IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-182

ENOCH D. HALL

Appellant,

v.

STATE OF FLORIDA

Appellee.

ANSWER BRIEF OF APPELLEE

ON APPEAL FROM THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

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STATEMENT OF THE CASE

On July 10, 2008, Hall was indicted by the grand jury of Volusia County, Florida, for the June 25, 2008 murder of Florida Department of Corrections officer Donna Fitzgerald. Following various pre-trial proceedings, Hall's trial began on October 12, 2009. The jury returned a verdict of guilty of murder in the first degree on October 29, 2009, and recommended that Hall be sentenced to death by a unanimous vote on October 23, 2009. The trial court imposed that sentence on January 15, 2010. Notice of appeal was filed on January 29, 2010, and Hall filed his *Initial Brief* on April 4, 2011.

STATEMENT OF THE FACTS[1]

Sergeant Suzanne Webster, a corrections officer at Tomoka Correction Institution, was working as the control room supervisor on June 25, 2008. (V23, R2004-05). The control room handles all radio calls from officers and calls from vehicles on the road, monitors all alarms, passes out keys, and is responsible for getting a count from all areas of the prison as to the number of inmates in that area. (V23, R2005-06).

Webster said Officer Donna Fitzgerald was filling in for another officer when she worked the overtime shift on the night

[1] Hall does not challenge the sufficiency of the evidence to support his conviction. There is no question of Hall's guilt in light of his multiple confessions and the other evidence discussed herein. The evidence is more than sufficient to support the guilty verdict.

of June 25, 2008. (V23, R2009; V24, R2079). At approximately 4:05 p.m., Sgt. Webster requested that all areas report in a count of their inmates. Fitzgerald called Webster and told her that 13 inmates were working in the PRIDE[2] compound. (V23, R2006).

At approximately 7:30 p.m., Webster realized she had not heard from Fitzgerald. (V23, R2008-09). The officer that normally works that shift would call prior to releasing inmates from the PRIDE compound. (V23, R2009). The key box in the control room was checked and it was determined that the PRIDE keys had not yet been turned in by Fitzgerald. (V23, R2009). The PRIDE keys unlock all the buildings and individual locks within the PRIDE buildings. (V23, R2009; V24, R2082).

When Webster was unable to contact Fitzgerald by radio or by phone, she called the north tower which is located near the PRIDE building and has a direct view of the walkway going toward the sally port. (V23, R2010). Webster spoke with Officer Vickers who informed her that he had not seen Fitzgerald release the inmates down the walkway area. Vickers also attempted to radio Fitzgerald to no avail. (V23, R2010). Webster then radioed Officer Chad Weber, an inside security officer, and told him to check on Officer Fitzgerald. (V23, R2011). After Officer Weber

[2] Prison Rehabilitative Industries and Diversified Enterprises, Inc. See, http://www.dc.state.fl.us/orginfo/pride/. PRIDE is not part of the Department of Corrections. (V24, R2142).

went to the PRIDE facility there was a lot of confusion on the radio. Webster heard yelling, so she called out the alpha response team for backup to the PRIDE building. (V23, R2012). Webster then called Captain Shannon Wiggins who told her to "stand by" on calling out the bravo response team. (V13, R2012). Webster then heard, "officer down, officer down, we need assistance," so she radioed for the bravo response team to respond. (V23, R2012-13).

Officer Chad Weber was employed as a security officer at Tomoka Correctional Institution in June 2008. (V24, R2028-29). Weber was in Captain Shannon Wiggins' office when he received the call from Sgt. Webster. (V24, R2029). Weber and Sergeant Bruce MacNeil immediately proceeded to the PRIDE area. (V24, R2029-30, 2057). The PRIDE area contained a double set of gates that were usually closed and locked. Weber noticed that the gates were closed but not locked, which was very unusual. (V24, R2030, 2037).

Weber saw Fitzgerald's lunchbox and belongings sitting on a table inside the gates. (V24, R2037). Weber and MacNeil conducted a walk-through of the inside and outside areas of the PRIDE buildings. (V24, R2030-31, 2057). They entered an open

door of one of the buildings which was very dark inside.[3] Weber searched the lower floor while McNeil searched upstairs. Shortly thereafter, Weber saw Hall run out an open door on the other end of the building. (V24, R2031-32, 2034, 2039). Weber and MacNeil pursued Hall. (V24, R2040, 2058). MacNeil radioed the control room to send the response team and advised Captain Wiggins to stop any inmate running from the PRIDE area.[4] (V24, R2058, 2069). After Weber caught up to Hall, Hall continually stated, "I freaked out, I snapped, I killed her." (V24, R2033-34, 2040, 2042, 2044). Hall responded to all of Weber's commands and placed his hands on the wall to be handcuffed. (V24, R2044). MacNeil also heard Hall repeatedly state, "I snapped, I killed her, I killed her." (V24, R2071, 2076).

Weber took possession of a set of PRIDE keys that Hall had looped around his thumb. (V24, R2034, 2041, 2082). Members of the response team arrived and entered the PRIDE building. An officer shouted, "officer down." (V24, R2042). Hall remained outside with other officers as Weber re-entered the building. Captain Wiggins and Sergeant MacNeil also entered the building and located Officer Fitzgerald's body. (V24, R2043).

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[3] There was a welding shed nearly which contained machinery and numerous pieces of scrap metal. (V24, R2094-95). Hall worked in the welding area. (V24, R2096, 2100).

[4] Inmates exiting the PRIDE area have to pass by Captain Wiggins' office. (V24, R2058).

Officer Chad Burch responded to the call for help that an inmate was “running.” (V24, R2047, 2048). When Burch arrived at the PRIDE building, Hall had already been apprehended and handcuffed. (V24, R2048). Hall repeatedly yelled, “Sorry, I snapped, I killed her.” (V24, R2049, 2055). Burch entered the PRIDE building and found Fitzgerald in a paint room off one of the hallways. (V24, R2049). Burch yelled out, “officer down, officer down.” He went outside the building and flagged down Captain Wiggins. (V24, R2050). Wiggins entered the room where Fitzgerald was found and attempted to find a pulse. Wiggins ordered Burch to stand guard outside the building. (V24, R2052). Burch saw Wiggins exit the building as the warden came up the road. Burch heard Wiggins tell the warden that he thought Fitzgerald was dead. (V24, R2052). Two officers escorted Hall toward the medical facility on the grounds. (V24, R2053, 2055). Hall was later placed in confinement. (V24, R2054).

Sergeant Bruce MacNeil described a secured, fenced area near the PRIDE buildings that contained a tool storage area. The storage area contains “class A” tools that are labeled dangerous or harmful. The tools are kept under lock and key. (V24, R2068).

MacNeil said Captain Wiggins and several members of the response team arrived within a minute after the call for help. (V24, R2071). Wiggins spoke to Hall in a calm voice and asked, “Where’s my officer at, Enoch?” MacNeil said Wiggins knew Hall

for a quite a while and had a good rapport with him. (V24, R2072).

MacNeil and Wiggins entered the building. Officer Burch was exiting the paint room and told them, “We have an officer down in here.” MacNeil entered the room and saw Fitzgerald lying in a face-down position over a cart. Gray, wool blankets were wrapped tightly around the upper part of her body. The bottom half of Fitzgerald’s body was nude from the waist down and hung over the back end of the cart. Her underwear and pants had been pulled down. (V24, R2073). MacNeil and Wiggins tried to find a pulse but Fitzgerald was not breathing. Wiggins lifted Fitzgerald’s head, looked at her face and said, “She’s dead.” Wiggins told MacNeil to secure the area. (V24, R2074).

Captain Shannon Wiggins responded to the call for help within fifteen seconds. (V24, R2079-80). Wiggins knew something was not normal as Sergeant MacNeil was “screaming on the radio.” (V24, R2078-79). Upon arriving at the PRIDE building, Wiggins recognized Enoch Hall as the inmate being handcuffed. (V24, R2081). The response team arrived within fifteen seconds. (V24, R2082). Wiggins knew Hall as he had worked on several welding projects in the PRIDE area. (V24, R2082).

Wiggins retrieved the set of PRIDE keys from Officer Weber that Weber took from Hall. (V24, R2082). Hall was yelling, “I snapped, I snapped, I killed her, I killed her.” (V24, R2083,

2140). Hall told Wiggins that Fitzgerald was in an office area inside the PRIDE building. (V24, R2083-84). Wiggins started walking Hall down the hallway in the PRIDE building when Officer Burch ran out of a room, yelling “officer down, officer down.” (V24, R2085-86). Wiggins placed Hall on the ground as he and MacNeil ran toward the room Burch had exited. (V24, R2086).

Wiggins found Fitzgerald lying across a cart wrapped in blankets. Her uniform pants and underwear were pulled down to her ankles, exposing the bottom half of her body. (V24, R2122-23). A bucket containing water and a shirt was next to her on the floor. Wiggins called out Fitzgerald’s name and attempted to find a pulse. (V24, R2123). He tilted Fitzgerald’s body to look at her face. Fitzgerald “had a black eye, she was bloody all over the place.” (V24, R2124).

Wiggins told MacNeil to leave the room. Wiggins called the control room and ordered a safety check for all officers as well as an accounting of all inmates. (V24, R2124-25). Wiggins ordered Officer Burch to guard the crime scene and ordered Officers Dickerson and Schweit to escort Hall to the medical facility at the prison. (V24, R2126). Fifteen minutes had elapsed from the time Officer Burch checked on Fitzgerald to the time Hall was escorted to the medical facility. (V24, R12127). The crime scene was turned over to the Florida Department of Law Enforcement. (V24, R2128-29).

As commander of the rapid response team, Wiggins is familiar with searching for various weapons at prison institutions. (V24, R2129, 2131). During his nineteen year career, Wiggins has seen "thousands" of hand-made weapons found inside prison facilities. (V24, R2132, 2135). The various weapons found include "PRIDE-made shanks" and "convict-sharpened shanks." (V24, R2130). PRIDE-made shanks have a machine sharpened edge compared to a convict-made shank which has a rough, jagged edge. (V24, R2133). Wiggins was shown State Exhibit P[5] (State Exhibit 17) and explained the grind marks that were visible on the weapon. (V24, R2134). Based on Wiggins' experience and training, it was his opinion that State Exhibit P was a machine-made shank, sharpened by a grinder. (V24, R2135). Wiggins confirmed the PRIDE area of Tomoka prison contains grinders and machines in the welding area where Hall worked. (V24, R2135-36).

Wiggins visited the PRIDE facility on a daily basis. (V24, R2141). Normal working hours for the PRIDE area are generally 7:30 a.m. to 3:30 p.m. (V24, R2141-42). Anyone working after that time is usually working overtime for PRIDE and not the Department of Corrections. (V24, R2143). However, although the employee is getting paid by PRIDE, he or she is required to be a

[5] State's Identification Exhibit P was later published as State Exhibit 17, the weapon used to murder Officer Fitzgerald. (V25, R2259-60, 2309).

state-certified correctional officer. (V24, R2144). In addition to Department of Corrections personnel working in the area, civilian employees worked there as well. PRIDE maintains a contract with the Department of Corrections. PRIDE's function at Tomoka Correctional was to work on vehicles. (V24, R2142).

Wiggins said there are 50 to 70 inmates working in the PRIDE area depending on the projects going on at the time. (V24, R2142). He explained the check-in and check-out procedures of the PRIDE area. Inmates walk through a metal detector in the office area, and subsequently are patted down when entering and exiting the area. Time cards are maintained in the office as inmates are paid through PRIDE Enterprises. (V24, R2137). Two separate bins are maintained for the time cards - - an "in" bin and an "out" bin. (V24, R2138). On June 25, 2008, Wiggins located Enoch Hall's time card as the only remaining time card in the "in" bin. (V24, R2138-39).

Officer Gary Schweit responded to the call for help at the PRIDE compound. (V24, R2146-47). Captain Wiggins, Sergeant MacNeil, and Officer Dickerson were already standing near Hall. (V24, R2147). Wiggins ordered Schweit to guard Hall along with Dickerson. (V24, R2147). Schweit heard Hall repeatedly say, "he flipped out ... he had killed her." (V24, R2147, 2149). Hall "looked like he had done something he shouldn't have." (V24, R2149). After guarding Hall for a few minutes, Schweit was then

ordered to take Hall to the medical facility at the prison. (V24, R2148).

Agent Stephen Miller, Florida Department of Law Enforcement, assisted in investigating the murder of Officer Fitzgerald. (V24, R2151-52). On June 25, at about 9:00 p.m., the assistant warden and prison inspector gave Miller a brief synopsis of what had occurred earlier that evening. (V24, R2152; V25, R2277). After additional agents arrived, the group was escorted to the crime scene. (V24, R2152).

Miller observed Officer Fitzgerald lying across a push cart with her underpants and pants pulled down around her ankles. She had multiple stab wounds to her back. (V24, R2153, 2154). Miller noticed that there was an absence of blood in the area and suspected there was another crime scene area. (V24, R2153).

Miller spoke with Captain Wiggins and then went to interview Hall along with Agent Krafft. (V24, R2155). The two agents, along with Inspector Joiner and correctional officers, met with Hall in an interview room. (V24, R2155-56; V25, R2278). Agents Miller and Krafft asked Hall if he was willing to speak with them. (V24, R2155). Hall waived his *Miranda*[6] rights after acknowledging he understood them. The interview began at 10:40 p.m. and was recorded. (V24, R2156, 2157, 2164; V25, R2178,

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

2277, State Exh. 13). The first of three recorded interviews was published for the jury. (V25, R2178-2232).

Hall said he took four pills[7] at lunchtime that he got from an inmate named "Frank Prince." Prince worked in the PRIDE area with Hall. Hall said, "I just wanted to get high." (V25, R2181, 2182). Hall got pills from Prince every few days. (V25, R2203). After returning to work in the PRIDE area after lunch, Hall said, "I just went freaking out. I just freaked out." (V25, R2183).

Hall said his shirt was in his locker and admitted he was wearing Prince's shirt. (V25, R2187-88, 2197, 2225). Hall claimed he was already in the paint room in the PRIDE area (where Fitzgerald was later found) when Fitzgerald walked in. (V25, R2188, 2189). Hall said he knew Officer Fitzgerald for a long time. He "didn't want to hurt her." (V25, R2184, 2186). He thought they were friends. (V25, R2188). Hall repeatedly said he "just freaked out." He did not want to have sex with Fitzgerald. (V25, R2185).

Hall was waiting for Prince to come in the room when Officer Fitzgerald showed up and surprised him. (V25, R2220). Hall was in the process of looking for more pills in the paint room as Prince sometimes left them there. (V25, R2192). Hall said he picked up the piece of sheet metal before Fitzgerald

[7] Hall said the pills were Valium. (V25, R2203).

came into the room. (V25, R2218). He did not know how many inches long the metal piece was. (V25, R2217). By the time Fitzgerald got in the room, Hall was standing in a closet. Fitzgerald could see him in there. (V25, R2221). Fitzgerald, who called Hall by his nickname, “Possum,” told Hall to get out of the room. (V25, R2221-22). Hall told Fitzgerald to get out but she refused. (V25, R2199, 2213). Fitzgerald entered the room and closed the door. Hall said, “She was laughing and stuff.” (V25, R2199, 2200, 2204, 2222). Hall thought Fitzgerald was laughing because he told her to get out of the room. (V25, R2207). Hall kept the metal piece close to his right leg where Fitzgerald could not see it. (V25, R2200, 2204-05, 2219). He did not want Fitzgerald to come in the room as, “I just wanted to be high.” (V25, R2189-90, 2195). Hall said Fitzgerald was “right in my face” and grabbed him by the arm. (V25, R2200, 2208, 2223). Hall grabbed Fitzgerald and “stuck her.” (V25, R2208, 2223). Fitzgerald dropped her keys. (V25, R2226). Hall attacked Fitzgerald because he wanted to find more pills and she had interrupted him. (V25, R2193, 2216). Hall was mad because “I couldn’t find no pills.” (V25, R2198). Hall said Fitzgerald “messed me up.” (V25, R2210, 2211, 2226).

Hall did not recall how many times he stabbed Fitzgerald. (V25, R2191, 2224). He thought Fitzgerald fainted as she fell to the floor. (V25, R2201, 2209). Hall continually stated, “I

freaked out. I didn't want to hurt nobody. I just wanted to get high." (V25, R2192). Hall threw the metal weapon on the floor. (V25, R2196, 2203). He claimed he was in the room with Fitzgerald for just a short period of time. (V25, R2197). He placed Fitzgerald on the cart to "move her out of the way." (V25, R2201, 2202, 2210). Fitzgerald was no longer moving. (V25, R2201-02, 2209). He did not recall if he stabbed Fitzgerald while she was on the cart. (V25, R2212).

Hall removed his bloody T-shirt and put it in the bucket of water on the floor. (V25, R2197-98, 2202-03, 2212, 2225). He did not recall at what point he pulled Fitzgerald's pants down. He "was just mad." (V25, R2202, 2214, 2225). Hall did not know if Fitzgerald had her radio with her. (V25, R2205). He did not wash up, he just left the room. (V25, R2198, 2212).

Hall turned off the lights in the main part of the building. (V25, R2205). He walked around the PRIDE building and ended up in the sand blast room looking for pills. (V25, R2193-94, 2228). He did not know if Fitzgerald was dead. (V25, R2194, 2204).

Hall ran to the front of the building to hide when other officers showed up. (V25, R2229). Hall did not recall saying anything to officers when he got caught. (V25, R2230-31).

Hall told Agent Miller, "I messed up. She was a nice lady." (V25, R2215).

Miller said Hall was wearing a T-shirt underneath a blue prison uniform shirt with Prince's name on it. A white T-shirt was found in a bucket of water next to Fitzgerald's body. (V25, R2232). Hall said he had found the new T-shirt and Prince's prison shirt inside the room where Fitzgerald was found and had put them on. (V25, R2233).

Agents collected all of the clothing Hall was wearing at the time of his interview. (V25, R2234).

After interviewing Hall, Miller returned to the crime scene to locate the weapon. However, it was not located in the room as Hall had described. (V25, R2233, 2235). Miller was then notified that Hall wanted to speak to him again. (V25, R2235, 2278).

Hall[8] was moved into a cell where Miller spoke with him for a second time at about 1:30 a.m. (V25, R226, 2279). Hall acknowledged he had been previously been given his *Miranda* rights and continued to waive those rights. (V25, R2236). Miller recorded a portion of the interview.[9] (V25, R2236-37, R2240,

[8] Hall's clothes had been taken and he was wrapped in a bed sheet. (V25, R2279).

[9] Miller inadvertently did not depress the activate button on the recorder until three to five minutes into the interview. (V25, R2237). Hall's renewed motion to suppress as to what had transpired before the recording started was denied. (V25, R2238). During the unrecorded portion, Miller said Hall told him he remembered that Fitzgerald chased him outside to the welding area. (V25, R2238).

2244-56, State Exh. 14). The interview was published for the jury. (V25, R2244-56).

Hall changed his recitation of the events and said Fitzgerald found him in the paint room and chased him to the welding shop. (V25, R2244, 2251-52). While Hall searched for pills, he found a piece of sheet metal he claimed inmate Prince kept in that area. (V25, R2245-46, 2247). Hall held the piece of metal in front of him where Fitzgerald could see it. Fitzgerald told Hall to drop it. (V25, R2253). Fitzgerald tried to take the metal and grabbed Hall when he tried to leave the area. (V25, R2245, 2253). Hall said that is when he stabbed her. (V2245, 2247).

Fitzgerald fell unconscious to the floor. (V25, R2254). Hall hid the makeshift knife inside a crack in the brick wall by the welding area.[10] (V25, R2255). Hall then carried Fitzgerald's body to the paint room. (V25, R2245, 2248, 2254). He did not recall if he used the cart to transport Fitzgerald's body from the welding area to the paint room. (V25, R2249). He removed her pants but did not sexually assault her. (V25, R2254). He then went to the sand blast room where inmate Prince had a locker and

[10] The knife was located in the wall approximately 11 feet from the ground. (V26, R2410).

sometimes kept pills. (V25, R2245). Hall said he "tried to throw some dirt" on the blood outside the welding area.[11] (V25, R2250).

After the second interview concluded, Miller and other corrections personnel found bloody footprints near the welding area. There was evidence of an oil-absorbent material[12] placed on the blood and evidence of an attempt to sweep it away. (V25, R2257). The makeshift knife was not located. At Miller's suggestion, Hall was brought[13] to the welding area to identify the location of the weapon. (V25, R2257-58). Hall gestured toward a crevice area in the wall. A corrections officer knocked out a piece of wall with a sledge hammer where the makeshift knife was ultimately found. Hall acknowledged this piece of sheet metal was the murder weapon. (V25, R2259).

With Hall's consent, Miller and Krafft conducted a third interview which began at about 3:30 a.m. (V25, R2260, 2280). The interview was recorded and published for the jury. (V25, R2262, 2263-75, State Exh. 15).

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[11] At this point in the interview, crime scene technician Amanda Fitch photographed Hall's hands. (V25, R2235, 2250-51, 2280).

[12] Captain Wiggins explained the material is called "Speedy Dry," a granulated material similar to cat litter. (V24, R2136).

[13] To expedite Hall's arrival, he was brought to the welding area in a wheelchair because he was shackled. The medical facility is a distance from the welding area. (V25, R2258).

During the third interview, Hall admitted he was actually in the welding area the whole time looking for narcotics. When he heard Fitzgerald coming, he hid in a shed. Fitzgerald opened the shed door and entered. (V25, R2265-66). Fitzgerald tried to grab Hall as he tried to run past her. He was holding the sheet metal weapon in his hand. As she was holding on to him, he "stuck her." (V25, R2266-67). He stabbed her enough times "just to get by." (V25, R2267). Fitzgerald fell to the ground. Hall did not know if she was dead. (V25, R2267).

Hall found a towel and tried to wrap it around Fitzgerald's head. (V25, R2267). Hall said, "There was blood everywhere. I got some blankets and tried to wrap her up." (V25, R2268). He hid the handmade knife in the wall. He then spread the Speedy Dry material over the bloody area in an effort to mop up the blood. He swept the blood and granular material toward the fence area. (V25, R2268). Hall then wrapped Fitzgerald's body in blankets and wheeled her on a cart toward the PRIDE building. The cart did not fit through the door so Hall carried Fitzgerald into the paint room and placed her on a cart. Fitzgerald was not moving or making any noise. (V25, R2269).

Hall stated he then went to the sandblasting room looking for pills but did not find any. He continued walking around the PRIDE building. He said, "I was mad." (V25, R2270). He returned to the paint room and removed Fitzgerald's pants. (V25, R2272).

He said he did not sexually assault her. (V25, R2272-73). Hall reiterated that he put his bloody shirt in a bucket of water and put on Prince's shirt which he found in the paint room. (V25, R2274). He exited the room and ran from the officers. (V25, R2273). After the third interview concluded, Miller assisted in escorting Hall to the Sally Port area of the prison for Hall to be transported to the County Jail. (V25, R2276).

Officer Hector Olavarria, a member of the rapid response team, received a texted page at home on June 25 at 9:11 p.m., to report to Tomoka Correctional. (V25, R2282-83, 2314). He arrived at the prison at about 9:30 p.m. and was ordered to report to the "chute," the area where Hall had been transported. The chute is a bench area located between medical and confinement. (V25, R2283, 2284). Olavarria did not know what had happened but was told not to speak to Hall. He assumed there had been a mini-riot or a fight. (V25, R2284). Hall was handcuffed and shackled. (V25, R2317). After FDLE agents arrived, Olavarria escorted Hall to a conference room. (V25, R2285, 2315).

Olavarria heard Hall talk about what had transpired. After the interview concluded, Olavarria escorted Hall to a cell in the confinement unit. Olavarria shackled Hall and watched him through the cell door. (V25, R2286). Hall asked Olavarria to get the FDLE agents so he could speak with them again. Hall told Olavarria, "he remembered something about the weapon." (V25,

R2287). Another officer got the agents who then interviewed Hall in the cell. Olavarria heard Hall tell the agents about the weapon. (V25, R2287).

After the agents were unsuccessful in their search for the weapon, Olavarria escorted Hall in a wheelchair to the welding area. Olavarria assisted in the search and ultimately found the murder weapon in a crevice at the top of a wall. (V25, R2287-88, 2289, 2291-92, 2294).

Olavarria described the shank as "a very specific weapon." It had been machine-cut and sharpened on both ends by a machine or blow torch. (V25, R2308).

Officer James White conducted a security search in the PRIDE facility on November 21, 2008. (V25, R2319). He located an inmate's prison shirt, covered in dust, on the top of a spray paint booth.[14] The inmate's name patch on the shirt had been ripped off. (V25, R2320). The shirt appeared to have dried blood on it. (V25, R2327). White bagged the shirt in a sealed evidence bag, and gave it to Inspector Joiner. (V25, R2326-27).

Inspector John Joiner works for the Florida Department of Law Enforcement, Inspector General's office. (V26, R2349). The office investigates allegations or complaints of any crime or administrative actions that occur anywhere that the state has

[14] The paint booth is approximately 16 feet high, 16 1/2 feet wide, and 50 feet long. (V25, R2320, 2325).

property leased or owned, or where inmates are present. (V26, R2350).

Joiner was assigned to Tomoka Correctional on June 25, 2008. (V26, R2350). Later that evening, he received a call at home "that an incident had occurred." He responded to the prison at 8:45 p.m. (V26, R2351). Senior Inspector Barry Glover ordered Joiner to report to the area where Hall was being detained. (V26, R2352). Joiner found Hall, handcuffed and shackled, seated on a bench in the chute area, guarded by several corrections officers. (V26, R2352-53, 2365). Hall repeatedly mumbled that he just wanted to get high and had freaked out. (V26, R2366). Photographs were taken as well as a video recording of Hall. Joiner remained[15] with Hall until he was transported to the County jail early the next morning. (V26, R2353).

Joiner witnessed the three interviews FLDE agents conducted with Hall. (V26, R2354, 2357, 2366). Joiner collected Hall's clothing and submitted it to FDLE. (V26, R2354-55, 2356). Hall was given a garment to wear, "a shroud," and was then re-secured with handcuffs. Joiner and the other officers exited the cell and left Hall confined. (V26, R2357, 2367).

Joiner accompanied Officer Olavarria to the PRIDE area when Hall was transported in the wheelchair. Hall was restrained in

[15] At some point, Joiner took a short 15-minute break at which time Inspector Glover remained with Hall. (V26, R2354).

handcuffs, a waist chain, and leg irons. (V26, R2358). At an area near the welding facility, Hall indicated where he had hidden the murder weapon. (V26, R2359). Subsequent to finding the weapon, Joiner witnessed, but did not hear, a third interview conducted between Agent Miller and Hall. (V26, R2359-60, 2368).

Based on an initial autopsy report, Joiner assisted other inspectors in searching the PRIDE area for some type of ligature. (V26, R2360-61). Inspector Spurlock located a pair of prison pants with Hall's name on them. The pants were found in the room where Fitzgerald had been located. (V2361-62). The pants "appeared to be soaked in a red liquid" and were found at the bottom of a pile of inmates' clothing in the corner of the room. (V26, R2361, 2362). The pants (State's Identification Z) were ultimately turned over to FDLE. (V26, R2363, 2364).

Agent Timothy Krafft, FDLE, assisted Agent Miller in investigating the murder of Officer Fitzgerald. (V26, R2369-70). After a briefing from Captain Wiggins, Krafft and Miller went to the room where Fitzgerald was found. (V26, R2370, 2371). Krafft saw Fitzgerald lying on the cart with stab wounds to her back and her pants and underwear pulled down to her knees. (V26, R2371).

Krafft also responded to the crime scene area by the welding building in the PRIDE facilities. Krafft observed the bloody footprints around the welding shed. (V26, R2373).

Kraft was present when Hall pointed to the area in the wall where the weapon was located. Krafft described it as a "five - to six - inch dagger type piece of metal, with a sharp point end on it, with a square handle." (V26, R2374).

Krafft obtained a buccal swab from Hall after he was transported to the Volusia County jail. (V26, R2375, State Exh. 19). Krafft submitted the buccal swab and Hall's clothing to FDLE. (V26, R2378-79).

Daniel Radcliffe, crime scene investigator, assisted in collecting evidence from the crime scene at Tomoka State prison. (V26, R2385, 2386-87). Radcliffe photographed, sketched, and measured the paint room where Fitzgerald was located. (V26, R2390). He photographed Fitzgerald's injuries.[16] (V26, R2392).

Radcliffe located pills[17] in a file cabinet in the paint room. (V26, R2397, 2449-50). He also found several T-shirts and two pair of white socks in a bucket of water. (V26, R2401). One of the T-shirts appeared to have more blood on it than the

[16] Hall's renewed motion objecting to victim photographs was denied. (V26, R2394-95).

[17] The pills were 800 milligram Ibuprofen tablets and 200 milligram Tegretol tablets, which were prescribed to inmate Franklin Prince. (V26, R2398-99, 2449-50). Tegretol is an anti-seizure medication used to treat epilepsy. (V26, R2400).

others. (V26, R2402). It was determined that Fitzgerald was attacked in another location and then transported to the paint room as there was no blood spatter on the walls or floor. (V26, R2403).

Radcliffe reported to the welding area where he photographed the crime scene. (V26, R2404). He observed "possible" bloody shoe tracks and "possible" blood droplets. Photographs were taken and samples of the stains were collected. (V26, R2404, 2405, 2416, 2422, 2434-35). There was quite a bit of "what appeared to be" blood inside the welding shed. There were red stains on the walls - - "some of these stains were quite heavy." Samples of these areas were taken to be tested for the presence of blood. (V26, R2405, 2417). The makeshift knife found in the concrete wall was photographed, collected and submitted as evidence. (V26, R2410, 2437). A baseball cap that "appeared to have red stains on it" was also collected and submitted as evidence. (V26, R2411). A blue bucket containing an oil-absorbent material was found outside the welding shed, as well as the same material swept into the grassy area. (V26, R2423). Radcliffe collected samples of the oil-absorbent material found by the grass. (V26, R2426-27). Brooms found in the area were also collected. (V26, R2429, 2432). Radcliffe collected the clothing Hall was wearing when he was apprehended. (V26, R2438).

On June 26, Radcliffe attend Fitzgerald's autopsy. (V26, R2440-41). Radcliffe photographed the autopsy as it took place, and collected items of evidence the medical examiner obtained. (V26, R2441). Radcliffe collected a sexual assault kit as well as a blood standard the medical examiner obtained from Fitzgerald. (V26, R2441). Fitzgerald's clothing and shoes were also collected. (V26, R2442).

Jillian White, crime laboratory analyst with FDLE,[18] examines items of evidence for the presence of body fluids such as blood, semen, and saliva. (V26, R2454). She then attempts to identify or exclude someone as the donor. (V26, R2455).

White performs Short Tandem Repeat ("STR") DNA testing. (V26, R2459-60). This type of testing is used in criminal cases, paternity testing, identification of human remains in mass disasters, and cancer cell research. (V26, R2460).

White said DNA samples can get old and degrade. If that occurs, White cannot complete a full, complete profile. (V26, R2462). DNA can degrade due to environmental factors, chemicals, or bacteria. (V26, R2462-63). White takes many precautions in avoiding contamination of evidence in her possession. (V26, R2463-64). White testified that FDLE utilizes the FBI's

[18] White performs proficiency tests twice per year. She has passed all of her proficiency tests. (V26, R2466).

statistical database[19] when calculating the statistics in DNA analysis. (V27, R2470).

White received the blood sample collected from Fitzgerald as well as the buccal swab obtained from Hall. (V27, R2477-78). She was able to generate a complete DNA profile on both Fitzgerald and Hall. (V27, R2478-79). White examined the murder weapon for the presence of fluids or blood. She noted "red-brown staining." (V27, R2479). After conducting chemical testing, White determined Fitzgerald's blood was on the shiv/shank. (V27, R2479-80, 2484, 2485, 2548). White did not find the presence of semen in any of the swabs contained within the sexual assault kit. (V27, R2486, 2547). However, an anal swab obtained from Fitzgerald contained the presence of blood. (V27, R2486).

White examined red stain swabs obtained from shoe tracks found on the floor outside the welding shed as well as red stain swabs obtained from inside the shed. (V27, R2487, 2490, 2491, 2492). The blood on the swabs belonged to Officer Fitzgerald. (V27, R2492, 2495, 2548).

White said the baseball cap (green cloth cap) found in the welding shed contained Fitzgerald's blood as well as Hall's DNA, which indicated he was the wearer of the cap. (V27, R2496, 2499, 2502, 2505, 2548). Testing of blood stains on Hall's clothing

[19] The database consists of three ethnicities: Caucasian, African American, and Southeastern Hispanics. (V26, R2470).

was consistent with both Hall's DNA and Fitzgerald's DNA. (V27, R2507, 2509, 2510, 2511). Blood stains on the inside of Hall's pants on the button fly area, contained Fitzgerald's blood. (V27, R2511). Hall's T-shirt contained bloodstains consistent with his DNA. (V27, R2512). Hall's underwear contained bloodstains consistent with Fitzgerald's DNA as well as Hall's. (V27, R2513-14). A blood stain on the back of Hall's underwear also contained his DNA. (V27, R2514-15). A blood stain on the inside front portion of Hall's underwear near the fly area contained Fitzgerald's blood. (V27, R2515). In addition, an analysis of Hall's left shoe revealed bloodstains consistent with both Hall's DNA and Fitzgerald's DNA. The right shoe contained Fitzgerald's blood. (V27, R2517, 2519, 2520).

White examined an additional inmate shirt and pair of pants for the presence of DNA, which were found the night after Fitzgerald's murder. (V27, R2521-23, 2527). The pants contained blood stains as well as a name tag which read, "Hall, E." The bloodstains matched Fitzgerald's DNA. (V27, R2528, 2529). The bloodstains on the shirt also contained Fitzgerald's DNA. (V27, R2530—32).

White examined the oil absorbent material ("a pile of gravel or like kitty litter") that was collected outside of the welding shed area. She also examined two broom heads found behind a sheet metal rack. (V27, R2533, 2534). An analysis of

the oil absorbent material contained “some red-brown staining.” (V27, R2534-35). White separated out some of the pieces of gravel that contained the stains. An analysis revealed the blood stains were consistent with Fitzgerald’s DNA. (V27, R2535-36, 2539). The bloodstains on one of the broom heads also contained Fitzgerald’s DNA. (V27, R2536, 2539). Bloodstains on Fitzgerald’s law enforcement badge and identification card contained Fitzgerald’s DNA. (V27, R2540-42).

Officer Frederick Evins works on the yard at Tomoka Correctional Institution and occasionally worked an overtime shift with PRIDE. (V27, R2569-70). Evins explained the procedure he utilized in the PRIDE area when a shift ended. Inmates were told to clean up their areas 45 minutes before it was time to leave the PRIDE compound. (V27, R2572). After the area was cleaned and tools were put away, Evins replaced the “PRIDE lock” with his lock, to which only he has a key. No one else has access to that area except a corrections officer. (V27, R2572-73). Tools are locked away, and rooms and offices are then locked in the PRIDE buildings. After the locks were secured, Evins checked the area and shut down the PRIDE compound. (V27, R2573). Evins returned to his office (a guard station) as the inmates leave the PRIDE area near the gates. (V27, R2573-74). The inmates wait for Evins to unlock the door. They enter one at a time, remove their belts, go through the metal detector, and

punch out with their time cards. (V27, R2574). Evins then pats down each inmate, they put their belts on, and leave. (V27, R2574).

Evins often had to tell Hall to hurry up because he was the last inmate to leave the PRIDE area. (V27, R2574-75, 2579). Inmates are never allowed to stay behind after officers leave the area. (V27, R2575). If Evins could not account for every inmate that was supposed to leave the PRIDE area, he went looking for them. All inmates knew this was the procedure. (V27, R2577).

Dr. Predrag Bulic, medical examiner, performed the autopsy on Officer Donna Fitzgerald.[20] (V28, R2601, 2605). Fitzgerald's body was photographed and any trace evidence found on her body was collected. A sexual assault kit was used, as well. (V28, R2606). Samples of Fitzgerald's blood, hair, and nails were collected. (V28, R2607).

Bulic observed both blunt force and sharp force injuries to Fitzgerald's body. (V28, R2613). The blunt force injuries were on both sides Fitzgerald's face. (V28, R2614). There were injuries around Fitzgerald's left eye and above it, as well as to the left side of her forehead. There was an injury on the bridge of her nose, her chin, and abrasions on her upper lip.

[20] Fitzgerald was 50 years old, five-foot four and a half inches, and weighed 155 pounds. (V28, R2606).

There were similar injuries on the right side of Fitzgerald's face in addition to a blunt force injury to her right temple. (V28, R2615). In Bulic's opinion, the blunt force trauma injuries were caused by punches to the face while Fitzgerald was alive. (V28, R2616, 2618).

Fitzgerald sustained sharp force injuries (three incised wounds) to her upper right arm - - these were defensive wounds. (V28, R2616, 2617, 2618). In Bulic's opinion, Fitzgerald was alive and trying to protect her face and vital organs when these wounds were inflicted. (V28, R2619). Fitzgerald sustained additional defensive wounds on her fingers, hands, and arms. (V28, R2619-21). All of these injuries were inflicted by some sort of knife or sharp instrument while Fitzgerald was alive. (V28, R2621-22).

Fitzgerald sustained 5 stab wounds to her upper and lower abdomen. (V28, R2622). Stab wound "A" entered her upper abdomen which penetrated through the abdominal wall into her liver. In Dr. Bulic's opinion, this wound was not immediately lethal. (V28, R2625). However, the injury caused Fitzgerald to bleed slowly. Bulic found "about four cups" of blood in Fitzgerald's abdominal cavity. (V28, R2625). Fitzgerald was alive when this stab wound was inflicted. (V28, R2625-26). To the right of stab wound A, Fitzgerald suffered stab wound "B." This wound was "a relatively shallow wound" approximately one inch deep. Bulic

said this was not a fatal wound. (V28, R2626). Stab wound "C," located above stab wound B, was a non-lethal, shallow wound one inch in depth. (V28, R2626). Stab wounds A, B, and C were all inflicted in a downward position. (V28, R2626). Fitzgerald was alive when stab wounds B and C were inflicted. (V28, R2627). Stab wound "D" was above stab wound A. This was a shallow wound, about an inch in depth and inflicted in a downward position. (V28, R2627). Stab wound "E" was located on the right side, slightly above Fitzgerald's naval area. This was a shallow wound, also inflicted in a downward direction. (V28, R2628). Fitzgerald was alive when stab wounds A, B, C, D, and E were inflicted. In Bulic's opinion, none of these wounds were fatal with the exception of stab wound A, in which Fitzgerald's life might have been saved had she received medical attention. (V28, R2624, 2628). Bulic testified that the hand-made knife (State Exh. 17) "is very likely to be the implement that would cause these types of injuries." (V28, R2629).

In addition to the 5 stab wounds to Fitzgerald's torso, Bulic identified 10 stab wounds to Fitzgerald's back. (V28, R2629-30). Stab wound "M" entered Fitzgerald's back on the right side[21] in a downward motion. It was four inches deep and penetrated through her chest wall and through her tenth rib. The

[21] Dr. Bulic clarified his testimony that wounds M, N, O, and P were inflicted to the right side of Fitzgerald's back, not the left. (V28, R2635).

wound penetrated through Fitzgerald's lung, continued through her diaphragm, and ended in the left lobe of her liver. (V28, R2630-2631). In Bulic's opinion, "significant force" with the weapon was used in order for it to penetrate through the rib. (V28, R2631). Fitzgerald was standing when this wound was inflicted. (V28, R2632).

Stab wound "N" was inflicted right above stab wound M. Stab wound N, about 3 1/2 inches deep, was similar in nature to stab wound M as far as the length and width. This wound penetrated through the chest cavity and lower lobe of the lung. (V28, R2632-33). In Bulic's opinion, "the same implement was being used on all of the wounds because they looked very similar." (V28, R2632).

Stab wounds "O" and "P" entered Fitzgerald's back, went through her chest wall, went between her ribs, and entered her lung. (V28, R2633). Fitzgerald was alive when stab wounds N, O, and P were inflicted. (V28, R2633-34). Fitzgerald's lung would have collapsed and caused severe difficulty in breathing. (V28, R2634).

Stab wounds Q, R, S, T, U, and V, were inflicted to the left side of Fitzgerald's back. (V28, R2635). Wound "Q" entered Fitzgerald's side and went through her eight rib and left lung. (V28, R2636, 2637). A significant amount of force was used to inflict this stab wound. (V28, R2637). The wound was 5 inches in

depth, “very deep and it also penetrated the heart.” (V28, R2636). Fitzgerald’s lung would have collapsed. With two collapsed lungs, Fitzgerald “would be gasping for air.” (V28, R2638). In Bulic’s opinion, this stab wound was “immediately lethal.” Bulic explained that “immediately lethal” meant that a person could survive for a short period of time, about three to five minutes, but “they could not be saved.” (V28, R2637-38, 2646). Fitzgerald could have survived for a “maximum of five minutes.” (V28, R2636).

Stab wounds R, S, T, U, and V were all similar wounds that entered the left side of Fitzgerald’s back, through her chest cavity, and entered her left lung. (V28, R2638). These stab wounds were between three and four inches in depth. (V28, R2639).

Fitzgerald suffered a total of 7 defensive wounds to her hands and arms, and 15 additional stab wounds. (V28, R2623). In Bulic’s opinion, she was alive when all these wounds were inflicted. There was no post-mortem injury. (V28, R2639). Bulic concluded that the defensive wounds occurred first, followed by the abdominal injuries. (V28, R2639). The back wounds occurred last. After Fitzgerald’s lungs collapsed, she “probably expired rather quickly,” within three to five minutes. (V28, R2640, 2646). All of these injuries were consistent with being inflicted by the shank. (V28, R2640-41).

During the autopsy, Bulic noted some faint abrasions on Fitzgerald's mouth which extended across her cheeks. These injuries were similar to ligature marks. (V28, R2641). Bulic concluded that a necklace that Fitzgerald was wearing at the time she was killed "fit perfectly in the size and shape - - across the face." In Bulic's opinion, the injuries were caused by her necklace "being pulled backward or being yanked backward." (V28, R2642, 2643).[22]

Hall proffered the testimony of Dr. Daniel Buffington, a clinical pharmacologist.[23] (V28, R2667).

Buffington reviewed Hall's medical records and interviewed Hall on October 2, 2009. (V28, R2668). Buffington said that Tegretol, an anti-seizure medication, is not a controlled substance. (V28, R2669). It can also be used to treat "neuropathic pain." (V28, R2669). Tegretol can cause side effects which include a severe rash, dizziness, headaches, depression, confusion, and hallucinations. (V28, R2670). It can have an exaggerated effect on a person with an underlying psychiatric disorder. (V28, R2670, 2688). In reviewing Hall's records, Buffington noted that Hall had a history of depression,

[22] At the close of the State's case-in-chief, the court denied Hall's motion to reduce the charge of first degree murder to second degree murder. (V28, R2654-60).

[23] Clinical pharmacology is the study of medications and the clinical application or use of them. (V28, R2695).

post-traumatic stress disorder, and a history of schizophrenia, dating back to the late 1980's and continuing through his current incarceration. (V28, R2671).

Buffington said that safe doses of Ibuprofen range from 200 milligrams to 800 milligrams, with the high end being 3200 milligrams per day, if prescribed by a physician. Doses of 400, 600, or 800 milligram tablets are only obtainable if prescribed by a physician. (V28, R2672—73). The dosage found in inmate Prince's office were 200 milligram tablets. (V2672, 2675). Buffington said a typical dosage of Tegretol would be 50 to 100 milligrams to treat a condition. (V28, R2676).

Hall told Buffington that inmate Prince gave Hall one tablet of Tegretol in the morning on the day of Fitzgerald's murder. He claimed Prince gave him four more tablets at lunchtime and two more tablets at the end of the day. (V28, R2675, 2676, 2681, 2683). Buffington said that someone taking numerous pills of Tegretol in a day would experience "anywhere from skin reactions to ... blood disorders that are very significant ... a serious blood condition called agranulocytosis." (V2, R2677, 2688).

Buffington said Hall told him the day of Fitzgerald's murder "started with significant stress" due to tension between the inmates assigned to the PRIDE area that day. Hall said inmate Prince offered Hall some medication to relieve the

“stress” he felt. (V28, R2689-90). Hall took one Tegretol pill in the morning and four more at lunchtime. Subsequently, Hall described being on “an emotional roller coaster, he began to have more extreme effects from that, from anxiety, to anger, frustration ... agitation.” (V28, R2690). Hall went to inmate Prince at about 4:00 p.m. and requested a few more Tegretol pills which Inmate Prince gave him. Before going back to his cell, Hall wanted to get some more pills. He saw where inmate Prince kept the pills underneath a sink area in a storage room. (V28, R2691).

Buffington opined that if Hall took too many Ibuprofen tablets in a day, he could have experienced gastrointestinal bleeding. (V28, R2678-79, 2688). Buffington could not give an opinion as to what reactions Hall had the day of Fitzgerald’s murder as Buffington stated, “I wasn’t there that day.” (V28, R2687). The court determined Buffington’s testimony was “legally irrelevant.” (V29, R2710-11).

Hall re-called Inspector John Joiner as a witness. (V29, R2719). Joiner said Hall was being videotaped as he waited in the “chute” area of the prison subsequent to Fitzgerald’s murder. (V29, R2720). Hall was in the chute area for about an hour. (V29, R2721). The videotape (DVD) was published for the jury. (V29, R2723-27, 2730-31).

On October 23, 2009, the jury returned its verdict finding Hall guilty of First Degree Murder as charged in the indictment. (V30, R2893).

The penalty phase began on October 27, 2009. (V31, R2913).

The direct testimony of G.S.[24] was published for the jury. (V31, R2967-3006, State Exh. 68).

G.S., 66 years old, resided in Pensacola, Florida, in April 1993. (V31, R2970). She walked three times a week after surviving a heart attack earlier in the year. On April 8, G.S. left her apartment to walk to a local restaurant. (V31, R2970-71). She was carrying her keys, identification, and nitroglycerin tablets in a small coin purse. (V31, R2972).

G.S. recalled she was wearing a pair of orange colored earrings,[25] khaki pants, and a cream-colored shirt. (V31, R2971-72, 2973). As G.S. returned to her apartment complex, a car pulled up next to her as she passed the complex's office door. (V31, R2974, 2976). G.S. heard "fast footprints" coming up behind her. She turned as Enoch Hall grabbed her by the

[24] G.S. passed away prior to Hall's trial. (V31, R2944). That testimony was given on November 3, 1993, at Hall's previous trial in Escambia County, *State v. Enoch Hall*, Case No. 1993-16887. (V31, R2969, 3012). Hall's objection to the transcripts of G.S.'s testimony being entered as evidence was granted. With the agreement of both parties, only G.S.'s direct testimony was published for the jury. (V31, R3007-12, 3015).

[25] The earrings were State Exh. 5. G.S. did not know how the earrings were removed from her ears. (V31, R3004-05).

shoulders and neck and pulled her backward. (V31, R2977, 2998). She screamed as he pulled her toward his car. Hall threw G.S. on the front seat. Her buttocks were on the passenger side and her feet landed on Hall's shoulders as he quickly got into the driver's seat. (V31, R2977-78). G.S. repeatedly kicked Hall. Hall started "hitting me as hard as he can," and knocked the right side of G.S.'s face against the dashboard. Hall said, "Be quiet, bitch." (V31, R2978). Two of the apartment's office workers ran out to the driver's door to assist G.S. but Hall had locked the doors. (V31, R2979). Hall threw G.S.'s feet off himself and repeatedly hollered, "Shut up bitch. Be quiet, bitch." (V31, R2978). G.S. unsuccessfully attempted to get the car into neutral gear as Hall drove off with her. (V31, R2979-80).

Hall told G.S., "You better do everything that I want you to or you are going to be sorry." (V31, R2981-82). G.S. told Hall she had recently had a heart attack and needed her nitroglycerin pills.[26] Hall told her, "I don't give a damn about your heart ... didn't I tell you to shut up, and be quiet, bitch. I'm going to kill you." (V31, R2982).

Hall continued to drive in an area G.S. recognized. (V31, R2982-83). Hall eventually drove down a trail away from the

[26] G.S. said the coin purse fell into the back seat. (V31, R2982).

road. (V31, R2986-87). After the car stopped, Hall quickly reclined G.S.'s seat. Hall told her, "Take off your clothes, bitch" and "I'm going to kill you" if she did not do as he said. (V31, R2987). G.S. could not get her pants down over her shoes. Hall grabbed her right shoe and "zipped it off." Hall then pulled off the right pant leg of G.S.'s pants. G.S. said, "He got back on and he raped me." (V31, R2988). G.S. was "so nervous and upset" she did not know how long the rape lasted.[27] But, "it wasn't long." (V31, R2988).

After a few minutes, Hall got out the driver's side door. He pulled up his pants and told G.S. to get out of the car. (V31, R2988-89). Hall threw G.S.'s coin purse at her. G.S. attempted to pull her pants up and put her shoe on. (V31, R2989-90). As G.S. leaned down to get her coin purse, Hall attempted to hit her on the head with a "heavy object." G.S. ran toward the road as Hall chased after her with a tree limb. (V31, R2991, 2992).

The next thing G.S. remembered was crawling through bushes to get to the road. She heard a man and woman speak to her. Someone told her, "You are going to be all right. We're taking you to the hospital." (V31, R2993-94). G.S. was hospitalized for 18 days. (V31, R2994). She suffered brain damage, hearing loss,

[27] G.S. testified that she "didn't think it was a normal sex act." She did not think Hall ejaculated. (V31, R2989).

dizzy spells, and lost her sense of smell. (V31, R2994-95, 2996). G.S. identified Enoch Hall as "the man that took me and he abducted me, threw me in his car, and raped me and tried to kill me." (V31, R2998, 3005-06).

D.D.[28] was 22 years old in April 1992 and lived in Pensacola, Florida. (V31, R3023, 3024). On February 5, D.D. was eating lunch in her car in the parking lot where she worked. (V31, R3023-24). D.D. opened the windows but kept the doors locked. The keys were in the ignition so she could roll the windows up and down. (V31, R3024-25). D.D. was a reading a book when Hall reached in through the passenger window and unlocked the door. He got in the car and was holding a knife. Hall told D.D. "shut up and drive." (V31, R3025, 3037).

D.D. drove toward Alabama while Hall held the knife between them on the armrest. (V31, R3026). Hall instructed D.D. to drive down a dirt road and pull into a wooded area. Hall held the knife and told D.D. to get undressed. D.D. said Hall told her, "if I freaked out, that he would kill me and put me in the trunk of the car." D.D. got undressed. "Then, he raped me." (V31, R3027). Hall held a knife to D.D.'s neck or head during the attack. (V31, R3029).

After Hall sexually battered D.D., Hall told her to get dressed. Hall quickly dressed himself but "had the knife pointed

[28] Hall's objection to D.D. testifying was denied. (V31, R3022).

to me the whole time I was getting dressed." (V31, R3029). Hall instructed D.D. to keep driving. D.D. testified, "I don't recall the path because it was very - - a very long day, hours." (V31, R3029). D.D. was instructed to get money from an ATM because Hall "wanted McDonald's." Hall stood outside the range of the ATM camera and kept the knife in the front of his pants. (V31, R3029-30). At some point, D.D. put gas in the car. She paid with a credit card so she would have a paper trail. Hall told her "not to freak out" and "everything was going to be okay." (V31, R3030). He went in the store with D.D. as she paid for the gas. He had the knife in his pants and stood very close to D.D. (V31, R3030). Hall watched over D.D.'s shoulder as she signed the gas receipt. She tried to catch the clerk's eye but was afraid that Hall "was going to hurt someone else." (V31, R3031).

Hall was calm and quiet as the two of them drove around. D.D. thought if she conversed with Hall, that he might let her go. So, she remained calm "on the outside." (V31, R3031-32). Hall told D.D. that his nickname was "Skanks." He told D.D. that his younger brother had been killed by police. Hall said he wanted to buy a change of clothing so "they couldn't identify the ones (he) was wearing." (V31, R3032). Hall had D.D. drive to a Sears store in Mobile, Alabama. However, he changed his mind and instructed her to drive on Interstate 65 which runs north and south through Alabama. (V31, R3033).

D.D. said Hall became increasingly aggravated and angry. D.D. became tearful and verbally afraid. (V31, R3034). Hall told D.D. to get off the highway and instructed her to drive down a dark, dirt road. (V31, R3035). D.D. said Hall told her, "He was going to kill me now." (V31, R3035). D.D. noticed a car following behind them. D.D. wanted to swerve in such a way that the other car would hit her driver's side door. "She said, "I wanted to end it. I wanted it to be over without him killing me." (V31, R3035-36). D.D. swerved the car. When both cars stopped, she jumped out and ran toward the other car. Hall jumped in the driver's seat of D.D.'s car and drove off. The other driver drove D.D. to the police station. (V31, R3036). D.D. identified Enoch Hall as the person who kidnapped and sexually battered her on February 5, 1992. (V31, R3037).

Captain Shannon Wiggins has worked at Tomoka Correctional Institution for almost 20 years. Hall was serving two life sentences at Tomoka Correctional. (V31, R3039). Wiggins often had contact with Hall as Hall did special projects for Wiggins. (V31, R3039-40).

Victim impact statements were published for the jury.[29] (V31, R3105-3110).

[29] An employee from the State Attorney's office read two statements from Fitzgerald's former high school English teacher and a family friend. (V31, R3106-3110).

Donald Shure and Dana Shure, Fitzgerald's younger brother and sister, both prepared written statements and read them to the jury. (V32, R3111-12; 3113-17). Joanne Dunn, Fitzgerald's mother, also read a statement to the jury. (V32, R3130-34).

Hall proffered the testimony of Dr. Daniel Buffington, clinical pharmacologist. (V32, R3137-43).

Buffington met with Enoch Hall on October 2, 2009. (V32, R3139). Buffington said Hall claimed to have taken 7 Tegretol pills the day of Fitzgerald's murder. (V32, R3139-40). In Buffington's opinion, Tegretol has the capacity to alter a person's behavior. (V32, R3138).

Buffington said Tegretol has two primary purposes: 1) to treat epilepsy; and 2) to treat a unique type of pain in the facial nerve (trigeminal neuralgia). (V32, R3140). A typical dosage consists of taking a 100 milligram pill twice a day. The maximum dosage should not exceed 1200 milligrams per day. The medication comes in 200 and 400 milligram dosage strength. (V32, R3141). An overdose of Tegretol can cause dizziness, nausea, vomiting, or a skin reaction. A more severe reaction could include aplastic anemia, a blood disorder. (V32, R3142). Other complications that may occur with an overdose include drowsiness, fatigue, visual hallucinations, changes in vision, speech disorders, involuntary movements, depression with agitation, and changes in hearing. (V32, R3143).

Buffington said an overdose of Ibuprofen could cause gastrointestinal problems. However, Hall did not claim to ingest an overdose of Ibuprofen on the day of Fitzgerald's murder. (V32, R3146).

James Hall is Enoch Hall's father. (V32, R3160). Hall was a good son and got along well with his two younger brothers. (V32, R3162, 3165, 3168). Hall regularly attended school and helped on the family's 5-acre farm. Hall did not have any problems growing up. (V32, R3165-66, 3167). Hall played football and ran track. They did things "as a family." (V32, R3167). Hall was a cub scout and won awards. (V32, R3171).

Enoch Hall proffered the following testimony of James Hall:

Hall was arrested after high school due to a "scuffle" he had with his girlfriend. (V32, R3179, 3180). Subsequent to his arrest, Hall was raped in the "Pensacola"[30] jail. (V32, R3179, 3180-81). After his release, Hall became afraid and mostly stayed home. (V32, R3181). Hall eventually stayed to himself and started living in a shelter in the woods. (V32, R3182, 3183). James Hall did not see his son drink but "they say he drink." (V32, R3182).

James Hall said Enoch Hall was arrested after an argument with his girlfriend. Subsequent to his arrest, Hall claimed he was raped in jail. (V32, R3193). There were no records of the

[30] Pensacola is in Escambia County.

alleged rape. James Hall opined that law enforcement "covered up" the incident. (V32, R3196-97). Enoch Hall became afraid and stayed to himself. He no longer did things with the family. (V32, R3194-95). James Hall had not seen his son Enoch since 1995. (V32, R3196). James Hall believes his son did not commit the crimes against Donna Fitzgerald. (V32, R3197).

Dr. Daniel Buffington, clinical psychologist, conducted a medical evaluation of Hall on October 2, 2009. (V32, R3198, 3201, 3210). Buffington explained that ingesting high dosages of Ibuprofen and/or Tegretol could cause side effects that have "the capacity to alter someone's behaviors." (V32, R3202). Tegretol is not a controlled substance. It is prescribed as an anti-seizure medication and also prescribed to treat facial nerve pain. (V32, R3202-03, 3205). Side effects can include a skin reaction,[31] aplastic anemia, dizziness, nausea, vomiting, or headaches. (V32, R3203). It also can cause coordination problems, confusion, blurred vision, hallucinations, speech disorders, involuntary movements, sedation, or difficulty in hearing. (V32, R3204).

Buffington said excessive ingestion of Ibuprofen can cause intestinal bleeding. (V32, R3207-08).

[31] Dr. Buffington described this condition as Stevens-Johnson Syndrome, where the skin sloughs off the body. (V32, R3203, 3205).

Tegretol is usually prescribed in 100 milligram dosages, two tablets per day, with the upper ceiling at 1200 milligrams during a 24 hour period. (V32, R3205-06). Hall claimed to have ingested six to seven Tegretol pills on the day of Fitzgerald's murder. (V32, R3206-07).

Buffington said Hall claimed to have taken "white" colored pills, like the Ibuprofen. Tegretol are light pink/peach-colored pills. (V32, R3209-10). However, during the medical evaluation conducted on October 2, 2009, Hall pointed to a picture of the Tegretol and claimed to have ingested those pills. (V32, R3211). This contradicted what Hall told law enforcement the day of Fitzgerald's murder. (V32, R3211).

Department of Corrections medical records did not indicate Hall was ever prescribed Tegretol or that Hall had attempted to self-medicate from other inmates' medications. (V32, R3212). Hall claimed inmate Prince gave him the Tegretol. However, Prince denied giving Hall any pills. (V32, R3212-13).

David Clark worked for the Department of Corrections for almost 27 years. He has extensive training with regard to policies and procedures. (V33, R3233-37). However, Clark admitted he was terminated from the Department of Corrections in 2007 for sub-standard work, falsifying records, sleeping on the job, lackadaisical attitude, and inattention to detail. (V33, R3267, 3268, 3269).

Clark said that Hall was currently incarcerated in "maximum management" in the prison, separated from other inmates. Maximum management is the most severe restriction placed on an inmate, where the inmate's activities are "totally restricted." (V33, R3241). An inmate can get off maximum restriction with good behavior. (V33, R3243). It is a temporary custodial position. (V33, R3271, 3272). An inmate can request to be removed from maximum management status. (V33, R3272-73).

Clark also explained the procedures for inmates housed on death row.[32] (V33, R3249-53). In addition, he also explained the differences between maximum management and death row procedures. (V33, R3255-58). Corrections officers assigned to the death row unit are screened. They must have an "even temperament" and be able to listen. However, anyone can be assigned to maximum management. (V33, R3259). Clark said Hall would be housed in maximum management if he was not sentenced to death. (V33, R3261). An inmate could remain on maximum management status from one month to a number of years, but with no guarantee. (V33, R3265-66, 3273).

Dr. Reid Hines, a dentist, testified telephonically. (V33, R3278, 3281). Hines and Hall played sports together in high school. (V33, R3283). Hall was "an excellent athlete." (V33,

[32] Clark was a security officer on death row from 1981-1983. (V33, R3269).

R3284). Hines and Hall were part of "tight knit" teams. (V33, R3285). Hines last saw Hall in 1986, when Hines graduated from high school.[33] (V33, R3286).

Betty Hall, Enoch Hall's mother, said the family lived in a rural part of Florida in Milton. (V33, R3291, 3294). Enoch Hall was a sports enthusiast and played many different sports. (V33, R3294-95). The family attended church together, played games together, and also went horseback riding together. (V33, R3295, 3296). Hall loved playing football and ran track. His parents attended his games. They would "be there to support him." (V33, R3297). Enoch Hall was very protective of his brothers and sisters. (V33, R3299).

Bruce Hall,[34] employed by PRIDE Enterprises, managed the day-to-day operations of heavy duty vehicles at Tomoka Correctional Institution. (V33, R3310-11). Bruce Hall met Enoch Hall in the welding facility at the PRIDE compound at Tomoka Correctional. Enoch Hall was hired as a welding apprentice. Enoch Hall eventually worked his way up to be the lead welder. (V33, R3313).

Bruce Hall had contact with Enoch Hall several times a week. Enoch Hall worked hard and did what was asked of him. (V33, R3314-15). Enoch Hall would have been familiar with

[33] Hines was a year ahead of Hall in school. (V33, R3283).

[34] Bruce Hall and Enoch Hall are not related. (V33, R3312).

“fabrication,” which was taking “different pieces of metal and build something out of it that would fit into something else.” (V33, R3317).

Rodney Callahan was incarcerated at Tomoka Correctional for 22 years prior to being transferred to Sumter Correctional. (V33, R3323-24). Callahan knew Hall for 15 years. (V33, R3324). They worked in the PRIDE facility together, and socialized in the prison. (V33, R3325-26). Hall was a good worker, “very responsible, took a lot of pride in his work.” Hall worked as many overtime shifts in PRIDE as allowed. (V33, R3327). It was not unusual for welders to be the last people to leave the PRIDE area at the end of a shift. However, if everyone was leaving the PRIDE area, then Hall also should have been in line to leave. (V33, R3328).

Charles Washington, currently incarcerated, worked with Enoch Hall in the PRIDE facility at Tomoka Correctional. (V34, R3350, 3351). Hall was a good welder, “dedicated.” (V35, R3352).

Jeffrey Jones, currently incarcerated, worked with Hall in the PRIDE facility at Tomoka Correctional. (V34, R3356-57). Jones and Hall were also cellmates for a while. Hall was good at sports and a good welder. (V34, R3358, 3359). Hall never expressed being stressed or overworked in PRIDE. (V35, R3360).

During a recorded interview with Inspector Joiner subsequent to Fitzgerald’s murder, Jones told Joiner that Hall

had made sexual references about Officer Fitzgerald. (V35, R3363). However, Jones said he never said that to Inspector Joiner. (V34, R3364). Jones said inmates often make comments about female corrections officers. (V34, R3365).

Dr. Wade Myers, psychiatrist, testified in rebuttal. (V354, R3374-75). In addition to psychiatry, Myers is also trained and educated in the area of pharmacology. (V34, R3376). Myers is familiar with side effects of both Tegretol and Ibuprofen, and has prescribed Tegretol during his career. (V34, R3376, 3377, 3385).

Myers reviewed the statements Hall gave subsequent to his arrest for Fitzgerald's murder. (V34, R3378). Hall told FDLE agents that he took "four white pills" of 800 milligram Ibuprofen, which indicated he ingested 3200 milligrams of Ibuprofen. (V34, R3378, 3379, 3380). Myers said 800 milligram pills, although "it's the upper range," is an acceptable dose range for severe pain disorders or joint inflammation conditions. (V34, R3384). The maximum dosage in a 24-hour period should be 2400 milligrams. (V34, R3384-85). In Myers' clinical experience and based on the literature on Ibuprofen, approximately two-thirds of people that take an overdose of Ibuprofen do not have any side effects at all. (V34, R3380, 3385). The remaining group of people typically complain of stomach irritation or nausea. (V34, R3380).

Dr. Myers said that someone who takes an overdose of Tegretol might feel tired, sleepy, fatigued, dizzy, unsteady, or have blurred vision. Nausea might also occur. (V34, R3381, 3397). If someone took 7 pills of 200 milligram Tegretol, he would be dizzy, uncoordinated, and "might just go to sleep." (V34, R3382). In addition, Tegretol has an anti-aggression component to it. It can help treat aggression or people with personality problems that have trouble controlling their impulses. (V34, R3382). In Dr. Myers opinion, it "would be very unlikely" to cause aggression - - "You're going to get the opposite effect." (V34, R3383).

Dr. Myers said that a small percentage, approximately two percent, of patients that ingest an overdose of Tegretol might have an increase in suicidal thinking. (V34, R3396, 3399, 3401). In addition, visual hallucinations, speech disturbances, abnormal involuntary movements, or depression may occur. (V34, R3397, 3401). However, the majority of patients will be calmer, less agitated, and less aggressive. (V34, R3400).

On October 29, 2009, by a vote of twelve to zero, the jury returned its advisory verdict recommending that Hall be sentenced to death for the murder of Donna Fitzgerald. (V35, R3602). On January 15, 2010, the Court followed the jury's sentencing recommendation, and imposed a sentence of death on Hall. (V7, R912-990; V11, R1790-1811).

This appeal follows.

SUMMARY OF THE ARGUMENT

The trial court properly denied hall's motion to suppress his statements to law enforcement. Following a hearing, the trial court found that Hall's evidence was incredible, and that the State's evidence supporting the voluntariness of the statements was credible. There is no deficiency in those findings.

There was no error associated with the medical examiner's testimony. Hall's argument is based on an over-reading of that testimony, which was appropriately qualified and was well within the realm of allowable expert testimony.

There was no abuse of discretion in admitting the testimony of the victims of Hall's prior sexual batteries to establish the prior violent felony aggravator. That method of proof follows Florida law, and is not error.

The fact that Hall was incarcerated serving two life sentences when he stabbed Officer Fitzgerald to death is not "non-statutory aggravation." It is a fact, and it was not error to tell the jury about it.

The heinousness and coldness aggravators were properly found, and the mitigation was properly weighed, under controlling Florida law. There is no error. Moreover, Hall's

death sentence is proportionate to other cases in which this Court has upheld a sentence of death.

There is no *Ring v. Arizona* claim available to Hall because his sentence of death is supported by both the prior violent felony and under sentence of imprisonment aggravators. Those facts take his case out of any possible interpretation of *Ring.*

ARGUMENT

I. THE DENIAL OF THE MOTION TO SUPPRESS CLAIM

On pages 45-49 of his brief, Hall argues that the trial court erred in denying his motion to suppress some of his inculpatory statements. Hall's brief does not implicate his inculpatory statements were made when he was taken into custody by Department of Corrections personnel. Instead, the statements that he challenges, as understood by the State, are the subsequent (post-*Miranda*) statements made to agents of the Florida Department of Law Enforcement.[35]

A trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness, and a reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling. *San Martin v. State*, 717 So. 2d 462 (Fla. 1998). The trial court's ruling on

[35] The first statements are admissible, *inter alia*, as excited utterances. The admissibility of those statements is not at issue.

the voluntariness of a confession should not be disturbed unless it is clearly erroneous. *Escobar v. State*, 699 So. 2d 988, 993-93 (Fla. 1997); *Davis V. State*, 594 So. 2d 264, 266 (Fla. 1992); *Chambers v. State*, 742 So. 2d 466, 468 (Fla. 3d DCA 1999), *citing Bonifay v. State*, 626 So. 2d 1310 (Fla. 1993) and *Thompson v. State*, 548 So. 2d 198 (Fla. 1989). Whether a waiver of *Miranda v. Arizona*, 384 U.S. 436 (1966) rights was voluntarily made is reviewed *de novo*. *United States v. Barbour*, 70 F.3d 580, 584 (11th Cir. 1995) (stating that the district court's ultimate conclusion on the voluntariness of a confession or a waiver of *Miranda* rights raises questions of law to be reviewed *de novo*); *United States v. Schwensow*, 151 F.3d 650, 659 (7th Cir. 1998) (district court's determination of whether a *Miranda* waiver was knowing and voluntary is reviewed *de novo*). Hall cannot demonstrate any basis for relief, and the denial of the motion to suppress should be affirmed.

The motion to suppress Hall's statements was the subject of a lengthy hearing which is found in volumes 3 and 4 of the record and covers pages 245-512 of the record.[36] The basis of Hall's motion to suppress is his claim that he was "beaten" by Department of Corrections personnel, and that he confessed to

[36] The State presented 12 witnesses, and Hall presented one, himself.

FDLE agents to “get out of Tomoka” Correctional Institution. In denying the motion to suppress, the trial court said:

> The defendant’s testimony to his alleged abuse at the hands of the corrections officers is refuted by every other witness presented at the suppression hearing, furthermore, even if defendant had sustained a beating by the corrections officers as he has testified to, the court finds as a fact that he no longer was subject to the effects of such abuse when in the custody of the FDLE officers. He was administered *Miranda* warnings, made statements to the FDLE and cooperated voluntarily. As noted in the case of *Leon v. Wainwright*, 734 F.2d 770 (11th Cir. 1984), the trial court must take into consideration the “totality of the circumstances” in determining the issue of voluntariness. Even if defendant had been coerced by physical threats or abuse in a first statement, a later statement is not subject to suppression where the influence of such coercion has been dissipated so as to make the later statement voluntary. *Leon*, at 772. Here, defendant asked to speak with FDLE officers a second time after being taken to a holding cell following his first statement to them. He later agreed to speak with the FDLE officers a third time after showing them where he had hidden the murder weapon. The court specifically finds as a fact that if defendant had sustained injuries as a result of a beating by the first corrections officers who apprehended him or by threats after the first statement to FDLE, the effects of such abuse upon the voluntariness of his subsequent statements to the FDLE clearly has been dissipated.
>
> Finally, defendant admitted at hearing that the alleged victim, Officer Fitzgerald, had “got in his face” and “grabbed him” during the incident that resulted in her death. Any injury to defendant’s eye could have been sustained during the struggle during which Officer Fitzgerald was stabbed to death by a metal “shank.” Defendant’s version of the facts conflicts with every one of the state’s witnesses that were in a position to have observed how defendant was treated after his apprehension within the PRIDE building and custodial treatment thereafter. The court finds the state’s witnesses more credible under all

> the circumstances presented at hearing. *See, Johnson v. State*, 696 So. 2d 326 (Fla. 1997) (held: State proved by preponderance of the evidence that defendant's statement was voluntary and not induced by official coercion where defendant's testimony conflicted with every state witness at hearing.)
>
> The court finds the defendant's evidence incredible and finds the state's evidence convincing that no abuse or threats occurred that coerced the defendant to make his statements to the FDLE officers. The court notes that the ultimate issue of the voluntariness of the statements will be for the jury that hears this case. "Once a trial court has determined that a confession is voluntary and thus admissible, the issue of the voluntariness of the confession can be considered and conclusively determined by the jury." *Dillow v. State*, 884 So. 2d 508, 509 (Fla. 2d DCA 2004).

(V10, R1520-21).

Those findings of fact by the trial court are supported by the evidence, and are certainly not clearly erroneous. The credibility determinations made by the trial judge that saw the witnesses testify and had the opportunity to gauge their demeanor were resolved against Hall, and he has argued nothing more than his evident dissatisfaction with the result. That is not a basis for relief. No evidence from the suppression hearing supports granting Hall's motion, and, when that evidence is considered properly under the governing standard of review, there is simply no basis for relief of any sort.

II. THE MEDICAL EXAMINER TESTIMONY CLAIM

On pages 50-54 of his brief, Hall says that it was error to allow the medical examiner to testify about which of the

injuries to the victim were inflicted first. Florida law is settled that the admissibility of evidence is within the sound discretion of the trial court, and the trial court's ruling will not be reversed unless there has been a clear abuse of that discretion. *Ray v. State*, 755 So. 2d 604, 610 (Fla. 2000); *Zack v. State*, 753 So. 2d 9, 25 (Fla. 2000); *Cole v. State*, 701 So. 2d 845 (Fla. 1997); *Jent v. State*, 408 So. 2d 1024, 1039 (Fla. 1981); *General Elec. Co. v. Joiner*, 522 U.S. 136, 118 S.Ct. 512, 517, 139 L.Ed.2d 508 (1997) (stating that all evidentiary rulings are reviewed for "abuse of discretion").[37]

Hall's brief suggests that the medical examiner testified to the precise order in which the 22 "sharp force injuries" Hall inflicted on his victim took place. That is not what the testimony was. Instead, the medical examiner testified in more general terms, stating:

> A. We know that she was alive when she received all these injuries, so we can eliminate that there was any postmortem injury. And since there were defensive wounds, **I would say** that they came first because a person is at the time fighting for -- with the attacker and **the most likely sequence** of acquiring these injuries is the defensive wounds came first. So all the wounds on the hand -- on the -- on both arms came first.
>
> Q. On the upper arm.

[37] It is possible to construe Hall's claim as one based on *Frye v. United States,* 293 F. 1013 (D.C. Cir. 1923). However, he does not cite to *Frye* cases in his brief, and did not argue *Frye* as the basis of the objection below. (V28, R2639). No *Frye* claim is preserved for review.

A. And the upper arm.

> Second, **most likely** what the sequence of these injuries is that the abdominal injuries came second. **And since they were not lethal injuries and the person was, at the time, still relatively vital**. And then the last injuries were injuries on the back where some of them were immediately lethal, especially both lungs were collapsed and there was a stab into the heart. At that point the victim probably expired rather quickly.

(V28, R2639-40). (emphasis added). As the highlighted portion of the testimony shows, the testimony was phrased in terms of "most likely," and, when fairly considered, makes sense, especially since there were three discrete areas of injuries. There is simply nothing objectionable about this testimony, which probably explains why there was no cross-examination on this issue.

None of the cases cited on page 52 of Hall's brief stand for the proposition that this testimony was improper. In fact, in *Perez v. State*, 919 So. 2d 347, 378 (Fla. 2005), the medical examiner testified about which wounds likely came first. *Douglas v. State* 878 So. 2d 1246, 1251 (Fla. 2004) is similar. Moreover, it hardly strains credulity to conclude that defensive wounds on the extremities came before fatal, incapacitating stab wounds that penetrated the heart and lungs. The only remaining set of wounds were those to the victim's abdomen, and, again, it is not a stretch to conclude that that set came second. Hall's derisive comments about Dr. Bulic are baseless and unfounded -- he never

said that he "above all other medical examiners, was able to give an accurate opinion on such impossible matters." *Initial Brief,* at 54. Dr. Bulic's testimony was carefully qualified, and there is simply no error at all. This claim has no legal or factual basis, and is not a basis for relief.

III. THE PRIOR VIOLENT FELONY AGGRAVATOR

On pages 55-61 of his brief, Hall says that it was error to allow evidence about the details of Hall's prior convictions for sexual battery. Florida law is settled that the admissibility of evidence is within the sound discretion of the trial court, and the trial court's ruling will not be reversed unless there has been a clear abuse of that discretion. *Ray v. State*, 755 So. 2d 604, 610 (Fla. 2000); *Zack v. State*, 753 So. 2d 9, 25 (Fla. 2000); *Cole v. State*, 701 So. 2d 845 (Fla. 1997); *Jent v. State*, 408 So. 2d 1024, 1039 (Fla. 1981); *General Elec. Co. v. Joiner*, 522 U.S. 136, 118 S.Ct. 512, 517, 139 L.Ed.2d 508 (1997) (stating that all evidentiary rulings are reviewed for "abuse of discretion"). Whether the probative value of the evidence is substantially outweighed by its prejudicial impact is reviewed for abuse of discretion. *Rodriquez v. State*, 753 So. 2d 29, 42 (Fla. 2000) (observing that broad discretion rests with the trial court to determine whether the probative value of evidence sought to be admitted is substantially outweighed by unfair prejudice, and a trial court's decision to admit the evidence

will not be disturbed absent a showing of abuse of discretion); *Sims v. Brown*, 574 So. 2d 131, 133 (Fla. 1991) (noting that the weighing of relevance versus prejudice or confusion is best performed by the trial judge, who is present and best able to compare the two).

In the context of capital sentencing, a defendant's prior violent felony conviction cannot be proven by "testimonial hearsay." As this Court has said:

> We note that **before** *Crawford* [*v. Washington*, 541 U.S. 36 (2004)] - and when this penalty phase was held - we considered such hearsay testimony [from the investigating officer] the less prejudicial method of presenting evidence of prior convictions because it was "generally beneficial to the defendant for the jury to hear about those details from a neutral law enforcement official rather than from prior witnesses or victims." *Rodriguez v. State*, 753 So.2d 29, 44 (Fla.2000).

Rodgers v. State, 948 So. 2d 655, 664 n.5 (Fla. 2006). (emphasis added). In addressing this issue, this Court has said:

> At the outset of the penalty phase, the defense renewed its offer to stipulate to the previous violent felony and under sentence of imprisonment aggravators, but the court ruled that the State was entitled to decline the offer and present evidence concerning the prior felonies. The State then elicited testimony from Mary Louise Hamilton and Michael Bishop, both of whom were working at a convenience store the appellant robbed in 1980. Next, Judith and Earl Turner testified regarding the appellant's burglary of their home, during which he attacked the couple as they slept, covering Mrs. Turner's face with his hand while striking Mr. Turner in the head with a three-hole punch.

Finally, the State presented Bonnie Primeau to testify with regard to a sexual assault perpetrated upon her in 1989. During the attack, she was dragged out of a convenience store, pushed over a wall (resulting in her leg being broken), endured Cox's unsuccessful attempts to orally and anally rape her, and was then vaginally raped by Cox. Our examination of the record reveals that each of these witnesses tersely related the crimes committed against them, and each was able to do so without any emotional display.

Appellant asserts that the introduction of this evidence was contrary to the holding of *Old Chief v. United States*, 519 U.S. 172, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997), and resulted in a deprivation of his rights to due process and a fair trial. Both *Old Chief* and this Court's decision implementing *Old Chief* in Florida, *Brown v. State*, 719 So. 2d 882 (Fla. 1998), make their holdings clear:

> [W]hen requested by a defendant in a felon-in-possession of a firearm case, the trial court must approve a stipulation whereby the parties acknowledge that the defendant is, without further elaboration, a prior convicted felon.

Id. at 889. The United States Supreme Court decision turned on the Court's conclusion that in cases where "the point at issue is a defendant's legal status," the probative value of live testimony describing the defendant's prior felony is outweighed by the risk of unfair prejudice such evidence also carries. *See Old Chief,* 519 U.S. at 185-92, 117 S.Ct. 644. While both opinions addressed broader issues in the form of *dicta*, this Court explicitly limited its holding to felon-in-possession of a firearm cases. *See Brown,* 719 So. 2d at 889.

It is clear that this Court has not construed *Old Chief* to have established a rule of law that those found guilty of first-degree murder may simply stipulate to prior violent felony convictions and thereby prohibit the State from introducing any evidence thereof whatsoever. In *Elledge v. State*, 706 So. 2d 1340 (Fla. 1997), a case decided eight months

after the Supreme Court's *Old Chief* decision, we stated:

> Elledge next asserts that the trial court erred in allowing the state to introduce the details of two prior violent felony convictions ... because he offered to stipulate to their validity. This issue has been decided adversely to Elledge. We likewise find from our review of the record that the details of the two prior homicides did not become a feature of the case. Thus, we find no error.

Id. at 1344 (citations omitted); *see also Rhodes v. State*, 547 So. 2d 1201 (Fla. 1989); *Tompkins v. State*, 502 So. 2d 415 (Fla. 1986).

We have consistently stated that "any relevant evidence as to the defendant's character or the circumstances of the crime is admissible [during capital] sentencing" proceedings. *Stano v. State*, 473 So. 2d 1282, 1286 (Fla. 1985); *see also Rhodes*, 547 So. 2d at 1204 ("Testimony concerning the events which resulted in the [prior] conviction assists the jury in evaluating the character of the defendant and the circumstances of the crime so that the jury can make an informed recommendation as to the appropriate sentence."); § 921.141(1), *Fla. Stat*. (2001) ("In the [capital sentencing] proceeding, evidence may be presented as to any matter that the court deems relevant to ... the character of the defendant ...."). Thus, the holdings of *Old Chief* and *Brown* are not properly analogized to this capital sentencing proceeding, where "the point at issue" is much more than just the defendant's "legal status."

As "[a]dmission of evidence is within the discretion of the trial court and will not be reversed unless there has been a clear abuse of that discretion," *Ray v. State,* 755 So. 2d 604, 610 (Fla. 2000), there is no basis to reverse the ruling of the court below admitting testimonial evidence of the appellant's prior violent felonies at trial. This evidence was not emphasized to the level of rendering the prior offenses a central feature of the penalty phase. [FN12] *See Rodriguez v. State*, 753 So. 2d 29,

> 44-45 (Fla. 2000); *Finney v. State*, 660 So. 2d 674, 683 (Fla. 1995). Therefore, we affirm the trial court's decision allowing the admission of this evidence.
>
> > [FN12] The record reflects each witness's simply relating Cox's crimes against him or her. No emotional displays or breakdowns occurred.

Cox v. State, 819 So. 2d 705, 715-717 (Fla. 2002). There was no abuse of discretion in the admission of the facts of Hall's prior sexual batteries.[38]

The testimony about Hall's prior offenses consumed approximately 73 pages of the transcript. (V31, R2967-3038).[39] In the context of this trial, that is a small part of the evidence that the jury heard. Simply put, 73 pages of a transcript that is 900 pages long is hardly a feature of the trial, and is

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[38] None of the cases relied on by Hall support relief in this case. *Duncan v. State*, 619 So. 2d 279 (Fla. 1993), found the admission of a gruesome photograph harmless error, and *Rhodes v. State*, 547 So. 2d 1201 (Fla. 1989), was concerned with a pre-*Caldwell* hearsay issue. *Stano* stands for the settled proposition that "[i]n a sentencing proceeding **the state may introduce testimony as to the circumstances of a prior conviction, rather than just the bare fact of that conviction.** *Mann v. State*, 453 So. 2d 784 (Fla. 1984), *cert. denied*, 469 U.S. 1181, 105 S.Ct. 940, 83 L.Ed.2d 953 (1985); *Elledge v. State*, 346 So. 2d 998 (Fla. 1977)." *Stano v. State*, 473 So. 2d 1282, 1289 (Fla. 1985). (emphasis added).

[39] A substantial portion of those transcript pages reflect arguments by counsel and other matters that the jury did not hear.

certainly not a basis for relief.[40] Under Florida law, the state had a right to present the details of Hall's prior offenses. *See, Dufour v. State*, 495 So. 2d 154 (Fla. 1986); *Elledge v. State*, 346 So. 2d 998 (Fla. 1977). Both of Hall's prior offenses involved lengthy abductions which simply took some time to describe -- in other words, Hall's prior offenses were not robberies that took less than two minutes to commit and can be described quickly. Hall committed the offenses described at the penalty phase, and should not be heard that the details of his prior handiwork are such that the telling takes some time. The facts are what they are, and those facts do not establish an abuse of discretion by the trial court.

Alternatively, the result of the penalty phase would not have been different in the absence of the testimony of Hall's prior victims. The murder of Donna Fitzgerald is heavily aggravated, and the mitigation is virtually non-existent. If there was error, it was harmless beyond a reasonable doubt. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986).

IV. THE "NON-STATUTORY AGGRAVATION" CLAIM

On pages 62-63 of his brief, Hall says he is entitled to a new penalty phase because the jury was informed that he was serving two life sentences when he murdered Officer Fitzgerald.

[40] The testimony does not appear to be particularly emotional, especially under the circumstances.

Florida law is settled that the admissibility of evidence is within the sound discretion of the trial court, and the trial court's ruling will not be reversed unless there has been a clear abuse of that discretion. *Ray v. State*, 755 So. 2d 604, 610 (Fla. 2000); *Zack v. State*, 753 So. 2d 9, 25 (Fla. 2000); *Cole v. State*, 701 So. 2d 845 (Fla. 1997); *Jent v. State*, 408 So. 2d 1024, 1039 (Fla. 1981); *General Elec. Co. v. Joiner*, 522 U.S. 136, 118 S.Ct. 512, 517, 139 L.Ed.2d 508 (1997) (stating that all evidentiary rulings are reviewed for "abuse of discretion"). Whether the probative value of the evidence is substantially outweighed by its prejudicial impact is reviewed for abuse of discretion. *Rodriquez v. State*, 753 So. 2d 29, 42 (Fla. 2000) (observing that broad discretion rests with the trial court to determine whether the probative value of evidence sought to be admitted is substantially outweighed by unfair prejudice, and a trial court's decision to admit the evidence will not be disturbed absent a showing of abuse of discretion); *Sims v. Brown*, 574 So. 2d 131, 133 (Fla. 1991) (noting that the weighing of relevance versus prejudice or confusion is best performed by the trial judge, who is present and best able to compare the two).

In addressing this same issue, this Court said:

> Defendant claims that the prosecutor emotionally inflamed the jury by referring to his previous life sentence for a murder committed in 1967 and to the

> life sentence imposed for the D.C. murder following the commission of the present murder, and concluding that "if life meant life" both Chavez and the D.C. victim would be alive today. At trial, defendant objected on the ground that the prosecutor was arguing outside the evidence. The trial judge properly overruled the objection because both convictions were obtained prior to the sentencing here and were properly introduced as aggravating factors. § 921.141(5)(b), *Fla.Stat*. (1977). Defendant's argument on appeal that the jury was emotionally inflamed was not presented at trial and, thus, was not properly preserved for appeal. § 90.104(1)(a), *Fla. Stat*. (1981); *United States Fire Insurance Co. v. Dickerson,* 82 Fla. 442, 90 So. 613 (1921). Even had it been preserved, it would have no merit. **The record shows that defendant was sentenced to life imprisonment for first-degree murder in 1967, and later murdered two additional persons. Under these circumstances, it is manifestly obvious that "if life meant life" the defendant would not have murdered these two additional victims.** The prosecutor did not predict that the defendant would murder again if sentenced to life imprisonment and paroled after twenty-five years. This latter argument we have condemned in *Teffeteller v. State*, 439 So. 2d 840 (Fla. 1983), *cert. denied*, 465 U.S. 1074, 104 S.Ct. 1430, 79 L.Ed.2d 754 (1984). *See also Harris v. State*, 438 So. 2d 787 (Fla. 1983), *cert. denied*, 466 U.S. 963, 104 S.Ct. 2181, 80 L.Ed.2d 563 (1984).

Parker v. State, 456 So. 2d 436, 443-444 (Fla. 1984). (emphasis added). This is not a "non-statutory aggravator," but rather is simply a fact relating to Hall's two prior convictions. If there was no error in *Parker*, and that is the law, there is no error here, either.

Alternatively and secondarily, any error is harmless beyond a reasonable doubt. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). The length of Hall's prior sentences had no effect on the

jury's recommendation under the facts of this case. Even if the jury had not been told that Hall was serving two life sentences, the sentencing recommendation still would have been death. There is no basis for relief.

V. THE "IMPROPER DEATH SENTENCE" CLAIM

On pages 64-76 of his *Initial Brief*, Hall argues that his death sentence is improper because the trial court found two improper aggravating circumstances, CCP and HAC. Hall claims the trial court abused its discretion by failing to consider or minimizing the weight given to mitigating circumstances, and in finding the aggravating circumstances outweighed the mitigating factors. *Initial Brief*, at 64. Whether an aggravating circumstance exists is a factual finding reviewed under the competent, substantial evidence standard. In *Alston v. State*, 723 So. 2d 148, 160 (Fla. 1998), this Court held that it "is not this Court's function to reweigh the evidence to determine whether the State proved each aggravating circumstance beyond a reasonable doubt –- that is the trial court's job. Rather, our task on appeal is to review the record to determine whether the trial court applied the right rule of law for each aggravating circumstance, and, if so, whether competent substantial evidence supports its finding," *quoting Willacy v. State*, 696 So. 2d 693, 695 (Fla. 1997). *See also, Serrano v. State*, 36 Fla. L. Weekly S108 (Fla. Mar. 17, 2011); *Turner v. State*, 37 So. 3d 212, 222

(Fla. 2010); *Zommer v. State*, 31 So. 3d 733, 745 (Fla. 2010); *See Smith v. State,* 28 So. 3d 838, 866 (Fla. 2009); *Aguirre-Jarquin v. State*, 9 So. 3d 593, 608 (Fla. 2009); *Guardado v. State*, 965 So. 2d 108, 115 (Fla. 2007).

There is no error in finding the coldness aggravator and heinous aggravator when the true facts are considered. The trial court's findings are supported by the evidence.

Cold, Calculated and Premeditated

In discussing the CCP aggravator, Hall claims the trial court made a factual error in finding Hall "made the shank" that he used to stab Officer Fitzgerald and therefore the court erred in finding this "was evidence of a prearranged plan to kill, a heightened level of premeditation." *Initial Brief*, at 66. Further, Hall also claims the trial court erred in considering Hall's actions after he committed the murder as evidence of planning. *Initial Brief*, at 66.

In finding that Hall's murder of Officer Donna Fitzgerald was cold, calculated and premeditated, the trial court made the following findings:

> The defendant had been an inmate in Tomoka Correctional Institution for many years. He had been employed in the work-rehabilitation program at PRIDE on the TCI grounds also for many years. Corrections Officer Fitzgerald had been assigned to TCI for many years and the defendant knew her well as a "nice lady." Defendant was a skilled welder and worked in an area of PRIDE where he had ready access to sheet metal and various machine tools. The murder weapon was

fashioned by one having skills with grinding machines and metal cutting tools, skills the defendant would have learned over the years working at PRIDE.

Defendant had not left the PRIDE facility with the other inmates at the close of the day. Through years of experience, defendant knew that Corrections Officer Fitzgerald, the officer assigned to supervise the PRIDE inmates that day, would return to look for him after she performed her head count. By his own admission, the defendant waited within the welding shed of the facility while carrying the knife or "shank" carefully concealed behind his right leg. He admitted that the officer told him to leave immediately as she put her hand on him to guide him out. It was then that the defendant commenced his attack by punching and stabbing Officer Fitzgerald.

In the course of the attack, the defendant pulled backward on a gold chain necklace the victim was wearing preventing her escape, the force of the restraint being evidenced by visible post-mortem bilateral marks on the victim's mouth and jaw. Defendant inflicted twenty-two stab wounds upon the officer during the attack. After the officer had been killed, the defendant tightly wrapped the body in a blanket and carried it from the welding shed to the PRIDE paint shop office. Defendant placed the victim's body, face down, over the handlebar of a pushcart. Defendant ripped off the name tag from his bloody shirt and threw the shirt onto the roof of the paint booth. He removed his bloody pants and placed them beneath a pile of clothing in the paint shop office where the officer's body later was found. He placed his bloody T-shirt and socks in a bucket of water, He donned the uniform clothing of another inmate that had been left in the building. Defendant climbed up an interior wall of the building and dropped the murder weapon into a crevice within the wall in order to hide it. He also carefully spread oil absorbent material over the pools of blood on the crime scene floor to soak up the officer's blood. He then used a facility broom to sweep the absorbent material out of the space to eliminate it. At some point, defendant unbuttoned the victim's uniform pants and pushed her pants and underwear down to her knees. Defendant heard the noise of the other corrections officers within the building

> and immediately left the room to attempt to evade capture while carrying the keys to the PRIDE facility that had been in the possession of Officer Fitzgerald.
>
> These facts prove beyond and to the exclusion of a reasonable doubt, that the defendant carefully planned and executed his attack upon Officer Fitzgerald. He knew her routine and hid himself in an area with which he was very familiar, the welding shed. This would provide him the element of surprise. He carried a "shank" that had been fashioned using PRIDE cutting tools and steel. He surprised the officer as she attempted to secure him by punching her in the face and then stabbing her with rapid, deliberate, targeted strikes to her abdomen and back. Ligature marks upon the officer's mouth and neck prove that defendant had yanked back on her necklace to prevent her escape from the attack. After completing the killing, the defendant commenced a carefully planned attempt to clean up the crime scene, remove and hide the body, and dispose of the bloody evidence. The defendant's careful advance fabrication[41] of the weapon, his hiding within the facility while awaiting the officer, and his well thought-out plan for hiding the evidence of the crime evince a prearranged plan to kill, a heightened level of premeditation. Furthermore, these facts support the conclusion that the killing was not an act prompted by emotional frenzy, panic or fit of rage. There was no pretense of legal or moral justification for this killing. *See, Lynch v. State,* 841 So. 2d 362, 371 (Fla. 2003).
>
> The state has proved beyond a reasonable doubt that the crime was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. The court gives very great weight to this aggravator.

(V11, R1796-1798).

As found by the trial court, sufficient evidence exists to

[41] Captain Wiggins knew Hall for a long time and testified that Hall worked on special projects in the welding area. (V24, R2072, 2082).

support the cold, calculated, and premeditated aggravator. The PRIDE welding shed contained pallets of sheet metal as well as numerous pieces of scrap metal in bins. (V24, R2095). Hall's work station was inside the welding area. (V24, R2096, 2100). Hall was well-acquainted with the machinery used specifically for cutting and sharpening sheet metal. (V24, R2082).

On the day Fitzgerald was murdered, Hall admitted he stayed behind in the PRIDE area, claiming he was looking for narcotics after his shift ended. (V25, R2265). He said Officer Fitzgerald came looking for him as he was the only inmate that had not checked out of the PRIDE work area. (V25, R2266). Hall claimed he found the shank in the paint room/office while he looked for drugs (V25, R2218, R2271) and that inmate Prince hid the shank. (V25, R2246-47). Hall left the paint room area and hid inside the welding shed where Fitzgerald found him. (V25, R2244-45, 2251-52, R2266). Hall then hid the shank behind his right leg where Fitzgerald could not see it.[42] (V25, R2200).

When Fitzgerald approached him, Hall tried to get through the door but Fitzgerald "was trying to stop me." (V25, R2247). Hall repeatedly stabbed Fitzgerald, "just enough to get by." However, the medical examiner testified that there were

[42] In his third statement to Agent Miller, Hall claimed he held the knife in plain view and Fitzgerald told him to drop it. Fitzgerald attempted to take it from Hall and then he began to repeatedly stab her. (V25, R2253).

abrasions on Fitzgerald's mouth which extended across her cheeks. These injuries were similar to ligature marks. (V28, R2641). Dr. Bulic concluded that a necklace that Fitzgerald was wearing at the time she was killed "fit perfectly in the size and shape - - across the face." In Bulic's opinion, the injuries were caused by her necklace "being pulled backward or being yanked backward." (V28, R2642, 2643). In addition, Fitzgerald had been beaten about the face. (V28, R2613-14). She had several defensive wounds on her fingers, hands and arms, as well as 15 stab wounds to her torso and back. (R28, R2616-19, 2629-30). Hall tried to get by her but "she was still holding onto me." (V25, R2247, 2253). Hall did not know how many times he stabbed Fitzgerald. (V25, R2247). Hall then hid the weapon inside an empty cinderblock, located eleven feet off the ground, in a brick wall by the welding area. (V25, R2255, 2268: V26, R2410). He wrapped a towel around Fitzgerald's head and retrieved blankets "to wrap her up." (V28, R2267, 2268). Hall tried to cover up the blood outside the welding area with "kitty litter" in an effort to mop up the blood. (V25, R2250, 2268). Hall carried Fitzgerald's body to the paint room and placed her body on a cart. (V25, R2248, 2254, 2268-69). At some point Hall removed his uniform shirt and claimed he put it in his locker.[43]

[43] On November 21, 2008, Corrections Officer White located an inmate's prison shirt, covered in dust, on the top of a spray

(V25, R2187, 2225). He put his bloody white T-shirt in a bucket of water on the floor near Fitzgerald's body. (V25, R2197-98, 2273-74). Then, he put on inmate Prince's uniform shirt and T-shirt which he found in the room Fitzgerald was in. (V25, R2187, 2197, 2226, 2274). Hall continued looking for narcotics in the sand blast room. He "was mad." (V25, R2270, 2272). Hall returned to the room where he had placed Fitzgerald's body and pulled her pants down. (V25, R2248, 2272). At this point, other officers arrived. (V25, R2248).

In *Silvia v. State*, this Court stated:

> In order to establish the CCP aggravator, the evidence must show that (1) "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)"; (2) "the defendant had a careful plan or prearranged design to commit murder before the fatal incident (calculated)"; (3) "the defendant exhibited heightened premeditation (premeditated)"; and (4) "the defendant had no pretense of moral or legal justification." *Franklin v. State,* 965 So. 2d 79, 98 (Fla. 2007). This can be established "by examining the circumstances of the killing and the conduct of the accused." *Id.* "The CCP aggravator can 'be indicated by circumstances showing such facts as advance procurement of a weapon, lack of resistance or provocation, and the appearance of a killing carried out as a matter of course.'" *Id.* (*quoting Swafford v. State,* 533 So. 2d 270, 277 (Fla.1988)). "'CCP involves a much higher degree of premeditation' than is required to prove first-degree murder." *Deparvine v. State,* 995 So. 2d 351, 381–82 (Fla.2008) (quoting *Foster v. State,* 778 So. 2d 906, 921 (Fla.2000)).

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paint booth in the PRIDE facility. The inmate's name patch on the shirt had been ripped off. The shirt appeared to have dried blood on it. (V25, R2319, 2320, 2327).

Silvia v. State, 36 Fla. L. Weekly S138, 140-141 (Fla. Apr. 7, 2011).

In this case, Hall stayed behind in the PRIDE facility when his shift had ended and the other inmates left. He looked for narcotics that he claimed inmate Prince hid in the building. (V24, R2191-92). Hall turned the lights off in the building. (V25, R2118, 2205). Hall armed himself in advance with the shank and hid in the welding shed area in a closet, **before** Officer Fitzgerald found him. (V25, R2218, R2221, 2271). He hid the shank behind his leg where Fitzgerald could not see it. (V25, R2200). When Officer Fitzgerald found him, Hall said she "was right in my face," grabbed him by his left arm, and told him to leave. (V14, R2200, 2223). Hall then grabbed Fitzgerald's necklace and yanked her back, beat her about the face, and repeatedly stabbed her until she fell on the floor. (V14, R2200-01). There was no indication Fitzgerald provoked Hall in any manner. She had seven defensive stab wounds on her fingers, hands, and arms, and fifteen stab wounds to her torso and back. (R28, R2616-19, 2629-30). Hall then retrieved Fitzgerald's work keys and put them in his pocket. (V14, R2226, 2227). He hid the weapon inside an empty cinderblock, **eleven** feet off the ground, in a brick wall by the welding area. (V25, R2255, 2268: V26, R2410). He wrapped a towel around Fitzgerald's head and covered her with blankets. (V28, R2267, 2268). Hall then attempted to

cover up the blood outside the welding area with “speedy dry” and swept the bloody area and granules towards a fence. (V25, R2250, 2268; V26, 2423-24). Hall carried Fitzgerald’s body to another area of the PRIDE facilities and placed her body on a cart. (V25, R2248, 2254, 2268-69). Hall removed his uniform shirt, put his bloody white T-shirt in a bucket of water on the floor, and then put on inmate Prince’s uniform shirt and T-shirt which he found in the room Fitzgerald was in. (V25, R2187, 2197-98, 2225-26, 2273-74). Hall then continued looking for narcotics in the sand blast room and continued walking around the building, looking for pills. (V25, R2270, 2272). Hall “was all over PRIDE, looking for pills.” (V14, R2248). Finally, Hall returned to the room where he had placed Fitzgerald’s body and pulled her pants down. (V25, R2248, 2272). He ran out of the room when other officers arrived.[44] (V25, R2229, 2248, 2273).

As found by the trial court, sufficient evidence exists to support the cold, calculated, and premeditated aggravator. Hall armed himself in advance, hid in a closet in the welding shed, and, upon being found by Officer Fitzgerald, repeatedly stabbed her, took her keys, attempted to cover up the bloody welding area, and then covered and hide her body in another room. He then proceeded to search for narcotics (“pills”) throughout the

[44] Hall had possession of Fitzgerald’s work keys when he was apprehended. (V24, R2034, 2041, 2082).

PRIDE building before other officers arrived. Competent, substantial evidence exists to support this aggravator. *Pham v. State*, 36 Fla. L. Weekly S259, 262 (Fla. June 16, 2011) (defendant brought two knives to the scene, hid behind a closet door for an hour, waited for victim to arrive home and immediately attacked her); *Silvia, supra; McGirth v. State*, 48 So. 3d 777, 793-794 (Fla. 2010); *Turner v.* State, 37 So. 3d 212, 223-226 (Fla. 2010); *Walker v. State*, 957 So. 2d 560, 581-583 (Fla. 2007) (defendant laying in wait and attacked the victim); *Lynch v. State*, 841 So. 2d 362, 372 (Fla. 2003); *Anderson v. State,* 863 So. 2d 169, 176-177 (Fla. 2003).

The CCP aggravator was properly applied here, and death is the proper sentence.

Alternatively and secondarily, without conceding error of any sort, death is still the proper sentence even if the coldness aggravator is removed from the sentencing equation. Even without this aggravator, four[45] strong aggravating factors remain, including the heinous aggravator, which is one of the "most serious aggravators set out in the statutory sentencing scheme." *Aguirre–Jarquin v. State*, 9 So. 3d 593, 610 (Fla. 2009)

[45] The trial court merged two of the six aggravators: that the victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties, and, the capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws. (V11, R1799).

(*quoting Larkins v. State*, 739 So. 2d 90, 95 (Fla. 1999)), *cert. denied*, ––– U.S. ––––, 130 S.Ct. 1505, 176 L.Ed.2d 118 (2010). Those four aggravators are far more than sufficient to support a sentence of death. Even if there was some error, it was harmless beyond a reasonable doubt. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986).

Heinous, Atrocious, or Cruel

In discussing the HAC aggravator, Hall claims the trial court erred in relying on the medical examiner's testimony in finding HAC. *Initial Brief*, at 69. Hall asserts that the medical examiner's testimony regarding the sequence of the stab wounds to Fitzgerald's body was unsupported by any medical evidence. *Initial Brief*, at 70. Hall argues the sequence of the stab wounds could have been as follows:

> after the defensive wounds were inflicted, Officer Fitzgerald slumped forward, he stabbed her in the back rendering her unconscious, she starts to fall, he grabs her by her hair to pull her up, and then stabs her in the abdomen.

Initial Brief, at 70.

In finding that Hall's murder of Officer Donna Fitzgerald was heinous, atrocious, or cruel, the trial court made the following findings:

> The Volusia County Associate Medical Examiner, Dr. P. Bulic, is a forensic pathologist licensed to practice medicine in Florida. He described that the victim's body bore evidence of blunt force injuries, mostly on both sides of the face, caused by punches by a hand.

The victim was alive at the time of the blows. The victim's hands and arms had sustained seven defensive wounds caused by a sharp instrument. She was alive at the time these wounds were inflicted. Fifteen additional stab wounds were inflicted upon the victim as follows: one stab wound penetrated the abdominal wall and the liver causing internal bleeding; ten stab wounds were inflicted upon the victim's back; one of the back wounds entered the chest causing a rib to fracture and to penetrate the lung and liver; one back wound ended at the bottom of the left lung; two other back wounds similarly ended at the bottom of the lung; one left-side back wound was "very deep" and penetrated the victim's heart; five additional back wounds entered the left lung. The victim sustained collapsed left and right lungs as a result of the stab wounds and was alive at the time the stab wounds were inflicted. The stab wound to the heart was "immediately lethal," meaning that the victim would not have survived even if the wound had been immediately medically treated; the victim would have lived no more than five minutes as a result of this wound to the heart.

The witness was puzzled to note a ligature mark around the victim's mouth and neck. At first, he suspected that the perpetrator had attempted to gag the victim or to strangle her with some other instrument. On further examination of the crime scene photos, the doctor noted the presence of a necklace around her neck. He found the gold chain necklace on the body and noted that it fit exactly over the ligature marks. The doctor determined that the necklace had been pulled tightly around the victim's mouth and neck from behind in a manner so as to exert sufficient force to leave a post-mortem mark consistent with ligation.

Dr. Bulic described the likely sequence of the penetrating wounds to the victim. First, she would have experienced the defensive wounds to the hands and arms as she tried to protect herself from the defendant's knife thrusts. She was alive at this time. Next, the victim would have sustained the abdominal stab wounds. She still would have been "vital" as these knife wounds were inflicted upon her. The stab wounds to the back probably were inflicted last. The victim was alive at the time all of the blunt force

> injuries to the face and all of the sharp wounds were inflicted upon her. By reason of the collapse of the lungs, the victim would have experienced immediate difficulty breathing. She would have been gasping for air and choking as blood filled her airway. She would have expired within minutes of the fatal heart wound. Photographs of the victim taken at the scene of the crime and during post-mortem examination demonstrate that the deep, penetrating wounds to the victim's back and side were closely grouped consistent with being aimed at particular areas of the body.
>
> The evidence establishes that the murder of Officer Fitzgerald was both conscienceless or pitiless and unnecessarily torturous to the victim. *See, Hardson v. State*, 604 So. 2d 1107, 1109 (Fla. 1992). This aggravator has been established beyond a reasonable doubt. The court gives very great weight to this aggravator.

(V11, R1794-1796). Sufficient evidence exists to support these findings.

There were blunt force injuries on both sides of Fitzgerald's face caused by punches. (V28, R2613, 2616, 2618). Fitzgerald's necklace "being pulled backward or being yanked backward" caused faint abrasions "similar to ligature marks" on her mouth which extended across her cheeks. (V28, R2641, 2642, 2643). There were seven defensive wounds on her fingers, hands and arms. (V28, R2616, 2617, 2618). In Bulic's opinion, Fitzgerald was alive and trying to protect her face and vital organs when these wounds were inflicted. (V28, R2619). Fitzgerald was alive when she sustained five stab wounds to her upper and lower abdomen. (V28, R2622, 2624, 2628). In Bulic's opinion, none of these wounds were fatal with the exception of

one stab wound -- even then Fitzgerald's life might have been saved had she received medical attention. (V28, R2624, 2628).

Bulic also identified ten stab wounds to Fitzgerald's back. (V28, R2629-30). Those stab wounds ranged in depth from three to five inches. (V28, R2629-30, 2639). Bulic opined that Fitzgerald was still standing when "significant force" was used when one of the stab wounds penetrated Fitzgerald's lung, diaphragm, and rib. (V28, R2631, 2632). Her lungs would have collapsed and she would have had difficulty breathing. (V28, R2632-33, 2634). A significant amount of force was used when a stab wound to Fitzgerald's back, five inches in depth, penetrated her heart. (V28, R2636, 2637). With two collapsed lungs, Fitzgerald would have been "gasping for air." (V28, R2638). Bulic said she could have survived for a "maximum of five minutes." (V28, R2636, 2637-38, 2646). Fitzgerald did not sustain post-mortem injuries. (V28, R2639). Bulic concluded that the defensive wounds occurred first, followed by the abdominal injuries, with the back wounds occurring last. (V28, R2639, 2640, 2646).

This Court has held that "fear, emotional strain, and terror of the victim during the events leading up to the murder may make an otherwise quick death especially heinous, atrocious, or cruel." *James v. State*, 695 So. 2d 1229, 1235 (Fla. 1997). Furthermore, "the victim's mental state may be evaluated for purposes of such determination in accordance with a common-sense

inference from the circumstances." *Swafford v. State*, 533 So. 2d 270, 277 (Fla. 1988); *see also Lynch v. State*, 841 So. 2d 362, 369 (Fla. 2003) ("[T]he focus should be upon the victim's perception of the circumstances...."). And, in *Buzia v. State*, 926 So. 2d 1203, 1214 (Fla. 2006), this Court upheld the finding of the HAC aggravator and stated: "Whether this state of consciousness lasted minutes or seconds, he was 'acutely aware' of his 'impending death[ ].' We have upheld the HAC aggravator where the victim was conscious for merely seconds." *Aguirre-Jarquin v. State*, 9 So. 3d 593, 608 (Fla. 2009). This murder, however, was not quick.

The heinousness aggravator is also supported by this Court's decisions in *Miller v. State*, 42 So. 3d 204, 228 (Fla. 2010); *Schoenwetter v. State*, 931 So. 2d 857, 874 (Fla. 2006)(victim stabbed at least ten times), and *Guzman v. State*, 721 So. 2d 1155 (Fla. 1998). Those cases, like this one, were stabbing murders which were preceded by a period of time in which the victim was terrorized before being murdered. It takes no imagination to recognize the terror that Officer Fitzgerald endured during the last minutes of her life -- those circumstances establish the heinousness aggravator beyond any doubt at all. Competent, substantial evidence supports the HAC aggravator. The trial court properly found this aggravator, and that determination should not be disturbed.

Alternatively and secondarily, even without this aggravator, four strong aggravating factors remain, including the coldness aggravator, which is one of the most serious aggravators set out in the statutory sentencing scheme. *Silvia v. State*, 36 Fla. L. Weekly S138 (Fla. Apr. 7, 2011). Under these facts, any error is harmless. *State v. DiGuilio,* 491 So. 2d 1129 (Fla. 1986).

In finding that the CCP and HAC aggravators were applicable, the sentencing court discussed the evidence in detail, and properly applied both aggravating factors.

Mitigation

On pages 69-71 of his brief, Hall argues that the sentencing court erred when it rejected, as mitigation, that Hall was suffering from a cognitive disorder NOS and Coercive Paraphelia Disorder. *Initial Brief* at 70. Additionally, Hall claims the trial court erred when it held that there was no evidence that the murder was committed under extreme emotional disturbance, thereby rejecting Hall's statements that he had "freaked out." *Initial Brief* at 70. It is within the trial court's discretion to decide whether a mitigating circumstance is proven. *Frances v. State*, 970 So. 2d 806, 819 (Fla. 2007); *Pardo v. State*, 563 So. 2d 77, 80 (Fla.1990); *Scull v. State*, 533 So. 2d 1137, 1143 (Fla. 1988); *Teffeteller v. State*, 439 So. 2d 840, 846 (Fla. 1983).

This Court in *Campbell v. State*, 571 So. 2d 415 (Fla. 1990), established relevant standards of review for mitigating circumstances: 1) whether a particular circumstance is truly mitigating in nature is a question of law and subject to de novo review by this Court; 2) whether a mitigating circumstance has been established by the evidence in a given case is a question of fact and subject to the competent substantial evidence standard; and finally, 3) the weight assigned to a mitigating circumstance is within the trial court's discretion and subject to the abuse of discretion standard. *See also Kearse v. State*, 770 So. 2d 1119, 1134 (Fla. 2000) (observing that whether a particular mitigating circumstance exists and the weight to be given to that mitigator are matters within the discretion of the sentencing court); *Trease v. State*, 768 So. 2d 1050, 1055 (Fla. 2000) (receding in part from *Campbell* and holding that, though a court must consider all the mitigating circumstances, it may assign "little or no" weight to a mitigator); *Mansfield v. State*, 758 So. 2d 636 (Fla. 2000) (explaining that the trial court may reject a claim that a mitigating circumstance has been proven provided that the record contains competent substantial evidence to support the rejection). This Court has said:

> In summary, we have established a number of broad principles for the trial courts to use in evaluating the mitigating evidence offered by defendants. A trial court must find as a mitigating circumstance each proposed factor that has been established by the

> greater weight of the evidence and that is truly mitigating in nature. However, a trial court may reject a proposed mitigator if the mitigator is not proven or if there is competent, substantial evidence to support its rejection. Even expert opinion evidence may be rejected if that evidence cannot be reconciled with the other evidence in the case. Finally, even where a mitigating circumstance is found a trial court may give it no weight when that circumstance is not mitigating based on the unique facts of the case.

Coday v. State, 946 So. 2d 988, 1003 (Fla. 2006). That is the state of the law, and the sentencing court followed it exactly.

With regard to Hall's claim that he was suffering from a cognitive disorder NOS, Coercive Paraphelia Disorder, and under "extreme emotional disturbance," the trial court made the following findings:

> The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. *Fla. Stat*. §921.141 (6)(b). Defendant submitted evidence and argument in support of this statutory mitigating circumstance at the *Spencer* hearing conducted December 7, 2009. Harry Krop, Ph.D., a clinical psychologist with a specialty in forensic psychology, testified for the defense. He testified to his interviews with the defendant, his review of numerous records, and his administration of many psychological tests to the defendant. He reached the opinion that defendant had the following psychological diagnoses: Cognitive Disorder NOS ("not otherwise specified"); and Coercive Paraphelia Disorder (multiple sexual offender). He opined that defendant also has an alcohol/substance abuse disorder by history (this is not a psychological diagnosis). He ruled out Post-traumatic Stress Disorder (defendant may have experienced this in the past) and Intermittent Explosive Disorder (this was not supported by the available evidence). He testified that he always had felt that defendant was competent

to stand trial and that defendant was sane at the time of offense. However, Dr. Krop believes that the defendant had a serious emotional disorder at the time of the offense, and that the defendant's ingestion of Tegretol (according to the history given by defendant) could "bring out" some of his underlying psychological traits. This opinion incorporated Dr. Krop's knowledge of the opinion of Dr. Buffington (pharmacologist) to the effect that the defendant's underlying psychological abnormalities could be "unmasked" by the ingestion of excessive quantities of Tegretol (as stated by defendant in his history to Dr. Krop). Dr. Buffington testified at the penalty phase of trial and at the *Spencer* hearing. He is a clinical pharmacologist and interviewed defendant at the request of the defense. In that interview, defendant gave conflicting stories about what medications he may have taken on the date of the crime. However, the witness believes defendant did take Tegretol (an anti-seizure medication) by history, and that the amount ingested would have been excessive. This could result in adverse effects on the skin and cardiovascular system, imbalance in electrolytes, nausea, vomiting, central nervous system effects, dizziness, impaired cognition, mania, and suicidal tendencies. Based upon the witness's belief that defendant had a past history of schizophrenia and seizure disorder (per a reference in defendant's Department of Corrections file), as well as his observation of defendant in the video of his confinement after the crime (Dr. Buffington believes it demonstrates that defendant was in a "catatonic state"), the witness stated that defendant's underlying psychological condition "could have been unmasked" by the Tegretol causing him to commit the violent crime. The witness admitted that the defendant gave conflicting statements about the type of drugs and quantities he may have taken.

The State offered rebuttal testimony from Dr. William Riebsame, Ph.D., a forensic psychologist and professor of psychology, and Dr. Jeffery Danziger, M.D., a board certified forensic psychiatrist. Dr. Riebsame testified that he reviewed the records of Dr. Krop's testing of defendant together with other exhibits and background evidence. He concluded that the results of tests administered to defendant by Dr. Krop were "questionable." There was an inconsistent

effort by defendant in completing the tests and, most importantly, Dr. Krop failed to test for malingering. Such malingering test instruments are available and should have been administered to verify the psychological opinion. Defendant does have a low average intelligence quotient and an emotional/behavioral disturbance. However, there is no corroboration for any cognitive disorder, and defendant does not have a psychological diagnosis.

Dr. Danziger examined defendant at the request of the State after the guilt phase of trial. He reviewed all of the medical and school records available for the defendant, the psychological tests administered to defendant by Dr. Krop, and DOC records. He also reviewed statements the defendant had given to FDLE after the subject crime. He found no evidence that defendant experienced a psychotic disorder at the time of the crime. Rather, Dr. Danziger found that the defendant demonstrated strong indications of malingering on the test instruments he administered to him at the time of interview. He found many inconsistencies in the statements defendant had given to his doctors and to Dr. Danziger himself regarding his history of drug use before the crime. The EEG and PET scan results for the defendant were normal. The MRI report showed no focal abnormalities in the brain although there was some cerebral atrophy and white matter abnormality. As a result of the examination and review of defendant's records, Dr. Danziger arrived at the opinion that defendant has the following diagnoses: history of substance abuse partially in remission due to prison setting; adult anti-social behavior (but he cannot say it was a "disorder" by reason of the lack of evidence of such behaviors during childhood); history of sexually related charges, possibly psycho-sexual disorder; and pseudo-seizure disorder by history in DOC (corroborated by records). The defendant has no sign of mental retardation or cognitive deficit. He has no sign of "intermittent explosive disorder." He strongly disagreed with the opinion of Dr. Buffington that defendant's use of Tegretol could "unmask" an underlying psychological illness, especially where there was no proof defendant ingested Tegretol except from his own conflicting statements. Furthermore, defendant did not have an underlying psychological

> illness to be "unmasked." Such an effect of Tegretol is "unheard of' according to the witness. Furthermore, the defendant's own actions in performing a well organized attempt to conceal the crime he had committed belie any suggestion of psychotic illness. The witness strongly disagreed with any attempt by Dr. Buffington to "diagnose" a psychological condition where he is a pharmacologist by profession and not licensed to practice medicine. Finally, there is no evidence that the defendant committed the crime while under the influence of extreme mental disturbance. Nothing in the video recording of defendant's appearance after the crime supports the conclusion that defendant was confused or otherwise suffering from a mental condition. The video provides nothing useful in making a psychological diagnosis.
>
> The court has reviewed all of defendant's medical records in evidence as well as the deposition of John Tanner, M.D., dated October 2, 2009, State's Exhibit 1 at the Spencer hearing. Dr. Tanner is the neurologist who examined defendant at the request of the defense. He ordered an MRI and PET scan of the defendant. The PET scan was normal. The MRI did show some abnormalities in the defendant's brain (mild to moderate cerebral atrophy, some "white matter disease," and some asymmetry in the two brain hemispheres). According to this witness, these results are not sufficient to determine a mental illness in the absence of clinical diagnosis.
>
> Even if the evidence were sufficient to prove that defendant suffered from an extreme mental or emotional disturbance at the time of the murder, there is absolutely no evidence that such a mental disturbance prevented him from carefully planning, preparing for, and executing the murder of Officer Fitzgerald. *See, Sexton v. State*, 775 So. 2d 923, 934 (Fla. 2000). The court finds that the defense has not established the existence of this mitigating circumstance and, therefore, places no weight upon it.

(V11, R1806-10). A trial court has the discretion to reject a statutory mitigator where one expert's testimony is rebutted by that of another. *Zommer v. State*, 31 So. 3d 733, 749 (Fla.

2010). Further, there is no requirement that the sentencing court credit mitigation testimony, regardless of whether it is factual testimony or expert opinion. *Walls v. State*, 641 So. 2d 381, 390-391 (Fla. 1994). In Hall's case, there is no evidence of extreme emotional disturbance. Accordingly, the trial court's rejection of the statutory mitigator of emotional disturbance is supported by competent, substantial evidence. *Allred v. State*, 55 So. 3d 1267, 1281-1282 (Fla. 2010). When the sentencing order is considered in context, it is clear that there was no abuse of discretion. This claim is meritless.

Proportionality

On pages 71-74, Hall argues that his death sentence, which is supported by five aggravating factors (including three of the weightiest aggravators), is disproportionate. "Proportionality review compares the sentence of death with other cases in which a sentence of death was approved or disapproved." *Palmes v. Wainwright*, 460 So. 2d 362, 362 (Fla. 1984). This Court must "consider the totality of circumstances in a case, and compare it with other capital cases. It is not a comparison between the number of aggravating and mitigating circumstances." *Porter v. State*, 564 So. 2d 1060, 1064 (Fla. 1990).

There is no question at all as to Hall's guilt based on his confession. Against the aggravating factors found by the trial court was minimal mitigation, none of which was compelling.

The trial court found and weighed the following aggravating circumstances as follows:

(1) previously convicted of a felony and under sentence of imprisonment - great weight;

(2) previously convicted of another capital felony or of a felony involving the use or threat of violence to the person - great weight;

(3) committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws - great weight;

(4) especially heinous, atrocious or cruel - great weight;

(5) cold, calculated, and premeditated – great weight;

(6) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties - no weight - merged with aggravator number three as listed above.

This Court has recognized that CCP and HAC are "two of the most serious aggravators set out in the statutory sentencing scheme." *Aguirre-Jarquin*, *supra*; *Silvia*, *supra*; *Larkins v. State*, 739 So. 2d 90, 95 (Fla. 1999); *see also Hodges v. State*, 55 So. 3d 515, 542 (Fla. 2010) ("Qualitatively, prior violent felony and HAC are among the weightiest aggravators set out in the statutory sentencing scheme"). Furthermore, this Court has upheld death sentences where the prior violent felony aggravator

was the only one present. *See Rodgers v. State*, 948 So. 2d 655 (Fla. 2006); *LaMarca v. State*, 785 So. 2d 1209, 1217 (Fla. 2001); *Ferrell v. State*, 680 So. 2d 390, 391 (Fla. 1996).

In mitigation, the sentencing court found no statutory mitigators and gave "little weight" to "some weight" (V11, R1810) to the non-statutory mitigating circumstances, none of which are compelling or in any way diminish the substantial aggravators.[46]

Hall relies on various cases for the proposition that his death sentence is not proportionate. Hall compares his case to *Offord v. State*, 959 So. 2d 187 (Fla. 2007); *Robertson v. State*, 699 So. 2d 1343 (Fla. 1997); *Kramer v. State*, 619 So. 2d 274 (Fla. 1993) and *Nibert v. State*, 574 So. 2d 1059 (Fla. 1990). These cases are distinguishable.

In *Offord*, the defendant had an extensive history of a life-long mental illness. This Court found that Offord's illness contributed to the crime and agreed with the trial court's

[46] The trial court found the following mitigation existed: defendant was a good son and brother – some weight; defendant's family loves him – little weight; defendant was a good athlete who won awards and medals – little weight; defendant was a victim of sexual abuse – some weight; defendant was productively employed while in prison – some weight; defendant cooperated with law enforcement – some weight; defendant showed remorse - little weight; and defendant displayed appropriate courtroom behavior – little weight. (V11, R1800-06).

finding that Offord was under the influence of extreme mental or emotional disturbance and that Offord's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired. The one aggravating circumstance found was HAC. However, "[a]s a general rule, 'death is not indicated in a single-aggravator case where there is substantial mitigation." *Offord* at 192, *citing Almeida v. State*, 748 So. 2d 922, 933 (Fla. 1999) (*quoting Jones v. State*, 705 So. 2d 1364, 1367 (Fla. 1998).) After reviewing the mitigation evidence presented by Offord, this Court concluded that Offord's lifelong history of severe mental illness made the death sentence in this single-aggravator murder a disproportionate punishment. Likewise, in *Nibert*, HAC was the only aggravator along with "a large quantum of uncontroverted mitigating evidence." *Nibert v. State*, 574 So. 2d 1059, 1062 (Fla. 1990).

In *Robertson*, although there were two valid aggravating circumstances, (committed during the course of a burglary and HAC) this Court found that death was not proportionately warranted in light of the substantial mitigation presented. (Robertson's age of nineteen; impaired capacity at the time of the murder due to drug and alcohol use; abused and deprived childhood; history of mental illness and borderline intelligence.) "When compared to other death penalty cases,

death is disproportionate under the circumstances present here." *Robertson v. State* 699 So. 2d 1343, 1347 (Fla. 1997).

Finally, in *Kramer*, this Court found the existence of two aggravators: HAC and prior violent felony. Upon reviewing the facts and mitigating circumstances, "The factors establishing alcoholism, mental stress, severe loss of emotional control, and potential for productive functioning in the structured environment of prison are dispositive here. While substantial competent evidence supports a jury finding of premeditation here, the case goes little beyond that point. The evidence in its worst light suggests nothing more than a spontaneous fight, occurring for no discernible reason, between a disturbed alcoholic and a man who was legally drunk. This case hardly lies beyond the norm of the hundreds of capital felonies this Court has reviewed since the 1970s. *See Teffeteller v. State,* 439 So.2d 840, 846 (Fla.1983), *cert. denied,* 465 U.S. 1074, 104 S.Ct. 1430, 79 L.Ed.2d 754 (1984). Our law reserves the death penalty only for the most aggravated and least mitigated murders, of which this clearly is not one. Accordingly death is not a proportional penalty here." *Kramer v. State*, 619 So. 2d 274, 278 (Fla. 1993). Hall's reliance on those cases is an attempt to fit a square peg in a round hole.

This crime is more analogous to *Miller v. State,* 42 So. 3d 204, 229 (Fla.2010); *Turner v. State,* 37 So. 3d 212, 228 (Fla.

2010); *Zommer v. State*, 31 So. 3d 733, 752 (Fla. 2010); and *Buzia v. State*, 926 So. 2d 1203, 1216 (Fla. 2006), where this Court affirmed the sentences of death. The mitigators that were presented here are weak when weighed against the five aggravators, three of which are the most serious aggravators in Florida law (HAC, CCP, prior violent felony). The facts of this case are even more aggravated than *Miller*, *Zommer*, and *Buzia*. Death is the proper sentence.

VI. THE *RING V. ARIZONA* CLAIM

On pages 75-76 of his brief, Hall argues that his death sentence violates *Ring v. Arizona*, 536 U.S. 584 (2002). Under settled Florida law, Hall has no cognizable *Ring* claim because both the prior violent felony and under a sentence of imprisonment aggravators are present. This Court has made that fact clear:

> Hodges filed pretrial motions to bar imposition of the death sentence on the basis that Florida's capital sentencing scheme is unconstitutional under *Ring.* Hodges now contends that because this Court has wrongly interpreted the impact of *Ring* on Florida's death sentencing scheme, the trial court erred in denying his motions. Hodges asserts that this Court has erred in concluding that *Ring* is not implicated where one of the aggravating circumstances found by the trial court is that the defendant has been previously convicted of a prior violent felony. Hodges also asserts that this Court has erred by concluding that Florida may allow nonunanimous jury sentencing recommendations. Hodges' arguments are without merit.
>
> This Court has repeatedly held that *Ring* does not apply to cases where the prior violent felony, the

> prior capital felony, or the under-sentence-of-imprisonment aggravating factor is applicable. *See, e.g., Victorino v. State,* 23 So. 3d 87, 107–08 (Fla. 2009). Hodges offers no argument in opposition to this holding that has not been previously considered by this Court. Thus, he offers no persuasive reason to depart from precedent. Similarly, Hodges offers no reason for this Court to recede from its holding, *see, e.g., Frances v. State,* 970 So. 2d 806, 822 (Fla. 2007), that Florida's capital sentencing scheme need not require unanimous sentencing recommendations. Given that the aggravating factors of prior violent felony and under a sentence of imprisonment indisputably apply in the instant case—Hodges was convicted of robbery and aggravated assault prior to sentencing in this case and was on parole at the time of the Belanger's murder—Hodges is not entitled to relief on the basis of *Ring.*
>
> *Hodges v. State*, 55 So. 3d 515, 540-541 (Fla. 2010).

Additionally, this Court has also repeatedly rejected the argument that the jury must reach a unanimous decision on the aggravating circumstances. *Abdool v. State*, 53 So. 3d 208, 228 (Fla. 2010); *McWatters v. State*, 36 So. 3d 613, 644 (Fla. 2010); *Poole v. State*, 997 So. 2d 382, 396 (Fla. 2008); *See, e.g.*, *Parker v. State*, 904 So. 2d 370, 383 (Fla. 2005); *Hodges v. State*, 885 So. 2d 338, 359 (Fla. 2004); *Porter v. Crosby*, 840 So. 2d 981, 986 (Fla. 2003).

Finally, Hall’s argument that this Court should revisit its opinions in *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002), and *King v. Moore*, 831 So. 2d 143 (Fla. 2002), and find Florida's sentencing scheme unconstitutional has previously been rejected. *Abdool v. State*, 53 So. 3d 208, 228 (Fla. 2010). *See, e.g.,*

Guardado v. State, 965 So. 2d 108, 118 (Fla. 2007). To the extent that Hall claims *Ring v. Arizona* entitles him to relief for the imposition of a life sentence, nothing supports that outcome. Under settled Florida law, there is no basis for relief under *Ring*.

CONCLUSION

Hall's conviction and sentence of death should be affirmed in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to: Meghan Ann Collins, Assistant Public Defender, 444 Seabreeze Blvd., Suite 210, Daytona Beach, Florida 32118, on this _____ day of June, 2011.

Of Counsel

CERTIFICATE OF COMPLIANCE

This brief is typed in Courier New 12 point.

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