IN THE SUPREME COURT OF FLORIDA

KIRK DOUGLAS WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. SC08-965

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

ANSWER BRIEF OF APPELLEE

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TABLE OF CONTENTS

TABLE OF CITATIONS

CASES **PAGE#**

RULES & STATUTES

PRELIMINARY STATEMENT

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

"IB"	In this appeal, the Initial Brief dated as served by mail March 2, 2009;
"I" …	The volume number of the record of the direct appeal;
"SE"; "DE"	State's Exhibit and Defense Exhibit, respectively; photographs and several other items of evidence can be found in two separate volumes of the record, which the State will designate as "Exh" followed by applicable page number(s).

When applicable, page numbers follow the foregoing symbols.

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

STATEMENT OF THE CASE AND FACTS

As authorized by Fla.R.App.P. 9.210(c), the State submits its rendition of the case and facts.

Case History.

The following timeline provides an overview of the major junctures in the case:

10/7/2006	Body of Susan Littrell Dykes discovered floating in a lake with her feet inserted through the holes in a concrete cinder block and other blocks tied around her body. (E.g., VIII 48-60)

12/21/2006	Grand Jury Indictment charging Appellant Williams with First Degree Premeditated Murder of Susan Littrell Dykes. (I 79-80)
2/12/2008	Jury trial began. (VIII)
2/14/2008	After the State rested (XIII 628), the Defendant Williams indicated that he decided not to testify (XIII 628, 630), and when the trial court examined Williams on his decision, Williams confirmed it (XIII 630-31, 635). The defense rested without calling any witnesses. (XIII 638)
2/14/2006	Jury verdict of guilty as charged of First Degree Premeditated Murder. (III 403; XIII 716-18)
2/15/2008	Jury Penalty Phase (XIV), at which three witnesses testified on Williams' behalf (XIV 726-88); the jury recommended death by a vote of 11-1 (XIV 856-59; III 422).
4/1/2008	Spencer Hearing (XVI 12-79), at which Williams testified (XVI 14-55, 65-72), as well as two victim impact family members (XVI 59-65, 72-75).
Mar-May 2008	Parties' sentencing memoranda. (III 508-519, 553-54, 563-66)
5/13/2008	Circuit Judge Kelvin C. Wells sentenced Williams to death. (XVII; III 570-80)

Guilt-Phase Facts.

The victim, Susan Littrell Dykes (VIII 76-77), was a security guard for D-Train Security (VIII 84; IX 194, 193-203). She weighed 95 pounds, and she was 5'1" tall when her body was recovered. (X 308) When Appellant Williams was arrested in this case about a week after the Murder, he was 28 years old, 164 pounds, and 6'2" tall. (I 1) The medical examiner testified that the cause of the victim's death was blunt force trauma to the head, and the manner of the victim's death was homicide. (X 330)

On Saturday, October 7, 2006, Gerald Headley and his friends discovered the body of Susan Dykes floating in Lake Cassidy (VIII 41-45; see also VIII

49-52). Three concrete blocks (VIII 65, 152-54, 173, 183-84; Exh 138-41) were tied to the victim's body with 1,000 or 1,800 pound Mule tape, which was a kind of a flat rope with printing on it (VIII 59, 181-85; Exh 142-57). The victim's feet extending through the holes in one of the concrete blocks and tied together to affix the block are depicted in SE #8B. (Exh 107) As the victim's body became bloated, the blocks were not enough weight to keep it submerged, as the body formed gas from the decomposition process. (X 308)

The mule tape is flat, woven nylon rope. It has numbers on it marking every foot of the tape, and "mule tape" and the manufacturer's name (NEPCO") and telephone number on it. (VIII 154-55, 181-82) The FDLE analyst collected the rope into marked bags, and the rope was introduced into evidence. (VIII 176-180)

A rope (mule tape) in the victim's mouth was tied at the back of her head. (VIII 155, 175) A view of the rope extending through the victim's mouth and extending around the victim's face towards the back of her head is depicted in SE #8N. (Exh 131; see also X 309)

An FDLE analyst, who attended the autopsy on October 9, 2006, (VIII 150-51), noted three lacerations to the right side of the victim's head, "one near the forehead and two on the back" and "another laceration on the left side of her head near the back." There were no visible injuries to the victim's face. (VIII 156-57; 175-76) Several of the analyst's photographs of the victim were introduced into evidence and explained. (VIII 152, 171-75; See Exh 104-141)

Medical examiners found five large lacerations on Ms. Dykes' head, from five blows to the head, which resulted in internal bleeding to the victim's brain. (X 310-14) On cross-examination, the doctor acknowledged that each of the blows to the victim's head could have caused her to become unconscious or caused death and that the blows could have taken place in a manner of seconds. (X 331-32) On re-direct examination, Dr. Snider testified that people who get blows like this many times remain conscious, and at times they could still be standing. (X 340-42) The doctor continued:

> Q Now, if one blow caused unconsciousness in this case, the first blow, then that means that whoever struck her five times struck her helpless body as she lay unconscious four more times; is that correct?
>
> A Yes.

(X 344)

While the doctor also could not indicate, due to decomposition, which blows or combinations caused the hematoma (X 312-13) or which blow was delivered first (X 331), lacerations to the victim's head were consistent with an object with rounded contours striking the head (X 311), and the victim's injuries were consistent with being struck "with an instrument such as this ball bat" (X 330).

There were no injuries to the victim's left hand (X 337), and the right hand had a dark hemorrhage and a carpal bone was broken (X 339). The broken bone could have been a defensive injury or the result of a strong bite such as a snapping turtle. (X 339-40) On re-cross examination, the doctor indicated, "I can't say when the injuries or post mortem animal activity happened" but the hand fracture was acute and "not months old." (X 351-52)

Views of lacerations to the victim's head are depicted in SE #8D to #8M. (Exh 110-29) The medical examiner testified to several of the photographs, including the ones depicting the injuries, the rope, and the concrete blocks. (See X 320-26)

Dr. Snider, because of the variables that affect decomposition, could not testify to an exact time of death. Instead, he opined that the victim had been in the water "days, not weeks." (X 326-28) The doctor continued:

> Q All right. Now, in your professional opinion, would the condition of her body and the fact that her body was located floating in Lake Cassidy the morning of October 7th be consistent with her body having been placed in that lake the evening of October 3rd or the early morning hours of October 4th?
>
> A Yes, it is consistent.

(X 328-29)

A toxicology analysis was conducted on the victim. There was no sign of illegal drugs, such as cocaine and methylecgonine. (X 316-17) The medical examiner opined that some alcohol found in her system was due to the process of decomposition. (X 315-16)

Williams' wife, Callie Williams, lived with her father, Gillis Douglas. (XII 585) Callie and Defendant Williams married in March 2006. (VIII 134; XII 585) They lived together at her father's for a couple of months until the father kicked Williams out of the house. Since then they did not ever have a home together, but they saw each other ocassionally. (XII 585-86)

Investigators went to the victim's residence. (VIII 70-73, 131; IX 207-208) Investigator Haigh testified he knocked on the front door of the victim's residence and no one answered. "The front door appeared to be locked, but there did not appear to be anyone home." The air conditioner

was running. (X 409) The officers walked around to the back and noticed the rope near the back steps and the aluminum boat. (X 409-410) At this juncture, Investigator Haigh had the entire lot secured and waited for a search warrant. (X 409-412)

In the back, near the wooden deck, there was a "piece of white strapping tape." (IX 208; X 222, 240-41; Exh 181, 183; SE #18) On the tape was written "1800-pound Mule Tape;" it included the company's name and phone number. (X 222-23; see Exh 183) The tape was cut at a marker number 2860 (X 242).

Also behind the residence, there were some concrete blocks similar to those attached to the victim's body (X 222, 246-47; Exh 185) and a boat "leaning up against the side of the house" (X 223; Exh 189, 191, 193, 195, 197). (See also VIII 73; IX 208-209) The bottom of the boat contained blood spots ultimately identified as the victim's. (X 395-96; X 279-80, 399-400; SE #22)

Underneath, in, and adjacent to the boat were 1800-pound mule tape rope, some bungee cords, a blanket, a sheet, and two paddles. (IX 208, 212-13; X 224, 245, 278; Exh 199, 201, 203, 205, 207, 269, 271, 273) The blanket and sheet were "wadded up together." (IX 212) The mule tape contained markers, such as 2885. (X 244-45; SE #20) The "mule tape" found under the boat was like the tape found "on the victim's body."(VIII 73) The blanket and sheet were hidden from view unless the boat was moved. (XII

525) Blood on the blanket/bedspread (SE #16) found next to the boat was identified as a match to the victim's DNA. (X 235, 388-90, 399)[1] DNA consistent with four of 13 loci of Williams' DNA was also found in a DNA mixture on the bedspread. (X 390-91, 399)

The aluminum boat belonged to Callie Williams' father, Gillis Douglas, and Williams had not asked the father for permission to take it, nor had Williams mentioned to him that he was taking it. Williams had not previously used Douglas' boat. Douglas kept the boat behind a shed, which was about 25-30 feet from another where Williams worked on a broken down Chrysler vehicle. Douglas had no trailer for the boat. (VIII 139-43; see also X 271-73)

The front door of the victim's mobile home was "securely locked" (X 412) with a deadbolt (XI 460), but it looked like the back door could possibly be opened "with a pocket knife without having to actually force entry." Investigator Haugh's testimony continued:

> Eddie Eaton, the investigator with Holmes County, gave me his pocket knife and I was able to open the [back] door with a pocket knife. But it only opened an inch or two; something had it secured from the inside.
>
> Q What did you determine that was?
>
> A It appeared to be a lock hasp and -- or something like that. The door would only open about an inch, so I couldn't really tell what it was. I went to Mr. Cloer to borrow a hacksaw. And I believe that Eddie Eaton actually cut the hasp. And it turned out to be a metal lock hasp and we cut it with a hacksaw.

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[1] SE #24 is a chart that summarizes aspects of the DNA expert's findings concerning DNA. (X 397-401)

(X 412-13; see also IX 209; X 281, 285; XII 525; Exh 249) The hasp was fastened on the inside of the back door. (XII 519) An FDLE analyst acknowledged that "[b]ut for the hasp, it would have been pretty easy to get in there" through the back door. (X 281) The hasp was introduced into evidence. (XII 484; SE #40)

Inside the residence,[2] investigators observed blood in the bedroom area. (VIII 73) There was a large area of suspected blood on the floor next to the bed in the master bedroom next to the bed. There also appeared to be blood on the side of the bed and on the mattress itself. (IX 210; X 231, 246; Exh 213, 245) The blood on the floor (X 391-92, 400) in the master bedroom matched the victim's DNA. All 13 loci were not identified in the floor-blood-stain possibly because the carpet cleaner next to it was used on it. (X 392-93)

Next to the blood spot on the floor was a bottle of Resolve Carpet Cleaner and a bloody towel. (IX 211-12; X 230-31; Exh 243, 281, 283) There was "some smearing on the floor it looked like some attempt had been made to maybe clean up the blood maybe using the Resolve Carpet Cleaner." (IX 212)

A bloody aluminum bat was in the master bedroom inside the closet in the master bedroom. (IX 210-11; X 232-33, 275-77, 373; SE #14; Exh 250-63) There was a curved dent in the bat. (X 276; Exh 259) Blood on the top part

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[2] The FDLE analysts described photographs of the items inside the residence at X 225 et seq; Exh 209 et seq.

of the bat matched the victim's DNA. (X 376-77, 399) The expert opined that the victim's blood was at the top of the bat and continued onto the handle. (X 381-82)

A mixture of DNA found on the handle of the bat contained DNA identified as the victim's and as consistent with Williams' DNA, that is, Williams is among the males who could have provided that DNA. (X 377-79, 382-83, 399) Williams was a possible contributor "at five of the six S.T.R loci." (X 379) Williams' "profile was in that mixture at those five specific places" in the DNA. (X 380-81) The profile consistent with Williams' DNA was possibly from skin cells due to handling or gripping the bat. (X 382; see also X 399) There was insufficient DNA on the handle for an exact match to Williams. (X 380)

More white strappling (Mule rope), like what was found outside near the deck, was located inside at the foot of the bed in the master bedroom. It also was imprinted with "1800-pound Mule Tape …," a phone number, and some numbers, such as 2397. (IX 212; X 242-43, 277-78; SE #19 Exh 265, 267)

A pair of bluejeans with spots of suspected blood were found on the "floor of the living room at the entrance to the dining/kitchen area." Underneath the jeans, was a white T-shirt or tank top with spots of suspected blood. (IX 211; X 233-34, 278-79, 282; Exh 275, 277, 279) The FDLE DNA expert confirmed the presence of blood on the jeans (X 383-84), which he identified as containing Williams' DNA (X 385, 400). The jeans' waistband contained a mixture of DNA, in which Ms. Dykes' DNA could not be excluded and in which Williams' DNA was identified. (X 385, 400) The FDLE

expert's test of the white shirt was negative for the presence of blood, and no DNA testing was done on it. (X 386-87)

Another pair of jeans, Jordache brand with blood on them, and a towel, with blood on it, were found in the middle of a clothes hamper. (VIII 79-80, 81-82; see also X 367-70; XI 461; SE #23; Exh 355) There was "quite a bit" of blood on these jeans, such as "in the crotch area on the outside that went down around to the butt area of the jeans." The blood matched the victim's DNA. The victim's DNA matched 12 of 13 loci to DNA found in the waistband area of the jeans. (X 393-95, 400)

Two backpacks were found in the living room area of the victim's mobile home. A red-and-black backpack contained an envelope addressed to Kirk Williams. (X 415; XI 462-63; Exh 363) Another backpack, tan colored, had additional lengths of mule tape in it. (X 415-16; XII 482-83SE #25, #39)

A charging cell phone was recovered in the victim's residence. The last outgoing call was October 2, 2006, at 9:48 p.m. Two missed calls included ones from "Capt. Anderson" on October 4, 2006, at 7:31 a.m. and 3:33 p.m. (X 229; XI 471-78; Exh 370)

FDLE analyst Richards photographed and videotaped the premises and items of interest and collected evidence. (See IX 209-212) He described the photographs for the jury. (X 217-47; Exh 160-247) Investigator Haugh also discussed photographs that he took of the premises and evidence found in and near the premises. (XI 418 et seq; Exh 299-316))

Investigator Haugh correlated the footage markers on various pieces of the Mule rope. (XII 502-509; Exh 380-81) The rope found in the grass of the

victim's back yard was marked (2860) one unit less than the first marker on the rope that tied the victim's feet (2861), and a piece from the backpack in the victim's residence was marked (2865) one unit larger than the largest number on the tape that tied the victim's feet (2864). (XII 507, 509)

Outside the victim's residence, officers observed Williams' white Cavalier there but not the victim's gold 1995 Saturn. (See VIII 127-28; X 220-21; Exh 173, 175, 177) Williams' Cavalier was registered at Gillis Douglas' residence (Compare VIII 127 with VIII 133), where, as mentioned above, Williams' wife, Callie, lived.

Investigator Haugh obtained a search warrant for Williams' Cavalier (XI 242), in which he found a business card from Mooney Bonding Agency (XI 426; Exh 320); a card stating "APPEAR *** Court *** 10-4-2006 *** JUDGE [appears to be a handwritten name]" (XI 426-27; Exh 322); and 12 ATM receipts dated in August 2006 and on the victim's account (XI 427-31; SE #28).

When she was murdered, Ms. Dykes was "in the process of buying" the mobile home "on a contract for deed." It was "[s]ort of a rent-to-own." (VIII 93-94) The victim paid about $300 a month in rent (VIII 94), and her landlord indicated to a neighbor that Ms. Dykes "owed him rent money." (VIII 118)

Callie, Williams wife, testified:

> Q Okay. During the time you and he were married, did he have a steady job?
>
> A Well, he would lie to me and tell me that he went to work, but he brought about maybe one paycheck home. But he didn't have a steady job; he would just go to Able Body about maybe once.

Q He never did have a steady job, did he?

A No, sir.

(XII 602-603)

A bank's video surveillance appeared to show Williams making August ATM transactions. (XI 430-440; Exh 329-336) Williams' wife testified that she was with him in his Cavalier when Williams used Ms. Dykes' ATM "credit card." Williams told her that the card "belonged to a buddy of his." (XII 586) These ATM transactions were on the same bank account as several October 3 transactions, described in greater detail infra, but a different ATM card was used. (XII 490-92) They overdrew the victim's account, and the victim could have had Williams charged with grand theft based on both sets of transactions. (XII 492)

The victim owned a tannish gold or brown Saturn car. (VIII 80-81, 83; 104) The victim's daughter testified that she lived 10 miles from her mother's mobile home and visited her mother "somewhat" often (VIII 77), and she had never seen Williams drive her mother's car (VIII 87); she had heard that he had driven the car. (VIII 87-88)

On October 9, 2006, when sheriff's officers located the victim's Saturn at Gillis Douglas' residence, they searched and seized it after obtaining a search warrant. (VIII 128-29; XI 424-25; see also X 248-52; Exh 26-68) "[S]cratches [were observed] on top of the trunk." (VIII 130; see also X 251-52) Subsequent examinations showed that gouge marks on top of the victim's car matched the distance between the ribs of the bottom of Douglas' aluminum boat. (See, e.g., X 252-55, 272-74; Exh 32, 34, 38, 40, 42, 91)

Inside the victim's Saturn, law enforcement found a pair of real handcuffs (X 256); two set of keys (X 255-56; Exh 50; 52); and a number of Wal-Mart receipts (X 255-56; Exh 54). Some ATM receipts were found in the console of the Saturn. (X 257, 262-63; Exh 62) Wal-Mart receipts were dated October 3 & 5, 2006. (X 260; SE #21-A, 21-F) One of the Wal-Mart receipts itemized a "safety hasp" and a "brass lock" purchased October 3, 2006, 5:12 a.m. (See also X 269) A Wal-Mart receipt was for gum on October 5, 2006. (X 270; Exh 296) Investigator Haugh obtained the Wal-Mart video of the October 3 transaction for the hasp and lock. He also obtained the video for the October 5 transaction for the gum; Williams and his wife, Callie Williams, are depicted in the video. (XI 449-50) There were four Regions ATM receipts, all dated October 3, 2006. (X 260)

Two Murphy's USA receipts were dated October 5, 2006, and in the Saturn's glove box. (X 257, 260, 270-71; Exh 297) Some sort of Wal-Mart pre-paid card was used to make the purchases. A corresponding commercial surveillance photograph of the transaction was introduced, and Williams and a gold Saturn, like the victim's, appear to be in the photograph. (XI 452-53; SE #33; Exh 345) Another photograph was introduced appearing to show Williams making a purchase inside the gas station about five minutes later. (XI 453-54; Exh 346) An Auto Zone receipt dated October 3, 2006, was in an Auto Zone shopping bag on the rear seat of the Saturn. (X 257, 260, 271; Exh 298)

A composite photograph displaying the items recovered from the Saturn was introduced. (X 257-58; Exh 64)

The victim's daughter estimated that Williams had been residing at the victim's mobile home for "maybe about six months" prior to the murder. (VIII 78) Neighbors indicated "several weeks" (VIII 104) and "[p]robably a month, give or take a few days" (VIII 114), and, on cross-examination, one of them acknowledged that he had seen Williams at Ms. Dykes residence on several occasions in the "August, September timeframe" (VIII 110). The neighbor also acknowledged that Williams "lives there." (VIII 111)

Christopher and Carol Richards lived "right across the street" from the victim, Ms. Dykes, for about four years. (VIII 102-103) The Richards' and the victim's trailers faced each other "pretty much squared on." (VIII 107)

Christopher Richards had seen Williams drive his white Chevrolet for awhile, but sometime prior to the murder, Williams parked his car in the victim's driveway and began working on it (VIII 104, 110 VIII; see also VIII 83-84). During the week prior to the victim's murder, Carol Richards often saw Williams working on his car in the victim's driveway. (See VIII 115) Carol Richards acknowledged a cross-examination question that for a couple of weeks prior to October 4, 2006, Williams' car appeared to be broken down. (VIII 122)

Christopher and Carol Richards had previously seen Williams in the area. (VIII 103-104, 114-15) Carol Richards saw Williams at Ms. Dykes' residence "[d]aily for about the last week," but she assumed that "he wasn't living there." (VIII 115) When asked a couple of questions concerning whether she was actually in Williams' presence, Ms. Richards responded:

> Basically side by side a couple of times talking to him asking him a couple of questions, giving him food, offering him food. Other than that talking about the dogs bringing stuff into the yards and that was it.

(VIII 115)

A diagram showed various locations, including Lake Cassidy, the victim's residence, the Gillis Douglas residence. It took Investigator Haugh, driving the speed limit, 12 to 21 minutes to drive between pairs of those locations. (XI 465-71; Se #37)

Three inmates testified against Williams. They contacted Investigator Haugh (XII 495-96), who described his interactions with them and methods he used to verify aspects of inmate Hawley's information (XII 496-502).

William Hawley, a 19-to-20-time convicted felon serving a prison sentence for escape for walking off an honor squad (XII 526-27, 539), testified that in June 2007 he asked Williams for something to read, which resulted in a conversation between them (XII 528-30). Williams was "bragging about trying to get away with murder." (XII 542) He said that "I've never once ever seen anything about this case or heard about it until I met Mr. Williams." (XII 547) Hawley testified:

> Q Mr. Hawley, what did he tell you about what happened to Susan Dykes?
>
> A He explained to me that -- what he was charged with. He was on a crack cocaine binge and that he was using and abusing her A.T.M. or credit cards. He said that he was wanted; he had a warrant for his arrest and that she threatened to turn him in on the warrant because he was using and abusing the cards. He said she was threatening to have him prosecuted for that as well; press charges on him.
>
> Q What did he say he did to her?
>
> A He said that they got into a physical confrontation over it; that he beat her with a baseball bat and she died. And he said he

took the body out to Lake Cassy or Cassidy -- I'm not from this area; I have no clue; I just wrote it down a day later -- that he wrapped her up in a rope and blanket and he threw her in a lake. I guess she floated up.

I'm trying to think what else he told me. That he had been to prison twice before and knew he didn't want to go back to prison and he had to kill her.

Q All right. Did he mention his wife when he was talking to you about the case?

A Yes, sir. He showed me a photograph that he said was his wife holding an infant. I don't know. That's what he showed me.

Q Okay.

A He also mentioned that he had called her to dispose of some evidence and that he was caught on some kind of jail surveillance audio and that they had that tape instructing her to get rid of the evidence.

Q All right. Mr. Hawley, you said that he characterized it as a confrontation between he and Susan Dykes; is that correct?

A Yes, sir.

Q Was that the word he used; "confrontation"?

A I honestly don't remember. I'm not going to say that precise. I don't know exactly how he put it, but he said they got into it over him using the credit cards and he was on a crack cocaine binge.

Q Did he claim in any way to you that it was a self defense act?

A No.

Q Did he claim that she struck him in any way?

A No.

Q So he claimed only that he feared her charging him with the A.T.M. transactions?

A Right. And he knew that once he started, that he had to not only kill her, but get rid of the body so that he wouldn't be charged with it because he did not want to go back to prison. He told me he was there I think for possession of a -- felon in possession of a shotgun or something.

(XII 532-34)

Hawley said he was a realtor with a cocaine problem. The prosecutor told Hawley that he would indicate for Hawley that "he did come forward" and cooperate (XII 538-539) Hawley gave a statement to Investigator Haugh long before this trial, and the prosecutor told him "to testify truthfully." (XII 549)

Inmate Billie Shirah testified. Shirah had met Williams at the Waffle House and had known him for one or two years. (XII 555-56) Shirah told Williams that he felt like killing his (Shirah's) wife, and Williams told him not to do it because "[y]ou don't know what it's like; what you have to live with, not being able to sleep or anything, when you kill someone. *** And he told me he was on drugs and told me he killed her with a ball bat for the drugs." (XII 558) Shirah indicated that he hoped for some assistance with his bond and for his brother's case, but that he was not promised any result. (See XII 559-62)

Inmate Joseph Cordell, age 24 (XII 578), testified that he was recently sentenced to 12 and one-half years in prison for nine counts of burglary and six counts of grand theft (XII 566-67). He requested assistance in his case, but he was promised nothing other than informing his judge of his cooperation "and try to get me a lighter sentence." (XII 576-77) The prosecutor told him to tell the truth. (XII 577) He testified that Williams said he and Susan got into an argument over drugs because she would not give him any. They then went to her house, "[a]nd she confronted him that he had been stealing her money and everything and said that she wasn't going to smoke the crack with him. *** He said something about an A.T.M. or

using her bank account or something like that." Williams said, while they were arguing, they knocked over some tools, and he picked up a bat of some kind, which "he picked it up and hit her in the head with it." (XII 573-74) "[O]ne thing led to another and then he hit her in the head with a bat." (XII 583)

> And he said. And he said that he put her body in some kind of like plastic or some kind of like blanket of some kind and he said he put her in the trunk. And then he went outside and got a canoe of some kind and he put it on top of the car and took it out to Lake Cassidy and said he threw her out. And he said he drove around in the car for a couple of days and eventually got pulled over for it.

(XII 574)

Witnesses testified to the following sequence of events.

On **Sunday, October 1, 2006**, in the evening, Christopher and Carol Richards saw Ms. Dykes at her residence. (VIII 104, 115-16)

On **Tuesday, October 3, 2006**, at about noon, Williams went to his wife's father-in-law's residence, where his wife was staying. They "did" some drugs. (XII 587) At one point they went to a junkyard for Williams to get a part for his white Chevrolet Cavalier. They used his wife's car. (XII 588-89) That day, they also went to Ms. Dykes mobile home twice; the second time Williams told his wife to wait in the car. (XII 589-90) While Williams' wife was with him, he was wearing blue jeans, sandals, a long pair of socks, and a white underwear or tank-top type shirt. (XII 591)

About 9 p.m., Williams dropped his wife at her father's place and left. (XII 590-91) Williams returned probably a little past 10 p.m. and knocked on her window. "He had some drugs on him." It did not take long to finish

the drugs, which she thought was crack, and he left, saying he "was going to get some more." (XII 592) Williams was now using Ms. Dykes' car. (XII 592-93)

Williams' wife said that sometime that night Williams returned with more drugs. This time, Williams parked the victim's car "in the woods"; it was "quite a walk" to where Williams parked the car. (XII 593) Williams had changed into shorts, a T-shirt, and tennis shoes. (XII 593-94) After Williams stayed for about two hours, it was about 4:45 a.m. (XII 594-95) She got Williams some tea, and Williams left again. (XII 595) She did not see Williams again until about Thursday, October 5, 2006. (XII 595)

On Tuesday, October 3, 2006, between midnight and 6:06 a.m., Regions Bank surveillance cameras showed Williams making the withdrawals in a car with features like the victim's Saturn. (XI 454-60; Exh 347-51) Williams' wife confirmed that Williams was in the victim's Saturn. (XII 586; see also XII 589, 593) In that time, Williams had emptied Ms. Dykes' account by making three $100 withdrawals and one $200 ATM withdrawal from it, resulting in an overdraft of over $200 (See X 267-68).

On October 3, 2006, at 5:11 to 5:12 a.m., surveillance cameras, although lacking a face-on view, showed a person appearing to be Williams at Wal-Mart, checkout number 13. (XI 443-45, 448; SE #31) The Wal-Mart receipt for the hasp and lock shows "TE # 13." (Exh 295) Still images from the video were captured and introduced into evidence. (XI 447; SE #32; Exh 343, 344) See timeline displayed in ISSUE I infra. Williams was later arrested near the victim's car (VIII 189-90), in which law enforcement also

found a receipt for the hasp and padlock (SE #21-B & 21-F; X 269). Subsequently, Investigator Haugh purchased a hasp from Wal-Mart to compare it with the hasp he had to cut from the back door of the victim's home. (XI 440-41) Photographs depicted the cut hasp (Exh 338; XI 441) and the newly purchased hasp with the same product number (Exh 340, 342; XI 442); the product number was also on the Wal-Mart receipt found in the victim's Saturn (XI 443).

On October 3, 2006, at 9:30 a.m. Ms. Dykes called Erica Rudolph at D-Train Security from her job site at Lincus, a construction site. Ms. Dykes indicated that her current security assignment was ending on October 6, and she requested 40 or more hours of more work afterwards. (IX 196, 200, Exh 159)

In the late afternoon of October 3, Ms. Dykes reimbursed her landlord, Don Cloer, $20 for her water bill. (VIII 97-98) No one testified in the guilt phase that they saw the victim alive after Mr. Cloer.

On **October 4, 2006**, between 6:00 a.m. and 6:30a.m., neighbor Christopher Richards, was leaving for work when he saw Williams drive up to the victim's residence in the victim's Saturn, with "a flat bottom aluminum boat" tied top-side-up to the top of the car. Although Mr. Richards had seen Williams drive the victim's Saturn on one or two prior occasions (VIII 111), he "thought this was strange because she [Ms. Dykes] never had a boat." "[T]he car stopped and Kirk [Williams] got out of the car and walked around the front of it to do something and got back in the car and pulled in behind the trailer" so that Mr. Richards could no longer see Williams.

(VIII 105-108) On this occasion, Williams and Christopher did not speak with each other. (VIII 109) Mr. Richards was positive that the driver was Williams. (VIII 106-107)

Carol Richards testified that on Wednesday, October 4, "around 6:15 a.m., 6:20 a.m., while she looked out her kitchen window, she saw Williams driving the victim's car with a boat on the top. She said the boat was turned upside down and tied at each end. (VIII 116-17) She was certain it was Ms. Dykes' car. (VIII 117) She had never previously seen the boat, and she had never previously seen the victim carry a boat on the roof of her car. (VIII 117) She saw Williams get out of the car, and then get back in the car and move the car behind the victim's trailer out of her view. (VIII 118) She and Williams did not speak with each other on this occasion. (VIII 120) Carol Richards testified that she had never seen Williams drive the victim's car prior to the morning of October 4. (VIII 122)

On October 4, 2006, Ms. Dykes did not show up for work. Captain Leon Anderson, Ms. Dykes' supervisor, indicated that she was not at her assigned job site, and he was unable to reach her by telephone. He indicated that "she was always on time and never missed a day." (IX 203-204)

Carol Richards testified that she next saw Williams Wednesday night, October 4, when Williams parked Ms. Dykes' car (See also VIII 120) in the same spot in front of her (Dykes') residence where Ms. Dykes usually parked. "He got out and went into the house, got a case of some type -- it looked like a wood grain case and put it in the back of the car and left." (VIII 116-17) Carol Richards' husband, Christopher, testified that he

"believe[d] it was "Thursday, October 5, after 4:30 p.m., when he saw Williams enter the victim's residence and "come back out carrying a small box" and then drive off in Ms. Dyke's car." (VIII 108-109) Williams and Christopher did not speak with each other. (VIII 109)

Thursday or Friday, October 5 or 6, 2006, a little before 6:30 a.m., Christopher Richards testified he saw Williams --

> park[] out next to a trash bin at the end of the [victim's] trailer on East Picasso, walk[] around behind the trailer over to his car [the white Chevrolet], look[] in the driver's window and around to the passenger's window and then walk[] around back behind the trailer and g[e]t in the car and left.

(VIII 109) Carol Richards testified:

> On Thursday morning he [Williams] pulled up to the trash bin [driving Ms. Dykes' car] where Susan put her trash. He parked the car and got out and walked across the yard. He had a flashlight. Looked in his white car parked in her driveway. Shined the light in, turned it off and left.

(VIII 119-20) She and Williams did not speak with each other on this occasion. (VIII 120)

Concerning other people possibly being at the victim's residence, Carol Richards testified:

> Q Did you see any other persons during this time coming and going from Susan Dykes' trailer?
>
> A No, sir, just Kirk Williams.
>
> ***

At about 6:15, 6:30 a.m., Ms. Richards also saw a tan Bronco with an Alabama tag "parked in that driveway on a Tuesday [October 3] morning" but "nobody [was] around it." She and her husband left for work "between 6:00 and 6:30 every day" and "were home by 4:00, 4:30 every day." She said she had never seen the Bronco before or after this time. (VIII 121-22, 123)

On Thursday, **October 5, 2006**, according to Callie Williams, she and Williams went to Wal-Mart to cash a check in Ms. Dykes' Saturn. Williams said he needed "to pay some guy back $20," so, Callie got a check from her mother. Williams "bought a pack of gum 'cause you have to buy something before you can get money back." (XII 596) A corresponding Wal-Mart receipt was recovered. (See X 270; Exh 296)

About noon on **October 6**, bail bondsman Buel Mooney took Williams into custody (on a charge apparently unrelated to this murder). (See VIII 187-88, 190) Williams was arrested at Gillis and Gene Douglas' residence. (VIII 147, 189) When the bondsman took Williams into custody, Williams was working on a car in a shed, and the victim's car was "sitting outside of the shed. Williams wanted to put something in the victim's car or take something out of it, but the bondsman "told him no." (VIII 189-90) The victim's Saturn was left at the Douglas', and Williams was taken to the Walton County jail. (See VIII 190-91) The bondsman did not have a gun, and he had no problem with Williams. (VIII 191-92)

Williams' wife testified that the victim's Saturn was parked and locked-up at her father's place. (XII 597)

When Williams was arrested, he had the keys to the victim's car and the victim's residence with him, as they were found among his jail property (XI 460, 461-62; Exh 353, 359). As indicated above, the receipt for the hasp and padlock as well as were four October 3 Regions ATM receipts were also found in the victim's car.

On Sunday, **October 8, 2006**, Williams called his then-18-year-old wife (VIII 133-34), Callie, from jail and asked her to look for an aluminum boat behind the victim's mobile home and retrieve a blanket, sheet, and some rope from underneath it. He gave her detailed directions to the victim's residence. (See XII 606-623) A recording of the call was played for the jury:

> OPERATOR: This call is from a correctional institution and is subject to monitoring and recording. Custom call in features are not allowed during this conversation. The cost for this call is $2.10 cents. If you do not wish to accept this call, please hang up now. To accept the call, press zero. Thank you for using Tenetix. Go ahead with your call.
>
> KIRK WILLIAMS: Hey.
>
> CALLIE WILLIAMS: Hey.
>
> KIRK WILLIAMS: Did you manage to get that stuff?
>
> CALLIE WILLIAMS: No. They told me to turn around and go home.
>
> KIRK WILLIAMS: Well, try and get up there in the morning I reckon.
>
> CALLIE WILLIAMS: Yeah. Oh, by the way
>
> KIRK WILLIAMS: Yeah.
>
> CALLIE WILLIAMS: My dad told me (inaudible) and we're going to get that paid for. My dad's going to (inaudible)
>
> KIRK WILLIAMS: You don't need my keys?
>
> CALLIE WILLIAMS: We're trying everything to get them.
>
> KIRK WILLIAMS: My keys are in another car that's out there at y'all's house.
>
> CALLIE WILLIAMS: At whose house?
>
> KIRK WILLIAMS: At y'all's house.
>
> CALLIE WILLIAMS: They're at another person's house?
>
> KIRK WILLIAMS: No. I just told you they're in that car that's out there at y'all's house.
>
> CALLIE WILLIAMS: Oh. (Inaudible)

KIRK WILLIAMS: No. The keys to that car are up here with me.

CALLIE WILLIAMS: So now we can't get in.

KIRK WILLIAMS: I reckon you have to come up here and get the keys that I got up here and then go out there and go back to y'all's house to open up that car. And the keys to my car are in -- somewhere in that other car out there.

***

KIRK WILLIAMS: Do you remember how to get out there to my car?

CALLIE WILLIAMS: No. Tell me again real quick.

KIRK WILLIAMS: You go down 90.

CALLIE WILLIAMS: I know; Smith Road.

KIRK WILLIAMS: Go to Smith Road; you turn down Smith Road; then you go down Smith Road. When you get down there to the intersection, take a left.

CALLIE WILLIAMS: A left.

KIRK WILLIAMS: And go down two lanes; there'll be two roads. It's the second road to the right.

CALLIE WILLIAMS: All right.

KIRK WILLIAMS: Turn right on it.

CALLIE WILLIAMS: Okay.

KIRK WILLIAMS: That will be a dirt road. Go down 'til you see my car.

CALLIE WILLIAMS: Okay. (Inaudible)

KIRK WILLIAMS: And when you go out there, there's a -- there's a you walk around -- around back and there's a -- there's an aluminum boat leaned up against the back of the trailer.

CALLIE WILLIAMS: Yes.

KIRK WILLIAMS: Look under that boat. There's a blanket, like a blanket; I think a blanket, a sheet.

CALLIE WILLIAMS: Yeah.

KIRK WILLIAMS: And a couple of ropes.

CALLIE WILLIAMS: Uh huh.

KIRK WILLIAMS: Grab that and put that in my car.

CALLIE WILLIAMS: Okay.

KIRK WILLIAMS: Try to take the fuel tank that's sitting out beside my car, try to put it in the car, too.

CALLIE WILLIAMS: Okay.

KIRK WILLIAMS: Like just throw it up on the back of -- back of everything there.

CALLIE WILLIAMS: All right. So I go down Smith Road, two roads, take a left and then go out and take a right.

KIRK WILLIAMS: No. You go down Smith Road down to the intersection.

CALLIE WILLIAMS: Yeah; I know.

KIRK WILLIAMS: Turn left at the intersection.

CALLIE WILLIAMS: Okay.

KIRK WILLIAMS: And then you go down two roads on -- at the intersection; that will be Oakwood Lakes Estates -- I mean Oakwood Lakes Boulevard.

CALLIE WILLIAMS: Say that one again.

KIRK WILLIAMS: Oakwood Lakes Boulevard.

CALLIE WILLIAMS: Okay.

KIRK WILLIAMS: And from there you turn left on Oakwood Boulevard and you go down three streets. And then it will be that next street on the right.

CALLIE WILLIAMS: On what street?

KIRK WILLIAMS: It will be the second -- the second street on the right. I can't think -- remember the name of it.

CALLIE WILLIAMS: Okay. Gotcha. All right.

KIRK WILLIAMS: Just hang a right on that road. You'll go down. And look on the right there and you'll see my car sitting over there in the yard.

CALLIE WILLIAMS: All right.

KIRK WILLIAMS: (Inaudible)

CALLIE WILLIAMS: What?

KIRK WILLIAMS: When are you going to come up here and get the keys?

CALLIE WILLIAMS: I'm going to come early.

CALLIE WILLIAMS: In the morning?

CALLIE WILLIAMS: Yeah.

KIRK WILLIAMS: All right.

CALLIE WILLIAMS: Kirk, I already talked to one of them police officers and he gave me permission to come up there and get them.

KIRK WILLIAMS: Yeah.

CALLIE WILLIAMS: (Inaudible)

KIRK WILLIAMS: All right. Those annoying ass mother fuckers.

CALLIE WILLIAMS: If I find that (inaudible) that says (inaudible) who do you want me to give them to?

KIRK WILLIAMS: I don't know. You can either take and show it to Mooney and Doug or somebody.

***

(XII 614-21; transcript at SE #45, Exh 382-91; see also XIII 658-59; VIII 142)

Callie, Williams wife, also testified about Williams' phone call to her. (See XII 598-602) Williams told her to locate the blanket and rope under the aluminum boat and put them in his Cavalier. He also wanted to straighten out a mix-up concerning his court date so he could "[h]opefully … get out." So, he wanted her to look in his Cavalier for some court appearance paperwork or card. (XII 599-600) There was a set of keys to the Cavalier in the Saturn and at the jail, and he wanted Callie to get the keys and then go out to the victim's trailer. (XII 600-601)

On **October 9**, law enforcement also searched the victim's residence after obtaining a search warrant, as described above. (See, e.g., IX 207-208; X 408 et seq)

On **October 11, 2006**, there were no visible injuries observed on Williams' face or head when Investigator Haugh served the search warrant for Williams' jail property. (XII 493-94)

The jury returned its verdict of First Degree Premeditated Murder as charged. (III 403; XIII 716-18)

Jury Penalty Phase.

The prosecution relied on guilt-phase facts for proof of aggravating circumstances for the jury penalty phase. (XIV 726). The defense put on three witnesses in the jury penalty phase.

Dr. James Larson, a forensic psychologist, testified. (XIV 726 et seq) Dr. Larson reviewed the "major" discovery in the case, talked with Williams' aunt, interviewed Williams a number of times, and had Williams tested. (XIV 731-32) He also looked at police reports and crime scene photographs.(XIV 732) The tests included tests for intelligence, personality, and malingering. (XIV 732) Larson knew that Williams had been previously incarcerated twice. (XIV 763-64) Larson did not attend the guilt phase of the trial. (XIV 777)

Williams "denied any history of mental illness per se," but he said he has been treated for substance abuse. (XIV 733) Williams told Larson he had engaged in polysubstance abuse and Larson listed the drugs. (XIV 733-34)

Williams had a "disenchanted childhood, a disadvantaged childhood." His mother married at age 14 and then divorced. Larson elaborated. (XIV 735-36) Larson said that Williams' childhood "included physical and sexual abuse and that his mother was abusing alcohol during her pregnancy with Williams. "[S]ome of the test results we got looked like Alcohol Fetal Effect Syndrome," (XIV 736) which means "you don't have the full blown syndrome" (XIV 737).

Williams has a learning disability, and he did not do well in school. (XIV 736-37) Williams cognition was intact. (XIV 738) Williams' full-scale IQ was 98, and his performance IQ was 110, and verbal was 90. (XIV 739-40) Larson "learn[ed]" about Williams' ADHD and Ritalin from Williams. (XIV 760) Larson saw no indication of malingering. (XIV 742-43) When Williams' score indicated that he was not carefully paying attention, Larson thought it was due to ADHD. (XIV 762)

On cross-examination, Larson said there is no history of brain insult or injury. (XIV 759) Larson said that Williams "didn't test out with any well-defined personality disorder." Dr. Larson did not observe any hallucinations, psychotic symptoms, or schizophrenia. (XIV 737-38; see also XIV 761, 762-63)

Larson said that Williams denied that he killed the victim, and when he talked about the victim he became tearful and said he missed her. (XIV 753-54; see also XIV 770-71) Williams' denial of guilt did not invalidate Larson's opinions or testing, according to Larson. (XIV 778)

Concerning statutory mental mitigation, Larson testified:

Q Do you have an opinion, Dr. Larson, as to whether the defendant had the capacity at the time this incident occurred to appreciate the criminality of his conduct or to conform his conduct to the requirements of law that were substantially impaired?

A I think he could appreciate the criminality of his conduct. Because he was basically strung out on crack cocaine or on a cocaine binge, I think his capacity to conform his conduct to the requirements of the law was substantially impaired.

(XIV 755-56)

Larson said that one of Williams' scores measuring a potential for violence was "elevated," but Williams had a "relatively low score overall." Larson knew that, prior to this case, Williams had committed at least two simple batteries. Larson did not know the details of the prior batteries. (XIV 766) If Williams were able to obtain drugs in prison, he would be at an increased risk for violence. (XIV 767)

Larson reiterated that Williams is not a psychopath (XIV 768), then he testified:

Q Well, a psychopath might kill someone and go on about their business, their daily business, as if nothing had happened, right?

A Right. Not bat an eye.

Q Is that what Kirk Williams did in this case? From the facts of this case, didn't he kill Susan Dykes by beating her savagely with a baseball bat and then take extensive and detailed steps to dump her in a cold lake and then go over to his wife's house and smoke some more crack? Isn't that what he did?

A That's consistent with the evidence I reviewed.

(XIV 769)

Larson testified on cross-examination that every time Williams bought cocaine, he knew he was breaking the law, every time he stole from Susan Dykes, Williams knew he was breaking the law, and, as he beat Ms. Dykes to death, he knew he was breaking the law. (XIV 772-73)

Larson said that every cocaine addict does not beat someone to death with bat, then, when the prosecutor asked Larson to testify to what Williams said about the incident, Larson said he could not find those notes. "[T]hose notes must have been misfiled." (XIV 773-76) "It wasn't of value because he wasn't talking about anything that had to do with the actual incident itself." (XIV 776)

Williams told Larson that he did not tie the three concrete blocks around the victim and put her in the lake. (XIV 776)

Finally, on cross-examination, Dr. Larson testified:

> Q And was it also made known to you, through your examination of materials, that during this cocaine binge he also found time to buy a hasp and a lock to secure the crime scene where he murdered her?
>
> A That's correct.
>
> Q Did you and he discuss that in any way?
>
> A No, we didn't

(XIV 777)

Betty Gulliver, Williams' aunt, testified for him. (XIV 780-85) She described the times that she was raising Williams. She involved Williams in various activities, like Boys Club. (XIV 781) She discussed when she got sick and could not support him and Williams being transferred back and forth among relatives. (XIV 781-82) Pam Miller also testified for Williams. (XIV 785-88) She has known Williams for about 7, 9, or more years. (XIV 785) She and her husband run a law care service, for which Williams worked as an employee "on and off." Williams has been "very kind and courteous." He has been a "nice, kind, gentle person." (XIV 786) What they asked Williams to do, he did. He was hard worker. She saw Williams and his little

girl cling to each other; "[y]ou couldn't ask for a better father." (XIV 787-88)

Williams did not testify in front of the jury. (XIV 789)

The jury recommended death by a vote of 11-1. (XIV 856; III 422)

Spencer Hearing.

At the Spencer hearing, April 1, 2008, Williams testified. (XVI 14-55) He said he has two children, one by "another woman" and one by his current wife, Callie. (XVI 15) He said he would maintain contact with his children if given a life sentence. (XVI 16)

Williams discussed his childhood, including his parents going to prison, his living with his aunt, then returning to his mom, then moving back to his aunt. (XVI 16-17) He was also in foster care for about three years. (XVI 18) He said that one of his step-fathers sexually abused him when he was 11 years old. (XVI 19) Williams has a brother and sister, who were also taken out of the home and split up. (XVI 18)

He dropped out of school between the ninth and tenth grade. His school records were lost, so rather than trying to locate the records, he "just went ahead and started working." (XVI 19) He described his work, in which he worked for several employers. (XVI 20)

Williams indicated he has spent time in prison, the first time for violation of probation on grand theft auto, "that he caught" when he was 18 or 19 years old. (XVI 20) He tried to get his GED in prison but he "wasn't there long enough" to complete it. (XVI 21)

The second time Williams went to prison was for possession of a firearm by a convicted felon for 13.4 months. He likes guns and likes to hunt. He did not intend to rob anything with the gun. (XVI 21-22) In prison, he was working on the street on a "DOT work squad." Williams said he never lost gain time in prison. (XVI 23)

Williams was also arrested for a couple of paraphernalia charges, "misdemeanor stuff." A controlled substance charge was dropped for an unknown reason. (XVI 24)

Williams has had "two misdemeanor batteries." One of them started as "domestic violence, but it got dropped to a simple battery." He thought he received six months probation. (XVI 25)

Williams said he has had problems with drugs "[o]ff and on since I was about eighteen, nineteen, somewhere in there." (XVI 25) It started with marijuana and "then went to cocaine, crack, meth and pills." He said he fell into it due to those he had considered to be "friends." (XVI 25-26) He received drug treatment once on probation, which he passed. (XVI 26)

He indicated he had been living with Ms. Dykes about three weeks (XVI 14), since the middle of September (XVI 32). He met her about January 2006 at a bar and had not previously lived with her. (XVI 32-33)

He said he could not take the witness stand because "I felt like I would be very emotional." He said he did not kill the victim. He said he could not "call the law" because he was "high on crack cocaine and already paranoid." Because of what he saw happen to his mother, he felt that he would be blamed for the murder. He said the bat belonged to the victim, but

he had handled the bat previously. He said he "freaked," "didn't know what to do." (XVI 27-28)

Williams said he came home in the early morning hours of October 3 (Tuesday) and found her dead in her bedroom dressed like when her body was recovered. "And her body stayed there in the trailer all day that Tuesday, and in the early morning hours of the 4th is when I moved her body to Lake Cassidy." (XVI 27-28) On cross-examination, Williams said that he used his father-in-law's boat without his permission to dispose of the body. (XVI 70)

Williams said he did not steal from the victim. "[S]he would give it to me freely." He said he was not worried about her charging him. "I would pay it back to her." (XVI 28-29) On cross-examination, he said:

> Q And the reason you weren't worried about her pressing charges while you were wiping out her account Tuesday morning is you claim she's already dead?
>
> A Yes.
>
> Q I guess she's alive when you left the trailer?
>
> A Yeah, that night she was.
>
> Q She was dead when you came back and found her and so you thought, Well, I'll get me another two hundred and nobody will miss that since she's dead; is that right?
>
> A Yes, sir.
>
> Q That's how you treated it?
>
> A Like I said I was already high.

(XVI 54; see also XVI 70) He said that those who testified that she called work the morning after he said she was already dead were mistaken. (XVI 54-55) He acknowledged that the victim "was doing a lot of cocaine just like"

him and that no cocaine was found in her system because "cocaine only takes about three days to get out of your system." (XVI 68)

Although he denied killing the victim, he said he felt remorse for her death. (XVI 31) He asked the Judge to sentence him to life. (XVI 31)

On cross-examination, Williams said that his wife's parents were "all high and mighty" and "very controlling." They kicked him out of their house twice. The second time was when he moved in with Ms. Dykes. (XVI 34) Williams claimed he could have lived with other friends. He also said that other people, like Ms. Dykes, would let him borrow their cars. (XVI 35)

Williams said he did not make enough money to have a place of his own. (XVI 36)

Concerning taking money from the victim, on Monday evening (October 2), at about 11:00, 11:30 p.m., Williams testified: "I took her car with me because I asked her if I could use a $100. I actually lied to her and said I needed a $100 to go toward buying a fuel pump for my car, but instead I used that on crack." He said he left on his bike, and "on the way up to town, a female friend named Chris "had sent me a text message and asked me where I was at." Williams texted her back. He went to Chris' residence and "got in her Explorer and went to town and made the first $100 withdrawal and went and got crack and went back to her house and we done that." (XVI 44) When he left the victim at about 11 p.m., the victim was alive. (XVI 47)

He said he used Chris' SUV to make all the withdrawals from the victim's account (XVI 45-46), except the last withdrawal after he found the victim's body:

> That was when I pulled up and went inside and found Susan and got her keys and came back out and got her car and went to the bank that last time.

(XVI 45) He said he found her dead "about 4:00, 4:35, 5 o'clock, somewhere around in there." (XVI 48) He also said that he got the victim's car when "it was about daylight" and that it was "[l]ike six something in the morning, five something or six something in the morning" when he got the victim's car and went to the bank for the last withdrawal from the victim's account. (XVI 45; see also XVI 66-67)

Concerning the hasp, he testified: "I did go buy a lock and hasp and place it on the house because the one that was on the house was already there." (XVI 39) Later, he indicated he bought the hasp and lock to put on the front door because he did not know who had a key to the residence. He said he never installed it and thought he actually returned them to Wal-Mart. (XVI 42, 47) When asked if Wal-Mart's records would reflect the return, he said "if I did or not. … I'm not real sure. I can't remember." (XVI 42)

Williams said that when he found the victim on the floor of her residence, there was Mule tape rope around her neck or mouth, with the bat "tied to the end of it and twisted up like somebody twisted a tourniquet." He again said he "was high and freaked out, I didn't know what to do." He thought he would be blamed because he had been withdrawing money from her account and he "figured" his fingerprints were on the bat. He cut some of

the rope, slung the bat away, and put her body in the closet and closed the closet door "until I could figure out what to do with the body." He said he stayed there all day. Then, the next day, October 4, he "got Gillis' boat and moved it and put her body in Lake Cassidy." (XVI 49-50)

Williams testified on cross-examination:

> Q How did you get her from the mobile home into the boat onto the car to the lake? Tell us how you did all that.
>
> A When I went to leave my wife's house that morning or her parents house, I took and pulled down there to the barn and loaded the boat up on top of the car and drove out there to Susan's and pulled up in the backyard. Then I took her body out through the back door and loaded it into the boat on top of the car while the boat was still on top of the car and drove to Lake Cassidy with her body inside the boat on top of the car. I went up the -- the way that I went was -- I come out down on 90 and went down to Dr. Roberts Road because at that time they were working on Oakwood Lakes Boulevard and I come out on 90. I went down to Dr. Roberts Road and went back onto Oakwood Lake Boulevard to 331 up to Sunrise Road. Took Sunrise Road and went on across 83. I went across 83 there down to whatever road that is down to -- I can't think of the name of the road. Right there where it splits and goes over Kidd Road. There's like a little dirt road that goes over Kidd Road. I went up Kidd Road that way.

(XVI 71)

Williams said that he thought he may have put the victim's bloody clothes in the hamper. They were on the floor. He thought that they got bloody when he put them over the blood stains on the carpet. (XVI 51-52) He was then asked:

> Q Earlier today when you first testified about the pants, you said you didn't know how the blood got there, do you remember that?
>
> A I just hadn't thought about it right then.

(XVI 53) Williams said he is "not the brightest person in the world" and not a good speaker. (XVI 53)

The first time that Williams told anyone that he found the victim dead was when he told his attorneys "the day we went to pick the jury." (XVI 69)

Williams said he really has "no idea" who killed the victim, but he speculates that the victim did not pay for some drugs. (XVI 67-68)

Williams said that William Hawley lied. (XVI 37, 69) He said that "about half the information [is] there on the [arrest] warrant" that he showed to Hawley. (XVI 40) He said he was in the same cell as Cordell, but he did not tell him anything. (XVI 41) He thought that Cordell may have heard him talking to Shirah "about it." (XVI 41)

Death Sentence.

After both parties submitted sentencing memoranda (III 508-519, 553-54, 563-66), on May 13, 2008, the trial court sentenced Williams to death. (XVII; XIII 570-80)

The trial court found the following aggravating circumstances and explained its rationale for each:

> 1. The crime for which the defendant is to be sentenced was committed for the purpose of avoiding or preventing a lawful arrest or affecting an escape from custody. (III 571-73) [**ISSUE II**]
>
> 2. The crime for which the defendant is to be sentenced was committed for pecuniary gain. (III 573-74) [**ISSUE IV**]
>
> 3. The capital felony was especially heinous, atrocious, or cruel ("HAC"). (III 574-75) [**ISSUE III**]
>
> 4. The crime for which the defendant is to be sentenced was committed in a cold and calculated and premeditated manner, without any pretense of moral or legal justification. ("CCP") (III 575) [**ISSUE I**]

The trial court rejected the mitigator of substantial impairment of ability-to-conform that the defense had contended applied. (III 576-77) [**ISSUE V**]

The trial court also addressed nonstatutory mitigation (III 577-80), finding for example:

> (1)(a). The defendant has a history as a polysubstance abuser having used cocaine, crystal meth[amphetamine], trazodine, loratab and soma. (1)(b). The defendant was on a cocaine binge at the time of the murder. The defendant was chemically dependent at the time of the crime. (l)(c). The defendant participated in an outpatient substance abuse treatment program approximately 10-12 months prior to the instant offense. Moderate Weight. (III 577-78)

In sentencing Williams to death, the trial court concluded:

> The Court has given the jury's advisory sentence and recommendation great weight. The Court has very carefully considered and weighed the aggravating and mitigating circumstances found to exist in this case, being ever mindful that a human life is at stake. The Court finds, as did the jury, that the aggravating circumstances do outweigh the mitigating circumstances.

(III 580)

SUMMARY OF ARGUMENT

The Initial Brief's alternative theories that conflict with evidence and reasonable inferences supporting aggravating circumstances may have been proper for the jury, but they do not comport with the standard of appellate review in which conflicts on the evidence and reasonable inferences from the evidence are resolved to support the trial court's decisions.

The evidence and reasonable inferences showed that Williams had been living in the victim's residence for a number of weeks, so he knew the victim's residence. Therefore, Williams knew that the residence's backdoor was flimsily secured. Williams purchased a hasp and padlock to secure that backdoor in the midst of emptying her bank accounts in the early morning hours of October 3, 2006. He bought the hasp and lock at Wal-Mart to secure

the murder scene that he intended to create and clean-up and, hours later, did create using his 69-pound weight advantage to beat the gagged victim to death with an aluminum bat to the point of denting the bat.

In addition to obtaining the hasp hours prior to killing the victim and then using it to secure the murder scene's backdoor, Williams' determination extended to stealing his father-in-law's boat in order to sink the victim's body in a lake. He stole the boat and then transported the dead victim and the boat from the victim's residence to the lake using the victim's car, a Saturn. He dumped the victim into the lake with three concrete blocks tied to her with Mule tape to hold her down. However, Williams' plan was foiled when, in a few days, she floated to the top of the water due to decomposition, and law enforcement's investigation led them to the victim's mobile home, where they found the pre-purchased hasp securing the back door and the bloody murder scene before Williams could finish cleaning it up. Williams' and the victim's DNA were found there.

Williams' attempts to clean-up extended to a few days after he dumped the body as he, while in jail on another charge, directed his wife to the victim's residence to retrieve some of the incriminating bloody evidence. His jail call was taped and played for the jury.

Subsequently, Williams made statements to three inmates who testified against him. These statements included Williams bragging to William Hawley "about trying to get away with murder." Williams told Hawley that the victim confronted him (Williams) and threatened to turn-him-in on an already outstanding warrant because he was using and abusing her cards.

Williams said that she also threatened to press charges against him. Williams told Hawley that he had been to prison twice before and knew he didn't want to go back to prison, and he had to kill her.

These and other facts detailed in the foregoing pages provide more than the requisite competent substantial evidence for the trial court's findings of CCP [**ISSUE I**], HAC [**ISSUE III**], avoid arrest [**ISSUE II**], and pecuniary gain [**ISSUE IV**]. These and other facts detailed in the trial court's order support the trial court's rejection of the substantial impairment of ability-to-conform mitigator [**ISSUE V**]

The abundant aggravation rendered Williams more than death-eligible [**ISSUE VI**], and render the death sentence proportionate [**SUPPLEMENTAL ISSUE**] The Ring claim should be rejected on several grounds, as this Court has done many times. [**ISSUE VII**]

ARGUMENT

ISSUE I (CCP): WHETHER COMPETENT SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING OF CCP. (IB 35-44, RESTATED)

Williams' ISSUE I attacks the trial court's finding of CCP. ISSUE I relies on selected portions of the evidence and contends that evidence conflicting with Williams' theory should be discarded.

ISSUE I reads like a closing jury argument. Therefore, ISSUE I does not comport with the standard of appellate review. Instead, competent substantial evidence shows that Williams, in the midst of emptying the victim's bank account in the early morning hours of October 3, 2006, bought a hasp at Wal-Mart to secure the backdoor of his intended crime scene, the victim's mobile home, so he could clean it up uninterrupted. Hours later,

he executed his plan. He gagged the victim with rope and bludgeoned her to death with an aluminum bat. Williams then continued his extensive efforts to conceal his crime. In addition to using the pre-purchased hasp to latch the back door of the crime scene, he started his attempt to remove the blood from the carpet. He gathered some bloody clothes to wash. He stole his father-in-law's aluminum boat, put it on top of the victim's car, then drove her body to a lake and sunk the body with concrete blocks he tied to it. A few days later, while he was in jail on another charge, Williams directed his wife to gather some bloody evidence he had left near the boat. Although unnecessary to sustain CCP, Williams also made statements to inmate Hawley confirming it.

A. Standard of Appellate Review and Elements of CCP.

> When evaluating claims alleging error in the application of aggravating factors, this Court does not reweigh the evidence to determine whether the State proved each factor beyond a reasonable doubt. *See Alston v. State*, 723 So.2d 148, 160 (Fla. 1998). Rather, we must 'determine whether the trial court applied the right rule of law for each aggravating circumstance and, if so, whether competent substantial evidence supports its finding.' *Id.* (*quoting Willacy v. State*, 696 So. 2d 693, 695 (Fla. 1997)).

Diaz v. State, 860 So.2d 960, 968 (Fla. 2003). See also, e.g., Douglas v. State, 878 So.2d 1246, 1260-61 (Fla. 2004), quoting Willacy.

Contrary to Williams' self-serving selection of portions of the evidence, the function of assessing the credibility of the evidence belongs to the trial court. Reynolds v. State, 934 So.2d 1128, 1158 (Fla. 2006), explained:

> The trial court is in the best position to assess the credibility of a witness, and we are mindful to accord the appropriate deference to the trial court's assessment of this witness's testimony in our

> review of whether competent, substantial evidence exists to support this statutory aggravator.

Accordingly, Trotter v. State, 932 So.2d 1045, 1050 (Fla. 2006), affirmed a trial court's rejection of mitigation:

> Because Dr. Pinkard is the only expert who examined Trotter in his youth, Trotter contends his testimony should be essentially determinative and afforded great weight. We disagree. First, the question of evidentiary weight is reserved to the circuit court, and this Court does not reweigh the evidence. *Tibbs v. State*, 397 So.2d 1120, 1123 (Fla.1981) ("Legal sufficiency alone, as opposed to evidentiary weight, is the appropriate concern of an appellate tribunal."), *aff'd*, 457 U.S. 31, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982). Second, the circuit court found Dr. Pinkard's testimony unreliable. The determination of the credibility of witnesses also is reserved to the trial court. *Windom v. State*, 886 So.2d 915, 927 (Fla.2004) ("This Court has held that it will not substitute its judgment for that of the trial court on questions of fact, and likewise on the credibility of witnesses and the weight given to the evidence so long as the trial court's findings are supported by **competent, substantial evidence**.").

This case includes direct evidence supporting the trial court's finding of CCP. However, even if this case were entirely circumstantial, the "circumstantial evidence rule does not require the jury to believe defendant's version of events where State has produced conflicting evidence," Finney v. State, 660 So.2d 674, 680 (Fla. 1995), citing Holton v. State, 573 So.2d 284, 289-90 (Fla. 1990); here, the trier of fact was the trial judge, who was "not require[d] … to believe defendant's version of events where State has produced conflicting evidence."

Concerning ISSUE I, competent, substantial evidence must support the elements of CCP:

> [T]he jury must determine 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); and that the defendant had a careful plan or prearranged design to commit murder before the fatal incident (calculated); and that the defendant exhibited heightened

premeditation (premeditated); and that the defendant had no pretense of moral or legal justification.

Duest v. State, 855 So.2d 33, 45 (Fla. 2003), quoting Jackson v. State, 648 So.2d 85, 89 (Fla. 1994).

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

B. Trial Court's Findings.

The trial court found that CCP had been proved:[3]

> The defendant, KIRK WILLIAMS, knew the victim Susan Dykes; and the victim knew the defendant. The defendant was married to Callie Douglas Williams; he and his wife resided together with Callie's parents for a short time after the marriage until his father-in-law kicked him out of the house. Sometime thereafter, defendant met and lived with the victim for a few months immediately preceding her death on or about October 3rd, 2006. The defendant murdered Susan Dykes in her trailer by brutally beating her about the head with an aluminum baseball bat. He gagged her at some point as he carried out the murder. He stole his father-in-law's boat from his yard for use in carrying out his murder plan. The defendant wrapped her body in a blanket to transport her. Using the victim's car, with the boat tied atop, he then took Susan Dykes' body to Lake Cassidy (several miles away from the victim's residence). The defendant used 'muletape' rope and bound her torso and both feet to three concrete blocks, and then threw her overboard and sank her body in the lake with the intent that she never be found. The muletape rope matched sections of the same rope later found inside and around Susan Dykes's trailer. The concrete blocks tied to the body matched other concrete blocks from the trailer premises.
>
> ***
>
> KIRK WILLIAMS' decision to kill Susan Dykes, however poorly conceived, was made in the early morning hours of Tuesday, October 3rd, 2006, as he realized that he would be going to prison if she lived to charge him with grand theft. At about 5:12 a.m., on October

[3] The first paragraph is quoted from the avoid-arrest section of the Sentencing Order, but it establishes a background for all of the aggravation.

> 3rd, 2006, the defendant purchased the hasp and lock at Walmart with the intent to secure the eventual crime scene. The timing of the hasp and lock purchase and its installation on the rear door of the trailer leads to the conclusion that the defendant planned to commit the murder and secure the crime scene. The defendant had time to reflect on his planned murder of Susan Dykes and did so. The testimony of William Hawley was that the defendant told him that he committed the murder because he knew he would go back to prison.
>
> The defendant (at the *Spencer* hearing) testified that he purchased the hasp and lock for the purpose of securing the door to Susan Dykes' trailer. This admission by the defendant confirms that the purchase of the hasp and lock was done with an intent to kill Susan Dykes.

(III 571, 575)

C. Competent Substantial Evidence Supporting the Trial Court's Findings.[4]

The trial court emphasizes the timing of Williams' purchase of the hasp. As a preliminary factual matter, it is important to keep in mind that law enforcement found the victim's **front** door secured with a dead bolt (XI 460) When they checked the **back** door, it was easy to jimmie the door partially open, but a hasp prevented the door from fully opening. In order to enter, officers hacksawed the hasp. (X 412-13; IX 209; X 281, 285; XII 484, 525, 519; SE #40; Exh 249) On October 18, 2006, Investigator Haugh purchased a hasp from Wal-Mart to compare it with the hasp he had to cut from the back door of the victim's home. (XI 440-41) Photographs depicted

[4] Identity is not contested on appeal, so in its argumentation within the issues, the State does not focus on the evidence showing witnesses' ability to recognize Williams' appearance and Williams' voice and the DNA evidence. However, identity-type evidence is discussed in the Facts section supra.

When a fact is initially referenced in the Argument section of the brief, an attempt is made to fully document it with references to the record. However, when these facts are subsequently repeated, generally the record citations are not repeated. See also Guilt-Phase Facts supra.

the cut hasp (Exh 338; XI 441) and the newly purchased hasp with the same product number (Exh 340, 342; XI 442); the product number was also on the Wal-Mart receipt found in the victim's Saturn (XI 443), which was recovered near where the bondsman arrested Williams (See VIII 189-90). When Williams was arrested, he had the keys to the victim's car and the victim's residence with him, as they were found among his jail property (XI 460, 461-62; Exh 353, 359). The Wal-Mart receipt for the hasp and padlock were also found in the victim's car, which Williams had also been seen driving several times in the week of the murder. (See, e.g., VIII 105-109, 116-17)

There was evidence that the victim was subdued and silenced before she was killed because, when her body was recovered, a rope extended through the victim's mouth and to the back of her head, where it was tied (See Exh 131;; VIII 152-55, 173-76, 180; X 309; see also ISSUE III infra); as the trial court found, the victim was "gag[ed] … to prevent her from crying out." (III 576) The injuries to the victim's head demonstrated a determination to kill her, as each of five lacerations on her head was indicative of a potentially fatal blow. (See X 310-14, 331-32)

Inside the residence, officers found evidence that the perpetrator had been attempting to clean up: carpet cleaner was next to the largest blood spot on the carpet, and there was smearing indicating attempted cleaning. A bloody towel was near that blood spot. (IX 211-12; X 230-31, 392-93; Exh 243, 281, 283) The victim's bloody jeans were found in the middle of the hamper in the residence and contained the victim's blood (VIII 79-80, 81-

82; X 367-70, 393-95, 400; XI 461; SE #23; Exh 355), indicating an intent to wash away evidence.

Williams went to extreme lengths to hide the victim's body at the bottom of Lake Cassidy (See VIII 59, 65, 152-54, 173, 181-85; Exh 138-57; SE #8B; Exh 107) using an aluminum boat he stole from his father-in-law (See VIII 105-108, 116-17, 130, 139-43; X 251-55, 271-74; Exh 32, 34, 38, 40, 42, 91) and weighting the body with three concrete blocks tied to the body with Mule rope. Williams provided specific instructions to his wife, Callie, to retrieve the bloody material he had used in disposing of the victim's body. (See XII 614-21; transcript at SE #45, Exh 382-91; see also XIII 658-59; VIII 142)

Moreover, there was competent substantial evidence showing that Williams was financially needy (XII 602-603; see also XII 515-16), thereby motivated to steal. He did not even have a place of his own to stay. His father-in-law threw him out of his house (XII 585-86), and for a few weeks he had been living at the victim's mobile home (VIII 104, 114). He "didn't have a steady job." (XII 602-603)

The foregoing background shows the context for the timing of the events leading up to and out of Williams' murder of Susan Dykes, including Williams' purchase of the hasp:

2006

Oct. 3	12:12 a.m.	Williams withdrew $100 from the victim's bank account, leaving a balance of $167.40. (SE #21-F; Exh 293; X 267-68)
Oct. 3	1:49 a.m.	Williams withdrew $100 from the victim's bank account, leaving a balance of $67.40. (SE #21-

		F; Exh 293; X 268)
Oct. 3	4:49 a.m.	Williams withdrew $100 from the victim's bank account, leaving a balance of -$94.65. (SE #21-F; Exh 294; X 268)
Oct. 3	**5:12 a.m.**	**Williams purchased hasp and padlock from Wal-Mart.** (See SE #21-B & 21-F; Exh 295; X 269; XI 443-45, 448; SE #31; XI 447; SE #32; Exh 343, 344; compare Exh 338, XI 440-43 with Exh 340, 342, XI 442)
Oct. 3	6:06 a.m.	Williams withdrew $200 from the victim's bank account, leaving a balance of -$294.65. (SE #21-F; Exh 294; X 268)
Oct. 3	9:30 a.m.	Ms. Dykes called Erica Rudolph at D-Train Security from her job site at Lincus, a construction site; Ms. Dykes indicated that her current security assignment was ending on October 6, and she requested 40 or more hours of more work afterwards. (IX 196, 200, Exh 159)
Oct. 3	Late afternoon	Ms. Dykes reimbursed her landlord, Don Cloer, $20 for her water bill. (VIII 97-98)
Oct. 4	~6:00 to 6:30 a.m.	Mr. & Mrs. Richards saw Williams drive up to Ms. Dykes' residence in the victim's Saturn, with "a flat bottom aluminum boat" tied to the top of the car; Williams pulled in behind the trailer so that he could no longer be seen. (VIII 105-108, 116-18)
Oct. 4	[unknown time][5]	Ms. Dykes did not show up for work, which was very unusual for her. (IX 203-204)
Oct. 4 or 5	Night or late afternoon	Williams parked Ms. Dykes' Saturn at her residence and retrieve a case or box and left in the Saturn. (VIII 108-109, 119)
Oct. 5 or 6	Morning	Williams drove Ms. Dykes' Saturn up next to a trash bin close to Ms. Dykes mobile home and looked in the window of his Cavalier and drove off in Ms. Dykes' Saturn. (VIII 109, 119-20)
Oct. 5	5:13 p.m.	Williams and his wife, Callie, went to Wal-Mart in Ms. Dykes' Saturn to cash a check; he bought

[5] The witness did not provide a specific time.

		a pack of gum so that Wal-Mart would cash the check. (XII 595-96; X 270; Exh 296)
Oct. 6	~Noon	Bondsman arrested Williams on a charge unrelated to this murder; when arrested, Williams was near Ms. Dykes' Saturn and wanted to access it; he was working on another car. (VIII 187-90) When arrested, Williams had the keys to the victim's car and the victim's residence with him, as they were found among his jail property. (XI 460, 461-62; Exh 353, 359)
Oct. 7	~9:30 a.m.	Ms. Dykes' body discovered in Lake Cassidy. (VIII 40-60) Three concrete blocks were tied to her body (VIII 65, 152-54, 173, 183-84; Exh 138-41) using the same type of Mule rope gagging the victim's mouth and found several other places, including in the aluminum boat and in the victim's back yard (See, e.g., VIII 73, 153-55, 175, 181-82; IX 212; X 242-43, 277-78, 309; XII 502-509; Exh 131, 380-81; SE #19 Exh 265, 267)
Oct. 8		Williams called his then-18-year-old wife (VIII 133-34), Callie, and directed her to retrieve the blanket and sheet next to the aluminum boat he had left in Ms. Dykes' backyard. (XII 606-623; transcript at SE #45, Exh 382-91; XIII 658-602; VIII 142)

As the trial court indicated (III 575), although not necessary to affirm the CCP finding, Williams did testify in the Spencer hearing that he bought the hasp intending to use it to secure the crime scene (XVI 42), and the trial court was entitled to accredit that portion of Williams' testimony, especially given the other facts in the case.

In sum, in the midst of cleaning out Ms. Dykes' bank account, Williams bought a hasp to secure the crime scene that he intended to create and did create several hours later and, in fact, secured the crime scene with the hasp he bought. There was nothing frenzied about Williams' methodically cleaning out the victim's account, buying the hasp, and elaborately

following-through by disposing of the body and attempting to clean up the crime scene while he thought it was secured; this murder was cold. Williams' premeditation extended for hours as he executed his prearranged design; this murder was calculated with heightened premeditation.

Moreover, with about a 70-pound weight advantage over the victim (Compare X 308 with I 1), Williams knew that his aluminum bat would be sufficient to implement his planned murder. And, while the medical examiner's testimony was limited due to the decomposition of the body, one does not generally gag a dead or unconscious body, and one generally does not strike repeated severe blows when the person is obviously already dead.

Competent substantial evidence clearly supports the trial court's CCP finding.

Indeed, William Hawley testified that Williams told him he killed to victim because he did not want to go back to prison. (See XII 532-34) Williams was determined not to return to prison as he **purchased the hasp and lock** (See SE #21-B & 21-F; Exh 295; X 269; XI 443-45, 448; SE #31; XI 447; SE #32; Exh 343, 344; compare Exh 338; XI 440-43 with Exh 340, 342; XI 442) **to seal the crime scene** (See IX 209; X 412-13; X 281, 285; XII 484, 519, 525; SE #40; Exh 249), **as he emptied the victim's bank account** (See SE #21-F; Exh 293; X 267-68; SE #21-F; Exh 293-94; XI 454-60; Exh 347-51; XII 586; see also XII 589, 593), **as he tried to clean up the crime scene** (See, e.g., X 392-93; IX 211-12; X 230-31; Exh 243, 281, 283), and **as he took the victim's body to a lake and sunk it with three large concrete blocks tied to her with Mule tape** (See Guilt-Phase Facts re Williams' access to father-

in-law's boat, Williams seen driving with boat on victim's car, scratch marks on car matching boat ribs, blood in boat, Williams telling wife to retrieve bloody blanket and sheet hidden near boat, blocks tied to victim in lake).

D. Williams' Case Law and "Hypothesis of Innocence."

Williams (IB 44) cites to Mahn v. State, 714 So.2d 391 (Fla. 1998); Geralds v. State, 601 So.2d 1157 (Fla. 1992), and Eutzy v. State, 458 So.2d 755 (Fla. 1984), as purported support for his arguments that a reasonable hypothesis of innocence provides a basis for concluding that CCP was not proved. Leading up to citing these cases, Williams posits several of **his views** concerning the evidence. The overarching principle that Williams ignores is that the trial court's determination merits a view of any evidence that supports it.

First, Williams (IB 37-38, 38 n.8) mentions in passing that the trial court accepted the State's theory of the case "lock, stock, and barrel." However, Williams does not develop a claim that the trial court did not fulfill its responsibility to determine the sentence, thereby failing to preserve any such claim at the appellate level. See Whitfield v. State, 923 So.2d 375, 379 (Fla. 2005)("we summarily affirm because Whitfield presents merely conclusory arguments"); Lawrence v. State, 831 So.2d 121, 133 (Fla. 2002)("Lawrence complains, in a single sentence ... bare claim is unsupported by argument); Sweet v. State, 810 So.2d 854, 870 (Fla. 2002)("Sweet simply recites these claims from his postconviction motion in a sentence or two"; unpreserved). Further, after the trial court read its

Sentencing Order in open court, defense counsel did not object. (See XVII 22-23) Therefore, in addition to any such claim being unpreserved at the appellate level, it was not preserved below. See, e.g., Gore v. State, 706 So.2d 1328, 1334 (Fla. 1997)(argument below was not the same as the one on appeal); Geralds v. State, 674 So.2d 96, 98-99, 98 n. 6 (Fla. 1996) (two claims of unconstitutionality of jury instructions pertaining to death penalty proceedings); U.S. v. Taylor, 54 F.3d 967, 972 (1st Cir. 1995)("raise-or-waive rule prevents sandbagging").

Moreover, arguendo, even if preserved, any such claim would be meritless here. A parties' persuasion of a court to its viewpoint does not mean that the Court abrogated any responsibility. Here, while parts of the trial court's Sentencing Order tracked parts of the State's memoranda, parts of the Order did not. Concerning CCP, the Order omitted two full paragraphs of the State's memorandum. (Compare III 575 with III 514) Williams also ignores the substantial additional differences between the Order and the State's memorandum, such as concerning the avoid arrest aggravator. (Compare III 571-73 with III 509-510) The trial judge did not simply copy-paste or simply rubber-stamp the State memorandum. It exercised the requisite judicial independence.

Williams' complaint is really that he lost the persuasive battle below, which is not a ground to reverse the trial court. See Bevel v. State, 983 So.2d 505, 523 (Fla. 2008)(similarities and differences between the Order and the State's memorandum; "trial court independently assessed the aggravating circumstances and did not merely 'rubber-stamp' the State's

memorandum"; "although the trial court essentially adopted the State's facts section almost verbatim, Bevel does not indicate that the trial court's statement of the facts is erroneous; more importantly, these findings are supported by the record and the testimony adduced at trial"). The facts and the law, indeed, do support CCP. The trial court did not err.

Next, Williams (IB 38-39) selects aspects of the inmates' testimonies and asserts that Hawley's testimony does not support CCP. Williams' focus on his statements concerning a confrontation with the victim ignores all the other evidence in the case, such as the rope tied through the victim's mouth (i.e., "gagged"), the multiple lethal blows to the victim's head, and, of course, the pre-planning. See sections B & C supra; ISSUES II & IV infra.

Moreover, Williams ignores Hawley's testimony that Williams "bragg[ed] about trying to get away with murder." (XII 542)

Also, Hawley testified:

> He said that he was wanted; he had a warrant for his arrest and that she threatened to turn him in on the warrant because he was using and abusing the cards. He said she was threatening to have him prosecuted for that as well; press charges on him.
>
> ***
>
> That he had been to prison twice before and knew he didn't want to go back to prison and he had to kill her.

(XII 532) A fair reading of the foregoing passage is that Williams killed the victim "because he did not want to go back to prison." (III 571)

A little later, Hawley continued:

> Q So he claimed only that he feared her charging him with the A.T.M. transactions?

A Right. **And he knew that** once he started, that he had to not only kill her, but get rid of the body so that he wouldn't be charged with it because he did not want to go back to prison. He told me he was there I think for possession of a -- felon in possession of a shotgun or something.

(XII 534) Williams does not say that he started hitting Ms. Dykes and only then did he realize that he had to kill her. Instead, a fair reading is that Williams said that he **knew** what he needed to do. Thus, the other evidence showed the lengths that Williams went to effectuate what he "**knew**" he needed to do.

In addition to Williams substantial size advantage over the victim (164 pounds versus 95 pounds, 6'2" versus 5'1" tall, I 1; X 308), Williams' cold execution of his plan and other cold follow-up rebuts any suggestion that this was sudden mutual combat. Hawley also testified:

Q Did he claim in any way to you that it was a self defense act?

A No.

Q Did he claim that she struck him in any way?

A No.

(XII 534)

Next, Williams (IB 39-43), at great length, attempts to explain away his purchase of the hasp in advance of killing the victim. He (IB 39) first claims that the hasp is a "common household" item. To the contrary, the odds of anyone needing a hasp for an innocent purpose days before actually using it to secure and attempt to clean-up a murder scene, the victim's residence, are infinitesimal, and the odds that they innocently buy it while cleaning out that same victim's bank account are even less.

Williams (IB 40) next weaves his own version of facts that conflicts with the trial court's record-supported facts. He tracks his own Spencer hearing testimony. He says that actually the victim was killed on October 3 by someone else "sometime between [his] withdrawals [of her money] from the ATM." He supposedly discovered the body, thought he would be blamed for the murder, then bought the hasp. Williams' story remains incredulous, even though the trial could lawfully reject it if it were more plausible. He supposedly was so high on drugs that he really did not know what he was doing when he stole the victim's money at the ATM at 12:12 a.m., 1:49 a.m., 4:49 a.m., and 6:06 a.m. Magically, Williams is awakened into worrying about being blamed for the victim's murder at about 5 a.m., so that he runs to Wal-Mart to purchase the hasp by 5:12 a.m., then somehow he lapses back into his cocaine stupor at 6:06 a.m. as he steals from the victim again. Somehow, purchasing the hasp is the only rationale act that Williams managed in that six-hour period, and it was not to secure his murder scene but rather to secure another person's murder scene.

Williams' ability to navigate the roads and several ATM transactions belie his stupored story, as does his ability to navigate the roads to Wal-Mart, find the hasp and lock there, check out there, find his car, and return to his ATM-thefts. Somehow, Williams managed to install the hasp on the weak door. Somehow, he managed to return to Callie's house a number of times that night.

Thus, Williams' correctly characterizes his hypothesis as "alternative" (IB 40) but it is unreasonable and contradicted by the evidence and common sense.

Williams (IB 40-41) self-servingly and erroneously discards the evidence from D-Train and Mr. Cloer by asserting that more evidence of the D-Train call should have been introduced and that Mr. Cloer really did not see the victim later in the day on October 3. Either the D-Train evidence or the testimony from Mr. Cloer support the conclusion that Ms. Dykes did not die when Williams now says. On October 3, 2006, at 9:30 a.m. Ms. Dykes called Erica Rudolph at D-Train Security from her job site at Lincus, a construction site. Ms. Dykes indicated that her current security assignment was ending on October 6, and she requested 40 or more hours of more work afterwards. (IX 196, 200, Exh 159) In the late afternoon of October 3, Ms. Dykes reimbursed her landlord, Don Cloer, $20 for her water bill. (VIII 97-98) Williams' current jury-style arguments do not belong in an appeal.

Williams' assertion (IB 42) that Ms. Dykes' cell phone records support his theory assumes, without record-support, that Ms. Dykes telephoned others using only her cell phone. Williams also ignores the evidence showing that when the police found Ms. Dykes' cell phone, it was recharging (X 229), indicating that at some point that week, it needed re-charging.

Williams (IB 42-43) asserts that it did not make any sense for him to decide to kill the victim, buy a "cheap hasp" in between ATM withdrawals, and not secure a weapon in advance. To the contrary, it appears that Williams' intent was to take some measure to secure the premises, not

necessarily to keep out a SWAT team, or, as here, an officer with a hacksaw. The degree that Williams was thorough or not thorough does not disprove the State's theory. Likewise, Williams' failure to anticipate the victim bloating from decomposition and surfacing does not undermine the State's case. Concerning Williams securing a weapon, given his size advantage, he knew the one he actually used would accomplish his goal, and, indeed, he probably needed no weapon other than his hands.

Williams (IB 43) floats yet another self-serving theory that he actually did kill her but it was on an impulse and then he "tried to buy some time by securing the door." This theory ignores substantial evidence, perhaps most notably his purchase of the hasp before he killed the victim. Williams' theory also fails to explain gagging the victim's mouth with the Mule tape.

Given the evidence in this case, Williams' cases (cited at 44) do not apply. At the conclusion of his "reasonable hypotheses" discussions, he cites to Mahn v. State, 714 So.2d 391 (Fla. 1998); Geralds v. State, 601 So.2d 1157 (Fla. 1992), and Eutzy v. State, 458 So.2d 755 (Fla. 1984).

Mahn, 714 So.2d at 398, in contrast to here, involved "no such advance planning or preconceived design to kill" the victims. In contrast to Williams' emptying the victim's bank account, purchasing the hasp to secure the crime scene, gagging the victim, and following-though with extensive efforts to conceal the murder, Mahn "carried out the attacks in a haphazard manner, striking out at Debra, for example, when she confronted him after the attack on Anthony, and then fled in a panic" and Mahn involved "rash

and spontaneous killing evidenced no analytical thinking, no conscious and well-developed plan to kill," 714 So.2d at 398.

In Geralds, 601 So.2d at 1164, in contrast to the facts here, a "cohesive reasonable hypothesis" was that the defendant intended only to burglarize or rob the victims during which the defendant became enraged. Geralds did not pre-purchase the means to secure the murder scene and then use it for that purpose, nor did he engage in the other elaborate efforts to hide his crime, discussed supra.

Eutzy, 458 So.2d at 757, actually upheld CCP under its facts: "Eutzy procured the gun in advance, that the victim was shot once in the head, execution style, and that there was no sign of struggle." The murder here was proved through different facts. However, killing then dumping a gagged victim resembles an "execution," and the victim's residence, while messy did not appear to indicate a struggle.

Williams (IB 43) also attempts to use White v. State, 616 So.2d 21 (Fla. 1993), and Penn v. State, 574 So.2d 1079 (Fla. 1991), for his argument. But because requisite operative facts are not present, they do not support Williams' argument. Williams contends that he could not have formulated CCP because he was a "crack addict and on a cocaine binge when he killed Dykes."

In White, unlike here, there was evidence that six days prior to the incident, the defendant was acting like an "animal" and that he "had been acting

> 'very bizarre,' that he normally was very articulate, and that his speech had become slurred. … his appearance had deteriorated, his

> nose was running, his eyes were red and sunken, and that he had lost twenty-five pounds in a few days.

In White, unlike here, rather than creating evidence showing his planning for the murder, the defendant, later that day but still prior to the murder, cried out for help:

> White's sister also testified that, in the early morning hours of July 10, 1989, White called her and said that he needed help. White told his sister: 'I need to talk to daddy. Please tell me where daddy is. Where is daddy? I got to get to daddy. I need to tell him something. I've got to go with him.' She explained that their father had died in 1984. She also testified that, when White called her around 2:30 a.m. on July 10, 1989, he was very intoxicated. The prior evening, White had come to her house around 5:00 or 5:30 p.m. She stated that he was dirty, his teeth had not been brushed, his clothes were bloodstained, and that he smelled bad. She stated that, in her opinion, he was intoxicated.

There also evidence that "when White smoked crack, White would also take three or four valiums" and that on the day of the murder "White was very intoxicated when he left driving 'like a bat out of hell.'"

Here, in contrast, Williams was ingesting crack of an unknown quantity, but, more importantly, there was no evidence that he was obviously intoxicated to the point that he "bizarre," "slurred," lost excessive weight in a short period of time, and "driving 'like a bat out of hell.'" Instead, Williams was apparently purchasing incremental quantities of cocaine over several hours and rationally negotiating at the bank, at Wal-Mart, and over the roads. Further, it appears he did not kill the victim until several hours after his incremental cocaine purchases.

In Penn, there was no explanation for why Penn murdered his mother, and evidence of Penn's pre-planning consisted of retrieving a "hammer from the laundry room, [then] beat[ing] his mother to death." See Penn, 574 So.2d at

1083 ("While Penn obviously decided, for some unknown reason, that he should kill his mother, there is no evidence of the cold calculation prior to the murder necessary to establish this aggravating factor"). Here, in contrast, there is evidence that Williams planned the murder hours prior to his execution of it. Here, there is evidence of Williams' motives of pecuniary gain and avoid arrest, which were both accredited by the trial court, in contrast to Penn. See 574 So.2d at 1083 n.5 ("state argues that the record also establishes that Penn committed the murder for pecuniary gain. Although the judge mentioned Penn's stealing numerous items from his mother's home, he did not find this aggravator to have been proved beyond a reasonable doubt and did not consider it").

Further, Penn did not take the time and effort to gag the victim, nor did Penn undertake Williams' extensive follow-up efforts to cover up the murder in the hours and days immediately following the murder.

In sum, Williams' imagination is not the standard of appellate review. Under the actual standard, there was competent substantial evidence supporting CCP, meriting affirmance of the trial court's finding. (For additional discussions directly pertinent to CCP, see ISSUES II, IV, and especially the purposefully driven behavior the trial court found and discussed in ISSUE V infra)

E. Additional Case Law Supporting CCP.

In contrast to Williams' case law, several cases support affirmance of the CCP finding, in addition to the general principles applied to the facts, discussed above.

Deparvine v. State, 995 So.2d 351, 381-82 (Fla. 2008), upheld CCP. There, like here, it was supported by "competent, substantial evidence." There, like here, the defendant attempted to anticipate what he would need to consummate the murder. There, the defendant "knew he would need to obtain a bill of sale from the truck owner prior to the completed sale because the truck owner was not going to survive a completed sale" and placed a decoy card at the murder scene. Here, Williams knew that he would need to secure the murder scene to allow him time to sanitize it, so Williams bought a hasp as he emptied the victim's bank account and then after he killed the victim he began to clean up the bloody crime scene until law enforcement interrupted that attempt. In Deparvine and here, the defendant "dumped" the bodies in a remote area, there "in a dark dirt driveway in the woods" whereas, here, Williams' efforts to conceal Ms. Dykes body in Lake Cassidy was far more elaborate with his configuration of ropes and cinder blocks. There and here, the scheme included using the victim's vehicle to effectuate the crime. While there, the defendant concealed the weapon to effectuate the murder, here, Williams gagged the victim and did not kill her with the pull of the trigger, but instead, he smashed her head multiple times with an aluminum bat. Evidence of Williams' CCP is as strong as the evidence in Deparvine, even without considering the testimony of any inmate. A fortiori, Hawley's testimony substantially adds to the evidence of CCP.

Durocher v. State, 596 So. 2d 997, 1001 (Fla. 1992), upheld CCP. There, the defendant told the police that he initially only intended to rob the victim,

> 'but after thinking about it I decided it would probably be better to go ahead and kill him then that way the police could not pin it to me.' Durocher then wiped his fingerprints off things he had touched, locked the store's front and back doors, and drove away in the victim's car.

Here, Williams thought about this murder hours before he executed it when he bought the hasp. Here, Williams did much more than "wipe[] his fingerprints." Here, not only did Williams drive "away" in the victim's car, he even drove it to dispose of her body. Here and in Durocher the "sequence of events demonstrates the calculation and planning necessary to the heightened premeditation required to find the cold, calculated, and premeditated aggravator."

Lockhart v. State, 655 So. 2d 69, 73 (Fla. 1995), upheld CCP. There and here, "[t]here was no evidence of forced entry." There, the victim was "bound at one time," and here the victim was gagged. While there, the victim was also tortured and raped, here Williams pre-purchased the hasp, emptied the victims' account, used the hasp, and elaborately attempted to conceal the murder.

In Diaz v. State, 860 So. 2d 960, 963-64, 970 (Fla. 2003), there was evidence of a previous "rocky" relationship between the defendant and the victim, his former live-in girlfriend. As here, there was evidence that the defendant engaged in some pre-planning of the murder. There, "[c]ircumstantial evidence of an altercation between Diaz and the victim [wa]s simply not enough to vitiate CCP in light of the ample evidence of

Diaz's calculated planning on the days preceding the murder." Here, the trial court was entitled to not accredit that portion of inmate testimony, especially in light of the other facts of this case. CCP is stronger here than in Diaz.

Lawrence v. State, 846 So.2d 440, 450 (Fla. 2003), rejected a challenge to CCP even though the defendant's mental condition was substantially more serious than Williams'.

Moreover, several cases illustrate that drug use does not preclude CCP where there is competent substantial evidence supporting CCP.

For example, Raleigh v. State, 705 So.2d 1324, 1329 (Fla. 1997), overruled on other ground, Delgado v. State, 776 So.2d 233 (Fla. 2000), upheld CCP even though there was evidence of "extensive drug dealing and drug use," including evidence that the defendant "prior to the murders, *** took acid, huffed freon, used cocaine, and took sleeping pills," 705 So.2d at 1327. There, the trial court found that the defendant had consumed a "great deal of alcohol before the murders," but the defendant's behavior indicated that he was able to effectuate the murder and otherwise carry on normal affairs, such as conversing and walking. There, the defendant had apparently developed a tolerance for alcohol, and here Williams behavior at the ATM, Wal-Mart, and his wife's residence, as well as traversing among them, demonstrated that whatever Williams had actually consumed did not disable his CCP capacity.

Guardado v. State, 965 So. 2d 108, 110 (Fla. 2007), upheld CCP even though there was evidence that the defendant "wanted to get high and

continue his recent crack cocaine binge. Desperate for money to fix his truck and obtain drugs, Guardado decided to rob a local grocery store." Guardado, 965 So.2d at 117:

> Contrary to Guardado's assertions that his drug use negates CCP, we have concluded that a chronic drug abuser can act '… according to a deliberate plan,' where the evidence shows he 'was fully cognizant of his actions on the night of the murder.' *Robinson v. State*, 761 So.2d 269, 278 (Fla. 1999).

Here, "the evidence shows he 'was fully cognizant of his actions on the night of the murder."

In Robinson v. State, 761 So.2d 269, 271-72 (Fla. 1999), evidence of the effects of substance abuse on the defendant was much stronger than here. Dr. James Upson, a neuropsychologist --

> testified that as a child, Robinson suffered from attention deficit disorder (ADD) and was prescribed Ritalin. Robinson is a chronic drug abuser who started consuming alcohol, marijuana and LSD in his teens, and eventually moved to methamphetamine and then cocaine, which he continued to use up until the murder. Dr. Upson also testified that Robinson was exposed to toxic poisoning in his early twenties and suffered a head injury when he was struck by an automobile while riding a bike.

Dr. Jonathan Lipman, a neuropharmacologist, testified, for example, that " Robinson suffered from conceptual aberrations caused by LSD and that the combination of drugs consumed by Robinson caused a psychotoxic effect which produced profound and long-lasting hallucinations and derangement of reality testing." "Both doctors agreed that drugs controlled Robinson's life and that because of his chronic drug use, Robinson was under extreme emotional disturbance and unable to control his actions. However, both doctors admitted that at the time of the offense, Robinson knew what he was doing and knew that his conduct was wrong." 761 So.2d at 272. In Robinson

and perhaps here, there was no evidence that the defendant used drugs at the time of the murder, but "he had consumed drugs 'days' before the murder," 761 So.2d at 278. Robinson, 761 So. 2d at 273 n.4, summarily rejected a challenge to CCP, citing to Robinson v. State, 684 So.2d 175, 179 n.6 (Fla. 1996). The challenge to CCP should be rejected here.

In Foster v. State, 654 So. 2d 112, 113 (Fla. 1995), the trial court found mitigation of "Foster's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirement of the law was impaired -- not substantially impaired" and "Foster's alcohol and/or drug addiction." Foster, 654 So.2d at 115, rejected a challenge to CCP, pointing to the defendant's determined actions surrounding the murder. Williams' determined actions surrounding the murder provide competent substantial evidence of CCP in spite of any cocaine use by Williams.

Davis v. State, 586 So. 2d 1038, 1040 (Fla. 1991), rejected a challenge to CCP, even though the defendant's "trial counsel did present evidence of Davis's intoxication on the night of the crime," Davis v. State, 928 So. 2d 1089, 1112 (Fla. 2005).

In Lawrence v. State, 698 So 2d 1219 (Fla. 1997), the trial court found CCP and that "Lawrence was under the influence of alcohol at the time of the crimes." Indeed, there, unlike here, the defendant had a low IQ. Lawrence, 698 So.2d at 1221, rejected an attack on CCP, finding that "competent substantial evidence to support the trial court's finding of heightened premeditation" and pointed to supportive facts surrounding the murder.

Damren v. State, 696 So. 2d 709, 714 (Fla. 1997), rejected a challenge to CCP even though the defense was intoxication. See also Damren v. State, 838 So.2d 512, 517 (Fla. 2003)(rejecting postconviction claim that "counsel was deficient for failing to present evidence that Damren was addicted to cocaine"; strategic decision).

See also Asay v. State, 580 So.2d 610, 610-611 (Fla. 1991)(defendant drinking and bar-hopping; CCP claim rejected).

Alternatively, even if CCP is struck, the remaining aggravating factors, See ISSUES II, III, IV, support the death penalty and render any error harmless.

ISSUE II (AVOID ARREST): WHETHER COMPETENT SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING OF AVOID ARREST. (IB 44-49, RESTATED)

As in ISSUE I, the appellate test is whether competent substantial evidence supports the trial court's finding of this aggravator.

As a preliminary matter, the CCP and avoid-arrest aggravators are not mutually exclusive. See Wike v. State, 698 So.2d 817, 823 (Fla. 1997)("trial judge appropriately found both the CCP and committed-to-avoid-arrest aggravators").

The trial court found:[6]

> **1. The crime for which the defendant is to be sentenced was committed for the purpose of avoiding or preventing a lawful arrest or affecting an escape from custody.[fn1]**

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[6] The first paragraph of the trial court's avoid-arrest finding, providing a background for all of the aggravation, is quoted in ISSUE I, section B supra.

***

The testimony of prisoner William Hawley, a cellmate of the defendant at the county jail after defendant's arrest, is direct evidence that establishes beyond a reasonable doubt that the defendant acted upon his fear of arrest and imprisonment. Hawley credibly testified that the defendant admitted to him that he had robbed the victim's checking account, that she threatened to turn him in for prosecution, and that he killed her because he did not want to go back to prison as he had been there before. This was clearly the dominant motive for defendant's murder of Susan Dykes.

> [FN1] … the Florida Supreme Court has held that '[T]o establish the avoid arrest aggravating factor where the victim is not a law enforcement officer, the State must show beyond a reasonable doubt that the sole or dominant motive for the murder was the elimination of the witness (citations omitted).' 'Mere speculation on the part of the state that witness elimination was the dominant motive behind a murder cannot support the avoid arrest aggravator. Likewise, the mere fact that the victim knew and could identify defendant, without more, is insufficient to prove this aggravator. (citations omitted).' *Reynolds v. State*, 934 So.2d 1128, 1156-57 (Fla. 2006) (*citing Bell v. State*, 841 So.2d 329, 336 (Fla. 2002)). However, '[e]ven without direct evidence of the offender's thought processes, the arrest avoidance factor can be supported by circumstantial evidence through inference from the facts shown.' *Id.* at 1157(*citing Swafford v. State*, 533 So.2d 270, 276 n. 6 (Fla. 1988)).

The defendant’s admission to inmate Hawley that he killed the victim to avoid another prison sentence supports application of this aggravating circumstance. [fn2]

> [fn2] *See Wright v. State*, 473 So.2d 1277, 1282 (Fla. 1985); *Hitchcock v. Slate*. 578 So.2d 685, 693 (Fla. 1990); *Consalvo v. State*, 697 So.2d 805, 819-20 (Fla. 1997); *Peterka v. State*, 640 So.2d 59, 71 (Fla. 1994); *Floyd v. State*, 850 So.2d 383, 405-07 (Fla. 2002); *Wournos v. State*, 644 So.2d 1000. 1009 (Fla. 1994).

The defendant's failure to flee the area or from his bail bondsman belies his fear of arrest. The defendant obviously had taken steps to avoid detection rather than simply running after committing the murder. The defendant purchased the hasp and lock to secure the crime scene (to secure the back door of the trailer). The defendant stole his father-in-law's boat to transport the body. With 'rnuletape' rope, the defendant tied concrete blocks to the [victim]'s body and from the boat sank her body in Lake Cassidy. The defendant began or attempted to clean the blood stains from the crime scene inside the trailer. The defendant mistakenly believed that he had more time to cover up the crime and did not expect, at that time, his arrest (on unrelated charges) by the bail bondsman Buel Mooney. The defendant

> was surely surprised by the body of the victim floating to the surface of the lake and being found.
>
> On Sunday evening the 8th of October, from the Walton County Jail, the defendant phoned his wife and gave her specific directions (the significance unbeknownst to her at the time) to move some of the evidence that he had left behind at the victim's trailer. For example, he directed her to go to the back of the victim's trailer and grab a blanket or sheet and some rope (all from under a bucket that was beneath the boat angled against the back of the trailer), also grab a nearby fuel tank, and put those items in his car. The defendant gave his wife directions to get from her parent's home to the location of the victim's trailer some distance away where she would see his car parked there.
>
> The defendant had twice before been sentenced to state prison. The defendant had used the victim's ATM card on August 20th, 2006, to completely wipe out and overdraw her checking account. On Tuesday morning, October 3rd, 2006, the defendant again completely wiped out and overdrew her checking account. There was evidence from the victim's employer establishing that Susan Dykes was very concerned about maintaining her employment. There was also evidence from Susan Dykes' landlord that she was behind in her rent-to-buy payments for her mobile home. All of this circumstantial evidence conclusively demonstrates that the defendant had reason to fear that Susan Dykes would charge him with the theft of her bank funds resulting in his certain conviction and imprisonment.
>
> Finally, any assertion that the defendant would not fear charges by the victim due to the October 3rd thefts from her checking account because she had not filed a complaint (after his earlier thefts from her account on August 20th) is not worthy of belief, it is directly rebutted by the testimony of William Hawley; and it is also controverted by the probability that Susan Dykes would not likely forgive the defendant again when the evidence from her employer and landlord demonstrated that she was in dire financial straits.

The State submits that all of the trial court's well-reasoned facts are supported by competent substantial evidence[7]; as the trial court indicates,

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[7] It appears that the only fact on which the trial court relies that Williams challenges is the trial court's interpretation of part of Hawley's testimony. See also discussions of facts in ISSUE I and in Guilt-Phase Facts supra.

they demonstrate that the "dominant motive," for killing the victim was to eliminate Ms. Dykes as a witness, meriting affirmance of the finding of this aggravator. See Reynolds v. State, 934 So. 2d 1128, 1156 (Fla. 2006)(avoid arrest can be proved through "dominant motive for the murder was the elimination of a witness").

Williams had previously taken money from Ms. Dykes in August, but the week of her murder, Ms. Dykes expressed concern for her job. Her current position was ending and her future income was uncertain. (See IX 196, 200, Exh 159) On October 3, when Williams began depleting the victim's account, the balance was only $267. (See SE #21-F; Exh 293; X 267-68) The victim's scarce financial resources was further demonstrated by the victim's landlord advancing money for her water bill (VIII 97-98) and by the landlord's concern regarding the victim making her next rent-to-own payment to him (See VIII 118). Defendant had been staying with the victim for a few weeks (See VIII 104, 114), so he was in a position to know the victim's financial predicament and her motivation not to tolerate his intended depletion of her bank account. Further, Williams had, indeed, previously been imprisoned. (See XVI 20-25) It is in this supportive context that Hawley's testimony must be viewed. Hawley testified:

> … [H]e told me … [t]hat he had been to prison twice before and **knew** he didn't want to go back to prison and he had to kill her.

(XII 533) A little later, Hawley continued:

> And he **knew** [past tense] that once he started, that he had to not only kill her, but get rid of the body so that he wouldn't be charged with it because he did not want to go back to prison. He told me he was there I think for possession of a -- felon in possession of a shotgun or something.

(XII 534) The trial judge heard Hawley testify, including intonation and the pacing of his words; the trial court's, not Williams', function is to accredit and interpret testimony. See Reynolds, 934 So.2d at 1158 ("Although Courtney's testimony was somewhat impeached by Robert Scionti's testimony at trial, this does not preclude the trial court from considering Courtney's testimony in its analysis of the aggravators present"). Once Williams "started" to implement his plan, he "knew" he had to kill the victim and get rid of her body, which he did. By the time he purchased the hasp, Williams had already "started." He "knew he didn't want to go back to prison and he had to kill her."

The trial judge's fair reading of this testimony, especially given all of the other evidence showing the victim's financial situation and showing Williams' determination to eliminate evidence, is that at some point prior to killing the victim, Williams decided that he needed to kill her to avoid returning to prison. Even without the other evidence, Hawley's testimony would have provided competent substantial evidence of this aggravator.

Further, as the trial court explains in detail and as discussed in ISSUE I and in the Guilt-Phase Facts supra, Williams displayed his preoccupation with not being caught by pre-purchasing the hasp to secure the murder scene, starting to clean up the bloody murder scene, elaborately disposing of the body, and, after Williams was unexpectedly arrested on another charge, directing his wife, Callie, to retrieve some of the bloody evidence.

Reynolds upheld the trial court's finding of this aggravator, where the evidence, as here, showed that the victims knew the defendant, where there was some sort of dispute between the victims and the defendant, here Williams anticipating a dispute over stealing the victim's money, and where a witness testified to "statements made by … [the defendant] regarding his apprehension of arrest given his previous record," 934 So.2d at 1158. Moreover, this case presents additional supportive evidence of Williams' preoccupation with not being caught.

In Wike v. State, 698 So. 2d 817, 822 (Fla. 1997), the victims knew the defendant and so they could identify him. Ms. Dykes certainly knew Williams. In Wiki, the defendant transported the victims to a remote area and killed them. Here, Williams rendered the victim's discovery more remote by purchasing the hasp to secure the murder scene and then transported her to a remote area, that is underwater in a lake, as well as attempted to reduce the chances of discovery by cleaning up, and directing the removal of evidence from, the murder scene. Here and in Wike, "The only logical inference from these facts is that Wike killed the victim to eliminate her as a witness." See also, e.g., Cave v. State, 476 So.2d 180, 188 (Fla. 1985) (avoid arrest aggravator established where defendant kidnapped victim and transported her "some thirteen miles to a rural area in order to kill and thereby silence the sole witness to the robbery").

In Hernandez v. State, 4 So. 3d 642, 668 (Fla. 2009), the trial court relied on a witness's testimony that "Hernandez told her that he killed the victim and cut her throat '[b]ecause she'd seen their faces.'" Hernandez

reasoned that "[w]hile Hernandez may not have explicitly told Tammy that he killed the victim to eliminate her as a witness to the robbery and burglary, this statement suggests that his dominant motive was witness elimination." As here, "[t]he fact that the trial court relied on … [this] testimony in its findings is significant in light of the trial court's superior vantage point to assess … [the witness's] credibility."

Trease v. State, 768 So.2d 1050, 1056 (Fla. 2000), upheld avoid-arrest where --

> the finding of the aggravator is supported by Siegel's testimony that Trease told her that the victim had to be killed because he could identify them, in addition to evidence that the victim would have been able to identify Trease if he had lived because he and Trease were acquaintances.

Here, Williams and the victim were more than "acquaintances." He "didn't want to go back to prison," so the "victim had to be killed," Trease.

The evidence here is substantially stronger than in Sliney v. State, 699 So.2d 662, 671-72 (Fla. 1997), where the defendant had previously interacted with the victim and the defendant stated that he would have to kill the victim because "[s]omebody will find out or something." Although this statement retained some ambiguity, "or something," the evidence was sufficient to establish avoid arrest aggravator. It is sufficient here.

In Looney v. State, 803 So.2d 656, 676-78 (Fla. 2001), as here, the victim would have been able to identify the defendant and the defendant expressed apprehension regarding being arrested. There, the defendant said that "we can't have no witness to all this stuff … so we're going to have to do this here." Here, the "this" is the much more specific, "kill her."

In contrast to the forgoing authorities and evidence, Williams' discussions (IB 48) of Urbin v. State, 714 So. 2d 411, 416 (Fla. 1998), and Elam v. State, 636 So.2d 1312 (Fla. 1994), are misplaced.

In Urbin v. State, 714 So.2d at 416), "Flatebo, Ambrose, and Mann all testified that Urbin shot the victim because the victim resisted the robbery attempt, a critical consistency in all of the witnesses' testimony relating Urbin's statements about the shooting." There was no such mutually consistent evidence in this case. Williams was using the victims' ATM card and purchasing the hasp prior to bludgeoning the victim. He did not kill her as a spontaneous reaction to her "bucking the jack."

In Urbin, "the murder took place as the result of a spontaneous fight that erupted when Beard confronted Elam concerning misappropriated funds." Here, the trial court accredited Hawley's testimony, and substantial other evidence further buttressed this conclusion that Williams killed the victim to eliminate her as a witness.

The predicate for Williams' reliance on Elam is his assumption, not accredited by the trial court, that this killing was the result of a spontaneous argument over drugs resulting in a contemporaneous killing.

Williams' current decision on which parts of the evidence to accredit and weigh was not binding on the trial court's determination, which relied on Hawley and the facts discussed above. The trial court found that the dominant motive for killing the victim was to assure Williams would not return to prison for stealing from her. This finding is supported by competent substantial evidence.

Arguendo, in light of the very weighty other aggravation, See ISSUES I, III, IV, any error in finding avoid-arrest was harmless. See, e.g., Reynolds ("harmless because we can state beyond a reasonable doubt that any error in this regard did not affect the result in this case").

ISSUE III (HAC): WHETHER COMPETENT SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING OF HAC. (IB 49-56, RESTATED)

As in ISSUES I and II, the standard of appellate review is whether competent substantial evidence supports the trial court's finding of the aggravator.

The trial court found:

> The defendant KIRK WILLIAMS brutally beat to death Susan Dykes with an aluminum baseball bat. Susan Dykes was 5-feet 1-inch in height and weighed 95 pounds. Her blood and hair was found on the baseball bat and also down both the front and back of her jean pants. Sometime while he carried out the murder, the defendant removed her jeans and underwear. He bound her torso and both feet to three concrete blocks, threw her body overboard from a boat and sank her body in Lake Cassidy. The multiple lacerations and locations of the lacerations around the head indicate that Susan Dykes' head was moving as the blows were inflicted. No other reasonable conclusion can be drawn other than Susan Dykes was conscious and standing at least long enough for the blood from her head injuries to reach both the front and back sides of her jeans in the manner in which the jeans are blood-stained. Susan Dykes was without a doubt acutely aware of her impending death and the pain associated with the terrible blows (which bent the aluminum bat). Then, while Susan Dykes was obviously still alive, the defendant gagged her with some of the muletape rope; there is no need to gag a dead person.
>
> Dr. Cameron Snider, an Associate Medical Examiner, testified in the guilt phase of the trial proceedings. His review included the autopsy report, autopsy photographs, several crime scene photographs of the recovery of the body from Lake Cassidy, and some of the sheriffs' offices' investigator narratives. Dr. Snider opined that the manner and cause of Susan Dykes' death was homicide by blunt head trauma, or injuries of the head; and that the injuries to Susan Dykes were consistent with having been struck with an elongated, hard instrument striking the head (such as the baseball bat).

> Dr. Snider testified that Susan Dykes had suffered injuries including (1) five lacerations or tears (each about 3-7 centimeters in length) to the scalp from a blunt force instrument striking the head multiple times; (2) bruising or hemorrhages under the surface of the scalp and into the galeum (a tough fibrous cover underneath one's scalp and over the bone or skull), and (3) a subdural hematoma (in other words, bleeding on the surface of the brain beneath the skull).
>
> Finally, Dr. Snider, also opined that the condition of Susan Dykes' body at the time of autopsy, considering such environmental variables with the body having been submerged in water and exposed to the sun, was consistent with her having been dumped in Lake Cassidy three-to-four days before her body was found and recovered on October 7th. Because the body was weighted down with such blocks it would have taken a little longer than the usual one or two days for gasses to have formed within a non-weighted body to bring it to the surface of the water.
>
> This murder was indeed a conscienceless, brutal and pitiless crime, which was unnecessarily torturous to the victim. The evidence establishes beyond a reasonable doubt that the defendant committed a brutal attack on Susan Dykes.

(III 574-75) The evidence supported the trial court's findings.

The medical examiner testified that the cause of the victim's death was blunt force trauma to the head, and the manner of the victim's death was homicide. (X 330) There were five lacerations on Ms. Dykes head, from five blows to the head, which resulted in internal bleeding to the victim's brain. (X 310-14) The lacerations to the victim's head were consistent with an object with rounded contours striking the head (X 311), and the victim's injuries were consistent with being struck "with an instrument such as [the] ball bat" (X 330). A broken carpal bone, an acute injury, (X 339, 351-52) could have been a defensive injury or the result of a strong bite such as a snapping turtle (X 339-40). While it was medically possible that each of the blows could have caused unconsciousness or death (X 331-32),

Dr. Snider testified that people who get blows like this many times remain conscious, and at times they could still be standing (X 340-42).

Here, as the trial court discussed, the severe lacerations are on various sides of the head (See SE #8D to #8M, Exh 110-29), indicating movement while the victim was being struck.

Further, blood on the victim's jeans indicates that she was standing while bleeding on them. The victim's Jordache jeans, which Williams had put with a towel in the middle of a clothes hamper, (VIII 79-80, 81-82; X 367-70; XI 461; SE #23; Exh 355) contained "quite a bit" of blood, including "in the crotch area on the outside that went down around the to the butt area of the jeans." The blood matched the victim's DNA. (X 394-95, 400) The victim's DNA matched 12 of 13 loci to DNA found in the waistband area of the jeans. (X 395, 400)

Moreover, as the trial court's finding succinctly put it, "while Susan Dykes was obviously still alive, the defendant gagged her with some of the muletape rope; there is no need to gag a dead person." (III 574) The evidence showed the rope in the victim's mouth and tied at the back of her head. (VIII 155, 175) A view of the rope extending through the victim's mouth and extending around the victim's face towards the back of her head is depicted in SE #8N. (Exh 131) In a word, the victim was, indeed, "gagged." The victim was gagged before she died; otherwise there is no reason to gag her. If the victim was gagged before the beating, her tortuous experience was all the more protracted. If the victim was gagged

during the beating, it accentuated her fear and pain from the previous blows and the upcoming blows.

Gordon v. State, 704 So. 2d 107, 117 (Fla. 1997), upheld HAC. There, as here, severe injuries were inflicted upon the victim by being struck several times. There and here the victim was "gagged." In Gordon, as the trial court found here, "[w]hile the medical examiner opined that the [victim] could have been rendered unconscious from the first blow to the head, the facts belie that this is what happened." In Gordon and here, "[i]f the victim had been rendered unconscious from the first blow, why inflict the others? Why blindfold him if he couldn't see? Why tie him up if he were lifeless?" Thus, even though the victim in Gordon was subsequently place in a tub of water, torture sufficient for HAC had already transpired through the multiple blows.

While the injuries in Taylor v. State, 630 So.2d 1038, 1042-43 (Fla. 1993), were more numerous than here, its principle applies, as it rejected a claim "that the trial court erroneously found the heinous, atrocious, or cruel aggravating factor because there was no evidence that the victim was conscious or that she endured great pain or mental anguish during the murder." A key fact was that the victim was alive while the injuries were being inflicted.

Here, the medical examiner opined that the victim's broken carpal bone could have been a defensive injury, but he could not rule out an animal attack. Essentially, Williams dumping and sinking the victim in the lake interfered with the doctor reaching a definitive conclusion. In Lawrence v.

State, 698 So. 2d 1219, 1221-1222 (Fla. 1997), "defensive wounds could not be detected," because "the medical examiner explained that any such wounds would have been obscured by the burned condition of Finken's body." However, the composite of injuries to the victim provided the evidentiary support for affirming the HAC finding. Lawrence reasoned:

> We have consistently upheld HAC in beating deaths. See, e.g., Bogle v. State, 655 So.2d 1103 (Fla.), cert. denied, 133 L. Ed. 2d 410, 116 S. Ct. 483 (1995); Whitton v. State, 649 So.2d 861 (Fla. 1994), cert. denied, 133 L. Ed. 2d 59, 116 S. Ct. 106 (1995); Colina v. State, 634 So. 2d 1077 (Fla.), cert. denied, 513 U.S. 934, 115 S. Ct. 330, 130 L. Ed. 2d 289 (1994). We find no error.

There is no error here.

In Dennis v. State, 817 So.2d 741, 750 (Fla. 2002), like here, one of the victims suffered multiple bludgeon-type injuries, sustained injuries to her hand that were "consistent with an attempt to protect herself from injury." Further, as the blood-stained jeans here show, the other "blood stains" also supported HAC. Dennis upheld HAC. 817 So.2d at 766. It should be upheld here.

In Francis v. State, 808 So.2d 110 (Fla. 2001), there were no defensive wounds, and the "medical examiner's testimony … was that the victims could have remained conscious for as little as a few seconds and for as long as a few minutes."), 808 So.2d at 135, citing Rolling v. State, 695 So. 2d 278, 296 (Fla. 1997); Peavy v. State, 442 So.2d 200, 202-03 (Fla. 1983) (upholding finding of HAC where medical examiner testified that victim lost consciousness within seconds and bled to death in a minute or less and there were no defensive wounds).

In contrast to the foregoing authorities and facts, Williams (IB 51-52) cites to Zakrzewski v. State, 717 So.2d 488, 493 (Fla.1998), and Elam v. State, 636 So.2d 1312, 1314 (Fla.1994). However, in Zakrzewski there was evidence indicating that the defendant appeared to have cold-cocked Syvia first, among several victims: "After his family arrived home, Zakrzewski approached Sylvia, who was sitting alone in the living room. He hit her at least twice over the head with a crowbar." 717 So.2d at 490. There is no such evidence undermining HAC here. Further, neither Zakrzewski nor Elam included the gagging, the multiple angles of attack, and bloody clothing.

Williams (IB 53-54) tries to explain away the evidence of gagging, multiple angles of attack, and bloody clothing.

Williams (IB 54-55) infers that the gag may have been tied after she died.[8] As the trial court reasoned, "there is no need to gag a dead person" (III 574).

Williams (IB 55 n.14) posits that the evidence was conflicting regarding whether a concrete block was attached to the rope that gagged the victim, suggesting that the rope through the victim's mouth and tied at the back of her head was actually only part of weighing the victim to sink her. A lay witness also thought he saw a block tied around the victim's head

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[8] Even if there had been a block attached to the rope extending through the victim's mouth, it would not eliminate its initial function as a gag. Otherwise, if the purpose of the rope were to hold a block, it would have been wrapped around the victim's neck where it would much more securely hold a block. (See Exh 131) However, there was no block attached to this rope, and there was no fourth block, as explained in the ensuing paragraphs.

(VII 52), but he authenticated, as depicting what he saw, the medical examiner's photograph (1-B, Exh 4), in which it appears that there was some slack in the ropes around the torso, which could have entangled around the victim's head.

Williams overlooks his own Spencer hearing testimony that, when he supposedly discovered the body, he admitted that a rope was tied "around either her neck or mouth" (also claiming that the bat was also tied to it). (XVI 49-50)

The medical examiner clearly testified that the rope through the victim's mouth was not attached to any of the blocks. (See X 309) Moreover, the FDLE analyst who attended the autopsy listed the three blocks tied to the victim's body, and none of them were attached to the rope "around her mouth." (See VIII 152, 154-55, 173-76, 180)

Williams' assertion appears to be based on Investigator Eaton's testimony. (See IB 55 n.14) However, Eaton does not clearly say that he saw the gag rope tied to a block. Instead, he describes a rope tying a block [1] to her feet, [2] a rope across "the center of her torso," and [3] a rope "going right across underneath her breast area and then there was some going through her mouth." He then indicates that "underneath her, each one of those pieces of tape was tied to sixteen inch … blocks." (VIII 63) A little later, however, he indicated that he was wrong in estimating four blocks; instead there were only three blocks. (VIII 65) Further, he confirmed that the medical examiner's photographs (which showed no block attached to the mouth-rope) depicted the "victim's body that was found in

the lake there." (VIII 64-65) Moreover Investigator Haugh testified that ropes around the victim's waist (XII 506) and from the victim's chest (XII 506-507) were attached to blocks, and with the block around the victim's feet (See, e.g., SE #8B, Exh 107), all three blocks are accounted-for, thereby indicating that there was no block attached to the rope extending through the victim's mouth. Therefore, when Investigator Haugh discussed the rope from the victim's mouth, he mentioned no block attached to it. (See XII 504-505)

In sum, the trial court's finding that the rope through the victim's mouth was a gag is supported by the evidence.

Williams (IB 53) also disputes the significance of the lacerations to varying parts of the victim's head at varying angles. He speculates that the blows moved the head around. The evidence belies his speculation. There were lacerations [1] "[o]n the **right** side of the **forehead**" over an inch long (X 310); [2] a laceration "on the **right scalp**" about several inches long (X 311); [3] a laceration on "the **back of the scalp**" over two inches long(X 311); [4] another one on the "**back of the scalp**" over two inches long (X 311); and [5] a "small laceration, one centimeter," on the **chin** (X 311). The doctor specifies some of the locations in the photographs as "top of the **left** side of the head," "above the **right** ear," "toward the **front** of the head," "above the **left** ear," "in the **back** of the head." (X 321-26) A reasonable finding, supported by the evidence, is that these diverse locations/angles are not from simply the head being knocked around by the bat.

Finally, Williams (IB 53-54) contends that the victim's bloody jeans do not support the finding that the victim was "conscious and standing at least long enough for the blood from her head injuries to reach both the front and the back sides of her jeans" (III 574). Williams infers that the blood could have been from "an unrelated injury," but there is no evidence to support this assertion; instead, the evidence shows a bloody crime scene and the murder weapon at the victim's residence where these jeans were recovered. Williams speculates that blood may have been smeared on the jeans "in an attempt to clean up the blood on the floor," but Williams ignores the towel that was already next to the carpet cleaner and blood spot on the carpet (See IX 211-12; X 230-31; Exh 243, 281, 283).

Perhaps most importantly, each of these items of evidence should not be viewed in isolation. The blood on both sides of the jeans is consistent with the injuries to the front and back of the victims head.

Alternatively, even if HAC is struck, the remaining aggravating factors, See ISSUES I, II, IV, especially CCP, support the death penalty and render the error harmless.

ISSUE IV (PECUNIARY GAIN): WHETHER COMPETENT SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING OF PECUNIARY GAIN. (IB 56-60, RESTATED)

The standard of appellate review is the same for this aggravator as the others. When specifically applied to this aggravator, the appellate question becomes whether competent substantial evidence supports the conclusion that "the murder was motivated, at least in part, by a desire to

obtain money, property, or other financial gain." Deparvine v. State, 995 So.2d 351, 382 (Fla. 2008)(citing other cases).

The pecuniary gain aggravator can be lawfully found "concurrent[ly]" with "finding … the avoid arrest aggravator." Hertz v. State, 803 So.2d 629, 652 (Fla. 2001)(citing cases). Here, in addition to avoid arrest, the trial court found:

> The evidence establishes that the defendant KIRK WILLIAMS clearly planned and anticipated to further benefit from the murder by obtaining the use of the victim's home, car and other personal property (within her home).
>
> Beginning in August 2006, the defendant made numerous unauthorized ATM withdrawals from Susan Dykes' bank account. Although the defendant had already stolen all of the money from the victim's checking account in the early morning hours of Tuesday, October 3rd, 2006, he planned to further benefit from the murder by using her home, car and other personal property.
>
> On Tuesday, October 3rd, at about 5:12 a.m., with Susan Dykes' ATM card, the defendant purchased a hasp and lock at Walmart. (When law enforcement initially arrived at the victim's trailer during their investigation, they sawed this hasp and lock which was affixed to the back door of the victim's trailer). The defendant's last ATM withdrawal looting her account was made at about 6:32 am, that morning. At about 9:30 a.m. on October 3rd, the victim placed a call from her job site to check-in with her security company employer's main office and spoke with the secretary/corporate supervisor (as she testified at trial and as reflected in the secretary's office memo for that morning). At some time after that phone call, on October 3rd, the defendant murdered Susan Dykes after she had returned home from work; she failed to show for work as scheduled on the morning of October 4th as her supervisor testified. If not for the defendant's surprise arrest by bondsman Buel Mooney on Friday, October 6th, 2006, he would have continued to occupy the victim's trailer, continued to drive her car, and continued to use the personal contents of her home.
>
> The defendant did not merely take the victim's car as an afterthought or means of escape.[fn4] He knew he was not going to run away but instead was planning to conceal the murder and benefit at least temporarily from the use of the victim's home, car, and other personal property.

[fn4] As in *Rogers v. State*, 783 So. 2d 980 (Fla. 2001).

> The neighbors, who lived directly across the street from the victim's home, observed the defendant on several occasions between on or about October 3rd and 6th going to and from the inside of the victim's trailer. The defendant was destitute.[fn5] He had no job, no money, no home and no operable vehicle and was anxious to satisfy his ravenous crack cocaine addiction. Although pecuniary gain was a part of the circumstances, it was not the sole or dominant motivation for this murder.[fn6]

[fn5] As in *Hildwin v. State*, 727 So.2d 193 (Fla. 1998).

[fn6] *Id.*; *see also Jones v. State*, 928 So.2d 1178 (Fla. 2006).

Williams does not contest the facts on which the trial court reached its conclusion, but rather, he contests the conclusion that the facts show the pecuniary-gain motive of this aggravator. The trial court's citations to Rogers v. State, 783 So.2d 980 (Fla. 2001), and Hildwin v. State, 727 So.2d 193 (Fla. 1998), support its finding of this aggravator and belie ISSUE IV's claim.

Rogers, like Williams, killed the victim then used her car. See Rogers, 783 So.2d at 986. Competent evidence of each defendant's intent was what each actually did in the events flowing out of the murder. Clearly, Williams did not have the victim's consent to possess her car between the time that Williams killed her and when Williams was caught with it. Clearly, Williams did not have the victim's consent to use her car to transport her body to Lake Cassidy. Williams' unauthorized use of the victim's car extended from his use of it to deplete the victim's account while she was alive, to buying the hasp to secure the intended murder scene, to taking personal property (a box that Mr. and Mrs. Richards saw) out of the victim's residence after Williams killed the victim, to driving to Wal-Mart to cash a check after he had killed the victim. (See timeline

table in ISSUE I supra.) On October 6, Williams was still in possession of the victim's car days after Williams killed her; the victim's car was next to where bail bondsman Mooney arrested Williams, as Williams was working on his disabled car in a shed behind his father-in-law's residence. In sum, the evidence of Williams' intent to use Ms. Dykes property, especially her car, after the murder was substantially stronger than in Rogers.

In Hildwin, as here, the defendant's need for property or money prior to killing the victim, and the defendant satisfying that need after the murder by using the victim's property supports a finding "that the killing was committed for pecuniary gain." The possibility that taking the victim's property was an "afterthought" is not a defense. Hildwin, 727 So.2d at 194-95. Accordingly, Deparvine v. State, 995 So.2d 351, 382 (Fla. 2008), upheld the pecuniary gain aggravator where "the victims' truck was discovered in Deparvine's possession after the murders."

Alternatively, if this aggravator is struck, the other aggravators, including the very weighty CCP as well as HAC, render the error harmless. See ISSUES I, II, III.

ISSUE V (ABILITY TO CONFORM): WHETHER COMPETENT SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S REJECTION OF SUBSTANTIAL IMPAIRMENT OF ABILITY TO CONFORM BEHAVIOR TO THE REQUIREMENTS OF THE LAW. (IB 60-67, RESTATED)

The test on appeal for a trial court's rejection of a mitigator is whether the "the record contains 'competent substantial evidence to support the trial court's rejection of these mitigating circumstances.'" Reynolds v. State, 934 So.2d 1128, 1159 (Fla. 2006)(quoted citations omitted). This Court has also indicated that the appellate test is whether there is a

"palpable abuse of discretion for the trial court to refuse to find the statutory mitigator," Foster v. State, 679 So.2d 747, 756 (Fla. 1996). As such, the question becomes whether the trial court was palpably unreasonable in rejecting the mitigator.

The record here supports the trial court's finding:

> The murder was committed because the defendant appreciated the criminality of his theft from the victim and the consequences of prosecution and imprisonment. The defendant took steps to conceal his criminal act of murder by locking and securing the crime scene at the victim's trailer, by disposing of the victim's body, by attempting to clean the blood stains from the floor in the trailer, and by attempting to dispose of evidence.
>
> Dr. James D. Larson, the defense's forensic psychologist (with extensive clinical and courtroom expert witness experience) testified that the defendant was able to appreciate the criminality of his conduct.
>
> Dr. Larson did opine that the defendant's capacity to conform his conduct to the requirements of law was substantially impaired due to his abuse of cocaine; however, the facts of this case show otherwise.
>
> The defendant made considered choices to feed his cocaine habit and to avoid arrest. Despite defendant's use of cocaine, he was able: (1) to operate the victim's motor vehicle without accident or incident; (2) to operate the ATM machines on multiple occasions to obtain the victim's funds; (3) to formulate his decision and plan to murder the victim and to secure the crime scene; (4) to enter the Walmart store and purchase the hasp and lock without incident; (5) to gag the victim to prevent her from crying out; (6) to drive to his father-in-law's house and there tie his father-in-law's boat to the top of the victim's car and then drive back to the victim's trailer; (7) to remove the victim's body from the trailer and three concrete blocks and place them within the car or boat; (8) to drive them to Lake Cassidy; (9) to carefully position and tie concrete blocks to the body; (10) to maneuver the victim's tied and weighted body in the boat; (11) to maneuver the boat out onto the lake; (12) to lift and dump the weighted body overboard into the lake; (13) to return himself to shore; (14) to again secure the boat atop the car; (15) to drive back to the victim's trailer; and (16) to place the boat angled against the backside of the trailer (the boat out-of-sight from anyone who might pass by the trailer or from neighbors).

> KIRK WILLIAMS' capacity to appreciate the criminality of his conduct **was not** substantially impaired.
>
> KIRK WILLIAMS' capacity to conform his conduct to the requirements of law **was not** substantially impaired, but rather his cocaine addiction led him to make a choice to steal the victim's money and then to deliberately murder her to avoid the consequences.
>
> The Court rejects this statutory mitigating circumstance. [fn10]
>
> [fn10] *See Merck v. State*, 975 So.2d 1054, 1064-65 (Fla. 2007) (affirming death sentence, including trial judge's finding that defendant's alleged alcohol consumption and his personality disorder did not rise to the level of the statutory mitigating factor).

(III 756-77, bold underline emphasis in original)

Put slightly differently, while Williams may have been motivated to steal money to satisfy his cocaine habit and eliminate the witness, he was thinking clearly enough to plan and **able to conform his behavior to his plan**: Empty the victim's accounts, buy a hasp to secure the murder scene, kill the victim, then secure the backdoor with the pre-purchased hasp while cleaning-up the murder scene, but when unexpectedly arrested on a different charge, have his wife grab some of the evidence.

Williams essentially contends that the trial court must accept an expert's opinion unless there is a conflicting expert opinion. Williams is incorrect. As here, the trial court can consider the facts surrounding the crime in determining whether to accept the expert's opinion. Those facts can be competent substantial evidence and can render the trial court's finding reasonable.

As a preliminary matter, the trial court did consider and weigh the purported basis for Dr. Larson's opinion, that is, Williams' drug dependency and use (XIV 772-73), giving it "moderate weight." (III 577-78)

Bailey v. State, 998 So.2d 545, 554 (Fla. 2008), found "that the circuit court's rejection of the statutory mental mitigating factors is supported by competent, substantial evidence." There, the trial court also found that "(4) Bailey was intoxicated at the time of the crime (found to be established but not to such a degree that Bailey could not conform his conduct to law." As in Bailey, the trial court here did not abuse its discretion in considering and weighing the mitigation as nonstatutory.

Prior to discussing additional case law supporting the trial court's position, it is worth noting the frail foundation for Dr. Larson's opinion that Williams' ability to conform was substantially impaired. Larson did not attend the guilt phase of the trial (XIV 777), so, although he had reviewed some reports and discovery, he really did not know what the actual trial evidence showed that Williams had done before, during, and after the murder. Further, Williams told Larson that he did not kill the victim. (XIV 753-54, 770) Larson admitted that every cocaine addict does not beat someone to death with bat, and when the prosecutor asked Larson to testify to what Williams said about the incident, Larson said he could not find those notes. (XIV 773-76) "It wasn't of value because he wasn't talking about anything that had to do with the actual incident itself." (XIV 776) So, Dr. Larson really did not even know what Williams specifically did and thought about during the events surrounding the victim's murder. While Larson concluded that Williams' denial of guilt did not invalidate his opinions or testing, (XIV 778), the trial court, without any other

conflicting evidence, could have disregarded Dr. Larson's opinion due to a lack of foundation for it.

In contrast to Dr. Larson's singular and weak evidence of mental mitigation, in Coday v. State, 946 So.2d 988, 1003 (Fla. 2006)(IB 66-67), "six defense mental health experts testified that Coday was unable to conform his conduct to the requirements of the law at the time of Gomez's murder." Further, in Coday, unlike here, the multiple experts indicated that defendant had a mental illness "tied that circumstance to the defendant's mental illness and the facts of this case." Here, Dr. Larson's opinion was not even based upon what Williams thought had occurred, and Dr. Larson did not review the evidence actually introduced at trial. There, the State did not rebut evidence of the defendant's "dissociative state." Here, the evidence rebutted a supposed inability to conform due to Williams' voluntary intoxication on drugs. Here, as the trial court found, there was, indeed, factual evidence that conflicted with Dr. Larson's opinion.

Merck v. State, 975 So.2d 1054, 1065 (Fla. 2007), cited by the trial court (III 577 n.10), supports the trial court's decision. Merck reasoned that "appellate review … does not involve reweighing or reevaluating evidence of aggravating and mitigating circumstances" and then discussed facts supporting the rejection of the substantial impairment mitigators, including conforming-conduct. While the evidence included an expert supporting the rejection, the holding also substantially relied on the defendant's ability to conduct his everyday affairs, including catching keys, walking, as well as his efforts to avoid being caught. Here, Williams

was able to drive, find locations, transact money, and extensively attempt to avoid being caught.

Brown v. State, 721 So. 2d 274, 281 (Fla. 1998), upheld the trial court's rejection of both prongs of the substantial impairment mitigator, including "conform[ing conduct to the requirements of the law." There, the defendant relied upon "excessive alcohol and drug use both on the day of and during the two weeks prior to the murder." In Brown, "despite Brown's claim that he smoked crack cocaine on the night of the murder and the existence of some evidence of alcohol consumption, there was no evidence that Brown was actually intoxicated at the time of the murder or that his capacity to conform his conduct to the requirements of the law was substantially impaired. To the contrary," as here, it appears that the defendant was "coherent at the time of the murder and knew what he was doing." Brown and Williams made decisions and engaged in goal-seeking behavior. In Brown and here, the trial court considered the substance abuse as a "nonstatutory mitigating factor." In Brown and here, there is "no error."

Trotter v. State, 932 So.2d 1045, 1050 (Fla. 2006), affirmed a trial court's rejection of mitigation even though "Dr. Pinkard [wa]s the only expert who examined Trotter in his youth," and even though "Trotter contend[ed] his testimony should be essentially determinative and afforded great weight." As here, "the question of evidentiary weight is reserved to the circuit court, and this Court does not reweigh the evidence." And as here, the trial court, especially here given all of the facts in the case,

can essentially found the expert's "unreliable" in terms of the ultimate question.

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

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

Pittman affirmed. The trial court here, having relied on facts very similar to Pittman, merits affirmance.

Provenzano v. State, 497 So.2d 1177, 1184 (Fla. 1986), upheld the rejection of the conforming to the law mitigator based upon the facts of the case, in addition to the defendant's knowledge of right and wrong:

> [S]everal actions taken by Provenzano on the day of the shootout support a finding that he knew his conduct was wrong and that he **could conform his conduct to the law if he so desired**. The fact that Provenzano **secreted** the weapons indicates that he knew it was unlawful. Minutes before the shootout he put change in the parking meter so he would not get a ticket. Further, rather than submit to a search of his knapsack that would have exposed his illegal possession of weapons, Provenzano decided to take his knapsack outside to his car.

Here, Williams went to extensive lengths to "secret[]" his crime.

Nelson v. State, 850 So.2d 514, 531 (Fla. 2003), "affirm[ed] the trial court's evaluation and rejection of the three statutory mitigators." There

and here, the defendant's "purposeful actions are indicative of someone who knew those acts were wrong and who could conform his conduct to the law if he so desired." Like, Williams, Nelson moved the body and engaged in other acts to try to conceal his crime.

Walls v. State, 641 So.2d 381, 391 n.8 and accompanying text (Fla. 1994), considered the quality of the experts' opinions ("hedged," "equivocal"), and, as discussed above, the State submits that Dr. Larson's opinion in this case has a very questionable foundation. Walls held, as the trial court reasonably found here, that "[r]easonable persons could conclude that the facts of the murder are inconsistent with the presence of the two mental mitigators." The facts in Wall included tying up victims, forcing them to lie on the floor, fighting with the victim when he "got loose from his bindings," conversing with a victim about why he now intended to kill her, stating "I guess I was paranoid and everything. I didn't want no, uh, no witnesses," and shooting the victim "a couple of times right there behind her head." Id. at 384-85. Here, the facts were even stronger showing Williams' controlled behavior.

See also Bryant v. State, 785 So.2d 422, 434-436 (Fla. 2001)(affirmed the trial court's rejection of mental mitigation of "neurological defects of his brain that would cause a lack of impulse control and impaired judgment"; expert testimony conflicting with "actions on the night of the murder indicate that he understood what he was doing, why he was doing it, and that it was unlawful"); Zack v. State, 753 So.2d 9, 19 n. 8 (Fla. 2000)(mental mitigator "contradicted by numerous witnesses … who had seen

[the defendant] at different times and who were in a position to observe [him] closely in the hours before and after the … crimes").

Alternatively, especially given the trial court's weighing of Williams' drug use, the weak foundation for Dr. Larson's opinion, and the weighty aggravation in this case, any error is rejecting this evidence as a statutory mitigator was harmless. See, e.g., Wuornos v. State, 644 So.2d 1000, 1011 (Fla. 1994)(h erroneous rejection of "nonstatutory impaired capacity and mental disturbance at the time of the murder," harmless).

ISSUE VI (DEATH ELIGIBLE): IS DEFENDANT DEATH INELIGIBLE DUE TO NO VALID AGGRAVATING CIRCUMSTANCE? (IB 67-68, RESTATED)

As a matter of law, Williams is correct that **IF (AND ONLY IF)** no aggravating circumstances whatsoever exists, Williams is not death-eligible. Of course, as the State has argued here for tens-of-pages, there is no predicate for this principle to apply here: There is at least one valid aggravating circumstance; indeed, there are four valid aggravators.

Williams (IB 67-68) somehow feels that a State offer of life at one juncture in the case is relevant to this inquiry. It is not. If it somehow becomes relevant, it should be clearly stated as such so that, in the future, prosecutors can factor that consideration into whether they decide to make any offer. However, such a change in policy would contravene the letter and spirit of Fla.R.Crim.P. 3.172(i) declaring withdrawn offers inadmissible. Further, here, it might also be "note[worthy]" (IB 67) that, as a matter of official pleading, the State had sought the death penalty beginning January 5, 2007, (I 89), and, at a status conference before the trial began, the prosecutor made it clear that the offer expired when the

DNA results arrived (See VII 15), which did ultimately incriminate and substantially assist in convicting Williams. See Guilt-Phase Facts supra Sufficiency infra. Thus, the resolution of evidentiary matters was pending when the offer was made, and it expired upon the prosecutor receiving reports that resolved those matters; this was a legitimate executive function, and the State respectfully submits that any suggestion to the contrary or judicial use of the offer adverse to the State would violate separation of powers under the Florida Constitution.

ISSUE VII (RING): IS FLORIDA'S DEATH SENTENCE STATUTE UNCONSTITUTIONAL UNDER RING V. ARIZONA? (IB 68-70, RESTATED)

Williams (IB 68) correctly indicates that his counsel filed a motion asserting Ring v. Arizona, 536 U.S. 584 (2002). (See I 119-51) The trial court denied the motion. (See II 373)

Williams (69-70) also concedes that this Court has rejected this claim numerous times. Indeed, the following are reasons why this claim is meritless in this case, which are well-founded and should not be "re-examine[d]" (IB 70): Here, the maximum penalty for this crime, as charged, is death; there is no constitutional requirement for a jury to increase what is already set at death. See, e.g., Porter v. Crosby, 840 So.2d 981, 986 (Fla. 2003); Shere v. Moore, 830 So.2d 56, 62 (Fla. 2002); Mann v. Moore, 794 So.2d 595, 599 (Fla. 2001); Mills v. Moore, 786 So.2d 532, 536-37 (Fla. 2001). Further, even if Ring applied to this case, it was satisfied by the jury's 11-1 recommendation of death. (III 422) See Jones v. United States, 526 U.S. 227, 250-51 (1999). As such, the jury necessarily found one aggravator, which would death-qualify Williams under

Ring, if it applied. See State v. Steele, 921 So.2d 538, 545-46 (Fla. 2005); see also Johnson v. Louisiana, 406 U.S. 356 (1972)(upholding a conviction based on a 9-to-3 jury vote); Apodaca v. Oregon, 406 U.S. 404 (1972)(upholding convictions by less than unanimous jury, 11-1 and 10-2).

ISSUE VII should be rejected. See also Bailey v. State, 998 So.2d 545, 556 (Fla. 2008) (collecting rationales and cases); Merck v. State, 975 So.2d 1054, 1067 (Fla. 2007) (same).

SUPPLEMENTAL ISSUES (SUFFICIENCY & PROPORTIONALITY): IS THE EVIDENCE SUFFICIENT FOR FIRST DEGREE MURDER & IS THE DEATH SENTENCE PROPRTIONATE? (ADDED)

Because this Court reviews the sufficiency of evidence and conducts proportionality review of every direct-appeal death sentence case, the State discusses sufficiency and proportionality.

A. SUFFICIENCY.

In determining the sufficiency of all of the evidence, it is viewed so that "every conclusion favorable to [the verdict] that a jury might fairly and reasonably infer from the evidence," Lynch v. State, 293 So.2d 44, 45 (Fla. 1974). See also, e.g., Reynolds v. State, 934 So.2d 1128, 1145-46 (Fla. 2006)(summarizing principle; collecting cases); Donaldson v. State, 722 So.2d 177, 182 (Fla. 1998) ("fact that the evidence is contradictory does not warrant a judgment of acquittal since ...").

Wiiliams confessed to Hawley (XII 532-34), among others, rendering the evidence sufficient for First Degree Murder. See, e.g., Murray v. State, 838 So. 2d 1073, 1087 (Fla. 2002); Meyers v. State, 704 So.2d 1368, 1370

(Fla. 1997)("Because confessions are direct evidence, the circumstantial evidence standard does not apply").

Moreover, here, although unnecessary to sustain the convictions in light of Williams' confession, there was additional compelling evidence. For example, a blanket and sheet were hidden from view under the boat that Williams had used to dump the victim's body and hidden behind the victim's residence (XII 525); blood on the blanket/bedspread (SE #16) found next to the boat was identified as a match to the victim's DNA (X 235, 388-90, 399); the blanket/sheet were items Williams had directed his wife to retrieve (See XII 614-21; transcript at SE #45, Exh 382-91; see also XIII 658-59; VIII 142); DNA consistent with four of 13 loci of Williams' DNA was found in a DNA mixture on the bedspread (X 390-91, 399). A mixture of DNA was found on the handle of the murder weapon, the bat, which was identified as the victim's and as consistent with Williams' DNA. (X 377-79, 382-83, 399) Blood on jeans at the murder scene (X 383-84) was identified as containing Williams' DNA (X 385, 400). The jeans' waistband contained a mixture of DNA, in which Ms. Dykes' DNA could not be excluded and in which Williams' DNA was identified. (X 385, 400)

Williams was seen driving to and from the victim's residence in the victim's car the week that she disappeared. One of those times Williams was carrying the aluminum boat that he stole from his father-in-law, and the victim's body was found floating in a lake. Williams depleted the victim's bank account the week that she disappeared, and in the midst of depleting it, he bought a hasp that he used to secure the victim's otherwise flimsily

secured back door. These and other facts (See Guilt-Phase Facts, ISSUES I, II, III, IV supra) clearly exceed the requisite sufficiency. See, e.g., Orme v. State, 677 So.2d 258, 261-62 (Fla. 1996) (holding that case involving evidence such as eyewitness testimony placing the defendant at the scene, acknowledgment by the defendant of a dispute with the victim and theft of the victim's purse, and DNA evidence suggesting that the defendant had engaged in sexual relations with the victim could not be deemed entirely circumstantial).

B. PROPORTIONALITY.

The jury recommended death by a vote of eleven to one. (III 422; XIV 856) The trial judge did not override that recommendation. (III 580) The death sentence should be affirmed.

"[H]einous, atrocious, or cruel [and] the cold, calculated, and premeditated aggravators … are two of the most serious aggravators set out in the statutory sentencing scheme." See also, e.g., Lynch v. State, 841 So. 2d 362, 377 (Fla. 2003)("both HAC and CCP are 'two of the most serious aggravators set out in the statutory scheme'"); Douglas v. State, 878 So.2d 1246, 1262 (Fla. 2004). CCP is present here (III 575; see also III 571-74, 576). See ISSUE I supra. HAC is also present here (III 574-75). See ISSUE III supra.

In contrast to the extremely weighty aggravators in this case, the trial court justifiably found no statutory mitigation, See ISSUE V, and reasonably afforded nonstatutory mitigation weight ranging from none to little to moderate (III 576-80). Williams' full-scale IQ was 98. (XIV 739-

40) Indeed, other than substantial impairment of ability-to-conform, Williams has not claimed that any additional mitigation applies. Given the weighty aggravation, relatively weak mitigation in this case, and the facts of this case, death is a proportionate penalty.

In Robinson v. State, 761 So.2d 269, 272-73 (Fla. 1999)(waited for victim to fall asleep then beat victim with hammer then stabbed her), the aggravation was not as strong as here, and the mitigation was stronger than here. There, the trial court found three aggravating factors of pecuniary gain, avoid arrest, and CCP, and two statutory mitigating factors and eighteen nonstatutory mitigating factors. Robinson upheld the death penalty. It should be upheld here.

In Gordon v. State, 704 So.2d 107, 116-17 (Fla. 1997), like here, the defendant inflicted multiple blows upon the victim and the "medical examiner opined that the doctor could have been rendered unconscious from the first blow to the head." Like here, Gordon involved four aggravators, including CCP and HAC, and no substantially weighted mitigation. Gordon affirmed the death sentence. It should be affirmed here.

In Bradley v. State, 787 So.2d 732 (Fla. 2001), where the jury vote was 10-2, Bradley beat the victim to death and the trial court found HAC, CCP, pecuniary gain, and during a burglary. There, the mitigation was not strong, but it was stronger than here, as it included no significant history of prior criminal activity.

Spencer v. State, 691 So.2d 1062 (Fla. 1996)(fatal beating and stabbing of his wife), included HAC and another weighty aggravator, there, prior

violent felony. In spite of two mental statutory mitigating factors (given less than great weight) and a number of nonstatutory mitigating factors, including drug and alcohol abuse, paranoid personality disorder, sexual abuse by his father, honorable military record, good employment record, and ability to function in structured environment, the death penalty was affirmed.

In Hoskins v. State, 965 So.2d 1 (Fla. 2007), the jury vote was 11-1, like here. Here the aggravation was stronger than there, where HAC, avoid arrest, and during another felony applied. There the statutory mitigator. In Hoskins, the judge found as mitigation "the defendant's mental age equivalent (given little weight), and fifteen nonstatutory mitigating circumstances, most of which were given little weight." Hoskins affirmed the death sentence. It should be affirmed here.

In Hauser v. State, 701 So.2d 329 (Fla. 1997), the trial court found pecuniary gain, CCP, and HAC. Hauser "had no significant history of prior criminal activity," and he "was under the influence of drugs or alcohol; and … had emotional or mental health problems since he was fourteen years old." Hauser affirmed the death sentence. It should be affirmed here.

In Archer v. State, 673 So.2d 17 (Fla. 1996), the jury vote was only seven to five, and the judge found CCP and during a robbery and "no significant history of prior criminal activity, which the trial court gave significant weight." Archer affirmed the death penalty. Here, there is more aggravation and no statutory mitigation. Death should be affirmed.

See also Hodges v. State 595 So.2d 929, 934 (Fla. 1992)(two aggravators, including CCP), reaffirmed Hodges v. State, 619 So. 2d 272 (Fla. 1993).

CONCLUSION

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

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by U.S. MAIL on June 5, 2009: Nada M. Carey, Assistant Public Defender, Leon County Courthouse, 301 S. Monroe, Suite 401, Tallahassee, FL 32301.

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted and certified,
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