy went to Baltimore, and due to an argument, Kathy Guy had to rent a car to get home. About a week later Davis' mother told Mr. Guy's office that he was disrespectful and smoking pot on the job.

(XXII 3011) His experience with Davis and the other kids in the family he hung around with were "just normal kids, just messing around." (XXII 3009) When Davis' father left, "it really tore" Davis up, and Davis became "more quiet and recluse." After Davis' mother's divorce, "she would cuss at him [Davis] more than I think she should have." He never saw Davis' mother hit Davis. Davis was always respectful to Mr. Guy. (XXII 3009-3010)

Kathy Rogers, Davis' step-mother, (XXII 3016-17) testified. Davis did not like going to church. One day after she hugged Davis, they had a close relationship. (XXII 3018-19) She testified:

[W]hen kids are going through a divorce it's kind of rough on them. So he would be between - som[]times if he don't have his way with his father he would go to his mom, if he didn't get his way with his mom he would go to his father, vice versa.

But when he was in our home, he had to go to church, that was a must. And some[]times he would retaliate against that and want to go to his mom. But we had a good relationship besides that.

(XXII 3019) She had worked with Davis, who she said was an "awesome worker" and "would take the initiative of doing things." (XXII 3021) Rogers related an incident, when Davis was about 18 years old, in which a guy demonstrated a vacuum cleaner's carpet cleaning. The guy was "acting strange," and she and Davis "feared for our life that day." After she managed to get the guy out of the house, she could not get Davis out of her bedroom, where he was under the bed. (XXII 3023-24, 3025) Davis was the "perfect kid." (XXII 3025)

On cross-exam, Ms. Rogers acknowledged that in school Davis got into "trouble fighting with people," and "the teachers and stuff." (XXII 3026) She said there was an incident in which he "did something to one of the

teachers," but she did not recall whether he threatened her. She said she was not concerned that Davis was making threats to teachers because "we knew he wasn't going to live them out." (XXII 3027) "He would always blame it on the teachers." "It was never his fault" (XXIII 3036) When asked on redirect whether she was aware that Davis always had difficulty in school and whether Davis expressed his frustration and his inability to perform at school, she said, "yes." (XXIII 3037)

Clarence Davis, Davis' father, testified. He and Dana divorced in 1995. (XXIII 3042) He said he was the disciplinarian in the family. She did not do as much. (XXIII 3046) He said that Davis' mother did not beat him, to his knowledge, and Davis never told him about Dana beating him with a spatula or spoon. (XXIII 3058-59) When Davis' misbehavior was "something severe," he was spanked. Davis' behavior was generally good, so he did not get spankings very often. (XXIII 3043) Later he said that he does not recall Davis ever being disrespectful to him. (XXIII 3056)

He testified that, although he spanked Davis, he never hit Davis on the head or sexually abused him. (XXIII 3059) Davis was not sexually abused by Dana, to his knowledge. (XXIII 3060)

Concerning Davis' school performance, the witness testified:

He didn't do very well. He was very slow learning and, you know, he liked to play a lot and that's what he liked to do and that was fun to him. And he just didn't seem too interested.

(XXIII 3043) He testified that Davis always had problems in school. "He was a little bit, you know, slow." The father helped Davis a lot with his spelling and math and a little with his reading. (XXIII 3045) Davis would

easily get bored in school. (XXIII 3062)

School personnel told him that Davis was hyperactive. They did not give Davis Ritalin because they had heard about its side effects. (XXIII 3043-44) He encouraged Davis to finish school and go into the Navy like he did. (XXIII 3044) There were a few disciplinary problems in which he or Davis' mom would have to go down to the school. (XXIII 3045) He said Davis refused to fight in school. (XXIII 3061)

The father testified that as Davis grew older, he did not seem to be as happy. (XXIII 3045) Davis got along with his step-parents "great." (XXIII 3046-47) When Davis moved in with Jimmy Armstrong and Heather Hurley, he did not think Davis was "ready" to live on his own, "he just didn't like, you know, the rules" (XXIII 3047) They went to church together "a lot." (XXIII 3047) He did not know Amy Ware and never met her. (XXIII 3048, 3064) He visits Davis in jail every Saturday. Since Davis has been in jail, there has been a "tremendous" difference in the strength of Davis' religious conviction. (XXIII 3048)

The father testified that Davis had no mental problems and no emotional problems that he knew of. (XXIII 3062-63) However, he said that two or three weeks before Davis was arrested for these murders, Davis was "very quiet and he wouldn't do much talking." Davis was depressed. (XXIII 3066) A couple of times Davis told the father that he was "hearing voices and that the devil was talking to him," but the father "thought they was just nightmares." (XXIII 3068)

Dana Sosa, Davis' mother, testified that that she feels she did a good

job raising Davis. (XXIII 3103) She said that there was nothing particularly unusual about Davis' childhood. (XXIII 3089)

However, Davis was tested and she was told he was slow in school and needed to be in special classes. (XXIII 3076-77) In elementary school, she received a school referral recommending that Davis be placed on Ritalin. She never had a formal psychological evaluation done on him outside the school system. (XXIII 3106) Davis' academic problems got a "little" worse in high school. (XXIII 3089) Davis treated high school more like a "social activity" than as a learning activity. (XXIII 3090) She was called to the office of the head of security for the high school. (XXIII 3090) She said she was not aware of any incident in which Davis hit or threatened a teacher. (XXIII 3103)

Davis unsuccessfully attempted to get his GED. Davis went into the Job Corps for a year and won an award there for math. He was supposed to get his GED in the Job Corps but "they kept taking him out of his GED classes and sending him to work." (XXIII 3092-93)

There was an incident in which Davis and she saw a silhouette of a man in their living room, and she thought it was her dead brother. She and Davis ran out of the door and did not talk about it. (XXIII 3085-86)

When Davis' father was away, she had a "little bit" of discipline problems with Davis. She would put him in his room, "smack his butt, take toys away, television privileges." (XXIII 3086) She said she never abused Davis, and she never hit him with a spatula or spoon. He was never emotionally abused. (XXIII 3096-97)

As Davis got older, his behavior in school got worse. She would be called to the office "frequently." Davis "[g]ot a little rebellious then" (sixth, seventh grade). (XXIII 3086-87) When Davis went through puberty, "he got a little rebellious," more than normal. (XXIII 3087-88) There was an incident in which two undercover officers watched Davis damage a street sign and arrested him as a juvenile. (XXIII 3091) Up until these murders, she never knew Davis to be violent. (XXIII 3096)

Davis was not happy about the divorce. He had a "little bit" of problem adjusting. (XXIII 3087) She took "the Fifth Amendment" when asked if she had used derogatory words to describe her husband, and she denied using any racial derogatory term on her son. (XXIII 3105) Davis thought very highly of his step-mother. (XXIII 3088)

The night before Davis was arrested, he ate with her, leaving her at about 8:15, 8:30. There seemed to be nothing wrong with him. (XXIII 3095) "He was fine but quiet." (XXIII 3102) She also testified that the week of the murders she "was kind of worried about him" (XXIII 3098) because he was unusually quiet (XXIII 3100). Davis told her nothing was wrong. (XXIII 3101)

While Davis has been in jail, she has been bringing him adult, spiritual, Oriental books to read. His reading is stumbling a little, but he reads fine now. (XXIII 3097-98)

Davis was not good at handling stressful situations (XXIII 3094), but other than being slow in school, she was not aware that he had any emotional problems. (XXIII 3098)

She knew that Davis had a relationship with Amy because he told her. He said that "he met a nice girl that he was interested in." She left town, and he did not seem depressed "right after she left," but he was quiet for awhile, then she felt he got over it. (XXIII 3098-99) She was not aware of Davis dating anyone after Amy left. (XXIII 3099)

She affirmatively acknowledged a leading question asking whether a few weeks after he was arrested in this case, Davis told her that "a man went inside of his body and compelled him to do all these terrible things." (XXIII 3107)

Davis also testified in the penalty phase of the jury trial. (XXIII 3113-46) He apologized to the victims' family. (XXIII 3114) He said he "was presented with plea --," at which time the jury was excused and his counsel clarified that the State did not make an offer, but instead his counsels attempted to convince Davis to plead for a life sentence. The prosecutor confirmed that the "State never made an offer." (XXIII 3115-17) Additional discussion and a proffer ensued. (XXIII 3117-35) When the jury returned, Davis testified that to his "comprehension," he was offered life. He said God told him to go to trial. (XXIII 3136)

On cross-examination, the prosecutor clarified that the State has been seeking the death penalty from "the getgo." (XXIII 3137) On re-cross, Davis said that he had a confrontation with more than one teacher. (XXIII 3144)

Davis said he now admits stabbing both of the women. When asked if he stabbed the women "over and over," Davis responded that he "had no control over what happened." The "devil" actually did this. (XXIII 3137-38) He

acknowledged that when he was in the victims' trailer, he put on something black in women's clothing from Loretta Wren's drawer. He said it could have been a dress or pants. (XXIII 3138) He admitted wiping off the door handles. When asked whether he saw himself choking Ms. Wren when she was not dead, Davis responded:

I was still possessed -- I was possessed at that time and I was still seeing myself but there was two -- there's a difference between the two after it left me.

(XXIII 3139) He said "it" was still in him when he was choking Ms. Wren.

(XXIII 3140) Davis denied being obsessed with Amy. (XXIII 3141) He said that Loretta Wren was his friend because she let him into her home. (XXIII 3141) However, that night he forced his way in. (XXIII 3141-42)

Davis testified he already had Amy's phone number, but admitted that he asked Loretta for the number that night and Loretta said she did not have it. (XXIII 3142)

In the penalty phase, the State called several witnesses. Ralph Riley, Jacksonville Sheriff's Office, who testified that on August 30, 2003, Davis was involved in a fight with another inmate, in which there was no arrest. (XXIII 3156, 3165) The officer did not know who started the fight. (XXIII 3166)

Sgt. Joseph Wollitz testified that on November 25, 2004, Davis was strapped into a reinforced "prostraint" chair when he destroyed the strap that was holding his left arm and damaged the strap holding his right arm. Apparently, the chair is intended for those who pose a threat to themselves or others or property. (XXIII 3168-70)

Officer M.J. Hunt testified that on February 2, 2005, Davis put a toothpaste cap in his cell locking mechanism, which means that cell door cannot lock properly. No incidents resulted. (XXIII 3173-74)

Officer Jessie Eanes testified that on April 20, 2005, he observed Davis in a fist fight with another inmate. Davis told the witness that the other inmate had been stealing from him.(XXIII 3175-77)

After the jury recommended the death sentence on both murders by a vote of nine to three (XXIV 3353-58), the trial court conducted a Spencer hearing on June 2, 2006, (XXVI) at which Davis addressed the trial court. He again said he is sorry for "whatever is going on." (XXVI 3399-3400)

SUMMARY OF ARGUMENT

Davis, in attacking CCP [ISSUE I], claiming that the trial court did not properly consider the mitigator of impaired capacity [ISSUE II], and contending that the death penalty is not justified [ISSUE IV], primarily relies upon his testimony, what he told his mental health experts, and his performance in school. In contrast, Davis' mother said Davis viewed high school more as a "social activity" than as a learning activity. Davis won an award in the Job Corp for his performance in math. Davis called several lay witnesses who testified that Davis appeared normal when they saw him.

The State emphasizes that the guilt-phase facts provide more than the requisite competent, substantial evidence supporting the trial court's determinations regarding CCP and impaired capacity and justifying the death penalty upon the jury's nine-to-three recommendation.

In the summer of 2003, Davis fell in love with Alice Albin's daughter, Amy Ware. After a relationship of several weeks up to perhaps a month or two, Ware moved away and terminated the relationship. On August 20, 2003, Davis gathered a knife, extra clothing, a bag in which to discard his clothing, and, under cover of darkness, walked about 500 to 600 yards from his trailer at the front of the trailer park to the victims' trailer at the back of the trailer park. Davis paused and concealed the knife when Wren answered the door, then forced his way into the victims' trailer and killed Alice Albin and her other daughter, Loretta Wren, by stabbing each of them to death. He first stabbed Wren, then, when Albin approached, stabbed her to death. Davis stabbed Alice Albin 18 times and cut or stabbed Loretta Wren 16 times. Both victims had multiple defensive wounds, including some on Wren's legs as she kicked to defend herself. In the process of killing the victims, Davis broke two knives and grabbed yet another knife. Davis tried to clean up the bloody scene with a towel, but the blood was too voluminous. He locked the victims' trailer behind him and returned to his trailer, which he actually rented from co-occupant, James Armstrong.

Davis hid his bloody outer jeans in the woods and buried some of the broken knife parts.

When Davis returned to his trailer that night, he asked to borrow a flashlight from Armstrong supposedly to look for some money he dropped while walking to a store; instead, he was actually checking to ensure he did not leave a blood trail as his gashed hand bled on the way home. When Davis again returned to his trailer, he attempted to conceal himself from

Armstrong and Armstrong's then-live-in girlfriend. The next morning, Davis told Armstrong a tale of Albin's jealous ex-boyfriend coming to the victims' trailer with a knife and he (Davis) taking the knife away from the ex-boyfriend and throwing the knife away. Davis said the ex-boyfriend was a long-haired tall guy. Armstrong saw a slash on Davis' hand, which Davis wrapped in a towel and said he received taking the knife from the ex-boyfriend. Davis suggested that they go check on the "girls." Davis and Armstrong drove over to the victims' trailer. At Davis' insistence, Armstrong peered through the victims' window and saw the bodies. Armstrong called the police.

When interviewed by the police, initially Davis embellished and modified his story about Albin's ex-boyfriend, stating that he saw the ex-boyfriend stab the victims and that, after the ex-boyfriend cut his (Davis') hand, he (Davis) escaped with his life by running out of the victims' trailer. Davis asked the police if they believed him, and the police confronted Davis with the fact that he did not call the police that night. Davis then abandoned the ex-boyfriend story and tried various alternative versions, ranging from being mad about his ex-girlfriend, to just doing it, to not being crazy, to philosophizing about killing in war, to being crazy. Davis told the police where to find where he had hidden his bloody clothes in the woods in the general area of his trailer and the knives he buried under some tires. Later, Davis embellished the last version of his story by telling his psychologist/psychiatric expert that the devil possessed him.

The foregoing events demonstrate, and provide competent, substantial evidence showing, a murderer who carefully planned the murders, including anticipating a bloody murder scene by bringing extra clothes with him and a bag to hide them in and carrying a murder weapon with him and hiding it from Ms. Wren when she answered the door. However, the murder did not go as planned, and Davis was caught. His roommates spotted him trying to conceal himself when he returned to their trailer after the murders. Davis also had gashed himself on the hand when one of the knives broke while stabbing the victims. Davis discovered that the police did not believe initial variations on the story about the knife-wielding ex-boyfriend. The police pointed out to Davis that he did not call the police that night. Davis switched to other stories and eventually told his "possessed by the devil" story to his mental expert.

The facts of this case support CCP [ISSUE I], and the trial judge rendered an extensive, thorough, well-reasoned 83-page sentencing order, which merits affirmance. The facts of this case also support the trial court's consideration of impaired capacity as non-statutory mitigation [ISSUE II] as well as the trial court following the jury's 9-3 recommendation of death [ISSUE IV].

Moreover, the trial court properly considered and weighed the mitigator of no significant prior criminal history [ISSUE III], and this Court has resolved the Ring issue [ISSIE V] against Davis' position.

ARGUMENT

ISSUE I: DID THE TRIAL COURT REVERSIBLY ERR BY INSTRUCTING THE JURY ON CCP, BY ALLOWING THE PROSECUTOR TO ARGUE CCP TO THE JURY, AND BY FINDING CCP? (RESTATED)

Competent, substantial evidence was introduced that supports the aggravating circumstance of CCP.¹⁰ Therefore, the jury was lawfully allowed to be instructed on it and consider it, and the trial judge lawfully found it. Davis' presentation of evidence that he argues on appeal conflicts with CCP does not preclude the trial court from considering and finding it.

A. A portion of Issue I is preserved.

The claim (IB 64-80) that there was insufficient of evidence for CCP is preserved, but defense counsel did not argue any due process clause, making those claims (IB 64 n. 9) unpreserved. (See XXIII 3200, 3220-22; XXIV 3242) See, e.g., White v. State, 753 So.2d 548, 549 (Fla. 1999)(state Constitutional due process "not raised to the trial court or to the district court of appeal during the direct appeal from his conviction"; "not preserved"); Hill v. State, 549 So.2d 179, 182 (Fla. 1989)("constitutional argument grounded on due process and Chambers was not presented to the trial court ... procedurally bars"); Geralds v. State, 674 So.2d 96, 98-99, 98 n. 6 (Fla. 1996) (two claims of unconstitutionality of

¹⁰ The State also recognizes that this Court conducts an independent review for sufficiency of guilt-phase evidence. The evidence discussed in this issue concerning CCP also is more than sufficient for the premeditation of premeditated murder. Moreover, the bloody scene coupled with Davis' confession supports first degree felony murder. Further, Davis' confession that he killed the victims, as well as the plethora of DNA evidence, disposes of identifying Davis as the killer. See also Facts supra.

jury instructions pertaining to death penalty proceedings).

B. Davis' burden on appeal.

"In reviewing an aggravating factor challenged on appeal, this Court's task 'is to review the record to determine whether the trial court applied the right rule of law for each aggravating circumstance and, if so, whether competent substantial evidence supports its finding.' *Willacy v. State*, 696 So. 2d 693, 695 (Fla. 1997)." *Douglas v. State*, 878 So.2d 1246, 1260-61 (Fla. 2004).

Even if the trial court erred in part of its findings, the trial court's finding is affirmed on appeal if there remains support with "competent, substantial evidence." *Douglas*, 878 So.2d at 1262-63 ("There is no evidence that indicates that Hobgood knew Douglas was going to kill her after he raped her. Despite this error, we affirm the trial court's finding of HAC because it is supported by competent, substantial evidence").

Here, the trial court's extensive order finding CCP is supported by "competent, substantial evidence."

C. The trial court's extensive, well-reasoned finding merits affirmance.

The trial court's 83-page order summarized the facts of the case (III 471-86) and found, as to each of the two murders, the aggravating circumstances of a contemporaneous murder, great weight as to each victim (III 487, 496); committed while engaged in a burglary, great weight as to each victim (III 487-88, 496-97); especially heinous, atrocious or cruel (HAC), great weight as to each victim (III 488-92, 497-500); and cold, calculated, and premeditated manner (CCP), great weight as to each victim

(III 492-96, 500-503). The trial court's order provided pages of detailed record support for HAC and CCP.

Because the trial court's finding of CCP is challenged here, the State quotes the trial court's reasoning, first concerning victim Loretta Wren:

The trial testimony in the guilt and penalty phases of this case proves beyond all reasonable doubt the existence of this aggravating circumstance. It is apparent from all the testimony that the Defendant went to his kitchen, got a knife, and took it to the victims' trailer around 12:00a.m.-1:00a.m. The Defendant told Detectives Stucki and Romano that he wore extra clothing [n. 9] the night of the murders because he knew he was going to get bloody and that he took a bag to place the bloody clothes into. The defendant testified that he walked from his trailer, located in the front of the trailer park, to the victims' trailer, located three streets over and approximately 600 yards away. The Defendant testified that while he was walking to the victims' trailer, the knife was concealed in his side pocket. The Defendant testified that when he reached the victims' trailer, he sat on the front step. The Defendant sat on the front step for approximately two to thirty minutes and contemplated his next actions. When he stood up, the Defendant testified he heard in his head, 'I dare you to do it.' Then, with the knife hidden in his hand so no one could see it, the Defendant knocked on the front door, Loretta Wren answered, and the Defendant asked her questions. The Defendant testified that after Loretta Wren answered his questions, he stabbed her and forced his way into the trailer. Loretta Wren tried in vain to flee her attacker, but the Defendant chased her and continued his assault when he cornered her in the kitchen.

Dr. Rao testified that Loretta Wren had sixteen stab wounds on her body. Dr. Rao testified that the stab wounds on Loretta's legs, arm, and hands indicated that she struggled and fought with the Defendant. The Defendant testified that his first knife broke while he was stabbing Loretta Wren, so he picked up another knife off of the kitchen floor, and continued to stab her. Dr. Rao testified that Loretta Wren was alive for all sixteen stab wounds as no injury would have been fatal by itself. Dr. Rao testified that Loretta Wren would have been conscious for all sixteen stab wounds. The Defendant admitted that Loretta Wren repeatedly asked him 'why' and 'why William' as he stabbed her. Evidently hearing something, Alice Albin entered the kitchen, at which time the Defendant stopped stabbing Loretta Wren and turned his focus to Alice Albin. The Defendant told Dr. Krop that, after he stopped stabbing Alice Albin, he turned back

to Loretta Wren, saw that she was still alive and attempted to strangle her.

Dr. Krop interviewed the Defendant after the murders on four separate occasions and diagnosed the Defendant with attention deficit disorder [n. 11]. Dr. Krop testified that, in general, people diagnosed with ADD, like the Defendant, have an inability to plan ahead at times. To the best of this Court's recollection, however, Dr. Krop did not testify that this inability to plan ahead necessarily applied to the Defendant, particularly on the night of the murders. Further, while the Defendant contends his body was invaded and taken over by an evil spirit and, therefore, he was unable to think, control, or understand anything from the time he got the knife from his kitchen to the time he completed the murders of both women, Dr. Krop testified he did not believe this to be the case. Dr. Krop testified, in his opinion, that while the Defendant believed this to be true after the murders, the Defendant did not believe this at the time of the murders. Specifically, Dr. Krop testified that, in his opinion, the Defendant felt a need to come up with a reason or justification for the murders, as a 'coping mechanism,' so the Defendant began to say that an evil spirit made him do it and, eventually, really began to believe this to be true. Further, Dr. Krop testified that the Defendant was sane at the time of the murders and knew right from wrong. Moreover, the Defendant's own testimony at trial was that at the time of the murders he was not under the influence of drugs, alcohol or prescription drugs.

Dr. Krop also diagnosed the Defendant with frontal lobe damage. Dr. Krop testified that the frontal lobe is responsible for problem solving and inhibiting impulse control. This Court is aware that a lack of impulse control coupled with other factors may present a hurdle in consideration of this aggravating factor. The evidence in this case, however, establishes forethought and impulse control on the part of the Defendant. Clearly evidencing forethought the defendant told Detectives Stucki and Romano that he wore extra clothing [n. 12] the night of the murders because he knew he was going to get bloody and that he took a bag to place the bloody clothes into. The Defendant explained that he wanted to be able to change inside of the victims' trailer. This Court finds this very significant in its analysis as to the cold, calculated and premeditated manner in which these murders were committed. Clearly, the Defendant possessed the ability to plan, and did plan, these murders. Also evidencing forethought, the Defendant armed himself with a knife, left his trailer, and after he crossed the distance between his trailer and the victims' trailer, stopped and sat down outside the victims' home to further contemplate his next actions. The testimony places this time for reflection to be from two to thirty minutes and, when coupled with the ruthlessness and deliberate

manner in which the murders were carried out, this establishes a heightened premeditation, a prearranged design to kill as opposed to a plan to commit some other crime in which the killings became incidental to that planned crime. The moment Loretta Wren opened the door of her home in response to the Defendant's knock, the Defendant's actions showed that the planned crime on the defendant's mind was clearly and unhesitatingly murder.

The evidence also showed that the Defendant exhibited impulse control at least two times on the night of the murders. First, the Defendant did not barge into the home and begin killing. Rather, the Defendant sat on the front step from two to thirty minutes contemplating his next actions, got up, took the knife out of his pocket, hid the knife in his hand so no one could see it, knocked on the door and had a cursory conversation with Loretta Wren when she answered. Second, the Defendant knew, before the night of the murders, that a little boy lived in the trailer and the Defendant saw the little boy, Aubrey, when he opened the door to his room. Without harming Aubrey, or even waking him up, the Defendant shut the door and moved to another room.

The trial testimony in the guilt and penalty phase of this case proves beyond all reasonable doubt the existence and establishment of this aggravating circumstance. This aggravating circumstance has been given great weight in determining the appropriate sentence to be imposed in this case.

(III 492-495, footnote text omitted, underlining in original)

In supporting its finding of CCP as to victim Alice Albin, the trial court added pertinent introductory facts and inserted coverage of her injuries:

Apparently hearing something, Alice Albin came into the kitchen while the Defendant was stabbing Loretta Wren. The Defendant stated he turned his attention from Loretta Wren and began to stab Alice Albin.

Dr. Rao testified that Alice Albin had eighteen stab wounds on her body. The Defendant testified that Alice Albin fell to the ground after the first stab wound, and Dr. Rao testified that the wounds on Alice Albin's hands indicated that she attempted to shield herself from the knife. The Defendant admitted that the second knife broke as he was stabbing Alice Albin, and he testified that he used three knives, including a butcher knife, but stated he did not remember grabbing the third knife. Dr. Rao testified that there was no indication Alice Albin ever lost consciousness. Rather, Dr. Rao testified Alice Albin was alive and conscious during each and every one of the eighteen stab wounds inflicted by the Defendant.

(III 500-501) See also trial court order quoted in, and discussion in, ISSUE II infra.

Standing on its own, the Order's two findings of CCP should be affirmed. However, the State elaborates.

D. The record provides competent, substantial evidence of CCP.

Davis' ISSUE I essentially proposes to elevate as dispositive some evidence in the record that he submits as conflicting with the facts in the trial court's finding. However, the existence of evidence that arguably conflicts with the trial court's findings is not the test. Davis may attempt to elevate the conflicting evidence he prefers to the facts so he can label the trial court's finds as "inaccuracies" (IB 79), but the standard of appellate review does not accredit the non-prevailing party's self-serving cherry-picking of the evidence. Thus, the State disputes Davis' position (IB 72) that he "consistently stated that he didn't think about or plan the murders" and that he "consistently" described the events as an "out-of-body experience." Instead, Davis' out-of-body statements came after he realized that his other lies did not have the impact on the police he desired. Here, on appeal, contrary to Davis' positions, there was a plethora of competent, substantial evidence supporting the trial court's finding of CCP, meriting affirmance.

The principles in Lynch v. State, 841 So.2d 362, 371-372 (Fla. 2003), provide guidance:

[T]his Court has held that "[a] defendant can be emotionally and mentally disturbed or suffer from a mental illness but still have the ability to experience cool and calm reflection, make a careful plan or prearranged design to commit murder, and exhibit heightened

premeditation." *Evans*, 800 So.2d at 193. Finally, this Court has noted that "[t]he facts supporting CCP must focus on the manner in which the crime was executed, e.g., advance procurement of weapon, lack of provocation, killing carried out as a matter of course." *Looney v. State*, 803 So.2d 656, 678 (Fla. 2001) (quoting *Rodriguez v. State*, 753 So.2d 29, 48 (Fla. 2000)).

Here, arguendo even if Davis was afflicted with some sort of mental condition, he procured the weapon and other materials in advance; there is no indication that he murdered out of some sort of situational "provocation," but, instead, navigated 500 to 600 yards to the victims' trailer apparently out of revenge or other preoccupation with Amy Ware; showed determination in overcoming the two women's resistance and stabbing them 16 and 18 times; and, extensively attempted to conceal his crime afterwards.

Davis intentionally obtained a deadly weapon, a knife, from his trailer. (XIV 1311; XVI 1732-33, 1746-47) Confirmed Davis murderous intent, Davis wore extra clothing because he knew he was going to get his clothes bloody, and he carried a bag for the bloody clothes. (XVI 1747) Late evening in the cover of darkness (Compare XIV 1315 with XVI 1668), he navigated the distance from the back of the trailer park to the front, a distance estimated at 500 to 600 yards. (XIV 1329-30) On this path, carrying his deadly weapon, Davis negotiated turns and passed several other trailers (XIV 1329-30; XVIII 2210) and found a particular trailer, the specific trailer in which the mother and sister of Amy Ware, his ex-girlfriend, lived. (XIV 1288-91. See XVI 1733-34, 1794-95, 1809-1810; XIX 2239) Amy Ware had moved away several weeks prior to that night. (See XIV 1289-96) Davis knew that Loretta Wren was Amy Ware's sister and that Alice

Albin was Ms. Ware's mother. (XVI 1668; 1717-18; XVIII 2161-62. See also XVIII 2221, Davis knew Aubrey lived there too)

Davis paused to reflect some more,¹¹ concealed the knife, knocked on the door, then when Amy Ware's sister, Loretta Wren, opened the door, Davis discussed one subject, Amy Ware, and when Ms. Wren denied Davis' request for Ware's phone number, Davis began stabbing Ms. Wren and then her mother, Alice Albin. (See XVI 1734, 1809-1810; XVIII 2158-63, 2212-13. See also XVI 1734)

As the trial court's order points out, the executions were laborious for Davis. Davis stabbed or cut Ms. Wren 16 times over various parts of her body. (XV 1566) She had cutting, stabbing, puncturing, or slashing wounds to her chest (XV 1569), left arm (XV 1569), back or left side of the chest

¹¹ Davis (IB 71 n. 12, 77-78) takes issue with specifically how long he reflected at the victims' front door before he knocked on the door and killed them. However, given the other extensive premeditated and calculated facts of this case, it does not matter whether he reflected at the door one second, one minute, or thirty minutes, and the trial court accepted that the estimate was approximate (See III 492) and could be as low as two minutes. Moreover, Dr. Krop did initially volunteer the figure of one half hour from his second interview with Davis (XXI 2679), which the trial court was entitled to accredit. Davis himself testified that he estimated that he sat there for a minute. (XVIII 2159, 2211)

Davis (IB 80 n. 16) later argues that the prosecutor asserted the half hour in his closing argument. However, the prosecutor correctly stated that Dr. Krop "at one point thought half an hour" and also qualified his argument with "I think" and with Dr. Krop "wasn't specific, but he waited for a period of time." He then mentioned the half hour but qualified it with the jury's recollection as "what's important." (XXIV 3270-71)

Further, contrary to Davis' assertion (IB 77) that he contemplated nothing while he waited on the victims' steps, given the evidence of Davis' planning for the murders, he may have hesitated at the victims' door but then **dared himself** to "do it," that is, do what he came there for. (See XVIII 2160).

(XV 1575). One stab wound entered Ms. Wren's left chest cavity, fractured her ninth rib, entered her left lung, and penetrated to the area next to her spine. (XV 1576) Another wound was lower and fractured the 10th rib and injured the left lung. (XV 1576-77) Davis inflicted numerous "incise wounds" on Ms. Wren, including one near her upper lip, which actually cut to the bone (XV 1566-67). (See also XV 1569, 1571, 1575-76) A wound on Ms. Wren's hand went "all through the web [between her index finger and her middle finger] coming onto the palm side." (See SE #101) Davis inflicted several injuries to Ms. Wren's legs. (See XV 1573-75, 1577-78) Ms. Wren attempted to fight off Davis and provided additional confirmation of Davis' determination to kill her. Therefore, she had multiple defensive wounds. (See XV 1579, 1583)

Davis again confirmed his cold, murderous premeditated calculation when he chased down the fleeing Ms. Wren as she fled into the kitchen and stabbed her some more. (XVI 1735, 1810-11) Yet more evidence of Davis' determination that evening was his pursuit of killing the victims after his first knife broke and he retrieved another and resumed the executions. (XVI 1736-38, 1812; XVIII 2167-68, 2219)

Indeed, yet more evidence of Davis' extremely heightened premeditation was his execution of Alice Albin when she entered the area. He inflicted 18 stab wounds to her body (XV 1538), including, for example, a wound "went through her mouth and cut the side of her tongue" (XV 1542); a cut that went from the "side of her face all the way behind ... her right ear" and hit bone (XV 1543); a stab wound to the head that "fractured the bone that's

sitting right underneath ... which is the temporal bone" (XV 1547-48); and two stab wounds to her chest (XV 1548-50). Like her daughter, Ms. Albin attempted to defend herself (See XV 1553-54), but Davis' premeditated determination and persistence prevailed.

Davis not only brought deadly force to the victims' trailer and used it without any events that might complicate ascertaining Davis' murderous premeditation, but also, as the trial court points out, Davis saw baby Aubrey and allowed him to live (XVI 1742; XVIII 2167, 2169), showing his ability to control himself.

Indeed, Davis rationally calculated during that entire evening and the next day, as he gathered the deadly weapon, brought extra clothing and a bag¹² for it; traversed the distance to the victims' trailer; executed the two victims; then rationally attempted to cover his tracks -

by attempting to conceal himself from his trailer-mates (See XIV 1313-17);

by hiding his bloody clothes in the woods (XVI 1744-45, 1747-48. Compare XVIII 2179; XIX 2235), by hiding some of the knives under some tires (XVI 1740, 1745, 1747, 1788-89. See also XVIII 2177-78; XIX 2236);

by looking for a bloody trail with Armstrong's flashlight (XIV 1312; XVI 1740-41; XVI 1814); and,

¹² Davis (IB 78 n. 15) argues conflicts among Davis' statements and testimony concerning the black bag. However, the trial court's resolution of conflicts in the evidence are entitled to deference on appeal. Here, the trial court found that the "Defendant told Detectives Stucki and Romano that he wore extra clothing the night of the murders because he knew he was going to get bloody and that he took a bag to place the bloody clothes into." (See also XVI 1747)

by lying to his trailer-mate and others (Compare XIV 1312, 1320-22, 1327-28 with XIV 1424-25, XVI 1668-72, 1686-1700 with XVI 1700-50 with XVIII 2156-2227, XIX 2233-45, XXI 2657-60, 2667-89).

As much as Davis had planned these murders, they did not go according to plan. Instead, he gashed himself on the hand when one of the knives broke. (XVI 1736-37. See SE #14. See also XIV 1320-21,1688-91; XVIII 2172-73) Davis' reaction again demonstrated the calculation and rational behavior permeating these murders, as he, for example, looked for a blood trail between the trailers with Armstrong's flashlight and as he attempted to concoct stories to Armstrong and the police, eventually including stories that would otherwise explain away his blood that he left in the victims' trailer.

The unplanned cutting of Davis' hand while he executed his plan and his attempts to cover it up, including his ultimate story of the "devil made me do it," does not negate the planning he did to perpetrate this murder. Indeed, they provide additional support for CCP.

In contrast to the hard cold facts showing Davis' rational ability to prearrange and execute his deadly force and rational attempts at covering up his crime, Davis has offered experts whose opinions substantially rely upon Davis' narratives and Davis' answers to psychological testing.

Davis would require the courts to accept that Davis acting impulsively and not planning when he obtained the knife, 2 sets of clothing, and a bag in which to stash his bloody clothing. Davis was acting impulsively when, around 11pm or midnight, he navigated 500 to 600 yards to the victims' trailer. Davis was acting impulsively when he selected the trailer of the

family of the girlfriend who left him. Davis was acting impulsively when he arrived at the victim's trailer, paused outside, concealed the knife, knocked on the door, and knifed both of the victims to death with 34 stabs and slashes, even rotating back to Wren and choking her. Davis was acting impulsively as he spared the young child in bed. Davis was acting impulsively as he wiped off the doorknob and continued with his impulsivity by lying to his roommate about his reason to "check on" the victims, lying to the police, and even throwing a devil story at his experts.

Moreover, Davis' own expert, Dr. Krop, determined that Davis' possession story was Davis' rationalization for the murders:

I was not buying that he did not have control at the time, I was buying or I am theorizing he had a need to tell me that again as a defense mechanism.

(XXI 2719) Thus, Davis' reliance (IB 72-73)¹³ on Krop's testimony is misplaced.

Further, as the trial court reasoned that while "people diagnosed with ADD" might have "an **inability** to plan ahead at times," "Dr. Krop did not testify that this inability to plan ahead necessarily applied to the Defendant, particularly on the night of the murders." Further, Krop referred to a dissociated state as "not a diagnosis," but rather a "coping mechanism." (XXI 2721) It was a way to divorce himself from what he was doing but it did not cause him to do it or impair his ability to conform.

¹³ The State objects to Davis' reliance upon materials outside the record on appeal at IB 72-73 n. 13.

(See XXI 2659-60)

Dr. Krop also opined that he thought that Davis' judgment was "compromised," but he refused to "speculate" that Davis was substantially impaired during the murders. (XXI 2705) Indeed, Krop's conclusion that Davis' judgment was "compromised" was based, in part, on finding no "rational motive" for the murders. (XXI 2705) Yet, Krop conceded that Davis had lied to him (XXI 2675-77), and as indicated above, Krop said he did not believe Davis' story about being possessed. Yet, Krop admits that Davis talked about being involved with Amy Ware, about them breaking up a few months prior to the murders, about getting a saute knife at his trailer, going to the trailer of victims he associated with Amy and killing them. (XXI 2667, 2670-71, 2678-79) Krop appeared to simply accept that Davis was not upset over the break-up, (XXI 2670-71. See XXI 2674) yet admitted that Davis could have an "interest in not telling [Krop] the truth" (XXI 2673-74), and indeed, Davis had proved this interest by actually lying to Krop. Therefore, it is reasonable to discredit Krop's acceptance of Davis' presentation of no motive to him, which was part of the foundation of his opinion even that Davis' judgment was "compromised."

In any event, "compromised" judgment, even accepting this opinion at face value, does not negate CCP, especially given all the facts of this case. See also Facts section supra.

Davis (IB 73-74) also discusses Dr. Dudley,¹⁴ but Dudley repeatedly refused to explicitly link his diagnosis of Davis with the murders so that, even arguendo accepting his testimony at face value, CCP was not negated. Thus, Dudley testified that he does not have "enough information to say whether at the time of these murders that he experienced a psychotic deterioration." (XXI 2748) He continued by opining that Davis is "vulnerable to periodic decompensations of a brief nature," but "I can't confirm that that happened at the time of the killings." (XXI 2750. See also XXI 2783)

Furthermore, contrary to some of the other defense evidence, Davis has "gained considerable reading capabilities" (XXI 2777); Davis treated high school more like a "social activity" than as a learning activity (XXIII 3090); Davis won an award in the Job Corp for math (XXIII 3092); and, several of Davis' own defense lay witnesses testified that Davis appeared to them to be "normal" (XXII 2799, 2805-2806, 2821; XXII 2945-48, 2953-56). For example, Armida Mata testified that Davis worked until 6pm on August 20, 2003 (the day before he was arrested; the murders occurred late on August 20 or early on August 21), and Davis acted normal. (XXI 2805-2806) Portia Wicker Davis testified that Davis "[a]bsolutely" acted normal on August 20, 2003. (XXI 2821) Manuel Mata testified that on August 20, 2003, there was "[n]othing wrong" with Davis. (XXI 2799)

¹⁴ Dudley indicated that in criminal cases, he "primarily" testifies for the defense. (XXI 2764)

The bottom-line is that the evidence as a whole shows that Davis manipulates and lies when it is to his advantage.

Because of the foregoing facts, Davis has failed to meet his burden of showing error in ISSUE I.

Here, as in Sexton v. State, 775 So.2d 923, 935 (Fla. 2000), there was evidence of mental mitigation, indeed substantially more compelling than here. And, as in Sexton, the existence of that mental mitigation did not preclude CCP. Here, as in Sexton, the defendant's manipulations supported CCP. There, Sexton "manipulat[ed] his children to assist with the murder and the disposal of the victim." Here, Davis orchestrated his preparation and manipulated Jimmy Armstrong and took measures to dispose of the evidence, but his gashed hand belied his manipulative efforts to escape detection. Sexton had the "ability to know that killing Joel was wrong," and here, when Davis knew he was caught, he finally expressed his knowledge of his wrong repeatedly to the police. Here, as in Sexton, "the trial court did not abuse its discretion by affording" CCP "'great weight.'"

Connor v. State, 803 So.2d 598, 611 (Fla. 2001), upheld the following trial court finding of CCP: "The Court does not believe that the defendant's mental illness, that is, some organicity and some paranoid ideation, reached such a severity that it interfered with Mr. Connor's ability to perceive events, or to coldly plan and carry out his murder of Jessica. Rather, the manner and means of death were done in a highly premeditated fashion, without any moral or legal justification." Here, while the manner that Davis exhibited his CCP was different from Connor,

Connor's principle relying upon facts surrounding the murder applies.

None of the Davis' cases apply. Davis (IB 70) cites to Almeida v. State, 748 So.2d 922 (Fla. 1999), but Almeida did not undertake the extensive preparation that Davis did (knife, extra clothing, bag for the bloody clothes); Almeida did not carry that preparation in a long walk to the murder scene; Almeida did not demonstrate his determination to execute two victims by stabbing them 34 times and overcoming their resistance; Davis, unlike Almeida, had not been "drinking on the night of the crime"; unlike Almeida, Davis did not have a "brutal childhood"; Davis was not "particularly unstable at the time of the crime" due to something external to the motive for the murder; and Almeida did not demonstrate his persisting rationality by looking for a blood trail, burying murder weapons, hiding his bloody clothes, and repeatedly lying in an attempt to cover his tracks.

Thus, unlike Mahn v. State, 714 So.2d 391, 398 (Fla. 1998)(IB 70), this was not a "rash and spontaneous killing evidenc[ing] no analytical thinking, no conscious and well-developed plan to kill." Further, unlike Mahn "using hastily obtained weapons of opportunity, carried out the attacks in a haphazard manner, ... and then fle[eing] in a panic, 714 So. 2d at 398, Davis methodically obtained his murder weapon in advance and carried it and extra clothing and a bag as he negotiated the walk to the victims' trailer, and, instead of fleeing in a panic, he attempted to clean up, wiped off door knobs, checked for blood trails, hid bloody clothing and weapons, and repeatedly and calculat[ingly] lied about what happened.

Santos v. State, 591 So. 2d 160, 163 (Fla. 1991)(IB 70), unlike here, involved "an ongoing, highly emotional domestic dispute" with Irma and her family and the murder was a "irrational, heated passion brought on by a domestic dispute." Indeed, Santos did not involve Davis' level of methodical preparation nor did Santos take Davis' extreme measures to hide his murder.

In Maulden v. State, 617 So. 2d 298, 303 (Fla. 1993)(IB 70, 74, 78), there was support in the events surrounding the murder for the expert's conclusion "Maulden was overwhelmed by his emotions" when he committed the murder. Here, there was no such expert evidence nor facts surrounding the murders to support such an opinion. Instead, for example, here Davis looked "normal" that day and extensively pre-arranged and post-arranged his cover-up for the murders.

In Coday v. State, 946 So.2d 988, 1004 (Fla. 2006)(IB 74), unlike here, the defense presented six mental health experts whose opinions included at least one opinion on point and directly linked to the crime: "Coday went into a dissociative state, described as an out-of-body state, where the defendant was aware of what he was doing but could not control it." Moreover, there, unlike here, the defendant went into a rage in the spur of the moment and killed the victim while in that rage. Indeed, here, there was evidence that the "dissociative state" was Davis' fabrication. More importantly, Coday did not address CCP.

In Hardy v. State, 716 So. 2d 761, 766 (Fla. 1998)(IB 76), unlike here, the defendant made a "spur-of-the-moment decision to shoot the officer.

Moreover, immediately following the shooting, Hardy attempted to take his own life." Davis' planning belies the "spur-of-the-moment decision" and Davis has not tried to kill himself.

Unlike here, Geralds v. State, 601 So.2d 1157, 1163-1164 (Fla. 1992)(IB 79), included evidence that the defendant obtained information towards perpetrating a burglary while "avoid[ing] contact with anyone during the burglary" and accordingly, "the victim was bound first rather than immediately killed shows that the homicide was not planned, and "the knife was a weapon of opportunity from the kitchen rather than one brought to the scene." Here, the victims' car was at their trailer, he planned the murder and therefore brought the knife, extra clothes, and a bag for the anticipated bloody clothes. Here, unlike Geralds' "struggle prior to the killing," the struggle was simply the victims attempting to survive a determined killer.

E. Any error was harmless.

Given the other serious aggravation in this case, especially HAC and a double-murder as prior violent felonies, given the jury's 9-3 recommendations of death, and given the conflicting evidence concerning Davis' mental condition, such as his "normal" behavior earlier in the day of the murder, See discussion supra citing XXII 2799, 2805-2806, 2821; XXII 2945-48, 2953-56, the State submits that any arguable error in arguing and finding CCP was harmless, meriting an affirmance of the death sentences.

ISSUE II: DID THE TRIAL COURT REVERSIBLY ERR IN FAILING TO CONSIDER AND WEIGH EVIDENCE OF DAVIS' IMPAIRED CAPACITY? (RESTATED)

The defense argued that "[t]he capacity of Mr. Davis to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired." (Suppl I 32; XXVI 3390. See also XXIV 3306-3307)

"Because competent, substantial evidence supports the trial court's findings," ... the trial court did not err in rejecting th[is] mitigating circumstance[]," Bevel v. State, 2008 Fla. LEXIS 443, *29-30 (Fla. 2008), as a statutory mitigator. Here, the trial court's well-reasoned order found:

The Defendant offered the testimony of Dr. Rick Dudley and Dr. Harry Krop to establish the existence of this mitigating circumstance. Approximately two years after the murders, Dr. Dudley examined the Defendant at the jail for over a day-and-a-half. Dr. Dudley testified that the Defendant had severe cognitive defects and that the Defendant met the criteria for a diagnosis of borderline personality disorder and, combined together, the Defendant had an extreme and significant psychiatric condition. However, Dr. Dudley testified that he could not say the Defendant experienced a psychotic deterioration at the time of the murders. While Dr. Dudley testified that, in his opinion, the Defendant was vulnerable to periodic and brief episodes of deterioration, he could not state it happened at the time of the murders and no reasonable evidence has been put forth to suggest otherwise.

Dr. Krop reviewed many of the Defendant's records and interviewed the Defendant on four separate occasions, the first interview occurring a week-and-a-half after the murders. Dr. Krop did not testify that the Defendant suffered from borderline personality disorder. Rather, Dr. Krop testified he did not believe that the Defendant suffered any major mental illness, but had Attention Deficit Disorder (ADD) and frontal lobe damage. Dr. Krop testified that the frontal lobe is the part of the brain that is responsible for problem solving, impulse control and inhibiting activity. Dr. Krop testified that people with frontal lobe damage who are faced with a problem or a crisis often do not make the right choice because they do not have the full capacity to think through all of the options available to them and then make the right decision. However,

Dr. Krop testified that while a person's judgment could be affected by frontal lobe damage, a typical person with frontal lobe damage would not just 'lose it,' or 'go off,' without something precipitating it, like a trigger mechanism. Dr. Krop testified that, based on the fact that he could not see a rational motive for the murders, he felt the Defendant's judgment was affected at the time of the murders, however, Dr. Krop could not state to what extent it was impaired. Further, Dr. Krop testified that the Defendant's frontal lobe damage was probably a congenital defect and testified that the Defendant was able to live every day of his life, up until the day of the murders, without being particularly violent. Moreover, Dr. Krop testified that the Defendant was sane at the time of the murders and knew right from wrong.

The Defendant's actions before, during and after the murders rebuts any contention that the capacity of the Defendant to appreciate the criminality of his conduct or conform his conduct to the requirements of the law was substantially impaired and supports Dr. Krop's opinion that the Defendant was sane and knew right from wrong when he murdered Loretta Wren and Alice Albin. Manuel Mata, Sr., Ms. Mata, Ms. Wicker, Ms. Sosa and Mr. Armstrong, all testified that when they saw the Defendant, the day or night before he was arrested, which would have been the day or night of the murders, the Defendant appeared fine and was acting normal. Mr. Mata, Sr., testified that the Defendant worked at his car lot the day before he was arrested and that the Defendant appeared fine to him and that there did not appear to be anything wrong with the Defendant. Ms. Mata testified that the Defendant worked the day before he was arrested from 9:00 a.m. to 6:00 p.m., and that the Defendant was acting normal. Ms. Wicker also testified that the Defendant was working the day before he was arrested at the car lot and that he was 'absolutely' acting normal. The Defendant's mother, Ms. Sosa, testified that the Defendant had dinner with her the night before he was arrested. Ms. Sosa testified that she met the Defendant at the car lot and that they walked to dinner. Ms. Sosa stated that nothing seemed to be wrong with the Defendant when she saw him and testified that she dropped the Defendant off at his trailer around 8:15 or 8:30 p.m. This would have been between three-and-a-half to four hours before the murders. After Ms. Sosa dropped the Defendant off at his trailer, Mr. Armstrong testified that the Defendant acted as a mediator during an argument between himself and Ms. Hurley.

Later that same night, around 12:00-1:00 a.m., the Defendant took a knife from his own kitchen, put the knife in his pocket, walked approximately 600 yards to the victims' home, sat outside on the victims' stairs from two to thirty minutes contemplating his next actions. The Defendant then got up, took the knife out of his pocket and hid it in his hand, knocked on the victims' door and when Loretta

Wren answered, asked her questions and, after she responded, stabbed Loretta Wren while she was standing at her own front door. The Defendant also testified that he started his assault on Alice Albin by first stabbing her as well. The Defendant controlled the two victims so that neither could leave or call for help. Further, the Defendant saw, had easy opportunity, but chose not to kill, the little boy, Aubrey.

The Defendant did what he could to cleanse the scene of the crime of anything that could connect him to the murders. The Defendant moved both bodies from the kitchen to the living room and stated he covered both of the bodies with a blanket. The Defendant attempted to clean up behind himself, but could not as there was too much blood in the kitchen. The Defendant did put kitchen utensils, including knives, in the kitchen sink and cleaned himself up in the bathroom. The Defendant turned off some of the lights, closed the blinds, wiped any prints off of the door knob on the front door, and locked the door behind him when he left.

The Defendant told Detectives Stucki and Romano that he wore extra clothing [n. 21] the night of the murders because he knew he was going to get bloody and that he took a bag to place the bloody clothes into. The Defendant placed his pants and shoes in the bag and hid it in the woods. The Defendant testified that he returned to his own trailer, got a flashlight, and searched around his home for any trails of blood. The Defendant also testified that the next day, he moved four tires, buried the knives in the dirt, moved the tires over the knives and then poured gasoline over the tires so dogs would not sniff around them.

The Defendant also tried to blame someone else for the murders of Loretta Wren and Alice Albin. The morning after the murders, the Defendant woke up and, around 10:00 a.m., told Mr. Armstrong that he had been at the victims' trailer the night before. The Defendant created a fictional perpetrator and described this person to Mr. Armstrong. The Defendant continued to blame this fictional perpetrator when he was interviewed by Detectives Stucki and Romano for over five hours.

This Court has had the benefit and has considered the full picture of the Defendant's actions on the night he murdered Loretta Wren and Alice Albin. In doing so, while this Court accepts the Defendant was under some level of mental or emotional disturbance at the time of the murders, it is clear he took precautions both before, during and after, in an effort to ensure that he was not identified as the one who murdered Loretta Wren and Alice Albin. There is no reasonable evidence that the Defendant's capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of law was substantially impaired. In fact, the evidence, as outlined

above, establishes just the opposite. The evidence, when considered in total, presents a person who knew what he was doing was wrong when he committed these murders and who thought he had taken the necessary precautions to hide his crimes.

The Court finds that the testimony and evidence did not reasonably establish the existence of this statutory mitigating circumstance and it shall not be considered as a statutory mitigator. However, this Court has considered the fact that the Defendant has ADD and frontal lobe damage as non-statutory mitigators as outlined in numbers ten and thirteen below under 'Non-Statutory Mitigating Circumstances.'

(IV 515-19, footnote text omitted, underlining in original) See also trial court order quoted in, and related discussion in, ISSUE I supra.

For the reasons the trial court enunciated in the order, the trial court's determination that Davis' mental impairment was not "substantial" merits affirmance. The trial court explicitly pointed to the specific "competent, substantial evidence" supporting its decision. See Ponticelli v. State, 593 So. 2d 483, 491 (Fla. 1991)("trial court ... rejected as a mitigating circumstance the fact that the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired"; trial court, among other things, "considered testimony concerning Ponticelli's actions on the night of the murder evincing that his capacity to appreciate the criminality of his conduct was not impaired"), vacated on other ground 506 U.S. 802 (1992). We again affirm Ponticelli's convictions and sentences of death". See also Connor v. State, 803 So. 2d 598, 611-612 (Fla. 2001)("trial court has the discretion to reject a statutory mental mitigator if the mental health experts are in disagreement regarding whether the mitigator exists).

Moreover, to Davis' benefit, the trial court not only considered Davis'

mental state in mitigators 10 and 13 of its order (ADD and Hyperactivity, IV 535; congenital brain damage, IV 536-40), but also found and weighed the following: 9. Impaired development as he grew up (IV 528-35); 11. Learning disability (IV 535-36); 12. Borderline personality disorder (IV 536); 13. Congenital organic brain damage (IV 536-40); 14. Cognitive and memory deficits (IV 540-41); and, 15. Low borderline IQ (IV 541-43). Even though not requested, the trial court also found as a mitigator that Davis was troubled by his murders, including his espoused belief, as a coping technique, that he was controlled by an evil spirit, "slight weight" (IV 548).

Here as in Pittman v. State, 646 So.2d 167, 170 (Fla. 1994), the defense elicited expert opinions regarding "the Defendant's capacity to conform his conduct to the requirements of the law [being] substantially impaired." As here, in Pittman's approving quotation of the trial court order, facts surrounding the murder[s] undermined the mitigator:

To the contrary, these facts reveal that all the actions by the Defendant leading up to the killings, the nature of the killings themselves, the methodical steps taken to destroy evidence, to effectuate a getaway, and to establish an alibi were the product of deliberate thought. These actions clearly show that the Defendant knew what he was doing and that it was unlawful. Again the presence of alcohol as a mitigating factor is unsupported by the record except for the expert's opinion.

Pittman affirmed the trial court finding that "there is nothing in the record to demonstrate that the Defendant could not conform his conduct to the requirements of law." In view of the facts of this case, Davis is fortunate that the trial court weighed his mental impairment at all.

Bryant v. State, 785 So.2d 422, 434-436 (Fla. 2001), affirmed the trial

court's rejection of mental mitigation ("neurological defects of his brain that would cause a lack of impulse control and impaired judgment"). Bryant, like Davis, produced expert testimony. Bryant reasoned:

As this Court has stated, 'even uncontroverted opinion testimony can be rejected, especially when it is hard to reconcile with the other evidence presented in the case.' *Foster*, 679 So.2d at 755 [Foster v. State, 679 So.2d 747 (Fla. 1996)]; see also *Walls v. State*, 641 So. 2d 381, 390-91 (Fla. 1994) (reasoning that opinion testimony 'gains its greatest force to the degree it is supported by the facts at hand, and its weight diminishes to the degree such support is lacking').

Here, as in Bryant, the defendant's "actions on the night of the murder indicate that he understood what he was doing, why he was doing it, and that it was unlawful." Indeed, as Bryant, quoting James v. State, 489 So.2d 737, 739 (Fla. 1986), reiterated: "the possibility of organic brain damage . . . does not necessarily mean . . . that one may engage in violent, dangerous behavior and not be held accountable. There are many people suffering from varying degrees of organic brain disease who can and do function in today's society."

Here, as in Zack v. State, 753 So.2d 9, 19 n. 8 (Fla. 2000), a mental mitigator was "contradicted by numerous witnesses ... who had seen [the defendant] at different times and who were in a position to observe [him] closely in the hours before and after the ... crimes." Indeed, Zack, 753 So. 2d at 20, also upheld the trial court's treatment of several additional mitigating circumstances, such as "brain damage" and "skewed perception of reality" because "the sentencing order demonstrates these factors were discussed and referenced in the evidence and the factors set forth in the order." Here, given all of the facts this case, the trial court properly

considered impaired capacity as a nonstatutory mitigator.

In contrast, Davis argues (IB 82) that Dr. Krop's testimony on impairment was "uncontroverted" and that Dr. Dudley testified that he "**could have** had a brief psychotic episode." Davis overlooks the weighty evidence surrounding the crime and his subsequent attempts to conceal and lie about it that reflect a lack of substantial impairment. Davis also overlooks Krop's testimony (XXI 2705) where he refused to "speculate" whether Davis was substantially impaired and that, according to Krop, dissociation was a way for Davis to divorce himself from what he was doing, to cope, but Krop did not say that it caused Davis to do the murders or that it impaired his ability to conform. (See XXI 2659-60, 2721). See discussion of Krop in ISSUE I supra. Concerning Dudley, as also discussed in ISSUE I supra, Davis overlooks Dudley's refusal to link any "decompensations" to "the time of the killings." (See XXI 2748, 2750. See also XXI 2783) The mere possibility of "could have" (IB 82) does not mitigate.

In sum, Davis' mental capacity was not **substantially** impaired before the murders as demonstrated by his preparation, determined execution of both victims, and consciousness of guilt after the murders, as he attempted to conceal his crime by cleaning, hiding evidence, and fabricating stories.

Arguendo, if somehow the trial court's treatment of impaired capacity is held to be error, it is harmless in light of all the ways the trial court did consider Davis' alleged mental condition and in light of the weighty, serious aggravation.

ISSUE III: WHETHER THE TRIAL COURT ERRED IN ALLOWING THE PROSECUTOR TO ARGUE FACTORS PERTAINING TO THE MITIGATOR OF NO SIGNIFICANT CRIMINAL HISTORY AND WHETHER THE TRIAL COURT PROPERLY WEIGHED IT. (RESTATED)

The State disagrees with Davis' conclusion (IB 83) that this issue was preserved. The evidence of Davis' jail misbehavior was discussed several times prior to it being introduced at the penalty phase, but the State has not found where Davis' counsel objected to it on the ground presented in ISSUE III. (See XX 2614, 2616-19; XXI 2826, 2827; XXII 2834-35, 2967-70, 3146-53). Admitted into evidence without an objection corresponding to ISSUE III, the State was entitled to comment on it and the judge was entitled to weigh it. However, because the evidence of Davis' school misbehavior was introduced for another purpose, the objections to the use of that evidence against no significant criminal history (See XXIV 3238, 3275, 3278) were arguably timely. However, neither the claim pertaining to jail misbehavior nor school misbehavior has any merit.

As a preliminary matter, the defense was allowed to argue this mitigator, and the trial judge found and weighed it after carefully considering the evidence. (See III 504-506)

In arguing the school and juvenile misbehavior, Davis does not point to any alleged misrepresentations by the prosecutor, but rather, attacks the trial court's order weighing the mitigator. (See IB 84-86) Thus, the standard of review is whether "competent, substantial evidence supports the trial court's findings," e.g., Bevel. Davis claims (IB 85) that the trial court "exaggerated the problems, suggesting that Davis was a violent person who was constantly getting into fights at school." The State disagrees. The

trial court's order says no such thing; it is very matter of fact. Indeed, Davis does not specify which of the misbehaviors were unsupported by the record, and Yates did testify, for example:

I recall specifically an indication of a fight with another student. I recall that he was extremely disruptive to and disobedient with authority figures. *** he disrupts things. But he started to destroy some pictures on a bulletin board and his was put up for open house. And the teacher says he -- every single day he does something that is not okay. *** So he's continuously being defiant, I guess, to authority figures? Yes *** he continues to disrupt the class? Yes, he does *** he's argumentative and so they aw[a]rd him with two days of in-school suspension *** He disrupts *** [he makes racist comments] *** continues to disrupt the class *** he's swinging at another student like he wants to fight ***

(XXII 2889, 2891, 2892, 2893, 2894, 2895) Accordingly, Ms. Rogers acknowledged that in school Davis got into "trouble fighting with people," and "the teachers and stuff." (XXII 3026) She said there was an incident in which he "did something to one of the teachers." (XXII 3027) Toni Rodriguez testified that Davis smacked her son Pete "in the head with a pine cone" and "dug" into his cheek. Another time, when Davis was about 10 or 11 years old, she heard Pete crying upstairs because Davis was trying to "suffocate him" with a bean bag chair. Davis said he was only playing around, but Pete was scared and had turned "blue, purple." (XXII 2987-92, 2996) Dana Sosa testified that there was an incident in which two undercover officers watched Davis damage a street sign and arrested him as a juvenile. (XXIII 3091) Thus, Davis' past misbehaviors were substantially more significant than the one incident in Ramirez v. State, 739 So. 2d 568, 582 (Fla. 1999)(IB 86), of "stealing a ten-dollar bill from the dashboard of a pick-up truck."

Concerning Davis' jail misbehaviors, assuming the merits are reached, the claim has none. Hess v. State, 794 So. 2d 1249, 1265 (Fla. 2001)(IB 84-85), held that subsequent misbehavior could not justify refusing to find this mitigator:

In *Santos v. State*, 629 So. 2d 838, 840 (Fla. 1994), we cited *Scull* [*Scull v. State*, 533 So.2d 1137 (Fla. 1988)] in support of our conclusion that "this mitigating factor must be found if a defendant had no significant history of criminal activity prior to the transaction in which the instant murder occurred." ... We also applied this reasoning in *Besaraba v. State*, 656 So 2d 441, 446-47 (Fla. 1995). Hence, we conclude that the trial court erred in **not finding** this statutory mitigator.

Here, the trial court considered, found, and weighed this mitigator. Thus, the trial court's **finding** complied with Hess, and therefore in determining **weight**, it was not bound by misbehavior occurring prior to these murders but rather by the exercise of reasonableness. Compare, e.g., Hess v. State, 794 So.2d 1249, 1265 (Fla. 2001)("weight assigned to a mitigating circumstance is within the trial court's discretion and is subject to the abuse of discretion standard") with Canakaris v. Canakaris, 382 So.2d 1197, 1203 (Fla. 1980)("where no reasonable man would take the view adopted by the trial court"). Davis has failed to show, or even argue, that any specific instance of Davis' jail misbehavior was unreasonably argued by the prosecutor and considered by the trial court, but instead he advocates a per se rule of excluding from all weight-consideration all post-murder incidents. The State submits that Davis extends Hess beyond its holding. See also Walton v. State, 547 So. 2d 622, 625 (Fla. 1989)("Once a defendant claims that this mitigating circumstance is applicable, the state may rebut this claim with direct evidence of criminal activity"; "evidence of

Walton's drug activity was **admissible** in rebuttal").

In any event, this mitigator and any contention that it should have been weighed more than its "little weight" (III 506) pales in comparison to the weighty aggravation and the weight that the trial court afforded the other mitigation. Any error would be harmless.

ISSUE IV: WHETHER THE DEATH PENALTY IN THIS CASE IS PROPORTIONAL.
(RESTATED)

In comparing this case with others, Davis self-gratuitously assumes a number of factual matters that the State contests. For example, Davis states (IB 87. See also IB 103-104): "Neither Davis nor the mental health experts could explain what possessed Davis to kill the two women." However, even Dr. Krop opined that Davis' "possession" was Davis' concoction, and as the State has argued at length in ISSUE I and ISSUE II, Davis has manipulated the process. Just as he tried to build in his escape from detection and apprehension when he took a deadly weapon to the victims' trailer in the dark of the night with his additional clothes and bag ready to hide his bloody clothes, he scurried to clean up and hide his bloody mess in the aftermath of his heinous acts. He was still hiding what he had done as he lied to Armstrong and the police and responded to his experts' questions.

The State disputes Davis' apparent belief (See IB 101-102) that the Burglary in this case is not serious because he did not "break into the home." To the contrary, as the trial court reasoned (III 488, 496-97), Davis stabbed his way into the home, then chased Loretta Wren down within her home as she tried to flee into the kitchen, then he also remained

unlawfully as he struck her mother down in her home.

Davis claims (IB 102) that the prior violent felony applies "only" because this is a double murder. Florida law does not cheapen innocent life simply because someone else was killed contemporaneously. In contrast, the taking of two innocent lives here aggravates this aggravation further.

Later in his ISSUE IV (IB 101-105), Davis reiterates his positions on other issues, which, of course the State continues to contest.

Davis cannot escape the serious and weighty aggravation that he perpetrated and that support affirming the trial court's following of the 9-3 jury recommendations of death in this case. HAC¹⁵ is one of the most serious aggravators in the statutory sentencing scheme. See, e.g., Douglas v. State, 878 So.2d 1246, 1262 (Fla. 2004). Here, HAC is multiplied by two victims and the 34 slashes and stabs that Davis inflicted on them as they fought for their survival in their home.

The prior violent felony aggravating circumstance is also "especially weighty." See, e.g., Frances v. State, 970 So.2d 806, 817 (Fla. 2007), citing Ferrell v. State, 680 So. 2d 390, 391 (Fla. 1996) (affirming death sentence where single aggravating circumstance of prior violent felony was "weighty"); Duncan v. State, 619 So. 2d 279, 284 (Fla. 1993) (affirming death sentence where sole aggravating factor was prior second-degree

¹⁵ Numerous stab wounds support a finding HAC. See, e.g., Hardwick v. State, 521 So.2d 1071 (Fla. 1988); Johnston v. State, 497 So.2d 863 (Fla. 1986). See also, e.g., Hansbrough v. State, 509 So.2d 1081, 1086 (Fla. 1987) (evidence of defensive wounds and that victim did not die instantly supported finding that murder was heinous, atrocious, or cruel).

murder).

Given HAC and prior violent felony in this case, Davis perpetrated a double murder in which he subjected two victims to painful deaths as they each bled to death from 16 and 18 stab wounds. Moreover, he perpetrated both murders in their home by forcing his way in and stabbing Loretta Wren as he entered and unlawfully remaining to knife Alice Albin down, more than justifying the "great weight" assigned to the while-engaged-in-a-burglary aggravator.

In addition, CCP aggravator is one of the "most serious aggravators set out in the statutory sentencing scheme." Larkins v. State, 739 So.2d 90, 95 (Fla. 1999). See ISSUE I supra.

In contrast to the extremely weighty four aggravators in this case, the trial court justifiably gave no significant prior criminal history little weight, extreme emotional disturbance some weight, mental age some weight, and several non-statutory mitigators little and slight weights, with dysfunctional extended family, organic brain damage, borderline IQ, and being called racial names receiving some weight. (III 470 et seq.)

Pittman v. State, 646 So. 2d 167, 173 (Fla. 1994), rejected a challenge to proportionality and held that where "Pittman stabbed his in-laws to death in the middle of the night after taking the precaution of cutting the phone lines," "[c]learly, these murders justify the sentences imposed in this case." While Davis did not cut the phone lines, he quickly cut the victims off from the outside world when he forced his way inside stabbing as he went, chasing Loretta Wren down as she ran to the kitchen, and

cutting Alice Albin down as she entered the kitchen area.

This case is also comparable to Lawrence v. State, 846 So. 2d 440, 455 (Fla. 2003)(11-1 jury vote), and many of the cases it cites.¹⁶ Like here, in Lawrence prior violent felony and CCP were found. Lawrence held:

The Court finds, as did the jury, that these two aggravators greatly outweigh all of the statutory and non-statutory mitigating circumstances, inclusive of the significant mental mitigation. *** In comparing the particular circumstances of the instant case with other cases which have had similar aggravation and mitigation, we determine that Lawrence's death sentence is proportionate.

Lawrence discussed Robinson v. State, 761 So.2d 269 (Fla. 1999), but this case is more much aggravated than Robinson, in which CCP, pecuniary gain, avoid arrest were found but where there was only one murder and no HAC. Here, the death sentence merits affirmance, because as Lawrence notes regarding Robinson, "This Court upheld Robinson's death sentence because the totality of the circumstances indicated that Robinson was capable of functioning in everyday society and that he "acted according to a deliberate plan and was fully cognizant of his actions." As here, Lawrence reasoned that "Lawrence's mental impairments were diminished by other evidence in this case." And as Davis here, "Lawrence was capable of

¹⁶ For example, Lawrence collected cases in which there was "extensive aggravating circumstances outweighed substantial mitigating circumstances," citing analogously Chavez v. State, 832 So.2d 730 (Fla. 2002); Zakrzewski v. State, 717 So. 2d 488, 494 (Fla. 1998); Gudinas v. State, 693 So.2d 953, 968 (Fla. 1997); Rolling v. State, 695 So. 2d 278, 297 (Fla. 1997); Pope v. State, 679 So.2d 710, 716 (Fla. 1996); Henyard v. State, 689 So.2d 239, 255 (Fla. 1996); Branch v. State, 685 So.2d 1250, 1253 (Fla. 1996); Spencer v. State, 691 So.2d 1062, 1065 (Fla. 1996); Provenzano v. State, 497 So.2d 1177, 1183-84 (Fla. 1986).

functioning in society, he could comprehend the consequences of his actions, and he acted with a deliberate plan to further his own gruesome personal interests." Moreover, here HAC is present, times two.

Robinson's mitigators significantly overlap those here:

Of the nonstatutory mitigation presented, the trial court found: (1) Robinson had suffered brain damage to his frontal lobe (given little weight because of insufficient evidence that brain damage caused Robinson's conduct); (2) Robinson was under the influence of cocaine at the time of murder (discounted as duplicative because cocaine abuse was considered in statutory mitigators); (3) Robinson felt remorse (little weight); (4) Robinson believed in God (given little weight); (5) Robinson's father was an alcoholic (given some weight); (6) Robinson's father verbally abused family members (given slight weight); (7) Robinson suffered from personality disorders (given between some and great weight); (8) Robinson was an emotionally disturbed child, who was diagnosed with ADD, placed on high doses of Ritalin, and placed in special education classes, changed schools five times in five years, and had difficulty making friends (given considerable weight); (9) Robinson's family had a history of mental health problems (given some weight); (10) Robinson obtained a G.E.D. while in a juvenile facility (given minuscule weight); (11) Robinson was a model inmate (given very little weight); (12) Robinson suffered extreme duress based on fear of returning to prison because where he was previously raped and beaten (given some weight); (13) Robinson confessed to the murder and assisted police (given little weight); (14) Robinson admitted several times to having a drug problem and sought counseling (given no additional weight to that already given for history of drug abuse); (15) the justice system failed to provide requisite intervention (given no additional weight to that already given for history of drug abuse); (16) Robinson successfully completed a sentence and parole in Missouri (given minuscule weight); (17) Robinson had the ability to adjust to prison life (given very little weight); and (18) Robinson had people who loved him (given extremely little weight).

Robinson, 761 So.2d at 273. In Robinson, "death [wa]s the appropriate penalty," Id. at 277, as it is in this case.

Smithers v. State, 826 So.2d 916, 931 (Fla. 2002), involved killing two women, as here. There were two aggravators in one of the murders, previous violent felony (contemporaneous murder) and HAC. The other murder also

included CCP, compared with CCP in both murders here. Smithers included mental mitigation: committed while Smithers was under the influence of extreme mental or emotional disturbance (moderate weight) and Smithers' capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of the law was substantially impaired (moderate weight). Smithers also involved several non-statutory mitigators. Smithers held the death sentences proportionate. They are proportionate here. See also Mann v. State, 603 So.2d 1141 (Fla. 1992)(upholding death sentence for murder where the trial court found the aggravating circumstances of prior violent felony, murder during the commission of a felony, and HAC and several nonstatutory mitigating circumstances, including remorse).

Davis attempts to compare this case with several others. However, on their face, they do not apply.¹⁷ Hawk v. State, 718 So.2d 159 (Fla. 1998)(IB 93-95), had no CCP and no HAC, and the prior violent felony was an attempt rather than the double murder here. Hawk's mental mitigation was more serious than here. For example, in Hawk, "meningitis ... ravaged his nervous system as a child." Robertson v. State, 699 So.2d 1343 (Fla. 1997)(IB 95), involved only one murder, only one HAC, no CCP, and no prior violent felony. Larkins v. State, 739 So.2d 90 (Fla. 1999)(IB 95-96), had no HAC, no CCP, and involved only one murder. In Cooper v. State, 739 So.

¹⁷ By focusing on some aspects of these cases, the State does not concede that other aspects are similar to this case.

2d 82 (Fla. 1999)(IB 96-97), the defendant's childhood was brutal¹⁸ and there was much more serious mental mitigation than here. Also, Cooper lacked prior violent felony from a double murder and lacked double HAC. Morgan v. State, 639 So.2d 6 (Fla. 1994)(IB 97), especially focused on the defendant's age of "sixteen at the time he committed the offense and that he had been sniffing gasoline on the day of the murder and for many years before the murder," Id. at 14, not present here. Morgan had no CCP and no prior violent felony for a double murder.

In Almeida v. State, 748 So.2d 922 (Fla. 1999)(IB 98-99), there was only one valid aggravator, no CCP (struck on appeal), no HAC, no double murder as the prior violent felony; the jury vote in favor of death was only seven to five, and the defendant suffered from a "brutal childhood," not present here. Penn v. State, 574 So.2d 1079 (Fla. 1991)(IB 99-100), had only one valid aggravator, no CCP, and no prior violent felony. Penn's heavy drug use, not found here, was also significant.

In Maulden v. State, 617 So.2d 298 (Fla. 1993)(IB 100-101), unlike here, the trial judge discounted two of the aggravators under that facts of that case as being insufficient to impose death, leaving CCP as the key aggravator under the facts there, and it was struck on appeal. Here, there

¹⁸ As indicated in the Facts section supra, the trial judge heard conflicting evidence concerning whether and how much Davis was physically struck as he grew up. The judge found: "While the Court does not find that Defendant was severely beaten by his parents, this Court does not totally discount Ms. Rodriguez's and Mr. Guy's testimony" concerning Defendant being called pejorative names. (IV 548)

are four valid and weighty aggravators. Also, as discussed supra, here, unlike Maulden, there is no evidence that Davis was "overwhelmed by his emotions" but rather the evidence shows a conniving murderer.

In sum, Davis deserves the death penalty. It is proportionate.

ISSUE V: WHETHER FLORIDA'S CAPITAL SENTENCING PROCEEDINGS ARE UNCONSTITUTIONAL PURSUANT TO RING V. ARIZONA, 536 U.S. 584 (2002). (RESTATED)

Davis (IB 107-108) correctly concedes that precedent controls opposite to his claim in this issue, and the State asserts that this issue should be rejected for that reason.

Furthermore, Frances v. State, 970 So. 2d 806, 822 (Fla. 2007), recently collected cases and summarized that "the prior violent felony aggravating circumstance," applicable here, renders Ring inapplicable:

This Court has repeatedly relied on the presence of the prior violent felony aggravating circumstance in denying Ring claims. See, e.g., Smith v. State, 866 So. 2d 51, 68 (Fla. 2004) (denying relief on Ring claim and "specifically not[ing] that one of the aggravating factors present in this matter is a prior violent felony conviction"); Davis v. State, 875 So. 2d 359, 374 (Fla. 2003) ("We have denied relief in direct appeals where there has been a prior violent felony aggravator."); Johnston v. State, 863 So.2d 271, 286 (Fla. 2003) (stating that the existence of a "prior violent felony conviction alone satisfies constitutional mandates because the conviction was heard by a jury and determined beyond a reasonable doubt"); Henry v. State, 862 So. 2d 679, 687 (Fla. 2003) (stating in postconviction case that this Court has previously rejected Ring claims "in cases involving the aggravating factor of a previous violent felony conviction").

Thus, Francis noted that "in over fifty cases since Ring's release, this Court has rejected similar Ring claims." 970 So.2d at 822.

In addition to two murders, here, the jury explicitly found Davis guilty of felony murders as well as murders through premeditation (III 404-

407), also rendering Ring inapplicable. See, e.g., Frances v. State, 970 So.2d 806, 823 (Fla. 2007)("unanimous jury found Frances guilty beyond a reasonable doubt of two counts of premeditated murder and one count of robbery, thereby satisfying the mandates of the United States and Florida Constitutions"), citing Kimbrough v. State, 886 So.2d 965, 984 (Fla. 2004); Doorbal v. State, 837 So.2d 940, 963 (Fla. 2003).

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm Appellant's convictions and sentences of death.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by U.S. MAIL on April 14, 2008: Nada M. Carey, Assistant Public Defender, Leon County Courthouse, 301 S. Monroe, Suite 401, Tallahassee, FL 32301.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

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