IN THE SUPREME COURT OF FLORIDA

DANE PATRICK ABDOOL,

Appellant,

v. CASE NO. SC08-944

STATE OF FLORIDA,

Appellee.

_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, STATE OF FLORIDA

# AMENDED ANSWER BRIEF OF THE APPELLEE

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## PRELIMINARY STATEMENT

Appellant, DANE PATRICK ABDOOL raises eight issues in his appeal from his conviction of first degree murder and sentence to death.

References to the appellant will be to “Abdool” or “Appellant”. References to the appellee will be to the “State” or “Appellee”.

The nineteen (19) volume record on appeal will be referenced as “TR” followed by the appropriate volume number and page number. References to the seven volume supplemental record on appeal will be referred to as “TR Supp” followed by the appropriate volume and page number. References to Abdool’s initial brief will be to “IB” followed by the appropriate page number.

## STATEMENT OF THE CASE

Dane Patrick Abdool, born on December 17, 1986, was 19 years and 2 months old when he murdered seventeen year old Amelia Sookdeo on February 25, 2006. Abdool murdered Miss Sookdeo by dousing her with gasoline and setting her ablaze. Smoke inhalation did not kill Amelia Sookdeo. Instead, she died by conflagration. In other words, she burned to death.

Abdool was arrested for Miss Sookdeo's murder on March 2, 2006. (TR Vol. IV 201). On March 21, 2006, Abdool was indicted and charged with one count of first degree premeditated murder. (TR Vol. IV 205). On February 19, 2008, contrary to his plea of not guilty, Abdool was found guilty as charged. (TR Vol. VI 704, TR Vol. XII 791).

The penalty phase commenced on February 20, 2008. The State called four witnesses. Dr. Marie Hanson, the medical examiner testified in support of the HAC aggravator. (TR Vol. XIII 861-864). The gist of her testimony was that Ms. Sookdeo's death would have been excruciatingly painful. (TR Vol. XIII 863-864). Three other witnesses read pre-prepared and redacted victim impact statements. (TR Vol. XIII 864-874).

The defense called fourteen penalty phase witnesses; two experts and twelve lay witnesses. The state called one witness in rebuttal, Dr. Daniel Tressler.

The trial court instructed the jury on two aggravators, CCP and HAC. The trial court instructed the jury on four statutory mitigators: (1) No significant criminal history; (2) extreme emotional disturbance; (3) Abdool's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired; and (4) Abdool's age. The trial court also instructed the jury on the catch-all mitigator. (TR Vol. VI 730-731). The jury recommended Abdool be sentenced to death by a vote of 10-2. (TR Vol. VI 736).

On February 29, 2008, Abdool filed a motion for a new trial. (TR Vol. VI 766-767). The trial court denied the motion on March 5, 2008. (TR Vol. VI 773).

A Spencer hearing was held on April 10, 2008. Neither side presented additional witnesses nor presented any additional argument. (TR Vol. III 137-140). However, both sides prepared, and presented the court with, sentencing memoranda. (TR Vol. VII 813-822, 839-853).

Abdool also filed a motion to bar execution by lethal injection. (TR Vol. III 137-138, TR Vol. VII 823-838). After giving both sides the opportunity to present argument on the motion, the trial court denied Abdool's lethal injection claim. (TR Vol. III 138).

At the Spencer hearing, the trial court offered Mr. Abdool the opportunity to address the court. Abdool declined to make any statement. (TR Vol. III 138).

On May 12, 2008, the court held a sentencing hearing. The trial judge followed the jury's recommendation and sentenced Abdool to death. (TR Vol. VII 861-896).

The trial court found the State had proven two statutory aggravators beyond a reasonable doubt: (1) The murder was cold, calculated, and premeditated (CCP); and (2) the murder was especially heinous, atrocious, or cruel (HAC). (TR Vol. VII 863-871). In mitigation, the court found four statutory mitigators and assigned weight to each one: (1) No significant criminal history (moderate weight); (2) Extreme emotional disturbance (little weight); (3) Age (moderate weight); and (4) Abdool's capacity to appreciate the criminality of his conduct or conform his conduct to requirements of law was substantially impaired. (little weight) (TR Vol. VII 872-879).

The trial judge also considered and weighed forty-eight non-statutory mitigators and assigned weight to each one: (1) Abdool voluntarily spoke with law enforcement (very little weight); (2) Abdool ultimately took responsibility (very little weight); (3) Abdool's biological father was an alcoholic (very little weight); (4) Abdool's biological father was a gambler (very little weight); (5) Abdool was hyperactive (little

weight); (6) Developmental delay (moderate weight); (7) Abdool had to repeat third grade (very little weight); (8) Abdool's parents' divorce had an adverse affect on him (very little weight); (9) Abdool moved from Trinidad to the United States at young age (very little weight); (10) Abdool is estranged from his biological father (very little weight); (11) Abdool is intellectually dull (moderate weight); (12) Although Abdool needed it, Abdool was not placed in special education classes (little weight); (13) Arrested development of social skills (moderate weight); (14) Emotionally underage (moderate weight); (15) Islets of ability (very little weight); (16) Abdool had to repeat 9th grade and it adversely affected him (very little weight); (17) Abdool is not a bigot (very little weight); (18) Abdool was unable to successfully complete a pre-GED program (very little weight); (19) Abdool was a good student in welding (very little weight); (20) Abdool was Baker acted in 2004 after a car accident for suicidal ideation (Very little weight); (21) Family tension resulted in Abdool moving in with his uncle temporarily (very little weight); (22) Abdool has OCD (little weight); (23) Abdool has features of borderline personality disorder (little weight); (24) Abdool had grandiose ideations (very little weight); (25) Abdool suffers from impulse control disorder (very little weight); (26) Abdool has communication disorder features (very little weight); (27) Abdool is a good

soccer player (very little weight); (28) Abdool has ADD (little weight); (29) Abdool has learning disabilities (moderate weight); (30) Abdool suffers from dyslexia (very little weight); (31) Abdool has processing glitches (moderate weight); (32) Abdool functions on 4th to 6th grade level (moderate weight); (33) Abdool misthinks things through (moderate weight); (34) Abdool has low self esteem (very little weight); (35) Abdool was a poor student (moderate weight); (36) Abdool has the love and support of his family (little weight); (37) Abdool was taunted by other kids for being held back in school (very little weight); (38) Abdool suffered from depression (very little weight); (39) Abdool dropped out of high school (very little weight); (40) Abdool has a good relationship with his siblings(very little weight); (41) Abdool is unable to function independently of family (little weight); (42) Abdool suffers from Anxiety Separation Disorder (little weight); (43) Abdool has been the victim of racial bias (little weight); (44) Abdool feels inadequate when compared to younger brother (very little weight); (45) Abdool failed to pass FCAT (very little weight); (46) Abdool was a responsible trusted employee (very little weight); (47) Abdool was a model inmate (very little weight); and (48) Abdool demonstrated good behavior at trial (very little weight). In all, the trial court gave very little weight to thirty non-statutory mitigators, little weight to nine non-

statutory mitigators and moderate weight to the remaining nine. (TR Vol. VII 879-894).

On May 15, 2008, Abdool filed a notice of appeal. (TR Vol. VII 905). Abdool is represented on appeal by the Office of the Public Defender in and for the Seventh Judicial Circuit of Florida.

On July 27, 2009, Abdool filed his initial brief. This is the State's answer brief.

## STATEMENT OF THE FACTS

Amelia Sookdeo was seventeen years old and still in high school at the time of her death. (TR Vol. VIII 48-49). Amelia was no stranger to Dane Patrick Abdool. Instead, Amelia and Abdool dated off and on. They also had a sexual relationship. (TR Vol. X 500-501). Because Abdool had another steady girlfriend, Abdool viewed his relationship with Amelia Sookdeo as "an affair." (TR Vol. X 499; TR Vol. XV 1189).

On the night of February 24, 2006, Amelia visited her friend Natasha (Tasha) Jagllal. Amelia told Tasha that she planned to meet with Abdool late that night. (TR Vol. VIII 66). Although Tasha had never known Amelia to drink alcohol, Amelia told Tasha that she planned to have a couple of drinks with Abdool. (TR Vol. VIII 66).

Before Amelia's death, Tasha and Amelia spent a lot of time together. They were best friends. (TR Vol. VIII 63-64).

Amelia Sookdeo left Tasha's home about 9:45 p.m. on the last full day of her life. (TR Vol. VIII 67). Tasha's Mom took Amelia home. (TR Vol. VIII 67, 77).

Tasha and Amelia were supposed to meet Saturday morning, February 25, 2006. Amelia was to call Tasha that morning to finalize their plans. Amelia never called. (TR Vol. VIII 68).

Madee Lachman is Amelia's mother. (TR Vol. VIII 47-48). Ms. Lachman last saw her daughter alive on February 24, 2006, at

about 10:00 p.m., when Amelia arrived home from Tasha's house. (TR Vol. VIII 50).

The next morning, Ms. Lachman mother went to Amelia's bedroom. The window was open and Amelia was gone. (TR Vol. VIII 49-50). There was no note. Ms. Lachman assumed that Amelia had snuck out again. Amelia had snuck out of the house before. The police had found Amelia and brought her home. (TR Vol. VIII 52).[1]

When Ms. Lachman discovered her daughter missing, she called the police. On the morning of February 25, 2006, Officer Grice responded to Amelia's home to investigate. (TR Vol. VIII 50-51). Although neither Officer Grice nor Ms. Lachman knew it at the time, Amelia was already dead. (TR Vol. VIII 81-82).

Ms. Lachman told Officer Grice that Amelia had a boyfriend. His name was Dane Patrick Abdool. Officer Grice called Abdool's phone number in Amelia's cell phone. A person who identified himself as Abdool answered the phone. Abdool reported that he had not seen Amelia in two or three days. Abdool seemed very calm during his conversation with Officer Grice. (TR Vol. VIII 61-62).

[1] In the weeks before the murder, Amelia Sookdeo was out of sorts. Some two weeks before her death, Ms. Lachman overheard Amelia tell one of her friends she was pregnant. Ms. Lachman took her daughter in for a pregnancy test. The test was negative and Amelia showed her Mom evidence that she had started her period. (TR Vol. VIII 55-56). Ms. Lachman told the jury that Amelia seemed a bit depressed in the week before her death. She had not gone to school all week. (TR Vol. VIII 54).

Amelia's body was found at 4:14 a.m. on the morning of February 25, 2006. Officer Kristen Campbell, responding to an unrelated vehicle fire, spotted a small fire on the side of State Road 545. She pulled off the road to investigate. (TR Vol. VIII 81-82).

The first thing Officer Campbell observed was a white Nike tennis shoe. When she looked closer, Officer Campbell realized the object on fire was a human body. (TR Vol. VIII 82). The person was obviously dead. (TR Vol. VIII 82).

Officer William Bagley arrived in response to Officer Campbell's call for assistance. Officer Bagley took a fire extinguisher from his car and put out the fire. (TR Vol. VIII 88). Like Officer Campbell, Officer Bagley saw no signs of life. (TR Vol. VIII 88).

Amelia's body was burned beyond recognition. (TR Vol. VIII 131-132). A forensic odontist eventually identified Amelia by way of her dental records. (TR Vol. VIII 150-151). She was also identified by DNA. (TR Vol. 314-315).

There was much evidence linking Abdool to the murder scene and to the murder. At the crime scene, police investigators found distinctive and pronounced tire tracks. (TR Vol. IX 207).

The police seized all four tires from Abdool's white Jetta. (TR Vol. IX 214, 347-349). The tires from Abdool's car were fairly rare Fuzion ZRI performance tires. (TR Vol. IX 327-328).

FDLE analyst Thomas Burongiorne, an expert in footwear and tire tread analysis, examined Abdool's tires. (TR Vol. IX 324). Mr. Burongiorne testified that the tire from Mr. Abdool's right front passenger tire matched the tire tracks found at the crime scene. (TR Vol. IX 331).

Police also found a pair of black gloves at the murder scene. (TR Vol. IX 206). A mixture of DNA was found on both gloves. Both Amelia and Abdool could be included as possible contributors to the mixture of DNA found on the gloves. (TR Vol. IX 315-319). Abdool admitted that the gloves found at the scene were his and that he had left them there. (TR Vol. X 527).

A crime scene investigator found a green BIC lighter at the murder scene about eight (8) feet from Amelia's body. (TR Vol. VIII 128-131, TR Vol. IX 197). Investigators found another green lighter, similar in color and design, in Abdool's apartment. (TR Vol. IX 214).

Duct tape, a melted plastic gas can, and a black gas cap/spout were found at the murder scene. Abdool bought a gas can and a roll of duct tape at a 7-11 convenience store at 12:44 a.m., February 25, 2006. (TR Vol. IX 338; TR Vol. X 556; TR Vol. XVII 48). Abdool also bought some gas. (TR Vol. X 558).[2]

[2] In a statement to the police, Abdool denied buying the gas can on the morning of the murder. Abdool said he already had the gas can and the gas in it. While Abdool admitted he bought gas at the time of the murder, he claimed he bought gas only for his

Abdool admitted that he bought the duct tape on the night he killed Amelia and that he wrapped Amelia with the duct tape found at the scene. (TR Vol. X 530, 556).

Abdool also admitted he drove Amelia to the place where she died and pulled her from the car. (TR Vol. X 517-518). Abdool told Detective Bobby Gammill he put on the gloves found at the crime scene and then poured gas on Amelia. He poured a lot of gas on her. (TR Vol. X 536). All of Amelia's clothing; one shoe, panties, bra, socks, shirt and jeans, tested positive for gasoline. (TR Vol. IX 265).

Abdool admitted that he lit the lighter that caused Amelia, already doused in gasoline, to burst into flames. (TR Vol. XI 559). Abdool told Detective Gammill that after he lit the lighter and "it caught her", he panicked and took off. Abdool told Detective Gammill that Amelia was screaming and running around. Amelia ran into the front fender of Abdool's car. (TR Vol. XI 559). After the murder, Abdool washed his car to erase any trace of Amelia's collision with the front of his car. (TR Vol. XI 676).

At trial, Abdool did not contest the state's claim that he doused Amelia with gas and set her on fire. The only real issue in contention was Abdool's intent at the time he did so. The

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car. (TR Vol. X 558). The state presented evidence to contradict Abdool's version of events.

State contended Abdool's actions were intentional and taken with a premeditated design to kill Ms. Sookdeo. Abdool claimed it was an accident. (TR Vol. X 531).[3]

[3] Many of Abdool's actions after the fire showed a consciousness of guilt. For instance, Abdool suffered some burns, likely as result of splashing some gasoline on himself and catching fire when he lit Amelia on fire. Abdool lied to several people about the cause of his burns. For instance, he told co-worker Christian Morgan that some old gang members jumped him, poured gas on him, and set him on fire. (TR Vol. IX 341-342). Abdool tossed the duct tape he bought on the night of the murder out of his car window. (TR Vol. XI 558). He also lied to the police, more than once, initially denying even seeing Amelia on the night of the murder.

## SUMMARY OF THE ARGUMENT

**ISSUE I**: In this claim, Abdool challenges the denial of his motion for a judgment of acquittal on the charge of premeditated murder. The trial court properly denied Abdool's motion for a judgment of acquittal because there was sufficient evidence to go to the jury.

Abdool confessed to the police that he poured gasoline on Amelia Sookdeo and set her on fire. As such, the only issue of real contention was Abdool's intent. Abdool claimed his actions in setting her on fire was an accident. The State alleged premeditation. A judgment of acquittal should rarely, if ever, be granted when the only issue of contention is the defendant's intent.

In any event, the State's evidence showed that Abdool communicated, to a school acquaintance, a desire to kill Ms. Sookdeo some time before the murder. Abdool also attempted to solicit two young men to kill Amelia for him. When they demurred, Abdool took matters into his own hands.

In the early morning house on the day Amelia Sookdeo died, Abdool purchased the murder weapons from a local 7-11. In this case, the murder weapons were a roll of duct tape, a gas can and about a half a gallon of gas.

Abdool drove Amelia Sookdeo to an isolated area of road, pulled her from his car, attempted to restrain her with duct

tape, poured gasoline on her body, and set her on fire. Evidence that Abdool contemplated, planned, and then executed the murder was sufficient evidence to go to the jury. The trial judge committed no error in denying Abdool's motion for a judgment of acquittal.

**ISSUE II**: In this claim, Abdool alleges the trial court erred in allowing Detective Gammill to testify that, at the time he conducted a taped interview with Dane Patrick Abdool, he did not believe the killing of Amelia Sookdeo was an accident. Contrary to Abdool's claim, the trial court did not abuse its discretion. The state did not elicit Detective Gamill's testimony on this point so the detective could offer an opinion on Abdool's intent at the time of the murder.

Instead, the state elicited this testimony to explain why, during the taped interview, Detective Gammill seemed to accept, and even agree with, Abdool's repeated claims that Amelia's death was an accident. Detective Gammill explained that his statements to Abdool were part of his interview technique. Because Detective Gammill was not asked to, and did not, offer any opinion on the ultimate issue before the jury, the trial court committed no error in allowing Detective Gammill's testimony.

**ISSUE III**: In this claim, Abdool alleges it was error for the trial court to allow the state, over his objection, to present the testimony of Deollal Sookdeo, Amelia's father. Abdool claims his testimony was irrelevant and intended only to evoke the sympathies of the jury. The trial judge did not abuse her discretion because Mr. Sookdeo's testimony was, at the very least, marginally relevant. Even if this Court disagreed, any error in allowing his testimony was harmless. At most, Mr. Sookdeo's testimony was cumulative. Moreover, nothing in the record supports an argument that Mr. Sookdeo displayed any inappropriate grief or anger on the witness stand that would improperly evoke the sympathy of the jury. Abdool cannot show any reversible error in the trial court's decision to allow Mr. Sookdeo to testify.

**ISSUE IV**: In this claim, Abdool claims the trial judge erred in requiring his two mental health experts to turn over, to the State's expert, raw data (testing materials, answers, results, etc) from the various educational and psychological tests they administered to Abdool. Abdool avers that Rule 3.202, Florida Rules of Criminal Procedure, permits the release of such materials, prior to the defense expert's testimony, only if the defendant refuses to cooperate with the state's mental health expert. Abdool is mistaken.

Rule 3.220, which also applies to the penalty phase of a capital trial, imposes a two-way discovery obligation. Among those obligations is the obligation to disclose reports or statements of experts as well as results of physical or mental examinations and of scientific tests, experiments, or comparisons. The trial court committed no error in applying Rule 3.220 to order the release of the defense experts' raw data.

**ISSUE V**: In this claim, Abdool raises several allegations of prosecutorial misconduct. None of the alleged acts of misconduct are preserved because Abdool made no objection at trial. Neither are they error. Certainly, they do not rise to the level of fundamental error necessary for reversal.

**ISSUE VI**: In this claim, Abdool avers the trial court erred in failing to strike one portion of Deollal Sookdeo's victim impact statement. Abdool alleges the objectionable portion contained fiery metaphors and improperly offered an opinion about the crime and the defendant.

Abdool did not preserve this issue for appeal because he did not make the same arguments below that he makes here. Even if this Court were to find that Abdool properly preserved this issue, no impropriety was present. The objectionable portion of Mr. Sookdeo's statement fell within the parameters of acceptable

victim impact evidence and did not offer any opinion about the crime, the defendant, or an acceptable sentence.

**ISSUE VII**: In this claim, Abdool attacks the sufficiency of the CCP aggravator and the weight the trial court gave to the two statutory mental mitigators. Abdool also claims his sentence to death is disproportionate.

There was competent evidence to support the CCP aggravator. The state presented evidence that, prior to the murder, Abdool stated a desire to kill Amelia and solicited two young men to kill Amelia for him. When the young men demurred, Adbool took the matter into his own hands. On the night of the murder, he bought and/or brought the murder weapons, drove Amelia out on to an isolated stretch of road, doused her with gasoline and set her on fire. Abdool had ample opportunity to abandon his plan but failed to do so.

The trial court did not abuse its discretion in giving little weight to both statutory mental mitigators. The only expert who opined that both statutory mental mitigators applied was Dr. Karen Gold. The state offered expert testimony to rebut her testimony. Dr. Daniel Tressler testified that, in his view, neither mental mitigator applied. The trial found that Dr. Tressler was more credible than Dr. Gold. Abdool can show no abuse of discretion in assigning little weight to the mental mitigators.

Finally, Abdool's sentence to death is proportionate. This Court's decision in at least two capital murder cases, both of which demonstrate the same level of planning as is present here as well as similar aggravation and mitigation, support a conclusion that Abdool's sentence to death is proportionate.

**ISSUE VIII**: In his final claim, Abdool challenges the constitutionality of his death sentence under Ring v. Arizona and Caldwell v. Mississippi. This Court has rejected, on numerous occasions, the same claim the defendant presents before this Court. The claim is due to be denied.

## ARGUMENT

### ISSUE I

**WHETHER THE TRIAL JUDGE ERRED IN DENYING ABDOOL'S MOTION FOR A JUDGMENT OF ACQUITTAL (RESTATED)**

In his first claim, Abdool alleges the trial court erred in failing to grant his motion for a judgment of acquittal because the state failed to exclude Appellant's reasonable hypothesis of innocence. According to Abdool, the state failed to exclude the reasonably possibility that Abdool did not premeditate the murder, but merely intended to scare the victim. (IB 42).

The standard of review on this claim is *de novo*. McDuffie v. State, 970 So. 2d 312, 332 (Fla. 2007). In conducting its review, this Court must consider the evidence and all reasonable

inferences from the evidence in a light most favorable to the State. Id.

Ordinarily, a trial court properly denies a motion for judgment of acquittal if the conviction is supported by competent, substantial evidence. Baugh v. State, 961 So. 2d 198, 204 (Fla. 2007).[4] There is sufficient evidence to sustain a conviction if, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt. Banks v. State, 732 So. 2d 1065 (Fla. 1999). A motion for judgment of acquittal should not be granted unless "there is no view of the evidence which the jury might take favorable to the opposite party that can be sustained under the law." Williams v. State, 967 So.2d 735, 755 (Fla.2007) (quoting Gudinas v. State, 693 So.2d 953, 962 (Fla.1997)).

In a case consisting entirely of circumstantial evidence, a motion for judgment of acquittal should be granted if the State fails to present evidence from which the jury can exclude every reasonable hypothesis except that of guilt. Orme v. State, 677 So. 2d 258, 262 (Fla. 1996). In meeting its burden,

[4] Direct evidence is that to which the witness testifies of his own knowledge as to the facts at issue. Circumstantial evidence is proof of certain facts and circumstances from which the trier of fact may infer that the ultimate facts in dispute existed or did not exist." Davis v. State, 90 So. 2d 629, 631 (Fla. 1956)

the State is not required to "rebut conclusively, every possible variation of events" which could be inferred from the evidence, but must introduce competent evidence which is inconsistent with the defendant's theory of events. Darling v. State, 808 So. 2d 145, 155-156 (Fla. 2002). Once the State meets this threshold burden, it becomes the jury's duty to determine whether the evidence is sufficient to exclude every reasonable hypothesis of innocence beyond a reasonable doubt. Id.

This is not an entirely circumstantial evidence case. Abdool confessed to pouring gasoline on Ms. Sookdeo and setting her on fire. This Court has held that a confession is direct evidence of guilt. Perry v. State, 801 So.2d 78, 84 n. 6 (Fla. 2001 (a confession is direct, not circumstantial evidence of guilt).

A trial court should rarely, if ever, grant a motion for judgment of acquittal on the issue of intent." Washington v. State, 737 So. 2d 1208, 1215 (Fla. 1st DCA 1999). This is so because proof of intent usually consists of the surrounding circumstances of the case. A judgment of acquittal is not proper where reasonable persons might differ as to facts tending to prove ultimate facts or inferences to be drawn from the facts. Snipes v. State, 154 Fla. 262, 17 So.2d 93 (1944).

Premeditation is more than a mere intent to kill, it is a fully formed conscious purpose to kill. However, premeditation

may be formed in a moment. The state need only prove that the defendant's purpose to kill existed for such a time before the homicide to permit reflection as to the nature of the act to be committed and the probable result of that act. Boyd v. State, 910 So.2d 167, 181 (Fla.2005). Premeditation can be shown by circumstantial evidence. Whether the State's evidence fails to exclude all reasonable hypotheses of innocence is a question of fact for the jury. Green v. State, 715 So.2d 940, 943-944 (Fla.1998).

Evidence from which premeditation may be inferred includes such matters as the nature of the weapon used, the presence or absence of adequate provocation, previous difficulties between the parties, the manner in which the homicide was committed, and the nature and manner of the wounds inflicted. Although the issue of whether premeditation exists is a question of fact for the jury, the jury is not required "to believe the defendant's version of the facts when the State has produced conflicting evidence." Perry v. State, 801 So.2d 78, 84 (Fla.2001) (citations omitted) (quoting Green v. State, 715 So.2d 940, 943 (Fla.1998), and Spencer v. State, 645 So.2d 377, 381 (Fla.1994)). When the only issue in dispute, as is the case here, is whether the state introduced sufficient evidence of the defendant's premeditation, this Court will affirm if there is competent substantial evidence from which the jury could conclude

that the defendant possessed "a fully formed conscious purpose to kill." Williams v. State, 967 So.2d 735, 758 (Fla. 2007).

In this case, the state presented sufficient evidence of Abdool's premeditation to go to the jury. Even if this Court were to apply the "entirely circumstantial evidence" standard of review to the premeditation element of first degree murder, Abdool's conviction is due to be affirmed because the State presented competent substantial evidence which was inconsistent with the defendant's theory of events.

First, the State presented evidence that sometime prior to the murder, Abdool attempted to engage the services of Julian Pinnock to kill Amelia Sookdeo. (TR Vol. IX 225-227). When Pinnock turned him down, Abdool told Pinnock that he would find someone else. (TR Vol. IX 227). Abdool also spoke with Visham Adjoda about getting rid of Amelia's body. Abdool wanted Ajoda to do it, to take care of it for him. Adjoda demurred. (TR Vol. IX 241-242).

Some time before the murder, Abdool made a statement relevant to his intent to a school acquaintance, Lalita Beekoo. Abdool told Ms. Beekoo that he hated Amelia because she had vandalized his home and his car as well as his mother's car. Abdool told Ms. Beekoo that he wanted to kill her and burn her car. (TR Vol. XII 643).

This Court has previously found that statements of intent made prior to the crime are sufficient to establish premeditation. *See* Pagan v. State, 830 So.2d 792 (Fla. 2002); Asay v. State, 769 So.2d 974 (Fla.2000) (statements made close to the time of the crime demonstrated defendant's motive for committing the homicide). While Abdool argues that Pinnock, Adjodan and Beekoo, for various reasons, were unworthy of belief, conflicts in the evidence and credibility of the witnesses have to be resolved by the jury. A trial judge cannot grant a motion for judgment of acquittal based on evidentiary conflict or witness credibility. Sapp v. State, 913 So. 2d 1220, 1223 (Fla. 4th DCA 2005)(citing to Hitchcock v. State, 413 So. 2d 741, 745 (Fla. 1982)).

Even so, the State presented ample evidence that was contrary to Abdool's theory that he did not intend to kill Ms. Sookdeo.[5] First, the State presented evidence from which the

[5] Before this Court Abdool avers there was no evidence of premeditation, in part, because there was no evidence Abdool tried to conceal Amelia's body. The evidence shows that Amelia's body was found, still actively burning more than an hour after Abdool left the murder scene. Moreover, the evidence supports a conclusion that Abdool did attempt to conceal her body, and for a while was successful. Abdool drove Amelia off to an isolated stretch of road and burned her beyond recognition. But for a report of an unrelated car fire on SR 545, Amelia's body may have gone undiscovered for some time. Identity had to be established through DNA and dental records well after her body was found.

jury could find that Abdool brought the lighter he used to set Ms. Abdool on fire to the murder scene.

A green BIC lighter was found at the crime scene. (TR Vol. VIII 128-131, TR Vol. IX 197). Abdool does not smoke. (TR Vol. X 514). While Abdool told the police that he used Ms. Sookdeo's lighter to light her on fire, evidence found at Abdool's apartment contradicted his claim. Investigators found another green lighter, similar in color and design to the one found at the murder scene, in Abdool's apartment. (TR Vol. IX 214). Abdool told investigators that Amelia did not smoke. (TR Vol. IX 514).

The state also presented evidence that less than two hours before the murder, Abdool purchased the duct tape he used to try to restrain Ms. Sookdeo as well as the gas can which he used to, in his own words, put a lot of gas on her, "like a half of a gallon, I think." (TR Vol. X 535; TR Vol. XI 556).[6] He also bought gas. (TR Vol. XI 558).

Testimony from state witness and arson investigator Juan Bailey conflicted with Abdool's version of the facts. Mr. Bailey testified that, in his opinion, the fire that killed Amelia

[6] In his initial brief, Abdool notes that his argument at trial was that he "splashed" gas on Ms. Sookdeo and lit the lighter which started the fire that led to her death. (IB 42). Evidence that he poured a lot of gas on her, about half a gallon, belies any notion Abdool "splashed" gas on Amelia. Abdool admitted to Detective Gammill that he poured gas on Ms. Sookdeo. (TR Vol. X 535).

Sookdeo was an intentional fire where the accelerant was poured on the victim intentionally. (TR Vol. IX 288, 300). Mr. Bailey also testified that a large amount of gasoline was used. (TR Vol. IX 295). Three things were particularly relevant to show Abdool's intent.

First, evidence at the crime scene demonstrated that, prior to pouring "a lot" of gas on Amelia Sookdeo, Abdool separated the lid and spout from the gas can. The burnt gas can found at the scene had the spout removed and separated from the gas can. (TR Vol. IX 284). According to Mr. Bailey, removing the spout will result in the gasoline to come out of the gas container much easier. More of the gas will also come out. (TR Vol. IX 284).

Second, the state presented evidence that in order to ignite Amelia's body, Abdool held a heat source very close to Amelia's body. Juan Bailey told the jury that, because Abdool and Amelia were outside in the open, the heat source, in this case a BIC lighter, had to be very close to the fuel to ignite it. (TR Vol. IX 281-282). Mr. Bailey opined that Abdool would have had to hold the heat source within inches of the fuel. (TR Vol. IX 282). Mr. Bailey testified that, in his opinion, it would have been impossible to ignite the fuel on her body if the heat source was more than a foot away. (TR Vol. IX 299).

Mr. Bailey also testified that on a breezy day, the heat source would have to be even closer, within inches if not in contact. (TR Vol. IX 292). The evidence showed that on the morning Ms. Sookdeo was murdered, there was slight breeze blowing. (TR Vol. IX 187-188). Evidence that Abdool held the BIC lighter very close to, if not in contact with, Ms. Sookdeo's gasoline soaked body, belies any notion that Abdool was just waving the lit lighter around and it accidentally "caught."

Third, a soot line found at the scene provided evidence of Abdool's intent. The soot line ran between Amelia's body and a discarded gas can found at the murder scene. Mr. Bailey testified the soot line was consistent with Abdool pouring more gas on Amelia after she was already down and burning to death. (TR Vol. IX 285). Mr. Bailey testified that Amelia had gas burning on her hands, gas burning on her face and head, and gas that was burning on her torso. Eventually these three fires came together and caused the massive fire damage to Amelia's body. (TR Vol. IX 288).

Finally, and perhaps most telling in this case as to Abdool's intent was his own statement to the police. Investigators found Abdool's black gloves at the crime scene. (TR Vol. IX 206). Abdool admitted the gloves found at the scene were his and that he left them at the scene. (TR Vol. X 527).

Abdool told Detective Bobby Gammill that he put on his gloves before he poured gasoline on Amelia. (TR Vol. XI 569-570). Detective Gammill asked Abdool why he put on the gloves before he got the gas out from the back of his car and poured it on Amelia. Abdool told Detective Gammill "just not to get burned or something." (TR Vol. XI 569-570).

Abdool's admission that he put his gloves on before he poured the gas on Amelia and lit the BIC lighter that would engulf her in flames is evidence, from which a jury could find, that Abdool intended to kill Amelia Sookdeo. Accordingly, the trial court properly denied Abdool's motion for a judgment of acquittal and this Court should reject Abdool's first claim on appeal. Williams v. State, 967 So.2d 735, 758 (Fla. 2007).

## ISSUE II

**WHETHER THE TRIAL JUDGE ERRED IN ALLOWING A WITNESS TO STATE HIS OPINION ON WHETHER THE VICTIM'S DEATH WAS ACCIDENTAL (RESTATED)**

In this claim, Abdool alleges the trial judge erred in allowing Detective Gammill to testify that he did not believe the killing of Amelia Sookdeo was an accident. This claim is reviewed under an abuse of discretion standard. Wright v. State, --- So.3d ----, 2009 WL 2778107 (Fla. 2009)(reviewing Wright's claim concerning the admission of certain testimony under an abuse of discretion standard). Under this standard, the trial court's ruling on the state's request should be sustained

unless no reasonable person would take the view adopted by the trial court. Overton v. State, 801 So.2d 877, 896 (Fla. 2001) *See also* Huff v. State, 569 So.2d 1247 (Fla.1990).

The issue arose from an interview between the defendant and Detective Bobby Gammill. Detective Gammill taped the interview. The state played the taped interview for the jury at trial.

During the interview, Abdool claimed "I did not mean to do this." (TR Vol. XI 597). Abdool also told Detective Gammill it was an accident. (TR Vol. X 536).

During the interview, Detective Gammill made comments that indicated he believed Abdool's story. For instance, after Abdool told the police that he did not mean to do it, Detective Gammill said "I know, I know, I understand. You were just trying to scare her." (TR Vol. XI 597). At another point, when Abdool claimed he did not mean to do it, Detective Gammill commented "I know, it sounds like an accident." (TR Vol. X 536). Abdool replied, "It was an accident, I was just trying to scare her because she keeps- (TR Vol. X 536).

After Abdool's entire confession was played for the jury, the prosecutor sought to have Detective Gammill explain why, on tape, he appeared to agree with Abdool's claim the murder was an accident. The prosecutor asked Gammill "In part of your interview, there's a couple of times in which you and Detective McGhee talked about this being an accident. Did you believe it

was an accident at the time?" (TR Vol. XI 603). Trial counsel objected on the grounds that "it goes to the ultimate fact at issue." (TR Vol. XI 603).

Outside the presence of the jury, the state offered that it believed the testimony was relevant because the jury needed to understand that it was not Detective Gammill's belief that it was an accident. The court overruled Abdool's objection. (TR Vol. XI 603). Trial counsel did not request a limiting instruction.

The prosecutor then asked Detective Gammill whether, at the time he was questioning Abdool, he believed it to be an accident. Detective Gammill testified he did not. Detective Gammill explained that his statements to Abdool was part of his interviewing technique. (TR Vol. XI 604).

The trial court committed no error in allowing the State to elicit this testimony. It is obvious, that if the State had not cleared up any misconception on the part of the jury that Detective Gammill thought it was an accident, Abdool would have exploited that during closing argument (e.g. "even Detective Gammill, an experienced police detective, agreed with Dane, more than once, that it was an accident. You heard that on the tape.").

Moreover, it was clear from the context of the prosecutor's questioning she was not asking Detective Gammill to express an

opinion on the issue of Abdool's intent. Instead, the prosecutor limited her question to what Detective believed at the time of the interview and why he seemed, at the time of the interview, to be agreeing with Abdool that Amelia's death was an accident.

Given the context of the prosecutor's questions and Detective Gammill's responses no reasonable juror would have believed that Detective Gammill was offering an opinion on an element of the crime charged. Instead, every reasonable juror would view Detective Gammill's testimony for what it was; his explanation of a particular interrogation technique.

Even if the prosecutor's question could have been more carefully worded, any error is harmless. Arson investigation, Juan Bailey, testified, without objection, that in his opinion the fire was intentionally set. (TR Vol. IX 288). He also testified, again without objection, that an accelerant (gas) was intentionally poured on Amelia. (TR Vol. IX 300). Mr. Bailey's expert opinion testimony, admitted without objection, with all the other evidence of guilt, supports a finding any error was harmless beyond a reasonable doubt. State v. DiGuilio, 491 So.2d 1129 (Fla.1986).

## ISSUE III

**WHETHER THE TRIAL JUDGE ERRED IN PERMITTING THE STATE TO CALL VICTIM'S FATHER AT TRIAL (RESTATED)**

In this claim, Abdool claims the trial judge erred in allowing Amelia's father Deollal Sookdeo to testify at trial. Abdool contends that Mr. Sookdeo had no relevant evidence to offer. Abdool avers the state called Mr. Sookdeo solely to play to the sympathies of the jury. (IB 56-59). This claim is reviewed under an abuse of discretion standard. Wright v. State, --- So.3d ----, 2009 WL 2778107 (Fla. 2009)(reviewing Wright's claim concerning the admission of certain testimony under an abuse of discretion standard).

Abdool preserved this issue for appeal by objecting to Mr. Sookdeo's testimony at trial. Shortly before opening statements were to begin, trial counsel told the court that she believed the state intended to call both of Amelia's parents to testify before the jury. (TR Vol. VIII 26). Trial counsel agreed that calling Amelia's mother, who first found her missing, was proper. (TR Vol. VIII 26). Trial counsel argued that there were no legitimate grounds to call Amelia's father. (TR Vol. VIII 27).

The prosecutor told the court that she did intend to call Mr. Sookdeo. The prosecutor advised that Mr. Sookdeo would testify that his daughter was missing and he went out searching

for her. The State told the trial court that while it did not know which defense Abdool would present, there was some indication from a "stipulation of facts" that Abdool may defend on the theory that Amelia tried to commit suicide and Abdool was helping her or somehow Abdool just tried to scare her and it was an accident. (TR Vol. VIII 28). The state pointed out that Mr. Sookdeo also gave a buccal swab, which was later used to identify Amelia, and although the defense was stipulating to identity, the State was entitled to bring forth evidence to show what lengths law enforcement had to go to identify Ms. Sookdeo. (TR Vol. VIII 28). The State pointed out that there is a missing child, estranged parents, and there is a question whether Amelia has run away to her father's house. The State argued that as such, Mr. Sookdeo's testimony was relevant. (TR Vol. VIII 28). The trial court denied Abdool's motion to preclude the state from calling Mr. Sookdeo. (TR Vol. VIII 29).

Deollal Sookdeo testified for the State at trial. (TR Vol. VIII 91). His testimony spanned only three pages of the trial transcript. (TR Vol. VIII 91-93).

Deollal Sookdeo is Amelia's father. (TR Vol. VIII 91). At the time Amelia was murdered, he was separated from his wife and living apart from Ms. Lachman and his children. Ms. Lachman called him at work and told him that Amelia was missing. The

next day, Mr. Sookdeo went over to Amelia's home. (TR Vol. VIII 91).

Mr. Sookdeo went out and looked for his daughter. He drove all around Winter Garden. Mr. Sookdeo he had no idea where she was. (TR Vol. VIII 92).

Mr. Sookdeo went through Amelia's phone book and went to her friends' homes to see if they had seen her. (TR Vol. VIII 91-92). Mr. Sookdeo looked for his daughter for six days. (TR Vol. VIII 92). He stopped looking when a sheriff's deputy called him and told him they had found Amelia's body on State Road 545.

He and Amelia were very close. He was aware that Amelia's mother did not allow her to date. Amelia never told him she had a boyfriend. (TR Vol. VIII 93). Mr. Sookdeo asked his daughter several times whether she had a boyfriend. She always denied it. (TR Vol. VIII 93). Amelia never mentioned anyone named Dane Abdool. (TR Vol. VIII 93). Mr. Sookdeo provided the police with a DNA sample at their request. (TR Vol. VIII 93).

This claim should be denied for two reasons. First, Mr. Sookdeo's testimony was relevant. His testimony corroborated his estranged wife's (Madee Lachman) testimony that she was a strict parent who did not allow her daughter to date. (TR Vol. VIII 49, 92). This, along with Ms. Lachman's testimony, provided a complete picture to the jury of the lengths Amelia would go to

maintain her relationship with Dane Patrick Abdool which, in turn, likely fueled Abdool's determination to get rid of a person who pissed him off because she "calls me every day" and "she keeps getting on my nerves over and over." (TR Vol. X 529).

Mr. Sookdeo also provided testimony that he provided a DNA sample which in turn led to Ms. Sookdeo's identification as the biological child of Madee Lachman and Deollal Sookdeo. (TR Vol. IX 313-315). The State's DNA expert testified she identified Amelia, in part, by way of a comparison with Amelia's DNA to Mr. Sookdeo's buccal swab that he provided to law enforcement officials. (TR Vol. IX 313).

While perhaps minimally relevant, Mr. Sookdeo's testimony was nonetheless relevant. As such it was admissible. *Section 90.402, Florida Statutes*. [7]

Even if this Court were to decide the court should have excluded Mr. Sookdeo's testimony on relevancy grounds, any error is harmless. Mr. Sookdeo's testimony spanned only three pages of this lengthy trial transcript. Contrary to Abdool's claim that

[7] Appellee acknowledges that a portion of Appellee's argument here was not made below. However, a trial court's ruling on an evidentiary matter will be affirmed even if the court ruled for the wrong reasons, as long as the evidence or an alternative theory supports the ruling. *See, e.g.*, Muhammad v. State, 782 So.2d 343, 359 (Fla.2001) (considering the argument, not presented below, that the testimony at issue was nonhearsay rather than hearsay admissible under section 90.803(3)(a)2).

the State called Mr. Sookdeo's solely to play to the sympathies of the jury, nothing in the record indicates Mr. Sookdeo was either overly emotional or engaged in any improper display of grief or anger. Certainly, trial counsel did not bring anything of a sort to the trial judge's attention. (TR Vol. VIII 91-93). Moreover, the jury had already heard from Amelia's mother who provided testimony about actually finding her daughter missing and then later discovering she was dead at the hands of Dane Patrick Abdool, a boy Ms. Lachman knew Amelia was seeing, albeit against Ms. Lachman's wishes. (TR Vol. VIII 49).

At most, Mr. Sookdeo's testimony was cumulative. Allowing a witness to give cumulative testimony, under these circumstances, is nothing more than harmless error. Floyd v. State, 850 So.2d 383, 400 (Fla. 2002); Holley v. State, 877 So.2d 893 (Fla. 1st DCA 2000). *See also* State v. DiGuilio, 491 So.2d 1129 (Fla.1986).

## ISSUE IV

**WHETHER THE TRIAL JUDGE ERRED IN REQUIRING THE DEFENSE TO TURN OVER RAW DATA USED BY ITS MENTAL HEALTH EXPERTS WHO TESTIFIED DURING THE PENALTY PHASE OF ABDOOL'S CAPITAL TRIAL (RESTATED)**

In his fourth claim on appeal, Abdool alleges the trial court erred in requiring his two mental health experts to turn over, to the State's expert, raw data (testing materials, answers, results, etc) from the various educational and

psychological tests they administered to Abdool. Abdool avers that Rule 3.202, Florida Rules of Criminal Procedure, permits the release of such materials, prior to the defense expert's testimony, only if the defendant refuses to cooperate with the state's mental health expert.[8]

Though not entirely clear, Abdool does not seem to argue the trial court could not have ordered the release of the materials at all. Instead, Abdool, citing to Gore v. State, 614 So.d 1111 (Fla. 4th DCA 1992), avers the trial court was only permitted to release the materials once his expert witnesses were on the witness stand and testifying at trial. (IB 60-61).

This issue arose just prior to the start of the penalty phase that, in this case, began the day following the conclusion of the guilt phase. The state requested the court direct the defense to turn over raw data from the actual psychological and educational tests conducted on Mr. Abdool. (TR Vol. XIII 800-807; TR Vol. XIV 829).

Trial counsel objected on the grounds that, pursuant to Rule 3.202, the state was entitled to the defense experts' raw

[8] Abdool offers no argument in support of the notion that the release of these raw materials before the defense experts testified prejudiced him in any way. Nor does he point to any unfair advantage, or even any advantage at all, enjoyed by the expert by the additional time he may have had Dr. Cowardin and Dr. Gold's raw data prior to this testimony. Absent any evidence of prejudice stemming from the alleged "premature" release of materials, any error in releasing the raw data, immediately before the penalty phase commenced would be harmless.

data only if the defendant refused to cooperate. Trial counsel pointed out that Abdool had given no indication he would refuse to cooperate with the state's mental health evaluation. (TR Vol. XII 800).

The State countered that such data was normal discovery material required to be provided once an expert witness is designated as a testifying expert. (TR Vol. XII 801). The State also pointed out that disclosure of the materials was especially appropriate given that the State cannot subject a defendant to evaluation until after he is found guilty of capital murder and in this case, the penalty phase commenced immediately after the guilt phase concluded. (TR Vol. XIII 826-827). Under the circumstances, the state argued that the state's expert could not, from a practical standpoint, start from scratch in testing Abdool. (TR Vol. XIII 13).

The trial court asked trial counsel whether she believed that Rule 3.220 applied to the penalty phase. Trial counsel replied that she believed it applied in a much different manner. (TR Vol. XII 802). The trial court disagreed and noted that it appeared that Rule 3.220(d)(1)(b)(2) required that reports or statements of experts as well as results of physical or mental examinations and of scientific tests, experiments, or comparisons be turned over. Nonetheless, the trial court gave

both parties overnight to research the issue. (TR Vol. XII 807).

The next day after further argument from both sides, the trial judge ruled that Rule 3.220 requires both parties to turn over not only the reports of the testifying experts but the results of any physical or mental examinations and of scientific tests, experiments, or comparisons. The court found that the data sought by the state was subject to discovery pursuant to Rule 3.220, Florida Rules of Criminal Procedure. (TR Vol. XIII 832-833). It is this ruling that Abdool challenges before this Court.

The state first takes issue with Abdool's suggestion that this Court should review this claim *de novo*. (IB 60). Instead, this Court should review this claim under an abuse of discretion standard. This Court has previously held that a trial court's discovery orders are reviewed for an abuse of discretion. Overton v. State, 976 So.2d 536, 548 (Fla. 2007). *See also* Harris v. State, 939 So.2d 338, 339 (Fla. 4th DCA 2006). Under this standard, the trial court's ruling on the state's request should be sustained unless no reasonable person would take the view adopted by the trial court. Overton v. State, 801 So.2d 877, 896 (Fla. 2001) *See also* Huff v. State, 569 So.2d 1247 (Fla.1990).

At issue in this claim are two rules of Florida Criminal Procedure. The first rule is Rule 3.202.

Rule 3.202 provides, in pertinent part, that if the defense notifies the state of its intent to present expert testimony of a mental health professional who has tested, evaluated or examined the defendant, in order to establish mitigation, the state shall have the right to an examination of the defendant by a mental health expert chosen by the state. The state's right to an evaluation is triggered only upon the defendant's conviction of capital murder. *Rule 3.202(b)(d), Florida Rules of Criminal Procedure*. If defendant refuses to cooperate with the state's mental health expert, the trial court, within its discretion may: (1) order the defense to allow the state's expert to review all mental health reports, tests, and evaluations by the defendant's mental health expert; or (2) prohibit defense mental health experts from testifying concerning mental health tests, evaluations, or examinations of the defendant. *Rule 3.202(e), Florida Rules of Criminal Procedure*.

The second rule at issue is Rule 3.220. The rule provides in pertinent part, that a defendant who elects to participate in discovery, must allow the state to inspect, copy, test, and photograph any reports or statements of experts made in connection with the particular case, that is in the defendant's

possession or control, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.[9] *Rule 3.220(d)(1)(B)(ii), Florida Rules of Criminal Procedure.*

Abdool's entire argument turns on the notion that Rule 3.220 does not apply to the penalty phase of a capital trial. Abdool is mistaken.

Although this Court has apparently not squarely addressed the exact same claim Abdool raises here, this Court has recognized the applicability of both Rule 3.202 and Rule 3.220 to penalty phase proceedings. In Kearse v. State, 770 So.2d 1119 (Fla. 2000), the defendant claimed Rule 3.202 was unconstitutional because the defense was required to give written notice of intent to present expert testimony of mental mitigation, to give a statement of particulars listing the mitigating circumstances the defendant expects to establish through the expert testimony, and to list the names and addresses of the experts who will establish the mitigation, while imposing no corresponding duties on the state.

This Court rejected Kearse's claim. This Court noted that, while Rule 3.202 does not by its terms require reciprocal discovery by the State, Rule 3.220 does.

[9] Abdool does not dispute that he elected to participate in discovery pursuant to Rule 3.220(a), Florida Rules of Criminal Procedure. (TR Vol IV 213-218).

This Court observed that Florida Rule of Criminal Procedure 3.220 governs discovery in all criminal proceedings. Kearse v. State, 770 So. 2d at 1126, n.3. This Court noted that Rule 3.220 provides for two-way discovery and imposes obligations on both sides, including disclosure of expert witnesses. Kearse v. State, 770 So.2d at 1126-1127.

Nothing in Rule 3.202 prohibits a trial court, in its discretion, from ordering the disclosure of defense experts' raw testing data once the defendant has been convicted of first degree murder. Likewise, nothing in Rule 3.202 supports a finding that Rule 3.202 preempts any other rule of criminal procedure, including Rule 3.220.

In this case, the trial court applied Rule 3.220 to compel disclosure of the defense experts' raw data to the state's mental health expert, immediately before the penalty phase began. In line with this Court's decision in Kearse, the trial court committed no error. This Court should deny Abdool's fourth claim on appeal.[10]

[10] Abdool's suggested "remedy" in this case is that the trial court should require disclosure of raw data only after the defense expert has taken the witness stand and is testifying. (IB 61). Such a suggestion is contrary to this Court's consistent position that the purpose of discovery is to prevent trial by ambush. Scipio v. State, 928 So.2d 1138 (Fla.2006). (This Court has held that the chief purpose of our discovery rules is to assist the truth-finding function of our justice system and to avoid trial by surprise or ambush). Delaying

## ISSUE V

**WHETHER THE PROSECUTOR'S ARGUMENTS DEPRIVED THE DEFENDANT OF A FUNDAMENTALLY FAIR PENALTY PHASE (RESTATED)**

In this claim, Abdool presents a claim of prosecutorial misconduct. Abdool claims the questions posed to three witnesses, two expert and one lay, during the penalty phase of Abdool's capital trial, deprived him of a fundamentally fair penalty phase. Abdool complains only of two areas of inquiry. (IB 62-64)

### A. *Questioning penalty phase expert witnesses*

In this portion of Abdool's fifth claim, Abdool alleges it was improper of the prosecutor to elicit testimony from two expert witnesses that the defendant knew right from wrong, was competent to stand trial, and exhibited no remorse for the killing. The testimony about which Abdool complains came during the state's cross-examination of defense expert, Dr. Karen Gold,

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disclosure of defense experts' raw data until the expert is actually testifying would foster a penalty phase by ambush.

Moreover, while Abdool cites to Gore v. State, 614 So.2d 1111 (Fla. 4th DCA 1992) and claims the court discussed the requirements of Rule 3.202, Abdool is mistaken. (IB 61). Nowhere in Gore is there even a discussion of Rule 3.202. This is not surprising since Rule 3.202 was not even in existence in 1992 when Gore was decided. Amendments to Florida Rule of Criminal Procedure 3.220-Discovery (3.202-Expert Testimony of Mental Mitigation During Penalty Phase of Capital Trial), 654 So.2d 915 (Fla.1995). Even so, raw data of testifying mental health experts was not even at issue. Instead, attorney work product was the focus of the Fourth DCA's decision in Gore.

and during the direct examination of State expert, Dr. Daniel Tressler.

***(1) Dr. Gold***

During the penalty phase, Abdool presented the testimony of Dr. Karen Gold, a forensic psychologist. The purpose of presenting Dr. Gold was two-fold; negate CCP and establish the mental mitigators.[11]

During direct examination, Dr. Gold testified that, in her opinion, both statutory mental mitigators applied. (TR Vol. XIV 1125). She also described Abdool's mental and emotional age as somewhere between 12-14 years of age. (TR Vol. XIV 1126). Dr. Gold testified that Abdool had an impulse control disorder and was delusional. She described the latter condition as a "very, very, very serious mental disorder..." (TR Vol. XIV 1119). Dr. Gold described Abdool as someone who is intellectually limited and immature. (TR Vol. XIV 1108). During cross-examination, the prosecutor asked Dr. Gold the following questions:

> Prosecutor: Now, you would agree that he's not mentally retarded, right?
>
> Dr. Gold: That's correct
>
> Prosecutor: That he was not insane at the time of the offense, that he knew right from wrong

[11] This initial purpose is made more obvious by Appellant's initial brief. Appellant relies on Dr. Gold's testimony to argue that CCP was not supported by competent substantial evidence. (IB 76-83)

Dr. Gold: Yes.

Prosecutor: That he was competent to stand trial, understands what is going on?

Dr. Gold: Yes

Prosecutor: Correct?

Dr. Gold: I conducted a competency evaluation, yes. (TR Vol. XIV 1128).

A bit later, the prosecutor asked Dr. Gold:

Prosecutor: You found that he [Abdool] had characteristics of an antisocial personality disorder.

Dr. Gold: Yes ma'am.

Prosecutor: And some of that was lack of empathy for others?

Dr. Gold: That's correct, at the time.

Prosecutor: Inability to appreciate the consequences of his actions?

Dr. Gold: Somewhat.

Prosecutor: Another feature of anti-social personality disorder is lack of remorse.

Dr. Gold: Yes.

Prosecutor: You also found that he had features of borderline personality disorder and some features of a dependent personality disorder.

Dr. Gold: Yes.

Prosecutor: And as you testified today, do you still find those in Mr. Abdool.

Dr. Gold: All the same things are there. I've just added to them.

(TR Vol. XIV 1133-1134).

This claim may be denied for two reasons. First, this argument is not preserved for appeal. Abdool posed no objections to the prosecutor's questions. Claims of prosecutorial misconduct are preserved for appeal only if the defendant first makes a timely objection and states the legal ground for that objection. Additionally, a defendant must state the same legal ground as the one he later presents on appeal. Farina v. State, 937 So.2d 612, 628-629 (Fla. 2006).

As Abdool did not even object at all to the questions he now complains of, Abdool failed to preserve this issue for appeal. The only exception to this preservation requirement is fundamental error. Id.

Overturning a conviction or death sentence on the basis of fundamental error is a remedy that should be applied only on rare occasion. Fundamental error is error that reaches down into the validity of the trial itself to the extent that a verdict of guilty [or death sentence] could not have been obtained without the assistance of the alleged error. In other words, it is error that goes to the foundation of the case.

In cases involving allegations of prosecutorial misconduct, this Court has ruled that prosecutorial misconduct constitutes fundamental error only when, but for the misconduct, the jury could not have reached the verdict it did. Farina v. State, 937

So.2d 612, 628-629 (Fla. 2006).[12] This Court may deny this claim because the prosecutor's questions did not constitute error, let alone fundamental error.

Given Dr. Gold's testimony that, in her opinion, Abdool had a "very, very, very, serious psychotic disorder in the delusional area", the prosecutor was entitled to elicit testimony that in spite of this "psychotic disorder in the delusional area", Abdool knew right from wrong. (TR Vol XIV 1119). While inquiry into his competence may have been irrelevant because his competency was not directly at issue, the question was clearly designed to elicit testimony that Abdool knows what is going on (that is he is not always delusional). (TR Vol. XIV 1128). Even so, Abdool cannot show that Dr. Gold's response that Abdool is competent, a fact that Abdool did not then, and does not now, dispute, denied him of a fundamentally fair trial.

As to the prosecutor's questioning of Dr. Gold on lack of remorse, the record shows the prosecutor did not elicit testimony that Abdool did not express any remorse for the murder of Amelia Sookdeo. Nor can Abdool point to anywhere in the record where the prosecutor argued Abdool's lack of remorse in non-statutory aggravation.

[12] Internal citations and quotes omitted.

Instead, the record reflects the prosecutor was simply eliciting testimony about traits shared by persons with anti-social personality features, some of which Dr. Gold found in Abdool. It would defy law and logic to conclude that while a prosecutor can bring out testimony a defendant is anti-social or has anti-social features, a fact that Abdool does not seem to dispute, the prosecutor cannot elicit testimony to explain to the jury just what having antisocial personality features means. This is especially true in a case where a defense expert opines a defendant has a serious mental disorder and then testifies that his "very, very, very" serious mental disorder had nothing to do with what happened on the night of the murder. (TR Vol. XIV 1140).

Abdool cannot show the prosecutor's questions constituted error. To the extent that any questioning about the lack of remorse as a feature of anti-social personality disorder was error, it certainly was not fundamental error.

***(2) Dr. Tressler***

Abdool also complains the prosecutor brought out testimony from Dr. Daniel Tressler that Abdool knew right from wrong, was competent to stand trial and exhibited no remorse for the murder of Amelia Sookdeo. (IB 63). However, the record refutes any claim the prosecutor asked Dr. Tressler whether Abdool was competent. The record also refutes Abdool's claim that the

prosecutor asked Dr. Tressler any questions about Abdool's lack of remorse. (TR Vol. XV 1200).

Because the prosecutor did not elicit any testimony about competency or lack of remorse, the only remaining comment to which Abdool seems to object is the prosecutor's question to Dr. Tressler about Abdool's capacity to know right from wrong. Abdool cites to no case where this question has been found to constitute error, let alone fundamental error.

The thrust of Abdool's argument at trial, and again here before this Court, is that Abdool is childlike, whose accountability for this horrific crime should be diminished because of his learning disabilities, poor decision making skills, low IQ, and immaturity. (TR Vol. XVI 1279, 1281-1283, IB 14, IB 78-79, 86-87). As such, the prosecutor was entitled to bring out one undisputed fact. At the time of the murder, Dane Patrick Abdool knew what he was doing and that it was wrong. Despite this, he did it anyway for his own purposes, and in a most heinous way.

### B. ***Question about Abdool's upbringing in a Muslim home***

In this portion of Abdool's claim, Abdool alleges that the prosecutor improperly elicited testimony that Abdool was raised in a Muslim home. (IB 64). Abdool argues that, especially in today's political climate, eliciting such testimony was

egregious misconduct. Abdool also claims eliciting such testimony was inflammatory because research studies, none of which was presented to the trial court below, show there is a large segment of Americans who view Muslins with fear and prejudice. (IB 64).

Abdool points to one place in the record where this occurred. The question at issue came when the prosecutor was cross-examining, Abdool's step-father's sister, Ashmin Gadjader.

During the penalty phase and subsequent to the testimony at issue, Abdool's mother testified as to Abdool's biological father's drinking problem. (TR Vol. XIV 1047). Patrick Abdool himself had admitted to drinking alcohol when Abdool was a youngster but denied he was alcoholic. (TR Vol. XIV 1001). Abdool's mother clearly thought otherwise. (TR Vol. XIV 1047). The prosecutor asked Ms. Gadjader the following:

> Prosecutor: And Nazreen's [Abdool's mother] and Haseeb's [Abdool's stepfather] household was a very loving household, correct?
>
> Ms. Gadjader: In Trinidad, yes.
>
> Prosecutor: No alcohol issues in the family?
>
> Ms. Gadjader: No, ma'am.
>
> Prosecutor: In fact, Haseen and Nazreen did not have alcohol in their household, correct?
>
> Ms. Gadjader: No.
>
> Prosecutor: Their household was based in faith, correct?

Ms. Gadjader: Yes.

Prosecutor: They're Muslims?

Ms. Gadjader: Yes

Prosecutor: And everything that your brother and Nazreen tried to do was teach Mr. Abdool right from wrong?

Ms. Gadjader: I believe so.

(TR Vol. XIII 991-992).

This claim may be denied for two reasons. First, the issue was not preserved for appeal with a contemporaneous objection. (TR Vol. XIII 91-92). Mr. Abdool's failure to object results in a failure to preserve the issue for review. Lugo v. State, 845 So.2d 74, 102 (Fla. 2003). *See also* Farina v. State, 937 So.2d 612, 628-629 (Fla. 2006). This leaves fundamental error as the only basis for relief. Lugo v. State, 845 So.2d at 102.[13]

There is no basis for this Court to find error, let alone fundamental error. While Abdool might have some colorable argument if the prosecutor's question had been intended, and then used, to spark "fear and prejudice" in members of the jury, the record reflects just the opposite.

During the penalty phase, Abdool presented several family members to testify about Abdool's upbringing and good character.

[13] Appellee set forth the standard for finding fundamental error in the arguing Appellant's first claim of prosecutorial misconduct. For brevity's sake, Appellee will not repeat it.

Abdool also presented evidence, through the testimony of Abdool's mother and biological father, that Abdool had a somewhat rough start in life because his mother and father divorced when he was young and his father drank and gambled excessively. (TR Vol. XVI 1281). Indeed, the trial court found several non-statutory mitigators relating to Abdool's early childhood. (TR Vol. VII 879-894). Abdool also presented his step-father's sister who told the jury that she was a deaconess in the Presbyterian church and held a very responsible position. (TR Vol. XIII 986).

In response to Abdool's mitigation evidence, the prosecutor was entitled to bring out testimony from Abdool's witnesses that after the age of seven, and for some 12 years before this murder, Abdool lived in a stable hard working household, with loving, attentive, and God fearing parents who raised Abdool in an atmosphere free from neglect, abuse, gambling or alcohol.[14] Abdool can point to nothing in any of the prosecutor's subsequent comments or argument that would lead to the conclusion the purpose of the prosecutor's questioning was to spark fear, hatred or bias against Mr. Abdool.

[14] Abdool admitted to the police that he obtained alcohol for Amelia and she drank it on the night of the murder. (TR VOl. X 509-510). Amelia' blood alcohol upon autopsy was .128, more that 1 1/2 times the legal limit to drive in Florida. (TR Vol. VIII 171-172).

Abdool cannot show the one question about which he now complains constitutes error, let alone fundamental error. This Court should reject this claim.

## ISSUE VI

### WHETHER THE TRIAL COURT ERRED IN PERMITTING THE STATE TO PRESENT CERTAIN VICTIM IMPACT EVIDENCE (RESTATED)

In this claim, Abdool avers the trial judge erred in allowing the jury to hear certain victim impact evidence. The admission of victim impact testimony is reviewed for an abuse of discretion. Schoenwetter v. State, 931 So.2d 857, 869 (Fla.2006) (*citing* Zack v. State, 911 So.2d 1190 (Fla.2005)).

At issue is Deollal Sookdeo's victim impact statement. Deollal Sookdeo is Amelia's father. (TR Vol. VIII 90-92).

Before the penalty phase commenced, the State provided defense counsel with a copy of three prepared victim impact statements. (TR Vol. XII 794). The defense noted, without objection from the State, that it intended to ask that some portions of those prepared statements be deleted. (TR Vol. XII 794).

The next day, the parties went over the three victim impact statements in detail. As to Madree Lachman's statement, the defense objected only to the last paragraph of her statement. (TR Vol. XIII 834). The trial court sustained counsel's

objection and struck the last paragraph of Ms. Lachman's victim impact statement. (TR Vol. XIII 836).

As to Sally Sookdeo's statement, trial counsel objected only to a portion of the last paragraph. Trial counsel requested the court to strike the last paragraph, except for the last sentence. The court sustained the objection and struck the objectionable language. (TR Vol. XIII 837).

Finally, the defense objected to several portions of Deollal Sookdeo's victim impact statement. The trial court agreed to strike several portions of Mr. Sookdeo's victim impact statement to which Abdool objected. (TR Vol. XIII 838-845).

The trial court permitted, however, over the objection of trial counsel, one portion of Mr. Sookdeo's statement to be read to the jury. In this portion of his statement, Mr. Sookdeo read to the jury:

> When I think about the agony this has caused me, it pales in comparison to the pain this has caused my son. Amelia had never been away from her brother Andrew. Andrew is two years younger. He loved—he looked up to his big sister and did everything with her. She drove him to school, and she inspired him. He called her sister. Now I see him burning inside as he holds anger—as he holds anger deep inside and I fear for the day when it will come out, and I fear losing my son, my only son, to this anger, pain and remorse that can never be taken from him. That is more—that is one more future I cannot afford to lose.

(TR Vol. XIII 869).

Before this Court now, Abdool claims this portion of Mr. Sookdeo's statement improperly relayed his and his son's characterization and opinions about the crime. Abdool also complains Mr. Sookdeo's outrage and fiery metaphors improperly acted to arouse the passions of the jury, passions that have no place in capital sentencing determinations. (IB 68). This Court may deny this claim for three reasons.

First, this claim was not properly preserved for appeal. At trial, trial counsel made no claim, as Abdool does now in his initial brief, that Mr. Sookdeo's victim impact statement contained impermissible fiery metaphors or that this particular portion of Mr. Sookdeo's statement would tend to inflame passions or distract jurors from an impartial and reasoned sentencing analysis. (IB 66). Nor did trial counsel object to the statement on the grounds it improperly expressed Mr. Sookdeo's or his son's opinions about the crime itself. (IB 68).

Instead, trial counsel's only objection was that the particular paragraph at issue strayed from the effect of Ms. Sookdeo's death had on her father and went off on a speculative tangent whereby Mr. Sookdeo was imagining that he might lose another child in the future. (TR Vol. IV 716, TR Vol. XIII 844). Trial counsel noted that "[w]hat he is supposed to talk about is the loss to the community of Amelia, and he's sort of gone off

on a tangent imagining he's now going to lose another child." (TR Vol. XIII 844).

An argument is preserved for appeal only if the same argument was made below. Johnson v. State, 969 So.2d 938, 954 (Fla. 2007); Farina v. State, 937 So.2d 612, 628 (Fla. 2006). As Abdool did not make the same argument below as he does before this Court, this claim is not properly preserved.

Second, this Court may deny this claim because Mr. Sookdeo's statement constituted permissible victim impact testimony. In 19991, the United States Supreme Court in Payne v. Tennessee, 501 U.S. 808, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991), held that where state law permits its admission, the Eighth Amendment to the United States Constitution does not prevent the State from presenting evidence about the victim, evidence of the impact of the murder on the victim's family, and prosecutorial argument on these subjects. Id. at 827, 111 S.Ct. at 2609.

Subsequently, Florida's legislature enacted section 921.141(7), Florida Statutes (1993). *See Ch. 92-81, § 1, Laws of Florida.* This section states that victim-impact evidence should "demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death." Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be

permitted as a part of victim impact evidence. *Section 921.141(7), Florida Statutes*.[15]

Contrary to Abdool's argument, Mr. Sookdeo did not voice an opinion, either his or his son's, about the crime. Nor did he voice an opinion about the defendant or an appropriate sentence. Instead, Mr. Sookdeo told the jury only of the impact of Amelia's murder on both himself and his son, the latter of whom was especially close to Amelia.

This Court has held that the boundaries of relevance under Florida's victim impact statute include evidence concerning the impact of the victim's murder on family members. Mr. Sookdeo's testimony, which focused on the devastating and long-lasting effect of Ms. Sookdeo's death both on him and his son, did not stray from permissible victim impact evidence. Bonifay v. State, 680 So.2d 413, 419-420 (Fla. 1996)(finding the trial court properly denied Bonifay's request to strike the victim's wife testimony regarding the effects of her husband's death on her). *See also* Wheeler v. State, 4 So.3d 599 (Fla. 2009)(finding no error in the admission of testimony of four victim impact witnesses who discussed the uniqueness of Deputy Koester as an

[15] The statute requires that the state establish that one or more aggravators exist before presenting victim impact In this case, the state first called Dr. Hanson to establish the murder was especially heinous, atrocious or cruel (HAC). (TR Vol. XIII 861-864). The State also had already presented evidence in the guilt phase to establish the murder was cold, calculated, and premeditated.

individual and explained how his death had caused a loss to both his family members and to the community); Franklin v. State, 965 So.2d 79 (Fla.2007)(finding no error in victim impact evidence that included testimony that the victim's death devastated his family); Huggins v. State, 889 So.2d 743, 765 (Fla.2004) (finding statements presented during the penalty phase by the victim's husband, mother, and best friend regarding their relationship with the victim and the loss they suffered due to her murder were appropriate victim-impact evidence under the statute); Farina v. State, 801 So.2d 44, 52 (Fla.2001) (finding no error in admitting testimony by twelve of the victim's friends and family members about the impact of her murder because it came within parameters of Payne v. Tennessee).

Lastly, this claim may be denied because any error in permitting Mr. Sookdeo to talk about the potential loss of his son to anger and pain was harmless. The jury was properly instructed that it could not consider victim impact evidence as an aggravating factor. The jury was also instructed that its recommendation must be based on the aggravating and mitigating circumstances upon which it is instructed. (TR Vol. XVI 1290).

Moreover, the aggravation evidence in this case was strong (two of Florida's weightiest aggravators, HAC and CCP) and

Abdool's mitigation relatively weak.[16] Although the trial judge found several statutory mitigators and numerous non-statutory mitigators, the trial court gave little, or very little, weight to the vast majority of them. (TR Vol. VII 872-895).

In light of the aggravation and mitigation in this case, the horrific nature of this senseless crime, and brevity of the challenged portion of Mr. Sookdeo's victim impact statement, any error in overruling the defendant's objection was harmless. *See* Sexton v. State, 775 So.2d 923 (Fla. 2000)(although finding that family member's characterization of the murder as "a senseless act of violence" was improper victim impact evidence, this Court found the error harmless because the jury was already familiar with the circumstances of the baby's death, the comment was brief, and the comment was not made a focus of the penalty phase). *See also* Alston v. State, 723 So.2d 148, 160 (Fla. 1998)(finding any error in admitting victim impact evidence was harmless beyond a reasonable doubt given the strong case in aggravation and the relatively weak case for mitigation)

[16] In Larkins v. State, 739 So.2d 90, 95 (Fla.1999) this Court noted that HAC and CCP are "two of the most serious aggravators set out in the statutory sentencing scheme."

## ISSUE VII

**WHETHER THE TRIAL JUDGE IMPROPERLY FOUND THE MURDER WAS COLD, CALCULATED AND PREMEDITATED, WHETHER THE TRIAL JUDGE FAILED TO PROPERLY WEIGH AND CONSIDER ABDOOL'S MITIGATION EVIDENCE AND WHETHER ABDOOL'S SENTENCE TO DEATH IS DISPROPORTIONATE (RESTATED)**

In this claim, Abdool argues: (1) there was insufficient evidence to support the CCP aggravator, (2) the trial judge erred in the weight it gave to his two statutory mental mitigators, and (3) Abdool's sentence to death is disproportionate.

### A. CCP

Florida's cold, calculated, and premeditated aggravator is supported by competent substantial evidence if the state presents evidence that the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); the defendant had a careful plan or prearranged design to commit murder before the fatal incident (calculated); the defendant exhibited heightened premeditation (premeditated); and the defendant had no pretense of moral or legal justification. Duest v. State, 855 So.2d 33 (Fla. 2003).

While Abdool seeks to exploit his alleged mental impairments to defeat CCP, this Court has clearly held that a defendant can be emotionally and mentally disturbed 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. Even in cases of brain damage, this Court has found the CCP aggravator. Gill v. State, 14 So.3d 946, 962 (Fla. 2009) (internal citations omitted). In this case, Abdool is neither emotionally disturbed nor brain damaged beyond a mild learning disability.

In this case, as discussed more fully above, the State presented evidence that at the time of the murder, Abdool was not under the influence of an emotional frenzy, panic or fit of rage. Instead, the evidence showed that Abdool committed the murder after cool and calm reflection. Especially significant is the evidence that Abdool had to take many separate and distinct steps, even after he had driven to the kill site, to effect his plan to commit this murder.

First, Abdool took duct tape, a roll that he purchased less than two hours before the murder, and attempted to bind Amelia. Evidence that Amelia's earring and hair adhered to a piece of duct tape found at the scene illustrated Abdool's attempts to restrain Amelia with duct tape.

Next, Adool put on his gloves and took the gas can, also something Abdool had purchased less than two hours before the murder, from his car. Abdool poured its contents on Amelia so that all of her clothing tested positive for gasoline. Juan Bailey testified that Amelia had gas on her hands, head, and torso. Abdool's admission that he put on the gloves so he would

not get burned belie any claim that Abdool was acting in an emotional frenzy. Additionally, evidence at the scene showed that, before he poured out the contents of the gas can onto Amelia's body, Abdool separated the spout from the container so that the gas would flow easily and quickly onto Amelia's torso, hands and face. Finally, Abdool lit the BIC lighter that he had brought to the scene and held the heat source inches, if not in contact, with Amelia's body. The State's evidence in this case provides competent substantial evidence the murder was cold.

There is also competent substantial evidence the murder was calculated. Abdool had a careful plan or prearranged design to commit murder before the fatal incident.

The State presented evidence that Abdool told at least one person he wanted to kill Amelia and attempted to enlist the aid of two others to kill Amelia and get rid of her body. Additionally, Abdool bought the murder weapons within two hours of the murder, including gas, the gas can, and the duct tape. Abdool brought the last weapon, a BIC lighter, with him. Evidence that Abdool expressed a desire to kill Amelia, solicited others to help get rid of Amelia and purchased the tools he used to kill Amelia provide competent substantial evidence the murder was calculated.

Finally, the State produced competent substantial evidence that Abdool had ample time to reflect on his intended actions

and to abandon the plan to kill Amelia but did not do so. This Court has found heightened premeditation necessary for CCP in cases where the defendant had a period of reflection affording an opportunity to abandon the plan but, instead, committed the murder. Welch v. State, 992 So.2d 206, 216 (Fla.2008) (finding CCP proven where the defendant wrote a note in advance threatening to kill the victims and had time for reflection and an opportunity to abandon the murders but did not do so).

In this case, Abdool had ample opportunity to abandon his plan to kill Amelia Sookdeo. When Julian Pinnock and Visham Adjoda told Abdool they would not kill Amelia for him, he could have abandoned his plan to kill Amelia, but he didn't. When Abdool left his apartment after having sex with Amelia on the morning of her death, he could have abandoned his plan to kill her, but he didn't. When Abdool drove Amelia away from the 7-11 where he bought the duct tape, gas can and gas, he could have abandoned his plan to kill her and taken her home, but he didn't. When Abdool took time to put on his black gloves before he took the gas from the car so he would not get burned, he could have abandoned his plan to kill Amelia, but he didn't. When Abdool took time to separate the spout from the gas can, he could have abandoned his plan to kill Amelia, but he didn't. When Abdool poured gasoline on Amelia's hands, head and torso, he could have abandoned his plan to kill her, but he didn't.

Just before the struck the lighter, Abdool could have abandoned his plan to kill Amelia, but he didn't. Instead, he lit a green BIC lighter and set Amelia Sookdeo on fire. Evidence that Abdool intended and planned the murder in advance, obtained the murder weapons in advance, and that he had many opportunities to reflect upon, and abandon, his plan support the trial court's finding the murder was CCP. Gill v. State, 14 So.3d 946, 963 (Fla. 2009)(competent substantial evidence supported CCP when Gill had ample time to reflect on his intended action and abandon the plan to murder but he failed to do so).

**B. Mitigation**

In this portion of his seventh claim on appeal, Abdool presents a claim of error in the trial court's consideration of his mitigation evidence. (IB 79). Abdool claims the trial court's decision to assign little weight to each of the two statutory mental mitigators was clearly erroneous. Abdool identifies two primary deficiencies in the trial court's consideration of the two statutory mental mitigators:

(1) The trial court improperly considered that Abdool knew right from wrong. Abdool claims this consideration is irrelevant. (IB 81).
(2) The trial court erroneously recalled that all experts agreed that none of the defendant's diagnoses contributed to the murder. Abdool alleges that even Dr. Tressler could not say for certain that Abdool's personality disorders did not influence his conduct and specifically denied that the defendant was not suffering from any emotional disorders at the time of the murder.

> Abdool also notes that Dr. Gold specifically found a nexus because she opined the both mental mitigators applied. (IB 82-83).

This Court reviews a trial court's assignment of weight to mitigation under an abuse of discretion standard. *See* Blanco v. State, 706 So.2d 7, 10 (Fla.1997). Abdool is mistaken when he claims that the trial judge erred in considering whether Abdool knew right from wrong. Contrary to Abdool's suggestion, the trial court did not reject any proposed mitigator because Abdool knew right from wrong nor did she conflate any defense with a recognized mitigator. Instead, the trial court considered this factor as one part of the weighing process. (TR Vol. VII 876, 878). Abdool can show no error.

Abdool also can show no error in the trial court's ultimate conclusion that all of the experts agreed there was no nexus between any of Abdool's various diagnoses and the actual murder. For instance Dr. Cowardin testified that Abdool has a mild learning disability. (TR Vol. XIII 899). However, Dr. Cowardin could make no connection between Abdool's learning disability and the crime. (TR Vol. XIII 909). Dr. Cowardin told the jury that as far as she knows, Abdool's learning disability didn't lead him to do what he did. (TR Vol. XIII 904). Dr. Tressler opined that Abdool's learning disabilities had no effect on his actions on the night of the murder. Instead, Dr. Tressler

testified that Abdool's social judgment and understanding of cause and effect are his strengths. (TR Vol. XV 1186).

Dr. Tressler diagnosed Abdool with a personality disorder. Contrary to Abdool's claim that Dr. Tressler could not say for certain that Abdool's personality disorders did not influence his conduct, Dr. Tressler testified very clearly that Abdool's actions on the night of the murder were not caused by his personality disorder. (TR Vol. XV 1215).[17]

Finally, Dr. Gold testified that she diagnosed nothing in Abdool. She does not do diagnoses. (TR Vol. XIV 1104). She does not do so because any disorder is fluid. It comes and goes. (TR Vol. XIV 1104).

Instead, she has diagnostic impressions. Among her impressions was that Abdool was delusional. (TR Vol. XIV 1119-1120). In her mind, this is a major mental illness. (TR Vol. XIV 1120). Dr. Gold testified that Abdool's delusions had nothing to do with this murder. (TR Vol. XIV 1140). Additionally, while Dr. Gold testified about other various conditions or features, including developmental delay, some kind of impulse control disorder, obsessive-compulsive features, the equivalent thinking of a 12 year old, communication disorders,

[17] It appears that Abdool's argument as to Dr. Tressler centers on the notion that because a personality disorder is a lifelong condition, it follows that this disorder impacts every action taken. Nonetheless, Dr. Tressler testified that Abdool's personality disorder did not cause him to murder Amelia Sookdeo.

ADD, an explosive temper, separation anxiety features, and anti-social personality features, Dr. Gold did not opine that any of these disorders or traits had any nexus, or actually contributed at all, to the murder. (TR Vol. XIV 1115-1127).

While Dr. Gold did find both statutory mental mitigators applied, Dr. Tressler found the opposite to be true. (TR Vol. XIV 1125-1126; TR Vol. XV 1197, 1200). The trial court found Dr. Tressler's testimony to be more credible on these two points. (TR Vol. VII 876, 878).

In light of the trial court's credibility findings regarding Dr. Gold, Abdool cannot show the trial court abused its discretion in assigning little weight to both statutory mental mitigators. This Court should reject this portion of Abdool's seventh claim.[18]

**C. Proportionality**

Abdool's sentence to death is proportionate. In this case, the trial court found, and the evidence supports a finding, that the murder was both CCP and HAC. This Court has consistently

[18] Even if this Court were to conclude that the trial court erred in failing to give the two statutory mental mitigators greater weight any error would be harmless beyond a reasonable doubt. The trial court found that the aggravating circumstances outweighed the mitigating circumstances. This Court has consistently held that weighing the aggravating circumstances against the mitigating circumstances is the trial judge's responsibility and it is not this Court's "function to reweigh those factors." Hoskins v. State, 965 So.2d 1, 19 (Fla.2007); *accord* Connor v. State, 803 So.2d 598, 612 (Fla.2001).

found these two aggravators among the most serious and weighty. Sireci v. Moore, 825 So.2d 882, 887-88 (Fla.2002)(noting that HAC is one of the most weighty in Florida). Wright v. State, 2009 WL 2778107, 20 (Fla. 2009) (the CCP aggravator is one of the most serious aggravators provided by the statutory sentencing scheme. *See also* Larkins v. State, 739 So.2d 90, 95 (Fla.1999).

In comparison, the trial court's findings in mitigation, while great in number, were not, in any way, compelling. While Abdool relies heavily on the notion that both statutory mental mitigators were found, the sentencing order reflects that the trial court trial court gave them little weight. (TR Vol. VII 876, 878).

Dr. Gold testified that, in her opinion, both mental mitigators were present. (TR Vol. XIV 1125). Dr. Tressler opined that neither mental mitigator applied to this murder. (TR Vol. XV 1197, 21200). Indeed, Dr. Tressler testified that Abdool was "very clearly" able to conform his conduct to the requirements of the law. (TR Vol. XV 1215). The trial court found Dr. Tressler more credible than Dr. Gold on both points. (TR Vol. XV 876, 878). Accordingly, the trial judge assigned these two statutory mitigators little weight.

Abdool also points to his age as his most powerful aggravator. The trial court found Abdool's age as a mitigator

and gave it moderate weight. (TR Vol. VII 878-879). Abdool points out that the trial court cited to Dr. Cowardin's testimony that Abdool's emotional and social maturity at the time of the murder was substantially younger that his chronological age within the 12-14 year range.[19] The trial court found that Abdool did not have the problem solving skills of a 19 year old and may have found it difficult to think through the adult situation he was in and come to a reasonable conclusion. The trial court found that if Abdool had been more mature, he likely would have dealt with the "adversity" that he believed he was under in a different manner. (TR Vol. VII 879).

However, the evidence in this case demonstrated that Abdool was functioning as an adult. He has an IQ of 94 which his own expert put into the low normal range. (TR Vol. XIII 889). Abdool held two jobs. He also worked in his father's car auction business. (TR Vol. XIV 1148). At the time of murder, Abdool was no longer living with his parents and was living alone in an apartment. (TR Vol. XIV 1072).[20] Abdool played poker regularly with his brother. (TR Vol. XIV 1038-1039). Abdool drove a car and had completed several welding courses. (TR Vol.

[19] In actuality, that testimony came from Dr. Gold. The trial court largely rejected Dr. Gold's testimony in favor of Dr. Tressler's. (TR Vol. VII 878,878).

[20] Abdool had only been living on his own somewhere between two weeks to one month prior to the murder.

XIV 1151; TR Vol. XIX 292). He had a credit card. (TR Vol. X 394).

Dr. Tressler testified that Abdool's social judgment and understanding of cause and effect are among his strengths. (TR Vol. XV 1186). While Abdool attempts to portray himself as a man-child, the evidence shows that he was functioning as an adult who was fully aware of the consequences of his actions on the night of the murder.

Abdool cites to several cases he believes support his claim the death sentence in this case is not proportionate. Abdool first cites to Offord v. State, 959 So.2d 187 (Fla. 2007). In Offord, this Court reduced Offord's death sentence to life.

This Court's decision in Offord does support a reduction of the penalty recommended by Abdool's jury and imposed by the trial judge in this case. This true for two reasons. First, Offord was a one aggravator case, HAC. The court did not find, as the trial court did here, that the murder was CCP.

More importantly, however, this Court noted that the Offord case was "one of the most documented cases of serious mental illness this Court has reviewed. Through the uncontradicted medical records, a picture emerges of an individual with two serious mental illnesses-schizophrenia and bipolar disorder-who has been in and out of institutions since he was just five or six years old." Offord v. State, 959 So.2d at 193. This

Court found that Offord's mental illness contributed to the murder.

In this case, Abdool does not have a serious mental illness. Dr. Tressler opined the Abdool is not mentally ill. Instead, he has personality disorder. (TR Vol. XV 1197). Although Dr. Gold believed Abdool has delusions of grandeur, the trial court found Dr. Tressler more credible than Dr. Gold.

In Dr. Tressler's opinion, Abdool's personality disorder did not cause him to murder Ms. Sookdeo. (TR Vol. XV 1215). Even Dr. Gold, who believed Abdool was delusional because Abdool told her that he had driven Ferraris and Lamborghinis while working with his father in his auto auction business, opined that Abdool's grandiose delusions had nothing to do with the murder. (TR Vol. XIV 1140). Nothing in this Court's decision in Offord dictates reducing Abdool's sentence to one of life in prison.

Abdool also cites to other cases cited by this Court in Offord. In Robertson v. State, 699 So.2d 1343 (Fla. 1997), this Court reduced Robertson's sentence to life in prison, pointing to five factors: (1) Robertson's age of nineteen; (2) Robertson's impaired capacity at the time of the murder due to drug and alcohol use; (3) Robertson's abused and deprived childhood; (4) Robertson's history of mental illness; and 5) his borderline intelligence. This Court observed that "for no

apparent reason, Robertson strangled a young woman who he believed had befriended him. It was an unplanned, senseless murder committed by a nineteen-year-old, with a long history of mental illness, who was under the influence of alcohol and drugs at the time." Robertson v. State, 699 So.2d at 1347.

Only one of the five factors present in Robertson is present here. Both Abdool and Robertson were 19 years of age. However, there was no evidence that Abdool was impaired by either drugs or alcohol at the time of the murder. (TR Vol. XV 1200). Moreover, Abdool was not abused nor deprived as a child. Instead, he grew up in a loving, supportive, and concerned household free from neglect or abuse of any sort. (TR Vol. XIII 918). Unlike Mr. Robertson, Abdool has no history of mental illness and he is not of borderline intelligence. Instead, Dr. Cowardin testified that Abdool is of low normal range of intelligence. (TR Vol. XIII 902).

This case is also distinguishable from Robertson in another important respect. In Robertson, this Court found the murder was "unplanned." In this case, the evidence shows that Abdool planned to kill Amelia Sookdeao well before the murder, if not months and weeks, certainly hours. This Court should reject any notion that Robertson provides support for a finding that Abdool's sentence is disproportionate.

Abdool next cites to Nibert v. State, 574 So.2d 1059 (Fla. 1990), another one aggravator (HHC) case. In Nibert, this Court reduced Nibert's sentence to life on proportionality grounds. Among the factors that this Court considered were that Nibert had a below average IQ, he showed a great deal of remorse, he had a good potential for rehabilitation, and he had been physically and psychologically abused for many years. This Court also noted that uncontroverted evidence showed that Nibert had suffered from chronic and extreme alcohol abuse since his pre-teen years, that he had been drinking heavily on the day of the murder, and had been drinking when he attacked the victim.

Nothing in the Nibert decision suggests that Nibert planned the murder before he went to the victim's house. Indeed this Court found that there was no evidence presented that Nibert went to the victim's house to kill him. Additionally, the stat conceded that Nibert probably did not bring the murder weapon to the victim's home. Nibert v. State, 574 So.2d at 1060

Nibert is inapposite. In the instant case, there was ample evidence of pre-planning and preparation. Likewise, there is no evidence that Abdool was under the influence of any intoxicating substances at the time of the murder nor is there any support for the notion that Abdool has ever had a substance abuse problem. Indeed, his father had no alcohol in the house. Unlike Mr. Nibert, Abdool was raised in a household free from

abuse, neglect or even want. (TR Vol. XIV 1149). Abdool, unlike Mr. Nibert, does not have a below average IQ. Abdool, unlike Mr. Nibert planned to kill the victim and brought the murder weapons to the kill site. In all respects, Nibert case is totally inapposite to the case currently before this Court.

Finally, Abdool cites to Snipes v. State, 733 So.2d 1000 (Fla. 1999). In Snipes, the defendant killed a man in a murder for hire scheme.

Although the Court found two aggravators, pecuniary gain and CCP, there was substantial mitigation. Snipes was only seventeen years old at the time he committed the murder.[21] Snipes was sexually abused for a number of years as a child, he abused drugs and alcohol beginning at a young age, and he had no prior violent history. Snipes was also raised in a dysfunctional, alcoholic family, suffered childhood trauma, and has many positive personality traits. He also suffers emotional stress and a personality disorder due to his early childhood. Snipes voluntarily confessed to the crime and told others about it, he expressed remorse, and the State depended on Snipes' statements to obtain a conviction against him and a warrant against a codefendant. Additionally, the crime was arranged by

[21] Of course, today Snipes would be, at age 17, ineligible for the death penalty.

older individuals, and testimony reflected that Snipes was easily led by older persons.

Like Nibert, Snipes is inapposite. Abdool was 19 at the time of the murder, was not subject to the influence of another person, had no history of drug and alcohol abuse and his mother and step-father raised him in a loving household with strong faith based values. Moreover, while Abdool confessed to part of his crime, he has consistently denied any real wrong doing on his part, downplaying his culpability at every turn ("It was an accident"). Like the other cases to which Abdool has cited, this Court should not look to its decision in Snipes to find Abdool's sentence disproportionate.

While all the cases to which Abdool cites do not support his cause, there are cases that demonstrate Abdool's sentence to death is proportionate. For example in Way v. State, 760 So.2d 903 (Fla. 2000) this Court upheld Way's sentence to death for the murder of his daughter. Way called his wife and daughter into the garage, hit them in the head with a hammer and lit them on fire. The evidence showed Way's daughter was intentionally set on fire and struggled to move while she was engulfed in flames.

This Court found Way's sentence to death was proportionate. In aggravation, the trial court considered that: (1) Way was previously convicted of a felony involving the use or threat of

violence (Carol Way's murder); (2) the capital felony was committed while Way was engaged in the commission of arson; and (3) the murder was HAC. The trial court also found the murder was CCP, but did not rely upon that finding. The trial court considered the following statutory mitigating circumstances: (1) Way had no significant history of prior criminal activity; (2) Way's age at the time of the crime (thirty-eight). The court also considered the following nonstatutory mitigation: (1) difficult childhood-father died at an early age, family was poor; (2) four years of service in the Air Force and twelve years of service in the air force reserves; (3) successful employment history; (4) reputation for peacefulness and hard work; (5) a hearing impairment and possibly a mental impairment; (6) good behavior in prison; (7) all other mitigating circumstances asserted by the defendant. Way v. State, 760 So.2d at 920.

While the aggravators and mitigators found in this case are not an exact match to the aggravators and mitigators in Way, Way is instructional. In Way, as in the case at bar, the defendant had no significant criminal history. Way's, as does Abdool's, non-statutory mitigators included work, family history, and good behavior in prison. Although Way was significantly older than Abdool, Way served his country in the United States Air Force for a significant period of time while Abdool had no military

service to his credit. While Way's mitigation included possible mental impairment, the mental mitigation Abdool presented is as uncompelling. First, the trial court gave it little weight because she found the State's expert, Dr. Tressler more credible that defense expert, Dr. Karen Gold. Dr. Tressler testified Abdool was not mentally ill and neither statutory mental mitigator applied. Instead, Dr, Tressler opined that Abdool has a personality disorder.

Moreover, none of the experts, for either side, offered any nexus between any specific "mental impairment" and the murder itself. In light of this Court's decision in Way, Abdool's sentence to death is proportionate.

This Court may also look to Robinson v. State, 761 So.2d 269 (Fla. 1999).[22] Robinson murdered his girlfriend, with a claw hammer, while she was sleeping. Robinson admitted waiting till she fell asleep to hit her. The trial judge found in aggravation that: (1) the murder was committed for pecuniary gain; (2) the murder was committed to avoid arrest; and (3) the murder was cold, calculated and premeditated. Id.

The trial court also found two statutory mitigating factors: (1) Robinson suffered from extreme emotional distress (some weight) and (2) Robinson's ability to conform his conduct

[22] It appears Robinson was 29 at the time of July 1994 murder. http://www.dc.state.fl.us/ActiveInmates/detail.asp?Bookmark=16&From=list&SessionID=792687860

to the requirements of the law was substantially impaired due to history of excessive drug use (great weight). 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 (little weight); (5) Robinson's father was an alcoholic (some weight); (6) Robinson's father verbally abused family members (slight weight); (7) Robinson suffered from personality disorders (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 (considerable weight); (9) Robinson's family had a history of mental health problems (some weight); (10) Robinson obtained a G.E.D. while in a juvenile facility (given minuscule weight); (11) Robinson was a model inmate (very little weight); (12) Robinson suffered extreme duress based on fear of returning to prison because where he was previously raped and beaten (some weight); (13) Robinson confessed to the murder and assisted police (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 (minuscule weight); (17) Robinson had the ability to adjust to prison life (very little weight); and (18) Robinson had people who loved him (extremely little weight). Robinson v. State, 761 So.2d at 272-273.

This Court held that Robinson's sentence to death was proportionate. In doing so, this Court noted that while experts agreed Robinson suffers from mild brain damage, it would not prevent him from functioning normally within everyday society. This Court also observed that although Robinson chronically abused drugs from a young age, there was no evidence that Robinson had consumed drugs or alcohol on the day of the murder. According to both mental health experts, Robinson knew what he was doing at the time. This Court noted that these opinions were supported by the fact that before killing the victim, Robinson admitted that he calmly and deliberately waited until she was sleeping and then coldly bludgeoned her to death with a drywall hammer. After killing the victim, Robinson took steps to conceal his crime by burying the victim and lied to the

police about who committed the crime. Although drugs admittedly consumed Robinson's life and he apparently suffered some residual effects from chronic drug abuse, the evidence indicates Robinson acted according to a deliberate plan and was fully cognizant of his actions on the night of the murder. Under the circumstances, this Court found Robinson's sentence to death proportionate. Robinson v. State, 761 So. 2d 278.

In many ways, the instant case is similar to Robinson. Like Robinson, Abdool made preparations to carry out the murder and then subsequently took steps to cover up his crime, including throwing evidence out of his car window, washing his car to remove any mark that Amelia, engulfed in flames, may have left on his car, and lying repeatedly about his involvement in Amelia's disappearance and the injuries he sustained in setting Amelia ablaze.

Like Robinson, Abdool has some impairment of brain function. Robinson's brain damage affected the frontal and left temporal lobe of his brain. Abdool has mild learning deficits.

In neither case, does any brain impairment affect normal functioning in society. Robinson v. State, 761 So.2d at 278. In the instant case, the evidence showed that Abdool could hold down two jobs and still work part time for his father. Abdool drove a car and completed several welding and shop skill courses. (TR Vol. XIX 292).

While in school, Abdool exhibited appropriate classroom behavior. (TR Vol. XIX 291-292). While in jail awaiting trial, he stayed out of trouble and did not receive any disciplinary reports. (TR Vol. XIX 321). He maintained family relationships including engaging in care giving activities for a family member stricken with a serious illness. (TR Vol. XIV 1068).

In Robinson, the trial court gave some and great weight to both mental mitigators in the Robinson case. In this case, the trial court gave little weight to both. Many of Robinson's non-statutory mental mitigators parallel Abdool's, including ADD, an alcoholic father, personality disorders, social isolation, failure to graduate from high school, a model inmate, a loving family, and failure of the system to intervene when assistance was needed. In accord with Robinson, Abdool's sentence to death is proportionate.

## ISSUE VIII

### WHETHER ABDOOL'S SENTENCE TO DEATH IS UNCONSTITUTIONAL UNDER RING V. ARIZONA AND CALDWELL V. MISSISSIPPI (RESTATED)

In this claim, Abdool avers his sentence to death is unconstitutional. Abdool points to the United States Supreme Court's decisions in Ring v. Arizona, 536 U.S. 584 (2002) and Caldwell v. Mississippi, 472 U.S. 320 (1985).

Abdool alleges a number of deficiencies in his sentencing proceedings. First, Abdool alleges the penalty phase jury

instructions diluted or diminished the jury's sense of responsibility in the sentencing process. (IB 92). Next, Abdool points to the fact that the jury's recommendation was not unanimous, but was instead 10-2 in favor of death. (IB 93).

Finally, Abdool complains that the jury did not make specific findings, ostensibly by means of a special interrogatory-type verdict form, as to the aggravating and mitigating factors found to exist. Abdool avers that, as such, "we" cannot know whether the jury was unanimous in its decisions on the aggravating factors found to exist or whether the jury unanimously determined there were sufficient aggravators to warrant death, before addressing the issue of whether the aggravators were outweighed by the mitigating circumstances. (IB 93).

This Court should reject Abdool's claim on three grounds. First, as to his Caldwell claim, the trial court instructed the jury in accord with Florida's standard jury instructions. (TR Vol. XVI 1286-1287). The trial court also instructed the jury that it was required to give its recommendation great weight and that only in rare circumstances would it impose a sentence other than the sentence it recommended. (TR Vol. XVI 1287). This Court has consistently ruled these instructions do not run afoul of the dictates of Caldwell v. Mississppi. *See* Chavez v. State, 12 So.3d 199, 214 (Fla. 2009).

Next, this Court should reject Abdool's claim that his sentence is unconstitutional because the jury's 10-2 recommendation for death was not unanimous. This Court has rejected similar claims before. In Heath v. State, 3 So.2d 1017 (Fla. 2009), Heath claimed that that Florida's sentencing structure is unconstitutional in light of Ring because it does not require a unanimous jury to recommend a sentence of death. In rejecting Heath's claim, this Court noted that it has "repeatedly held that Florida's capital sentencing scheme does not violate the United States Constitution under Ring." Heath v. State, 3 So.3d at 1035. *See also* Butler v. State, 842 So.2d 817, 834 (Fla. 2003)(rejecting Ring claim in first degree murder case where court found only one aggravator; HAC, and jury's recommendation of death was not unanimous).

Finally, this Court should reject Abdool's claim that his death sentence is unconstitutional under Ring because the jury did not make specific findings, on an interrogatory verdict form, as to the aggravating and mitigators found. This Court has ruled that not only is there no constitutional requirement for such findings, but requiring jurors to agree on the existence of a particular aggravating factor, on a special interrogatory verdict form, constitutes a departure from essential requirements of law. State v. Steele, 921 So.2d 538, 545-546 (Fla. 2005). *See also* Hernandez v. State, 4 So.3d

642,665 (Fla. 2009)(rejecting Hernandez's argument that a special verdict form indicating the aggravating factors found by the jury should have been used).

All of Abdool’s arguments presented in this last claim have been previously considered and rejected by this Court. This Court should do the same in this case.

## CONCLUSION

Based upon the foregoing, the State respectfully requests this Court affirm Abdool’s conviction and sentence to death.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing AMENDED ANSWER BRIEF OF THE APPELLEE has been furnished by U.S. Mail to James Wulchak, 444 Seabreeze Boulevard, Suite 210, Daytona Beach, Florida 32118-3941, this 28th day of October 2009.

_____
MEREDITH CHARBULA
Assistant Attorney General

## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

_____
MEREDITH CHARBULA
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