IN THE SUPREME COURT OF FLORIDA

WILLIAM GREGORY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. SC11-842

ON APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

# ANSWER BRIEF OF APPELLEE

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## TABLE OF CONTENTS

## TABLE OF CITATIONS

**Cases**

**Statutes**

## PRELIMINARY STATEMENT

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

"V" indicates volume of the record on appeal;

"R" for pleadings in the record;

"T" for transcripts of trial, penalty phase, etc.;

"Supp.R" for supplemental record.

## OVERVIEW

William Gregory, 24, and Skyler Meekins, 17, had an affair which produced one child, Kyla. Gregory was imprisoned, and during the time of his imprisonment the relationship soured. Gregory became obsessively jealous. After Gregory was released from jail, he learned Skyler was dating Daniel Dyer. On August 21, 2007, Gregory snuck into the residence where Skyler and Daniel were sleeping, took a .12 gauge shotgun from the closet, loaded it, and shot Skyler and Daniel in the head as they slept.

## STATEMENT OF THE CASE

William Gregory was indicted on the following charges:

(1) First Degree Murder of Skyler Dawn Meekins;

(2) First Degree Murder of Daniel Arthur Dyer;

(3) Burglary;

(4) Possession of a firearm by a convicted felon.

(V1, R12-13).

**Trial.** The case was tried by jury from February 22-March 3, 2011. (V9-22). Gregory was convicted as charged. (V4, R604-07). On Count 3, the jury made specific findings that Gregory both carried and discharged a firearm and committed an assault or battery. (V4, R606).

**Penalty Phase.** The penalty phase was held on March 9, 2011. (V24). By a vote of seven to five (7-5), the jury recommended a sentence of death for the murder of Skyler Dawn Meekins. (V25, PP2459). By a vote of seven to five (7-5), the jury recommended a sentence of death for the murder of Daniel Arthur Dyer. (V25, PP2459).

***Spencer* Hearing**. The *Spencer* hearing was held April 1, 2011. (V29). The State relied on the sentencing memorandum provided to the court. (V29, T4). The trial judge had received a letter from Julia Barrett and the pre-sentence investigation report. (V29, T6). Defense counsel requested the court consider testimony and evidence from the PSI that acknowledged Gregory had been employed prior to the homicide. (V29, T7). The trial judge stated he would consider that as additional mitigation. (V29, T7). Defense counsel disputed the

reference in the PSI to a "gang" tattoo. Gregory had a tattoo, but it was not gang related. (V29, T9). The trial judge struck the statement from the PSI. (V29, T10).

The State called Daniel Dyer's sister, Jennifer, as a witness. (V29, T12). Defense counsel objected to victim impact evidence. (V29, T13). Jennifer had prepared a letter for the judge. (V29, T16). Jennifer read the letter into the record and a copy of it was filed. (V29, T17-22). Skyler's family sent two letters, which the Assistant State Attorney read into the record. (V29, T24-30).

Defense counsel introduced copies of the motion for postconviction relief on the felony for which Gregory was on felony probation. (V29, T31). The motion had been denied and was on appeal. (V29, T31). Defense counsel also introduced letters from family and friends of Gregory: Jenny Ross, Edward Ray Gregory, Tara Reilly, Michael Furmanek, Leigha Furmanek, Kimberly Furmanek, Kristi Probert, Erin Daley, and Donna Pruitt. (V29, T32). Defense counsel also filed a medical report on a 2004 case in which Gregory was charged with battery on a medical care provider. (V29, T32). The medical report showed Gregory was "suffering from alcohol poisoning" and had a blood alcohol level of "2.58". (V29, T33). This report was admitted to show Gregory consumed drugs and alcohol. (V29, T33). The State objected on hearsay grounds. (V29, T33).

Leigha Furmanek spoke in person to the court and asked the judge not to impose the death penalty. (V29, T35).

**Sentencing and Attendant Trial Court Findings.** The trial judge sentenced Gregory to death. (V5, T1-39). The judge found four aggravating circumstances as to both victims, who were killed simultaneously:

(1) committed while on felony probation - moderate weight;

(2) conviction of prior violent felony; i.e., the contemporaneous murders – very substantial weight;

(3) committed during a burglary - moderate weight;

(4) committed in a cold, calculated and premeditated manner - great weight.

(V4, R718-28).

The trial judge found one statutory mitigating factor: the murders were committed while the defendant was under the influence of extreme mental or emotional disturbance. The judge gave this factor slight weight. (V4, R722-23). The trial judge rejected the statutory mitigating factor that Gregory's capacity to conform his conduct was substantially impaired. (V4, R723). As non-statutory mitigation, the trial judge found:

(a) Long standing drug problem - slight weight;

(b) Grew up without his father and was raised by his mother - slight weight;

(c) Forced to witness sexual abuse during his childhood - slight weight;

(d) Dysfunctional childhood - slight weight;

(e) Impaired at the time of the homicides due to ingestion of drugs and/or

alcohol - slight weight;

(f) employed and a good worker - slight weight.

(V4, R724-27).

Notice of appeal was filed on April 19, 2011. (V4, R731). Gregory filed his initial brief on January 9, 2012.

## STATEMENT OF THE FACTS

**Events leading up to the murders**. During the summer of 2007, Skyler Meekins lived with her grandparents in Flagler Beach. (V15, T941). Skyler had a one-year old child, Kyla. Gregory is Kyla's father. (V15, T941). Skyler's brother, Colton, 16, lived next door with his father, stepmother, and 6- year-old brother, Darren. (V15, T939, 940, 945, 1070). Colton had known Gregory for about four years and they became "pretty good friends." (V15, T945). Gregory had lived with Skyler in the grandparents' home for about nine months. (V15, T943, 944). Gregory moved out before Kyla's first birthday (July 30) and went to live with his mother. (V15, T944, 945).

In June 2007, Gregory was in the Flagler county jail. He called Colton's house "multiple times" to try to talk to Skyler. Colton spoke with Gregory several times. (V15, T946). The June 24, 2007, phone call was published for the jury. (V15, T947, State Exh. 43). During that phone call, Gregory asked Colton if "Skyler

ever make it back." Colton said she had not and that Kyla was next door with the grandparents. (V15, T951). Gregory was "stressing" about Skyler. He asked Colton, "Do you know anybody's who's been calling her or anything?" (V15, T953). Colton did not know who his sister was "hanging out with right now … it could be anybody." (V15, T953). Gregory asked about several people that Skyler might be with. He asked Colton if he knew their phone numbers but Colton did not know. (V15, T954).

Colton told Gregory that he and Skyler had been at a party a few weeks ago but he did not see her talking to anyone. (V15, T955). Gregory told Colton that Skyler was "trying to hide something." (V15, T956). However, Colton said his sister was always home with the exception of that party night and that night. (V15, T957). Colton did not think his sister was seeing anyone else. (V15, T958). Gregory asked Colton to find Skyler and tell her that Gregory cared about her and not to " f—ck me over." (V15, T959). Gregory said, "I guess I'll probably ... try to get over Skyler ..." (V15, T960). Colton said he would tell his sister that Gregory had called and tell her that Gregory cared about her. (V15, T961). Gregory said he thought Skyler was "trying to like get with some dudes" since she left Kyla behind. (V15, T962). Gregory asked Colton to go find his sister and tell her, "don't f—ck with me ... at least tell him" if she was "going to go out and do her own thing." (V15, T962).

On June 25, called Skyler Meekins from jail. (V15, T965, 967, State Exh. 44). The phone call was published for the jury. (V15, T967). During that phone call, Skyler expressed anger toward Gregory because Gregory's sister, Leigha, yelled at her for not taking care of Kyla. Skyler said her sister Falon had been taking care of Kyla the previous night when Skyler went to her friend's house. (V15, T967). Gregory asked Skyler, "How long were you gone?" (V15, T969). Skyler told Gregory "I can do what the f—ck I want to now." (V15, T970). Further, she told Gregory she would not be writing to him in jail anymore. Gregory told Skyler that he loved her and had been trying to get hold of her the previous night and all day. (V15, T971-72). Skyler told Gregory not to get his sister Leigha involved. (V15, T972). They were not "still together" and she had informed him of that in her letters. (V15, T 973). She told Gregory she no longer cared about him. (V15, T974). Gregory told Skyler he did not want to lose her ... "over being jealous." Talking to her was "the highlight of my day." (V15, T978-79).

On June 26, Gregory spoke from jail via a three-way phone call with Colton and Colton's father, Charles Meekins. (V15, T980-81, 982, State Exh. 45). The phone call was published to the jury. In the phone call, Charles told Gregory that Skyler had taken her daughter to the beach. (V15, T984). Gregory asked Charles to tell Skyler that he called. Charles said if Skyler showed up, he would get her on the phone with Gregory. (V15, T985). After Charles got off the phone, Gregory asked

Colton to check Skyler's email to see "if she's f—cking all up on other dudes ..." Gregory told Colton he would call him back in a short while. (V15, T987). Gregory gave Skyler's email and password to Colton so he could log onto her computer account. (V15, T988). Colton told Gregory, "I'll help you out."

About twenty minutes later, Gregory called Colton again. (V15, T991, State Exh. 46). The phone call was published to the jury. During that phone call, Colton read a message to Gregory from Skyler's "Myspace" account which read, "I saw a picture of - - your hottie and he's pretty cute." Colton suggested the message was about Gregory as his picture was the only one on Skyler's Myspace page. (V15, T993). Gregory asked Colton to check Skyler's outgoing email messages. Colton relayed that all old messages were from females. (V15, T994). Gregory asked Colton to get his mother Lynda Probert, on a three-way call. (V15, T996). Gregory told his mother to try to call Skyler and that he would call Probert again later in the evening. (V15, T996).

Colton received another call from Gregory later in the afternoon on June 26. (V15, T997, 998, State Exh. 47). The phone call was published to the jury. Gregory asked Colton to again check Skyler's email. (T1000). Colton told Gregory that Skyler had joined a website called "SingleParentsMeet.com" (V15, T1002). Gregory told Colton that he had accessed Skyler's account from his phone and had erased all of Skyler's male contacts from her account. (V15, T1004-05). He asked

Colton to check all of Skyler's sent emails. (V15, T1004). Colton accessed Skyler's messages at SingleParentsMeet.com. (V15, T1006). He told Gregory that Skyler had not entered any profile for herself. Gregory asked Colton to try to erase Skyler's account. (V15, T1007).

Colton received another call a few minutes later which was published to the jury. (V15, T1010, State Exh. 48). Colton told Gregory there were no emails from any males. (V15, T1011). Gregory asked Colton to type a message from him on Skyler's Myspace page saying, "I'm sorry about the other night. I love you ... I miss you … Can't wait to get out ... Give Kyla hugs and kisses for me." (V15, T1013, 1014). Gregory asked Colton to find out if Skyler was home. He also asked Colton to check if his father's truck was there, which was not. (V15, T1015). Gregory then asked Colton to again check Skyler's outgoing messages on her Myspace account. (V15, T1016). Gregory wanted to know if there were any messages from men. (V15, T1018). Colton read several messages that went back and forth between Skyler and "The Italian Stallion." (V15, T1020-22). Colton also told Gregory that Skyler posted a message that read, "I'm single now, hottie, hottie..." Gregory told Colton to erase this message. (V15, T1023-24).

Gregory called Colton again a few minutes later, and spoke with him and Colton's younger brother Darren Meekins. (V15, T1027, 1028, State Exh. 49). The phone call was published to the jury. Colton told Gregory he was going to edit the

pictures on Skyler's Myspace account. (V15, T1031). Colton said he would write a caption under a picture of Gregory and Skyler that read, "Me and my boyfriend." (V15, T1032, 1035). Gregory asked him to write, "or ... fiancé or something." (V15, T1032). Gregory asked Colton to make a three-way call next door and see if Skyler was home. (V15, T1032). Darren answered the call and told Gregory and Colton that Skyler was at the beach with her friend Cori Aldrich. (V15, T1032-33). Gregory asked Darren to tell Skyler that he had called and that he loved her. (V15, T1033). After Darren hung up, Gregory asked Colton to remove all of Skyler's male contacts on her Myspace page. (V15, T1034, 1036). Colton told Gregory that he had informed Skyler that Gregory had been calling for her and that he cared about her. Skyler said she was mad at Gregory and "I don't even want to talk to him right now." (V15, T1043).

During the next call a few minutes later, Gregory asked Colton to call next door and see if Skyler was home. (V15, T1046, 1050, State Exh. 50). Colton said he would go next door and bring Skyler back with him. Gregory said he would call back in 15 minutes. (V15, T1052).

Gregory made another call around 7:32 p.m. on June 26 which was published to the jury. (V15, T1054, 1055, State Exh. 51). Colton heard the voices of Kory Gregory (Appellant's brother), Mary Ann Meekins, Colton's grandmother, and his younger brother, Darren. (V15, T1054). Kory placed a three-way call to Skyler's

home but MaryAnn Meekins said Skyler was not there. (V15, T1057). Kory then placed a three-way call to Colton's home and Gregory spoke with Darren. (V15, T1058). Gregory asked Darren to get Skyler at her friend Annie's house. (V15, T1059). Kory then placed another three-way call to Annie's house. Gregory left a message for Skyler on the answering machine. (V15, T1061). At Gregory's request, Kory made another three-way call to Colton's house and left a message for Skyler. (V15, T1062). Kory asked Gregory, "Won't they get mad?" because of the repeated phone calls. (V15, T1062). Kory told Gregory not to "be stressing" over Skyler ... "deal with that … when you come home." (V15, T1063). Gregory asked Kory to keep calling Skyler and tell her Gregory wanted to talk to her. (V15, T1066).

On June 29, Gregory spoke to Skyler Meekins via phone. The phone call was published to the jury. (V15, T1068, 1069, State Exh. 52). Gregory told Skyler that he might be released that evening and wanted to see her. Skyler told Gregory that she had plans and that "It would be kind of awkward." (V15, T1071).

Colton said that after Gregory was released from jail about one month before Kyla's birthday, he came by the house at least three times a week to see Skyler. "He'd just show up," sometimes uninvited. (V15, T1076, 1091). Nevertheless. Skyler and Gregory had a joint birthday party for their daughter, Kyla. (V15, T1094). Colton said Gregory did not stay at his grandparents' house after his

release from jail. (V15, T1091). However, about a week or two before the murders, Colton helped Gregory sneak into his grandparents' house to "see if anybody was in the house." (V15, T1092, 1093).

On August 20, Gregory called Colton while Colton was at his friend, Aaron's, house. (V15, T1077). After their conversation, Colton and Aaron went fishing. Colton and Aaron got back to Colton's house at about 1:30 a.m. on August 21. Colton did not notice anything unusual. (V15, T1077-78, 1086). However, he did hear dogs barking in the kennel nearby which was unusual. (V15, T1088). He did not see any other cars besides his parents'. (V15, T1087). Colton and Aaron slept in the living room. (V15, T1079, 1089). Colton's father, Charles Meekins, woke him at 5:40 a.m. "anxious and panicked." Colton and Charles went next door to his grandparents' home. Charles Meekins called 911. (V15, T1080).

After police arrived, Colton called Gregory at his home number but no one answered. (V15, T1081-82). Colton left a message telling Gregory, "You better run ... " (V15, T1082).

Cori Aldrich was Skyler Meekins' best friend. (V16, T1141, 1142). She lived "about 15 seconds" from Meekins. (V16, T1155). Aldrich saw Gregory driving on a dirt road near Meekins' home about six months before the murders. (V16, T1156, 1157). Aldrich knew Meekins dated Gregory for two years until June 2007 but broke off the relationship a few months before the murders. (V16, R1143, 1144).

Daniel Dyer was a friend of Aldrich's former boyfriend, Kevin Dalton. (V16, T1143). Aldrich and Dalton introduced Dyer to Meekins. They started dating on July 4, 2007. The four friends were frequently together. Occasionally Kyla was with them. (V16, T1145). In late July, Gregory came to Meekins home one day when the four friends were swimming in the pool. (V16, T1146-47). Gregory said, "Hey, what's up, guys?" and then asked Meekins if "they were still on for tonight?" Aldrich said Meekins did not know what Gregory was talking about as they had not made any plans. (V16, T1147, 1149). Gregory left after a few minutes. (V16, T1158).

Aldrich said Gregory called her mother's and Dyer's phones frequently. (V16, T1149). Dyer told Aldrich that he and Gregory had a telephone conversation about two nights before the murders. (V16, T1150, 1151). Gregory told Dyer, "I want to personally thank you for ruining my life." (V16, T1151).

Mary Anne Meekins, Skyler's grandmother, said Gregory, Skyler and their daughter Kyla lived with her and her husband Charles "Huck" Meekins from 2006 through 2007. Mary Anne made Gregory move out on June 6, 2007, a month prior to Kyla's first birthday. (V16, T1161-62, 1164-65). MaryAnne's son, Charles "Hap" Meekins, lived next door with his wife Sherri, their son Darren, and Colton Meekins. (V16, T1163).

On August 20, about 10:00 p.m., Mary Anne heard Skyler talking on the

phone. She did not recall Skyler inviting anyone over to the house. (V16, T1166-67). Shortly thereafter, Mary Anne and her husband went to bed. They slept in separate bedrooms because Mary Anne often took care of puppies. (V16, T1167, 1181). Mary Anne did not hear anyone come in the house at any time after she went to bed. However, she admitted that she did not have good hearing. (V16, T1170).

Mary Anne got up several times during the night. At about 1:30 a.m., she went to the bathroom next to Skyler's room. Mary Anne noticed Skyler's bedroom door was slightly open, which was unusual. (V16, T1182). The television was on with the volume turned very low. (V16, T1171-72). At about 3:30 a.m., Mary Anne went to the bathroom near her husband's bedroom and noticed a closet door was open, which was also unusual. (V16, T1173, 1175, 1182, 1183). The closet contained a vacuum cleaner and her husband's guns. (V16, T1176). Mary Anne never saw Gregory handle the guns but knew Charles occasionally used them. (V16, T1177, 1185). Mary Anne later learned that one of Huck's rifles was missing from the closet. (V16, T1183-84).

Mary Anne did not hear any startling noises during the night. (V16, T1178, 1186). At 6:00 a.m., she called out Skyler's name to wake her for a dental appointment. Skyler always woke up when Mary Anne called her name. (V16, T1178, 1179). Mary Anne did not go in Skyler's room as she "had a gut feeling"

something was wrong when Skyler did not appear. She went to Huck's room and told him, "There's something wrong, I can't wake Skyler up." (V16, T1175). After Huck went into Skyler's room, he came out and told Mary Anne, "She's dead." (V16, T1180).

Mary Anne ran next door to her son's house where Hap was feeding animals in the yard. She told him, "Skyler's dead." Charles called 911. (V16, T1180).

Charles "Hap" Meekins met Gregory shortly before his granddaughter, Kyla, was born. Skyler broke up with Gregory in June 2007. (V16, T1191). Charles knew Gregory repeatedly tried to contact Skyler during the time he was in the Flagler County jail. (V16, T1191-92). After his release from jail, Gregory came by Charles's house uninvited. Charles last saw Gregory at his house about 9:00 a.m. three days before the murders. Charles said Skyler looked surprised to see Gregory. (V16, T1192, 1210). She asked Gregory, "What are you doing here?" (V16, T1210). Skyler and Gregory spoke inside Charles's home for a few minutes until Skyler walked out and left Gregory behind. (V16, T1193). Gregory left the home a few minutes later on foot. (V16, T1194). Gregory had repeatedly called Skyler, including the day of the murders. (V16, T1212).

Hap said his father, Huck, owned a 12-gauge Browning shotgun and a Ruger Mini-14 .223 caliber that he kept in a closet next to his bedroom. (V16, T1194-95). Hap used his father's shotgun to hunt deer but had not used it since 1986. (V16,

T1195-96). The guns were always stored unloaded and the ammunition was placed on a shelf in the closet. (V16, T1196). The Mini-14 and its clip were missing. (V16, T1203, 1209).

On August 20 at around midnight, Hap recalled hearing a lot of barking from the dogs in the kennel. He heard "more aggressive barking" about an hour later. (V16, T1205, 1206). At about 6:15 a.m., Hap's mother came to his house and told him "something was horribly wrong and that Skyler was dead." (V16, T1198). Hap woke Colton and they went next door. (V16, T1198). They walked into Skyler's room and found her and someone else he did not know. (V16, T1199). He did not know Dyer was in the house with Skyler. (V16, T1209). Initially he thought the other body was Gregory and that he had killed himself. (V16, T1208, 1211). Hap saw his father's shotgun and a shotgun shell lying on the floor. He called 911. (V16, T1199).

Wayne Lantrip was a friend of Gregory's for approximately one month before the murders. (V16, T1214, 1215). They did drugs together at least "a dozen" times. (V16, T1236). Lantrip never knew of Gregory turning himself in to police for using drugs. (V16, T1238). A week before the murders, Lantrip gave Gregory a ride to Skyler's house. (V16, T1224). At around noon on August 20, he picked up Gregory and his brother Kory at Amber Curnutt's house, a mutual friend. (V16, T1215, 1216, 1225). They drove around town talking and drinking beer. They

smoked crack cocaine and “maybe some pills” which Lantrip recalled were Lortabs. (V16, T1217, 1226, 1229). They bought and smoked crack cocaine throughout the day. (V16, T1227-28). Lantrip took the Gregory brothers home between 8:30 and 9:30 p.m. (V16, T1217, 1218-19, 1225). Lantrip got home around 11:00 p.m. (V16, T1234).

Lantrip said Gregory called him three or four times during that night so they could “buy more drugs.” (V16, T1220, 1230). However, Lantrip declined to pick up Gregory as he had to work the next day. (V16, T1222). Lantrip learned about the murders during the afternoon of August 21. (V16, T1223).

Michael Green was living with Daniel Dyer and his family in August 2007. (V16, T1239). Green said Dyer started dating Skyler on July 4, 2007. (V16, T1240). Dyer told Green that Gregory called him the week before August 20. (V16, T1245). Dyer told Green that Gregory said, “I personally want to thank you for ruining my family.” (V16, T1246).

On August 20, Skyler and her daughter went to Dyer’s home in the morning and spent the day. (V16, T1241). Sometime in the afternoon, Gregory called Dyer’s phone and asked to speak to Skyler. Green did not hear the conversation. (V16, T1247). Green and Dyer brought Skyler and Kyla home about 7:00 p.m. (V16, T1242). Around 10: 00 p.m., Skyler called Dyer. About 11:00 p.m., Green gave Dyer a ride to her house. This was the first night Dyer spent the night with

Skyler without her friends Cori Aldrich and Kevin Dalton also being there. (V16, T1243).

Lynda Probert is Gregory's mother. (V17, T1325). In August 2007, Probert and her boyfriend, her mother, and sons Kory and Appellant lived together in Flagler Beach. (V17, T1326, 1361). Probert was the office manager of a roofing company where Gregory also periodically worked. (V17, T1326).

Probert had a good relationship with Skyler. (V17, T1329). She helped care for Kyla and encouraged Skyler to attend school. (V17, T1329). Probert testified that prior to the murders, Skyler was friendly with Gregory. (V17, T1330). When Gregory was released from jail in June 2007, his sister Leigha dropped him off at Skyler's house. (V17, T1366). The week of the murders, Gregory spent a few nights at the Meekins' residence, including July 29, 2007, the night before Kyla's first birthday. (V17, T1373, 1374). Probert said her mother, Mary Wilson, picked Gregory up at Meekins' house three or four days before the murders "after he had stayed there." (V17, T1366). Skyler and Gregory spoke frequently after his release from jail. They shopped together for Kyla's first birthday party. (V17, T1366). However, they did not go to the party together. (V17, T1371-72). Skyler often called Gregory "late at nighttime" to come over. (V17, T1368, 1372). Probert said Gregory knew Skyler was dating Dyer. (V17, T1367).

On August 20, 2007, Gregory and his brother Kory left home at about 4:30

p.m. and returned around 10:00 p.m. (V17, T1333-34, 1335, 1369). Probert went to bed shortly thereafter. (V17, T1335, 1363). At 6:00 a.m. the next morning, Probert got up for work and asked Kory where Gregory was, but Kory did not know. (V17, T1338, 1340, 1341). Probert said Gregory insisted that she had seen him on their deck at 6:00 a.m., but Probert recalled the last time she saw Gregory was at 10:00 p.m. the previous night. (V17, T1355). Probert and her mother left for work at about 7:00 a.m. (V17, T1343). Probert's daughter Leigha called her before 8:00 a.m. and said police and emergency vehicles were seen at the Meekins' home. (V17, T1344, 1356). Probert went to work as she "couldn't ever imagine something like this … had happened." When she went home later and called Hap Meekins, he told her that "Skyler and Billy [Gregory] were dead."[1] (V17, T1345, 1348, 1349). Police arrived at Probert's home about 15 minutes later. She gave permission to search the home and gave them "everything they asked for." (V17, T1370). Probert said Gregory told her he was swimming during the night of August 20-21, 2007. (V17, T1359).

Gregory made numerous phone calls on the night of August 20 to Wayne Lantrip, Amber Curnutt, and to the Meekins' home. (V17, T1410-15). At 11:31

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[1] The family first believed this was a murder-suicide. They later learned it was Dyer in the bedroom with Skyler.

p.m., two phone calls were made from Gregory's home to a cab company. (V17, T1415, 1416). The next call made from Gregory's home was on August 21 at 4:48 a.m. (V17, T1416). Several phone calls were then made to Gregory's friends. (V17, T1416-20). At 7:25 a.m. and 7:26 a.m., phone calls were made from Aaron Reser's (Colton Meekins' friend) phone to Gregory's home. (V17, T1420, 1421). Probert also called her home several times. (V17, T1421-22). Shortly after 8:00 a.m., several phone calls were made back and forth between the Gregory home and Probert's cell phone. (V17, T1423-24). At 9:00 a.m., a phone call was made from the Gregory home to Hap Meekins' home. (V17, T1424).

Edward "Kory" Gregory, Appellant's older brother, said Appellant moved back in with their mother and Kory in June 2007. Prior to that, he stayed with the Meekins off and on. (V18, T1461-62, 1464). Kory did not know Dyer and did not know Meekins was dating Dyer. (V18, T1464). Kory testified that Gregory and Meekins were still seeing each other after his release from jail in June 2007. (V18, T1562). Meekins called Gregory many times at the house during June and July 2007. (V18, T1563).

Kory said Amber Curnutt picked up Kory and Appellant sometime in the afternoon of August 20, 2007. (V18, T1466). Kory recalled Gregory firing a .22 pistol while at Curnutt's house. (V18, T1565). Wayne Lantrip later picked them up at Curnutt's house. (V18, T1466). Lantrip and the Gregory brothers "rode around

and drank some alcohol, smoked some marijuana ... some crack ... popped some pills…" (V18, T1467, 1567). At 10:00 p.m., Lantrip brought the brothers home. Kory went to his room. (V18, T1467). Kory eventually "passed out" from medicine he was taking but thought Appellant was in the room with him. (V18, T1469). At some point, Kory realized Appellant was not in the bedroom. (V18, T1473, 1477). Kory recalled Appellant came back into the bedroom about 3:30 a.m. "He was wet, he was mumbling ... saying he was down at the beach." (V18, T1477, 1478, 1571).

Kory recalled his mother waking him about 6:30 a.m., on the morning of August 21, 2007, and asked where Appellant was. (V18, T1475, 1476). Appellant's "wet" clothes, black gym shorts and a white t-shirt, were in a laundry basket in the bedroom. (V18, T1476-77). Kory's mother and grandmother left the house. Kory did not make any phone calls. (V18, T1483). Appellant returned between 6:30 a.m. and 8:00 a.m. looking "nervous." (V18, T1484). Kory heard a threatening message on the answering machine that said, "You better run…" (V18, T1485).

Kory did not recall giving police a statement on August 21, 2007, that Appellant told him he had gone to the Meekins' house and saw Meekins and Dyer swimming and that he was angry about it. (V18, T1487). He did not recall telling police that Appellant said he would kill Skyler and then himself so "they could be

together." (V18, T1487). Kory said if Appellant wanted to get to Meekins' house, he found a way. (V18, T1489).

Kean Mahoney lived a few blocks from the Meekins family. (V18, T1577, 1578). Between 1:00 a.m. and 2:00 a.m., Mahoney heard a car and heard a voice through the open bedroom window. Someone said in an excited tone, "We're over here, we're over here" and "hurry up." (V18, T1580, 1581, 1585, 1591, 1593). This was unusual because it was a very quiet street. He heard a car engine rev up and leave quickly. (V18, T1581). Later than morning, after he heard about the murders, Mahoney drove to the Meekins' residence and told police what he had heard. (V18, T1582).

**Murder investigation.** On August 21, 2007, Corporal Jaime Roster, Flagler County Sheriff's Office, was dispatched to the Meekins' home at 6:55 a.m. (V13, T722, 723). Roster entered Skyler Meekins' bedroom and found the bodies of Meekins and Daniel Dyer. Both victims had suffered severe head trauma due to shotgun wounds. Roster observed a shotgun and two shotgun shells lying on the floor in front of the bed. (V13, T725, 726). He maintained a secured crime scene as other law enforcement personnel arrived. (V13, T728).

Investigator Robert Hardwick, State Attorney's Office, responded to the crime scene at 8:00 a.m. and was brief by law enforcement personnel. (V14, T860, 862-63). During the briefing, three men drove up to the scene at a high rate of speed.

They exited their car, “agitated, upset” and asked about their friend, Daniel Dyer. (V14, T863, 864). Hardwick conducted initial interviews with the men and advised them the Flagler County Sheriff’s Office would interview them further. (V14, T864).

Earlier that morning at around 4:17 a.m., Flagler Beach police officer Freshcorn, was dispatched to a beachside location to meet with Gregory. (V13, T799-800). Gregory had called “911” at 4:17 a.m. and told the 911 dispatcher, “I’d like to turn myself in, please.” (V13, T795, 797; State Exh. 37). Gregory said he thought there was a warrant for his arrest. (V13, T797-98). He gave his name, birth date, and current location. Gregory told the dispatcher that he was only wearing “basketball shorts.” (V13, T797). The 911 operator directed Gregory to walk to a nearby location and somebody would be sent to talk to him. (V13, T798). When Freshcorn arrived, Gregory was only wearing basketball shorts. (V13, T803). Gregory told Freshcorn that he thought there was a warrant for his arrest because he was on probation and “would have a dirty urine sample ... (he) should he be tested.” (V13, T801, 802). However, dispatch had alerted Freshcorn that there was no warrant so Freshcorn advised Gregory of same. (V13, T801). Freshcorn told Gregory to discuss the matter with his probation officer. (V13, T802).

Gregory called “911” a second time at 8:26 a.m. and told the 911 dispatcher that he was at a park and had received threatening phone calls at home that told

him, “you better run.” (V17, T1381). He did not recognize the voice but, “I left my house immediately ... They called last night ‘cause - - I’m doing drugs ... and I wanted to turn myself in ... but I don’t know if that’s any relations, but I doubt it.” (V17, T1381). Gregory said he would wait at the park for someone to meet him. (V17, T1382). Gregory was transported to the sheriff’s office after he claimed he had received threatening phone calls on August 21, 2007, the morning the victims were found. (V17, T1385, 1386-87, 1389). Since Gregory was on felony probation, he was arrested for a violation of probation based on his own admission of using drugs the night before. (V17, T1392, 1395).

Inv. Hardwick was informed that Gregory was at the sheriff’s office talking to two investigators. At about 10:00 a.m., Hardwick and Detective Scott Nance went to Gregory’s residence. (V14, T866-67, 906). They were met by Gregory’s brother, Kory, his sister, Leigha, and their mother, Lynda Probert. (V14, T869, 870). Leigha gave Hardwick and Nance “a ball of clothes rolled up.” (V14, T871). Probert gave permission to search their home. Kory gave permission to search the bedroom he shared with Gregory. (V14, T871, 872). Hardwick saw Gregory’s grandmother, Mary Lou Wilson, putting “two articles of clothing” in the washing machine. (V14, T872, 873). Hardwick took possession of the clothes, “a pair of black basketball shorts” and “a light-colored or gray-colored shirt.” (V14, T874-75, 876, State Exh. 39). Hardwick also took possession of two pair of shoes - - a

wet pair of sneakers (State Exh. 40) and loafers. (V14, T876, 878, 879). Additionally, he collected Gregory's "wet" wallet located in Gregory's bedroom. (V14, T880, 882, State Exh. 41). All of these items were submitted to FDLE. (V14, T884).

**Forensics investigation.** Steve Leary, Florida Department of Law Enforcement, was the lead crime scene analyst. (V13, T730-31, 732; V14, T851). Leary was assisted by John Holmquist, senior crime scene analyst. (V14, T826-27). The primary crime scene was Skyler Meekins' bedroom located in the southwest corner of the house. (V14, T833). There was a Browning 2000 semi-automatic shotgun lying on the bedroom floor, and two fired shotgun shells. (V13, T737, 750, 751, 758; V14, T834, 838). There were no signs of forced entry. (V14, T832-33, 852). There were no tire impressions located at the scene. (V14, T858).

Leary photographed the victims as well as dark areas on the ceiling that were "reddish in color" and appeared to be blood spatter. (V13, T751-52, 753). There was also blood on the east wall above the bed's headboard as well as the south wall. (V14, T838). The scene was processed for fingerprints. (V13, T757, 776, 777; V14, T850, 854). The scene and nearby wooded area were processed for shoe impressions. (V13, T778, 779-780, 790, 791, Def. Exhs.1, 2, 3, 4). Leary attended the autopsies of both victims and collected their clothing. (V13, T758, 762-63, 764). Several pieces of projectiles and plastic wadding were recovered from the

victims' skulls. (V13, T765, 766, 767). Leary collected DNA from Meekins and Dyer and submitted it to FDLE. (V13, T767).

A gunshot residue kit was performed on Gregory. (V18, T1447). Daniel Radcliffe, FDLE crime lab analyst in the gunshot residue section, said gunshot residue can remain on a deceased person "for days" but "on live people ... it's easily removed" by washing hands or touching other objects. (V17, R1318, 1320). Gunshot residue is not expected to be found on a live person after six to eight hours. (V17, T1320). Additionally, if a person washes their hands, wipes them, or goes swimming, the time frame is shortened. (V17, T1320). Absence of gunshot residue does not mean the person did not shoot a firearm. (V17, T1321). A gunshot residue kit administered to Gregory at 11:30 a.m. the day of the murders did not yield the presence of gunshot residue. (V17, T1321, 1322).

Maria Lam, FDLE crime lab analyst, examined DNA samples from Gregory, Dyer, and Meekins. (V19, T1609). She received swabs from the Browning shotgun, an upright shot shell, and an on-side shot shell. The swabs from the shotgun were from: 1) the trigger and trigger guard (3A); 2) the fore-end below the rifle barrel (3B); and 3) bottom of stock (3C). (V19, T1610). The DNA profile obtained from the fore-end below the barrel swab matched Skyler Meekins. (V19, T1612). The DNA profile obtained from the swab from the trigger and trigger guard was consistent with matching a female. (V19, T1615). Although, the DNA

profile did not indicate inconsistency with Meekins, Lam was unable to match it to Meekins. (V19, T1616). A DNA profile obtained from the upright shot shell matched Meekins. (V19, T1617, 1618). A swab from the bottom of the stock of the shotgun contained a DNA profile of a female which then matched the DNA of Meekins which was obtained from the upright shot shell. (V19, T1618). The swab from the bottom of the stock of the rifle tested positive for the presence of blood but Lam was not able to obtain a DNA profile. (V19, T1619).

None of Gregory's clothes contained DNA that matched Meekins or Dyer. (V19, T1619, 1622). Lam said the presence of any type of water or detergent applied to any stain could affect the ability to detect a DNA profile. (V19, T1620-21).

Lam examined Gregory's wallet and did not find blood present. She did not conduct a DNA analysis of the item. (V19, T1621-22).

**The shotgun and shells.** FDLE crime scene analysts Leary and Holmquist observed a Browning 2000 shotgun and two fired shotgun shells on Skyler Meekins' bedroom floor. (V13, T737, 750, 751, 758; V14, T834, 838). The shotgun and shells were submitted to the fingerprint and firearms departments at FDLE. (V13, T757; V14, T839).

Thomas Pulley, FDLE firearms identification section, examined the Browning semiautomatic shotgun, the two fired 12-gauge shot shells, and components of a

shot shell with wadding and combination wads. (V19, T1711). He test-fired the shotgun and retrieved the fired shells for comparison purposes. (V19, T1713). Based on his comparison of the shot shells that he fired to the shot shells collected at the scene, Pulley concluded the shot shells from the crime scene were fired from the Browning shotgun. (V19, T1715).

The Browning shotgun was loaded from the left-hand side of the receiver or directly into the barrel. (V19, T1717, 1719). In Pulley's opinion, a person would have to be familiar with this shotgun to know how to load it. (V19, T1718). The Browning shotgun, because it was semi-automatic, did not have to be racked to fire more than one shot. (V19, T1722-23).

In addition to the Browning shotgun, there were two "dusty" rifles, ammunition, and two loose shotgun shells in the bedroom closet. (V13, T748, 750, State Exhs. 15, 16; V14, T840, 843-44). One of the dusty" rifles was manufactured by Franchi and the other by Marlin. In Leary's opinion, neither of the "dusty" rifles were the murder weapon because the caliber was too small. The two rifles were processed for fingerprints but not collected as evidence. (V13, T748-49, 757, 771, 775, 789; V14, T845, 845). The loose shotgun shells from the closet were sent to the FDLE firearms department for processing. (V14, R857). Additionally, there had been a Ruger mini-14 rifle in the closet, which was missing at the time of the FDLE crime scene investigation. (V13, T782-83, 791-92; V14, T857). The

magazine from the Ruger was found and processed.

William Tucker, FDLE latent fingerprint and crime scene section, compared the known prints of Gregory to prints lifted from the Browning 12-gauge shotgun, the Franchi rifle, the Marlin rifle; and the Ruger magazine that contained ten .223 cartridges. (V19, T1739, 1742, 1743). Tucker did not find any prints of value on the Ruger magazine or the Franchi rifle. (V19, T1740, 1760). However, the print from the right side of the Marlin rifle matched Gregory's left index finger. (V19, T1742-43, 1759).

The Browning shotgun had three fingerprints from the trigger and trigger guard part of the shotgun that matched Gregory's – his left middle finger, left ring finger, and left little finger. (V19, T1743, 1747, 1749-50, 1751). Only Gregory's prints were located on the weapon. (V19, T1762).

During the time Gregory had lived with Skyler and her grandparents, the grandfather owned a shotgun and rifles. (V15, T1082-83). The guns were all kept in the same closet. (V15, T1084). Colton Meekins, Skyler's brother, never saw Gregory handle the guns. (V15, T1083). Colton learned a few days after the murders that the Mini-14 rifle was missing and never found. (V15, T1085, 1086).

**Incriminating statements made by Gregory**. Tyrone Graves, an inmate in the Flagler County jail in June 2007, was housed in the cell next to Gregory's. (V15, T1098-99, 1100). They talked all the time, "every day." (V15, T1100).

About a week or two after Graves learned of the murders, he asked to speak to law enforcement. (V15, T1103). Graves said Gregory was always talking about Skyler. After Graves read about the murders in the paper that a guard gave to him, "It seemed like it was just like he (Gregory) said." (V15, T1104, 1111-12). Graves said Gregory told him he was very jealous of Skyler and upset that she did not answer his phone calls. Gregory tried calling Skyler several times a day. (V15, T1104, 1105). Gregory "became very outraged when he even spoke to her or couldn't reach her." He was "angry, couldn't eat, pacing around." (V15, T1105). Gregory did not want Skyler "cheating" and he did not like her friends. (V15, T1105-06). Gregory told Graves, "If I ever catch the bitch cheating ... he was going to blow her f—cking head off." (V15, T1106). Graves said Gregory told him that Skyler wanted him to get his life together and to quit using drugs. (V15, T1106). At some point, Graves allowed Gregory to use his jail-issued PIN number to call Skyler. (V15, T1109). When Gregory was released from jail, he gave Graves his phone number. (V15, T1107, 1121).

On August 28, Gregory was moved to the St. Johns County jail. (V14, T887). At some point, Gregory either shared a cell with Eric Goebel or was on the same housing block. (V14, T888, 891, 900). Eric Goebel was an inmate at the St. Johns County jail in August and September 2007. (V19, T1659, 1661). He and Gregory were housed in the same cellblock. (V19, T1662). Goebel said Gregory

talked to him about his case. (V19, T1666). Goebel wrote notes after he and Gregory discussed the case. At some point, prior to giving a statement to law enforcement, police retrieved the notes from his cell. (V19, T1667, 1669, 1699).

Goebel said Gregory told him he abused cocaine the night of the murders. (V19, T1672). Gregory told him that he had been watching Meekins' house and saw Dyer go inside. (V19, T1673). Goebel did not know how Gregory got to Meekins' house. (V19, T1692). Gregory told Goebel their names and that they had been killed in Meekins' bedroom. (V19, T1673). Gregory saw his daughter on the way out of the house but that he did not take her, he "didn't mess with the child." (V19, T1673).

Goebel said Gregory told him that he thought the shotgun would not leave as much gunshot residue as a pistol. Further, Gregory said that he had called the probation department and reported that he had been firing a pistol that he was interested in buying and therefore "had gunpowder residue on his hands." (V19, T1674). Goebel said Gregory told him that he had tested positive for gunshot residue and was "very" surprised because "he jumped in the pool after - - the incident." (V19, T1675, 1693). Gregory "couldn't believe ... he still tested positive." (V19, T1675). Gregory was worried his DNA would be found in Meekins' bedroom. (V19, T1693).

Goebel said Gregory told him he was surprised that Meekins' grandmother did

not hear the shotgun noise. (V19, T1676). Goebel and Gregory discussed why Gregory killed Meekins and Dyer. The "main reason" was that Gregory "just couldn't stand to see her with that - - her new boyfriend." (V19, T1676). Goebel said Gregory thought Meekins' parents were going to keep his daughter Kyla away from him. (V19, T1677, 1694). Goebel said Gregory was concerned about leaving fingerprints on the murder weapon. Goebel could not recall if Gregory said whether or not he used gloves. (V19, T1677, 1678). Later, Goebel testified that he recalled Gregory said he had been wearing gloves. (V19, T1692).

When Goebel asked Gregory "What was it like to kill somebody?" Gregory replied, "The worse part about it all was watching her die." Gregory never said "yes or no" if he really had killed Meekins and Dyer. (V19, T1678). Goebel said Gregory reported having nightmares, and that he "was always shaking and crying when he'd come up to talk to me." Goebel said Gregory told him that "he has to live with it for the rest of his life." (V19, T1679). Gregory was "visibly agitated" that he could not talk to his family while in jail without being recorded. Goebel said Gregory stated that, "his family ... was going to be his alibi, but they had to get their stories straight." (V19, T1679). Goebel's conversations with Gregory took placed before Gregory was charged with the homicides. Gregory had said he was in jail on a VOP. (V19, T1680). Goebel knew Gregory had been charged with two counts of murder around September 21, 2007, as Gregory was moved to the

"murder block" part of the jail. (V19, T1681).

Patrick Giovine was a cellmate of Gregory's at the Flagler County jail from August to December, in 2010. (V19, T1625, 1626, 1642). Gregory spoke to Giovine about his case after Giovine agreed to sign a "waiver" that he and Gregory did not discuss it. (V19, T1627-28, State Exh.77). Gregory showed Giovine newspaper clippings and discovery material that related to his case. (V19, T1630, 1631). Giovine said Gregory thought "it was … a joke" that the State was concerned with the issue that Gregory may have "walked" to the crime scene because Gregory told him it was "impossible for that to have happened." Giovine said Gregory told him that he "had a ride that night" and that "he did what he had to do" when the two were discussing the homicides. (V19, T1633, 1634, 1651, 1652). Giovine could not recall if Gregory revealed who gave him a ride. (V19, T1651). Gregory did not tell Giovine anything further. (V19, T1632).

Giovine said Gregory told him the blood from the victims was not "splattered" all over, that 'the blood didn't pour out like that." (V19, T1636). Giovine said Gregory told him that he swam in the ocean after he had gotten a ride from the crime scene. (V19, T1641).

Giovine did not know the victims but Gregory was his "friend." They "did a lot of time in the cell together." He did not plan on testifying against Gregory. Gregory never told him that he committed the murders. (V19, T1650).

Francis Bowling was a co-worker of Gregory's for a few weeks in 2007. (V14, T914, 915, 920). Bowling occasionally brought Gregory home and hung around to "smoke some weed, drink a couple beers." (V14, T916). Bowling knew Meekins was Gregory's girlfriend and that they had a child together. He did not recall meeting her. Gregory told Bowling that Meekins' father was "always riding him about working." (V14, T916-17). Bowling recalled an incident in early 2007 where he told Gregory that if his girlfriend cheated on him, he would "beat the crap out of him and her if I ever found out." Gregory said, "If it ever happened to him ... he'd kill both of them." (V14, T917-18, 920, 927). Bowling said construction workers talk like this all the time so, he "blew it off" and did not tell anyone. (V14, T917, 920, 928). Bowling liked Gregory because "he had the same attitude I did." They discussed "everyday casual life." (V14, T919, 920).

Bowling was incarcerated in the Flagler County jail on July 19, 2007. (V14, T920, 922, 925). He saw Gregory being booked into the jail on August 21. (V14, T921, 922, 925-26). At some point, Bowling had a conversation with Gregory in one of the hallways in the jail. (V14, T927, 929). Gregory told Bowling he was in jail due to "a violation of probation." (V14, T929). Bowling said, "And they got you in the hallway?" Gregory further stated, "Well, some other s--t they won't find out." (V14, T929). Bowling learned through the newspaper that Meekins had been murdered. (V14, T922). Bowling wrote a "request slip" to Det. Nance on

September 9 and was interviewed by Nance on September 12. (V14, T922, 926).

Kory Gregory received many phone calls from Appellant from the Flagler County jail in August 2007. (V18, T1489). On August 21, at 2:20 p.m., Appellant called Kory from jail subsequent to his arrest for the probation violation. The call was published to the jury. (V18, T1499-1521, State Exh. 71). Appellant told Kory, "They got me locked up for a violation of probation." Kory informed his brother that Meekins had been killed. Appellant asked, "Why? How?" (V18, T1503). Appellant's mother got on the phone. Appellant asked her where Kyla was and whether anything happened to her. (V18, T1506).

Appellant told his mother he in was in jail because of a violation of probation, "doing some drugs." (V18, T1507). Probert asked Appellant, "Where did you go last night? Where were you?" Gregory said he had been at the beach, doing drugs, and was "in and out of the house." (V18, T1508). Appellant asked, "Why am I the … suspect?" His mother said, "Because you left." (v18, T1509). Appellant said he had been swimming and was "at the house all ... night." (V18, T1509). Probert said she only remembered Appellant being home at 10:30 p.m., the previous night and then she went to bed. She also did not see him at home in the morning. (V18, T1510). She told Appellant that Charles Meekins had called and said that Skyler and "someone next to her" were dead. (V18, T1512). Charles asked Probert where Appellant was but she did not know. (V18, T1512-13). Appellant said he had been

shooting a .22 Ruger two days prior and was now concerned because police had administered a gunshot residue test. (V18, T1514). Appellant told his mother that someone had left a threatening message on the answering machine. He asked his mother to visit him in jail. (V18, T1515).

Later on August 21, Appellant called Amber Curnutt. (V18, T1519, 1521). She informed Appellant the she was talking to police and told him, "… let me talk to them and ... you'll be alright …" (V18, T1520, 1521). He reminded Curnutt that he had been shooting the Ruger pistol a few days prior and was concerned because police had administered a gunshot residue test. (V18, T1520).

Appellant called Kory again. Kory told appellant the police had collected his clothing. (V18, T1524, 1525). Appellant told Kory, "from now on ... don't let them (police) in the house …" Further, he asked Kory to protect all of his pictures and "my s--t in my briefcase ..." (V18, T1525, 1526). Appellant told Kory to tell their mother to talk to his attorney. (V18, T1527). Appellant said he talked to his attorney and "told him the time line." He reminded Kory that he had been in and out of the house all night. Kory said he "did not remember much." (V18, T1528-29). However, Kory did remember that Appellant came in the bedroom looking "a little scared or something." Appellant said he was not scared, just "paranoid" about failing his urinalysis test. He turned himself in because 'it will look better for me…" as he was going to fail the test anyway. (V18, T1529, 1530). Appellant said

he had been at the beach and recalled a "wave washing up over me." (V18, T1531). Appellant asked Kory not to talk to police and the newspapers. (V18, T1532).

Several days later, Appellant called his brother again. Appellant also spoke with Probert and told her he had called Meekins on the day she was murdered. Probert informed Appellant that she was going to Meekins' memorial service. (V18, T1535, 1536, 1537).

Appellant called Kory again on August 26 and reminded Kory that they had been watching television together late on the night of the murders. Appellant said again that he had gone to the beach. Kory reminded Appellant that he could not recall anything due to medications he was taking. (V18, T1539, 1540, 1541). Appellant told Kory, "I just got that - - - real guilty - - - feeling …" (V18, T1541, 1542).

Appellant called on August 29 and spoke to his mother. (V18, T1546). Appellant asked her why she told police that she did not see Appellant at their house the morning of the murders. Probert said she did not remember seeing him. (V18, T1548). Appellant stated, "Nobody's helping me out …" (V18, T1549).

Appellant called Kory the following day and told him that he had moved to the St. Johns County jail. (V18, T1552, 1553). Appellant told Kory, "remember, you woke me up at like 6:30?" on the morning of the murders. Kory said he did not.

(V18, T1554).

Kory said he did not make any phone call to Meekins on August 20, 2007. (V18, T1573). He did not recall Gregory ever turning himself in for violation of probation because he had used drugs. (V18, T1574).

**Autopsies.** Dr. Frederick Hobin and Dr. Terrence Steiner, medical examiners, simultaneously performed the autopsies on Meekins and Dyer, respectively. (V17, T1261, 1264, 1265, 1293). Dr. Hobin said Meekins body was "extremely blood-stained." She was wearing pajamas which were covered in blood. She had extensive damage to the head which was clearly "a firearms-related injury." (V17, T1267, 1268). X-rays were taken of both victims. Dr. Hobin said the x-ray of Meekins' head showed "you wouldn't readily identify that as a human head ... there's been such extensive mechanical damage that parts of the head cranium have been fractured." (V17, T1272-73). There was a large opening on the right side of Meekins' head, which was "just air space, where body tissue might otherwise be." (V17, T1273).

Dr. Hobin located the remains of a projectile in Meekins' head which was a shotgun slug. (V17, T1274). Hobin concluded that it was a through-and-through gunshot wound. (V17, T1274, 1283). Wadding and other metal debris was also located within Meekins' cranial cavity. (V16, T1275). In Dr. Hobin's opinion, Meekins was shot one time in the upper right side of her forehead. (V17, T1276-

77). Due to the extensive damage to Meekins' head caused by the gunshot, the circumference of the entrance wound could not be determined. (V17, T1277). Additionally, "sooty residues" were visible around the abraded area of Meekins' forehead as well as inside the cranial cavity. (V17, T1277, 1282). In Dr. Hobin's opinion, part of the muzzle of the firearm was loosely touching Meekins' head when she was shot. (V17, T1280, 1281, 1283, 1303).

In Meekins' case, all of the ammunition components and the projectile were found in her head area. (V17, T1281). With regard to the trajectory of the shotgun shell through Meekins' head, Dr. Hobin said he could identify the entrance location but Meekins' "brain was actually destroyed, the anatomy of the skull was destroyed, and we could see ... a large exit defect - - on the back of the skull" and therefore he could not precisely determine the exact pathway of the shell. (V17, T1284). In Dr. Hobin's opinion, based on the postmortem changes in Meekins' body, she was lying on her right side, facing forward, when she was shot. (V17, T1285). Additionally, in Dr. Hobin's opinion, Meekins' body was found in the exact position she occupied when she was shot. (V17, T1287). Dr. Hobin concluded that Meekins was alive when she was shot because she showed "all the signs of having an intact circulation with very abundant bleeding." (V17, T1290-91).

Dr. Hobin said Meekins and Dyer were lying on their right sides with their

heads close together. Dyer had his right arm under Meekins' neck, around her shoulders and his left hand was on the left side of her body. (V17, T1290). Meekins also had an injury on her left shoulder which was indicative of a dental imprint. In Dr. Hobin's opinion, as Dyer was shot, there was a forceful movement of his jaw and teeth against Meekins' shoulder, which produced that injury. (V17, T1288). Meekins also had "a very thick, heavy deposit of soot" on the left side of her scalp, which, in Dr. Hobin's opinion, was caused by the close range gunshot injury to Dyer's head. (V17, T1288, 1290). Dr. Hobin concluded that Meekins' death was a homicide and she died instantaneously as a result of the shotgun injury to her head. (V17, T1291).

Dr. Hobin observed Dyer's autopsy, which was performed by Dr. Steiner. He also reviewed Dr. Steiner's autopsy report, his notes, x-rays, photographs and a transcript of Dr. Steiner's deposition. (V17, T1293). Dr. Hobin said the gunshot entrance wound to Dyer's head was between the middle and the left side of his forehead. (V17, T1290, 1299). There were very heavy soot residues around the entrance wound, indicating a close-range gunshot wound. In Dr. Hobin's opinion, the weapon was "less than an inch" from Dyer's head when he was shot. (V17, T1299, 1300). Dyer had a "massive injury" to his head. His body was "extensively blood-stained" as a result of the injury. (V17, T1294). Dyer was only wearing boxer briefs. (V17, T1294). X-rays indicated Dyer's head had displaced bone from

his skull. There was "air inside the cranial cavity, which is abnormal." (V17, T1296). As a result of the gunshot wound, Dyer's head "was open and the skull deformed, and the facial structures ... deformed." (V17, T1297). Dyer suffered a "dramatically severe head injury" with "massive deformity to the head." (V17, T1297). A deformed shotgun slug, metallic fragments, and wadding were recovered from Dyer's skull. (V17, T1298). Dyer's injury was "almost" a through-and-through gunshot wound, except the slug came to rest at the base of Dyer's neck behind his spine. (V27, T1299). Dyer also had a "U-shaped" injury to his forearm. Dr. Hobin opined this injury was caused by the slug that entered Meekins' head, and then impacted against Dyer's arm which was underneath her neck. (V17, T1301-02).

In Dr. Hobin's opinion, Dyer's body was found in the exact position he occupied when he was shot. (V17, T1301). Dr. Hobin concluded that Dyer's death was a homicide and he died instantaneously as a result of the shotgun injury to his head. (V17, T1301, 1303).

Dr. Hobin could not determine who was shot first or the exact time of death. In his opinion, Meekins and Dyer were shot at a very close interval. (V17, T1302, 1306). Dr. Hobin relied on Dr. Steiner's report which included information that Meekins' grandfather had made a statement that he heard "two noises which could have been the sound of gunshots on August 21, 2007, at 0115 hours." (V17,

T1307-09).

**Gregory's case in defense.** Gregory called five witnesses: Elyse Bekiempis, Steve Brandt, Scott Nance, Leigha Furmanek, and Mary Wilson.

Elyse Bekiempis, FDLE footwear and tire impression analyst, received a CD containing pictures of two footwear cast impressions and compared them to a database. (V20, T1816, 1817, 1818). Bekiempis' attempt to compare the casts and photographs to those in the database was unsuccessful. (V20. T1817).

Detective Steve Brandt, Flagler County Sheriff's Office, is assigned to the narcotics unit. (V20, T1820). On August 22, 2007, Det. Brandt and Corporal Flach conducted a "walk" from Gregory's home to Meekins' home. (V20, T1821, 1822-23). It took the officers 1 ½ hours to walk the 5.2 miles from one home to the other. (V20, T1823, 1827). Det. Brandt did not know what route Gregory would have taken to get to Meekins' house. (V20, T1829-30). On September 30, 2010, Brandt walked the distance between the two homes by taking a different route. (V20, T1830, 1832). Brandt also measured the time required to walk and swim a second route between Skyler's residence and Gregory's residence. (V20, T1833). The second route took one hour, 16 minutes to complete. (V20, T1834).

Deputy Nance testified that the black shorts he collected at Gregory's residence had what appeared to be beach sand on them. (V20, R1839). Gregory's mother gave consent to search the residence. (V20, R1840). Deputy Nance did not

find a Mini-14 rifle at the residence. The family did not prevent Nance from searching any area of the house. (V20, R1841).

Leigha Furmanek, Gregory's sister, picked Gregory up from the jail in June 2007. Skyler had asked Leigha to bring Gregory over to her house. (V20, T1847). To Leigha's knowledge, Gregory spent the night with Skyler. (V20, T1848). After that time, Leigha testified: "They would talk to each other, I mean, every day. And it was – they were always, you know, lovey-dovey." (V20, T1848). Skyler would call Gregory and he would spend the night at her house. (V20, T1848). Leigha testified that Gregory and Skyler continued to talk to each other during the months of July and August. (V20, T1849). They were together for the child's first birthday party. (V20, T1849). They seemed happy. Leigha was not living in the residence with Gregory, but she believed "they were always talking because they shared a child together." (V20, T1850). Gregory knew Skyler was dating Dan Dyer. (V20, T1850). Leigha never heard Gregory make threats or express anger towards Dyer. (V20, T1850-51). Leigha admitted on cross-examination that she did not live in the same house as Gregory, did not know anything about July 4th plans, and did not see Gregory on August 20 or 21. (V20, T1852-53). Leigha was the one who called Gregory's mother the morning of the murders to let her know there was a problem at the Meekins'. (V20, T1853).

Mary Lou Wilson, Gregory's grandmother, was living at her daughter's

residence in June 2007. (V20, T1855). The residence was a block from the ocean. (V20, T1855). Mary Lou slept on the couch. (V20, T1856). She had an alarm clock next to the couch. (V20, T1857). Gregory and brother Kory slept in one room. (V20, T1858). On August 20, 2007, Kory required medical attention and they took him to the hospital. (V20, T1860). Later in the day, Kory and Gregory were "in and out" the entire day. (V20, T1861). Around 4:30 p.m., someone picked up Kory and Gregory and they left. (V20, T1861). They returned around 9:30 p.m. (V20, T1862). By 10:00 p.m., Lynda and her boyfriend were in their room and Kory and Gregory were in their room. (V20, T1864).

Mary Lou considers herself a very light sleeper. If someone exited the house, they would have to pass by her on the couch. (V20, T1865). Around 10:30 p.m. there was a phone call with caller ID of "Charles Meekins." (V20, T1866. 1901). Around 12:10 a.m., Mary Lou went to Kory and Gregory's room because the television was loud. Kory was asleep and Gregory was lying on a mattress. (V20, T1867). Lynda's boyfriend went out to the deck around 1:30 a.m., then came back in. (V20, T1868). Around 2:05 a.m., Gregory left the residence. (V20, T1869). Gregory walked down the middle of the road. (V20, T1870). Around 3:45 a.m. Gregory returned and knocked on the locked door. (V20, T1873). He was soaking wet. He put his wet shoes on the deck. (V20, T1873). Gregory put his wet clothing next to the washing machine. (V20, T1874). He changed his

clothing and left the residence again around 3:45 – 3:50 a.m. (V20, T1874). Mary Lou did not see him return to the house. (V20, T1915).

Mary Lou has a vertigo condition and went to work with Lynda on August 21. (V20, T1917-18). As they were driving to work, Lynda got a call from Leigha. (V20, T1918). Lynda called Charles Meekins because everyone thought it was Gregory in the bed with Skyler and they both were dead. (V20, T1921).

Mary Lou testified that the police "stormed the place" in the morning. The family gave the police everything they asked for. (V20, T1877). She was trying to tidy the place and put Gregory's wet clothing in the washer. She started the washing machine, but the police stopped it and took Gregory's clothing out. (V20, T1878).

Gregory lived with Skyler for a time but returned to live with his mother at some point. (V20, T1885). Mary Lou did not think Skyler and Gregory were "completely broken up. They were just back and forth." (V20, T1886). During the time Gregory was in jail, he called Skyler many times. (V20, T1890).

## PENALTY PHASE TESTIMONY

The penalty phase was held on March 9, 2011. (V24). The State presented the testimony from one witness: probation officer, Julia Barrett. The defense presented the testimony from two witnesses: Gregory's younger sister, Leigha Furmanek; and Gregory's mother, Lynda Probert.

Julia Barrett, probation officer from Flagler County testified that Gregory began felony probation on August 21, 2007, and was on felony probation at the time of the murders. (V24, T2315-16). Gregory was placed on probation for possession of cocaine. (V24, T2317).

Leigha Furmanek, 26, is Gregory's sister. There is one other sibling, Kory. (V24, T2318). Leigha was born in Montana and lived with her mother, grandfather, and grandmother. (V24, T2318-19). Leigha and Gregory have different fathers. Neither father was involved in their lives. Gregory's father, Ray, was in jail in Virginia.[2] (V24, T2320). Joe Probert married Leigha's mother, Lynda Probert, when she was about 8 years old. (V24, T2321). Joe and Lynda are still married but are separated. Joe lives in Montana. Growing up in Montana was a "hard life, traumatizing life." (V24, T2322). When Leigha was 6 years old, a 14-year old boy raped her and made her brothers watch. (V24, T2322). Gregory was 8 years old at the time. (V24, T2323). Kory was 10 years old. (V24, T2323). The man who raped Leigha put a knife to her throat and said he would kill her and her brothers if they ever reported the rape. (V24, T2323-24). Leigha did report the

[2] Ray Gregory showed up about 6 months prior to the trial in this case. He was living in Virginia. (V24, T2321).

rape, but "nothing really happened." (V24, T2324). The rapist was not prosecuted. (V24, T2325). The family had to move. They then lived in West Valley, Montana, with the aunt. (V24, T2326). Gregory felt helpless about the rape and was heartbroken. He became very protective of Leigha. (V24, T2327). Eventually, the family moved back to Kalispell. When Leigha was 15 and Gregory was 17, their mother left and moved to New Jersey. Leigha became emancipated and got her own apartment. Kory had his own apartment next to Leigha. (V24, T2328). Leigha then moved to New Jersey, then to Florida. When Leigha was in Florida, Gregory came to live with her. (V24, T2329). Leigha, her mother, Gregory, and Leigha's boyfriend lived in Flagler. (V24, T2330). When the boyfriend kicked them out, they went to live in a shelter. (V24, T2330).

Joe Probert, the stepfather, drank heavily. (V24, T2331-32). That was one reason he and Lynda Probert separated. (V24, T2332).

Leigha learned Gregory was doing drugs when he was about 16 years old. (V24, T2332). They drank beer and smoked pot every couple of days. Gregory also consumed methamphetamine occasionally. (V24, T2333). When the family moved to Florida, Gregory was using methamphetamine, pot and alcohol but not frequently. (V24, T2334). When Gregory was around 20 years old, he used cocaine when he was with Leigha's boyfriend. Gregory also consumed Lortab on the weekend with the boyfriend when they were partying. (V24, T2335). This

went on for 3 years. (V24, T2336). Kory also used drugs with Gregory. (V24, T2339).

Gregory's mother, Lynda, had a boyfriend named Jon Schmucker. (V24, T2336). He drank heavily every day. (V24, T2336). Schmucker was physically abusive. (V24, T2337).

On cross-examination, Leigha admitted that during the time the family lived in Montana, they always had the grandfather as a role model. The grandfather was in the Coast Guard and FBI. He would do anything for the family. He was a positive influence and was close to Gregory. (V24, T2341). The family would go hunting, fishing and camping. They went to the lake a lot. (V24, T2342). Gregory was 17 years old when the grandfather died. (V24, T2346).

Kory currently works full-time and has custody of his daughter. (V24, T2343).

Lynda Probert, 51, testified that she has three children: Gregory, Leigha, and Kory. Gregory and Kory have the same father. Leigha has a different father. (V24, T2347). Lynda and Ray Gregory lived in Virginia, then moved to Charleston, South Carolina, because Ray was in the Coast Guard. They later moved to Green Cove Springs, Florida. (V24, T2349). Kory was born in Charleston; Gregory in Las Vegas. (V24, T2350-51). Ray had family in Las Vegas. (V24, T2352). The relationship between Lynda and Ray was not good,

and Lynda left with the children and went back to Florida where her parents were living. (V24, T2354). Lynda's father, William Wilson, had sinus problems and the doctors told him to move to a better climate. The family moved to Montana. (V24, T2355). Lynda and the children joined them 6 months later. (V24, T2356). Ray did not pay child support. (V24, T2356). Eventually, he went back to Virginia and went to prison. (V24, T2358).

In Montana, Lynda worked as general merchandise manager at a warehouse grocery store. (V24, T2357). She and the children lived in Montana almost 20 years. (V24, T2357). Leigha's father is Russell Weber, but he and Lynda were not married. (V24, T2358). They lived together for about a year. Kory and Gregory lived with them. (V24, T2359). Weber never provided child support. (V24, T2361).

Lynda married Joe Probert in 1984 in Montana. (V24, T2362). The family lived separately from Lynda's parents. (V24, T2364). In Lynda's opinion, Joe was an alcoholic. (V24, T2365). Leigha was raped before Joe was in the picture. (V24, T2366-67). Lynda found out about the rape after Leigha talked to a counselor at school. (V24, T2366). The rape affected all the children because, before the rape they had been riding horses and had animals. When the family had to move away from Kalispell the children had to give all that up. (V24, T2369).

Lynda was aware Gregory used alcohol and marijuana. (V24, T2370).

Gregory had a head injury when he was 17 days old. Kory pulled Gregory off the counter. Gregory split his head open. (V24, T2371). They took Gregory to the hospital and did a "CAT scan." (V24, T2372). Gregory also had earaches and infections which required ear tubes. (V24, T2373). One of the infections was so bad the eardrum had to be recreated. (V24, T2373).

Lynda testified that Gregory and Candace Steiger have a child together. (V24, T2374). The child was born 9 or 10 years before the penalty phase hearing (March 9, 2011). (V24, T2374). Gregory was not involved with that child's life. (V24, T2375).

Lynda moved to New Jersey in 2001 because her father died and the rest of the family went to New Jersey. (V24, T2376). The children stayed in Montana because they did not want to leave Montana. (V24, T2377). Gregory lived in Montana from age 9 months to age 18. (V24, T2410). He had birthday parties, celebrated Easter, enjoyed Halloween, and had a close relationship with his grandparents. (V24, T2411). Gregory did the things boys do: build forts, attend school, played with friends, went on vacations, went camping and fishing and hunting. (V24, T24011-12). Gregory was always fed and clothed. His family was always nearby. (V24, T24012).

When Lynda moved to Flagler Beach, Leigha and Gregory went with her. (V24, T2378). When the family was kicked out of the residence, Leigha went to

live with her grandmother and Gregory and Lynda went to Virginia, then to New Jersey. (V24, T2380). Eventually, Lynda and Gregory moved back to Flagler Beach. (V24, T2381). Kory moved to Flagler from Montana. (V24, T2383). Gregory worked for Sisson Roofing, and Lynda got a job there, too. (V24, T2384). Gregory worked steadily. (V24, T2385).

At some point, Jon Schmucker moved in with Lynda, Kory and Gregory. (V24, T2385). Jon drank a lot. Gregory observed the drinking. Jon was verbally abusive. (V24, T2387).

Gregory and Skyler lived together and had one child, Kyla. (V24, T2388). After they separated, Skyler would have Kyla 3 days and Gregory would have the child for 3 days. (V24, T2388). Gregory was involved with Kyla in activities such as going to the beach. (V24, T2389).

Lynda knew that Gregory was "drinking and stuff," but she never saw anything "drastically out of the ordinary." (V24, T2389). She was not aware whether Gregory took any drugs on August 20, 2007. (V24, T2390).

Lynda identified family photos which were admitted in evidence. (V24, T2394-2406; Defendant's Composite Exhibit #1).

When Gregory was around 7 years old he was riding a bike down a hill and the tire came off. He cracked his skull open. (V24, T2407). Gregory was at the hospital in Montana for 24 hours. (V24, T2407).

Approximately one year before the present trial, Gregory's father, Ray, contacted Gregory. (V24, T2408). Ray was living in Richmond Virginia. (V24, T2408). To Lynda's knowledge, Ray never paid child support. (V24, T2409).

## SUMMARY OF ARGUMENT

**Issue 1**. The trial judge did not err in denying the motion to disqualify. The motion was legally insufficient. The fact that a judge has made adverse rulings is legally insufficient to warrant disqualification.

**Issue 2**. The trial judge did not abuse his discretion by denying the motion *in limine* regarding testimony from Francis Bowling. Gregory told Bowling that if Skyler ever cheated on him, he would kill both her and the man with whom she cheated. This admission by Gregory, made 8 months before the murders, was not so remote it should be excluded. The statement was relevant to Gregory's state of mind, premeditation, and intent. Admission of this statement was not more prejudicial than probative. Error, if any, was harmless.

**Issue 3**. The trial judge did not abuse his discretion by allowing Tyrone Graves to testify about statements Gregory made. Although Graves did not identify Gregory at trial, he described Gregory and provided Gregory's home phone number which Gregory had given Graves. Gregory's statement was admissible as an admission and to show state of mind. Error, if any, was harmless.

**Issue 4**. The trial judge did not abuse his discretion by admitting testimony from Michael Green and Cori Aldrich that Gregory told victim Dyer "I want to personally thank you for ruining my life." This statement showed state of mind, knowledge Dyer was dating Skyler, and motive that Gregory believed Dyer ruined

his life. Error, if any, was harmless.

**Issues 5 and 6.** The trial judge properly applied the aggravating circumstance of cold, calculated, and premeditated. Gregory was jealous to the point of asking Skyler Meekins' brother to hack into her personal compter network to determine whether Skyler was cheating on him. Gregory questioned Skyler's friends and family about her whereabouts and activities. He said he would kill Skyler and any partner with whom she had an affair. When Gregory found out Skyler was dating Dyer, he broke into Skyler's residence and obtained a shotgun from the closet where he knew it would be. He selected his victims carefully, passing the sleeping grandparents and a sleeping child. He executed both victims with one close-range shot to the head. He then quietly left the house, returned home, and tried to conceal evidence by swimming in the ocean. Gregory then attempted to create an alibi by calling "911" to report himself for using drugs and violating his probation. Even if this aggravating factor were stricken, the three remaining aggravating circumstances outweigh the mitigation. Error, if any, was harmless.

**Issue 7.** Although not raised by Gregory, this Court automatically reviews the sufficiency of the evidence and conducts proportionality review. There is competent substantial evidence to conviction Gregory. The sentence is proportional.

## ARGUMENT

## ISSUE I

### THE MOTION TO DISQUALIFY WAS LEGALLY INSUFFICIENT, AND THE TRIAL JUDGE DID NOT ERR IN DENYING IT

Gregory claims the trial judge erred in denying his motion to disqualify the judge and the motion for rehearing of the motion *in limine*. (Initial Brief at 10). The motion to disqualify was denied as being legally insufficient. (V3, R536). The motion to disqualify was based on the trial judge's denial of a motion *in limine*. Additionally, Gregory claimed the trial made prejudicial remarks when ruling on the admissibility of certain phone calls. (V3, R538-40).

A motion to disqualify is governed substantively by section 38.10, Florida Statutes, and procedurally by Florida Rule of Judicial Administration 2.330. *See Cave v. State*, 660 So. 2d 705, 707 (Fla. 1995); *In re Amendments to Fla. Rules of Jud. Admin*., 939 So. 2d 966, 1003 (Fla. 2006). The rule provides that a motion to disqualify shall show that "the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge"; or that the judge is either an interested party to the matter, related to an interested party, related to counsel, or "is a material witness for or against one of the parties to the cause." Fla. R. Jud. Admin. 2.330(d).

In *Arbelaez v. State*, 898 So. 2d 25 (Fla. 2005), this Court addressed the

standard of review applicable to a denial of a motion to disqualify:

> Whether a motion to disqualify the judge is legally sufficient is a question of law we review de novo. *See, e.g., Chamberlain v. State*, 881 So. 2d 1087 (Fla. 2004); *Barnhill v. State*, 834 So. 2d 836, 842 (Fla. 2002). Such a motion will be deemed legally insufficient if it fails to establish a "well-grounded fear on the part of the movant that he will not receive a fair hearing." *Arbelaez [v. State]*, 775 So. 2d [909] at 916 [ (Fla. 2000) ] (*citing Correll v. State*, 698 So. 2d 522, 524 (Fla. 1997)). A mere "subjective fear[ ]" of bias will not be legally sufficient; rather, the fear must be objectively reasonable. *Fischer v. Knuck*, 497 So. 2d 240, 242 (Fla. 1986). The primary consideration is whether the facts alleged, if true, would place a reasonably prudent person in fear of not receiving a fair and impartial trial. *Id*.

*Arbelaez*, 898 So. 2d at 41. The fact that the judge has made adverse rulings in the past against the defendant, or that the judge has previously heard the evidence, or "allegations that the trial judge had formed a fixed opinion of the defendant's guilt, even where it is alleged that [t]he judge discussed his opinion with others," are generally considered legally insufficient reasons to warrant the judge's disqualification. *Rivera v. State*, 717 So. 2d 477, 480-81 (Fla. 1998); *Jackson v. State*, 599 So. 2d 103, 107 (Fla. 1992). *See also Griffin v. State*, 866 So. 2d 1, 11 (Fla. 2003) (Judge expressed belief defendant would keep on committing crimes; judge's ex parte explanation to the victim's father of a delay in the trial).

The allegedly improper statements made by the trial judge occurred during a pre-trial hearing on February 4, 2011. (V26). During the section of the motion *in limine* regarding Francis Bowling's potential testimony, the discussion revolved

around whether Bowling's testimony would show premeditation. (V26, R63-64). It was in this context that the trial judge used the word "prophetic." (V26, R66). Immediately following this statement, the trial judge noted:

> Now, whether they [the State] can prove that he did this or not, that's another matter, but it seems to me they are entitled to the benefit of trying to prove all the elements of the crime when one is premeditation, and this goes to that issue.

(V26, R66). Gregory argues the "prophetic" statement out of context. When place into context, the word "prophetic" is an appropriate word to use regarding premeditation.

The trial judge's second comment regarding the voice of Skyler Meekins occurred during the portion of the motion *in limine* to exclude phone calls Gregory made from jail. (V26, R67-71). In the back-and-forth with defense counsel, the trial judge opined:

> I don't – I really – I mean, you may be unhappy that the victim's voice is here, but I find it quite interesting that the victim, who has now been silenced, is allowed to be heard. I don't think that is a prejudicial event. It's sad, but I don't know that that's – certainly, it doesn't strike me as it being so prejudicial or so – that it would obviate any probative value.

(V26, R86-87). The trial judge did not use the word "refreshing" as alleged in the motion to disqualify and Initial Brief. (V3, R538; Initial Brief at 10). He used the word "interesting." (V26, R86). Nowhere in the discussion regarding phone calls does the judge make any comment that would show bias or impartiality. The fact

that the judge denied the motion *in limine* is not a reason to disqualify the judge.

## ISSUE 2

### THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION BY DENYING THE THIRD MOTION IN LIMINE

Gregory claims the trial judge erred in denying the motion *in limine* reference Francis Bowling. The standard of review for evidentiary issues is whether the trial judge abused his discretion. *See Smith v. State*, 28 So. 3d 838, 869 (Fla. 2009); *Salazar v. State*, 991 So. 2d 364, 373 (Fla. 2008).

Gregory's paragraph 7 in "Motion in Limine #3" moved to preclude Francis Bowling's statement that Gregory told him that if Skyler left him and went with somebody else, he would kill her and her partner. (V3, R418-419).[3] Judge Hammond had previously heard the motion and ruled on each issue. (V3, R465-67). After Judge Hammond declared a mistrial in the first trial (V3, R479), the case was assigned to Judge Parsons (V3, R481), who re-heard the motion *in limine* on February 4, 2011. (V26, R26, 61-66). Gregory argued the statement to Francis Bowling made 8 months prior to the murder was too remote to be admissible and that the statement was unduly prejudicial. (V26, R61-62).

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[3] The State re-phrased that statement as: "If she left me for someone else, I'd kill them both" or "If he caught Skyler with someone else, he would kill both of them." (V26, R63).

The State argued that since Skyler broke up with Gregory 6 months later (2 months before the murder) the statement was relevant and showed premeditation. (V26, R63-64).

The trial judge held that the statement was not remote and was relevant to premeditation. (V26, R66). A written order addressing each piece of evidence was entered on February 14, 2011. (Supp.R). Paragraph 12 of that order holds:

> The State MAY offer evidence that, approximately eight (8) months prior to the murders, the Defendant told former co-worker Francis Bowling that if Skyler Meekins left him for another guy he would kill them both. Such statements are relevant to the issues of premeditation and intent and are not so remote that their relevance is diminished.

(SR, R2).

A trial judge's ruling on the admissibility of evidence will not be disturbed absent an abuse of discretion. *Dessaure v. State*, 891 So. 2d 455, 466 (Fla. 2004). *See also Partin v. State*, 36 Fla. L. Weekly S705 (Fla. Dec. 1, 2011) (abuse of discretion standard used to review ruling on motion *in limine*); *Hodges v. State*, 55 So. 3d 515, 538 (Fla. 2010).

Gregory relies on *Walker v. State*, 997 P.2d 803 (Nev. 2000), cited in the *dissent* in *Robertson v. State*, 780 So. 2d 106 (Fla. 3d DCA 2001)(Initial Brief at 13). The irony of Gregory's mistake in citing this case is that the Third District *Robertson* majority opinion was reversed by this Court in *Robertson v. State*, 829 So. 2d 901 (Fla. 2002). Notwithstanding, this Court's decision in *Robertson* still

does not aid Gregory, since the basis of the ruling was that evidence of a prior threat was not admissible because it *involved a different victim.* Moreover, *Walker* involves threats made 6 years and 10 years prior or to the subject offense. Neither *Walker* nor *Robertson* are comparable to this case, which involves a threat to the specific victims 8 months prior to the murders.

A more informative case is *LaMarca v. State*, 785 So. 2d 1209 (Fla. 2001), in which this Court upheld admission of the defendant's statement that he intended to kill the victim. The statement was made 5 months before the murder. *Lamarca*, 785 So. 2d at 1215. This Court found the statement relevant to premeditation and direct evidence of the intent to kill the victim.

Gregory's more-prejudicial-than-probative argument is likewise unavailing. Gregory's threat to kill Skyler and her partner were relevant and not more prejudicial than probative. In *Dennis v. State*, 817 So. 2d 741 (Fla. 2002), the defendant was convicted of the first-degree murder of a young woman with whom he had a stormy relationship. The defendant argued that the trial court erred in admitting collateral evidence that he stalked, threatened, and assaulted the victim. He argued that this evidence was not relevant to demonstrate motive or intent, and should have been excluded on the grounds of unfair prejudice, as it demonstrated only propensity. The evidence the defendant complained of came from several of the victim's family members and friends who recounted incidents in which the

defendant would stalk the victim. Particularly, the victim's uncle described one incident in which the defendant, while aiming a gun at both of them, threatened to kill him and the victim. In sum, the evidence depicted the turbulent and sometimes violent relationship between the defendant and the victim. This Court in *Dennis* stated that "evidence of bad acts or crimes is admissible without regard to whether it is similar fact evidence if it is relevant to establish a material issue." 817 So. 2d at 762. Noting that the evidence against the defendant in *Dennis* was certainly prejudicial, this Court held that:

> [t]he evidence of the nature of [the defendant's] relationship with the victim was relevant to establish [the defendant's] motive. *See Burgal v. State*, 740 So. 2d 82, 83 (Fla. 3d DCA 1999) (holding prior incidents of domestic violence by the defendant against the victim were properly admitted to prove motive, intent, and premeditation in prosecution for attempted first-degree murder); *Brown v. State*, 611 So. 2d 540, 542 (Fla. 3d DCA 1992) (holding that evidence that the defendant had a rocky relationship with the victim and had threatened to kill her if he caught her with another man was relevant to establish motive in a prosecution for battery and attempted second-degree murder).

*Dennis*, 817 So. 2d at 762.

Likewise, in *Aguiluz v. State*, 43 So. 3d 800 (Fla. 3rd DCA 2010), admission of testimony the defendant threatened to kill the victim was not an abuse of discretion:

> We conclude that the testimony of prior incidents was admissible to prove motive, intent and the absence of mistake or accident. *See Dennis*, 817 So. 2d at 762 (finding that collateral evidence that

> defendant stalked, threatened, and assaulted former girlfriend was admissible; "[a]lthough certainly prejudicial, the evidence of the nature of [the defendant's] relationship with the victim was relevant to establish [defendant's] motive"); *Nicholson v. State*, 10 So. 3d 142 (Fla. 4th DCA 2009) (finding that evidence of defendant entering his former wife's home through a window and accusing her of sexual activity with another man was relevant to prove motive and intent in former wife's murder), review denied, 22 So. 3d 68 (Fla. 2009); *Burgal v. State*, 740 So. 2d 82, 83 (Fla. 3d DCA 1999) (holding prior incidents of domestic violence by the defendant against the victim were properly admitted to prove motive, intent, and premeditation in prosecution for attempted first-degree murder); *Evans v. State*, 693 So. 2d 1096, 1102 (Fla. 3d DCA 1997) (finding that prior instances of physical abuse were "properly admitted to prove intent and the absence of mistake or accident" in first-degree murder and aggravated child abuse case; defense was that victim had accidentally fallen off his bunk bed, or that he had received injuries during football games); *Brown v. State*, 611 So. 2d 540 (Fla. 3d DCA 1992) (finding that victim's testimony was admissible as evidence of motive, intent and premeditation in attempted second-degree murder and battery case; defendant's victim girlfriend testified that defendant had jealous streak and had threatened to kill her).

*Aguiluz*, 43 So. 3d at 804.

The trial court order shows the trial judge carefully weighed each piece of evidence and ruled on its admissibility. There was no abuse of discretion in admitting Francis Bowling's statement. Error, if any, was harmless. *State v. DiGuilio*, 491 So. 2d 1129, 1139 (Fla. 1986).

## ISSUE 3

### THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION IN ADMITTING TESTIMONY FROM TYRONE GRAVES

Gregory claims the trial judge abused his discretion in allowing Tyrone Graves to testify about a young lady who would not answer Gregory's phone calls, and whose head Gregory intended to "blow off" if she cheated on him. (Initial Brief at 14-15).

When Graves took the stand, he was asked to identify Gregory and could not. (V15, R1100). Defense counsel objected to the relevance of Graves testifying before he identified Gregory. (V15, R1101). The objection was overruled. (V15, R1101). Graves then testified that the person he knew as "Billy Gregory" gave Graves his home telephone number. (V15, R1102). Graves contacted law enforcement about a week after Skyler was murdered and told them what Gregory told him. (V15, R1101, 1103). Graves said the name of the female Gregory talked about was "Skyler." (V15, R1104). Law enforcement met with Graves and recorded his statement. (V15, R1103). Prior to Graves reciting what Gregory said about Skyler, defense counsel objected based on relevance. (V15, R1104). The objection was overruled. (V15, R1104).

Graves testified that Gregory was very jealous of Skyler and upset that she would not answer his phone calls. (V15, R1104). Gregory would try to call Skyler

several times a day. (V15, R1105). Gregory did not like the people Skyler was hanging out with and did not want her "cheating around." (V15, R1105). When the prosecutor asked Graves what would happen if Skyler cheated, defense counsel objected based on relevance and hearsay. (V15, R1106). The objection was overruled. (V15, R1106).

Graves testified that Gregory said: "if I ever catch the bitch . . . that he was going to blow her f—king head off." (V15, R1106). Gregory said Skyler would not speak to him because she wanted him to get his life together and stop using drugs. (V15, R1106). After Gregory left the jail, Graves called the phone number Gregory had given him. (V15, R1107). Graves recognized Gregory's voice. Gregory was getting ready to go out. (V15, R1107). Graves identified his interview with law enforcement and recited the phone number Gregory gave him. (V15, R1123). The number was Gregory's home phone number. (V15, R1124; State Exhibit 53).

A trial judge's ruling on the admissibility of evidence will not be disturbed absent an abuse of discretion. *Dessaure v. State*, 891 So. 2d 455, 466 (Fla. 2004). Graves identified the person he met in jail as "Billy Gregory", gave his height and hair color, and identified the phone number given when Gregory left jail. The fact Graves did not identify Gregory in the courtroom goes to the weight, not the admissibility of his testimony. All evidence is relevant unless excluded by law.

§90.402, Fla. Stat. The fact that a witness cannot make an in-court identification does not exclude his testimony. However, it can lessen the weight given that testimony. The only case cited by Gregory refers to whether an in-court identification is tainted by an unduly suggestive pretrial photo identification. This is a different scenario from the one presented here.

In the present case, Graves remembered the name and description of the inmate to whom he had spoken. Graves had contacted law enforcement with Gregory's home phone number. Graves had even called that phone number and identified the voice of the person he met in prison. There was no legal basis to exclude Graves' testimony.

In *McCrae v. State*, 395 So. 2d 1145, 1152 (Fla. 1980), this Court held:

> Although appellant argues that the testimony of Mrs. Veal and Mrs. Bergner is irrelevant because they failed to identify him, he ignores the fact that both witnesses stated that the person who attempted to gain entrance to their homes met the general description of appellant. Both women described an individual closely resembling appellant who, on October 13, 1973, was in the immediate area where the crime was committed at the approximate time of its commission. Therefore, their testimony was relevant and admissible as to the issue of identity. Appellant's contentions are merely questions for the jury as to the weight to be accorded the testimony.

Likewise, in this case the issue is the weight to be according the testimony, and not the admissibility.

Gregory's statement is admissible as both an admission pursuant to Section

90.803(18) and to show his state of mind pursuant to Section 90.803(3). §90.803(18), Fla.Stat. (2006); §90.803(3), Fla. Stat. (2006). *See Ibar v. State,* 938 So. 2d 451, 466-467 (Fla. 2006).

Admissions by a defendant was addressed in *Swafford v. State*, 533 So. 2d 270, 274 (Fla. 1988), in which this Court noted that an admission by the defendant is admissible if it tends in some way, when taken together with other facts, to establish guilt. In *Swafford*, this Court considered the admissibility of a defendant's statements in a trial for first-degree murder and sexual battery. Swafford was on trial for the abduction, rape, and murder of a gas station attendant. The victim had been shot nine times, twice in the head. *Id*. at 272. A witness for the State testified that two months after the murder Swafford suggested getting a girl and said, "[W]e'll do anything we want to and I'll shoot her." *Id*. at 273. Swafford and the witness drove to a department store parking lot that same night. Id. The witness asked Swafford whether he would not be "bothered" after abducting, raping and murdering a victim selected in a parking lot. Id. Swafford responded, "[Y]ou just get used to it." Id. This Court said:

> Swafford's statement that "you just get used to it," when viewed in the context of his having just said that they could get a girl, do anything they wanted to with her and shoot her twice in the head so there wouldn't be any witnesses, was evidence which tended to prove that he had committed just such a crime in Daytona Beach only two months before.

*Id*. at 273–74. Likewise, in *Johnson v. State*, 438 So. 2d 774, 779 (Fla. 1983), this Court held that the defendant's statement that he would "not mind shooting people to obtain money" was admissible. The same evening that Johnson made the statement, a deputy sheriff and a taxicab driver were shot and the taxicab driver was robbed. *See also Johnston v. State*, 863 So. 2d 271, 279 (Fla. 2003).

The state-of-mind exception authorizes the use of hearsay to establish the declarant's state of mind when his or her state of mind is material to the action. *See Monlyn v. State*, 705 So. 2d 1 (Fla. 1997)(hearsay statement made by the defendant to a fellow inmate that on the day before Monlyn escaped from jail, Monlyn told him that he was going to escape, get a shotgun, and kill the first person he saw with a car).

Additionally, a statement may be offered to prove a variety of things besides its truth. *See Williams v. State*, 338 So. 2d 251 (Fla. 3d DCA 1976) ("Merely because a statement would not be admissible for one purpose (i.e., its truth or falsity) does not mean it is not admissible for another (e.g., to show the declarant's state of mind.")). A statement may be offered, for instance, to show motive, *see Escobar v. State*, 699 So. 2d 988, 997 (Fla. 1997); *Chatman v. State*, 687 So. 2d 860, 862 (Fla. 1st DCA 1997); knowledge, *see Colina v. State*, 570 So. 2d 929, 932 (Fla. 1990); *Duncan v. State*, 616 So. 2d 140, 141 (Fla. 1st DCA 1993); or identity, *see State v. Freber*, 366 So. 2d 426, 427 (Fla. 1978). Of course, the alternative

purpose for which the statement is offered must relate to a material issue in the case and its probative value must not be substantially outweighed by its prejudicial effect. *See State v. Baird*, 572 So. 2d 904, 907 (Fla. 1990).

In *Foster v. State*, 778 So. 2d 906, 915 (Fla. 2000), the defendant argued that statements were hearsay within hearsay. This Court concluded that the trial court properly admitted the statements to establish both knowledge and motive, rather than to establish the factual truth of the contents of the statements. *See Colina v. State*, 570 So. 2d 929, 932 (Fla. 1990).

In *Foster,* the statements were also admitted to establish that Foster had a motive for killing the victim when he found out the victim was going to talk to the authorities. *See Escobar v. State,* 699 So. 2d 988, 997 (Fla. 1997)(defendant's hearsay statement that "he would kill a police officer before he would go back to jail" was admitted to show motive).

In the present case, Gregory's statement to Dyer showed he knew Dyer was dating Skylar and Gregory's statement that Dyer "ruined his life" show motive for killing him. Knowledge and motive were both material for the prosecution to demonstrate why Dyer was killed. See *Foster, supra; Koon v. State*, 513 So. 2d 1253, 1255 (Fla. 1987) (admitting statement to show that, having heard it, the defendant could have formed the motive to kill a witness, rather than admitting it for the truth of the matter asserted).

Error, if any, was harmless. *State v. DiGuilio*, 491 So. 2d 1129, 1139 (Fla. 1986).

## ISSUE 4

### THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION IN ADMITTING TESTIMONY FROM MICHAEL GREEN AND CORI ALDRICH

Gregory claims testimony from Michael Green and Cori Aldrich was impermissible hearsay. Cori Aldrich testified that victim Daniel Dyer told her about a conversation he had with Gregory. (V16, T1150). Defense counsel objected on the basis of hearsay. The trial judge overruled the objection "to the question as phrased." (V16, T1150). Dyer told Aldrich about the conversation no more than two nights before he was murdered. (V16, T1150). Aldrich testified that Gregory called Dyer and said "I want to personally thank you for ruining my life." (V16, T1151). Prior to the answer, defense counsel objected on the basis of hearsay. (V16, T1151). The objection was overruled.

Michael Green lived with Dyer and Dyer's mother, brother, and sister. (V16, T1239). About a week before the murder, Dyer told Green that Gregory had just called him. (V16, T1245). Defense counsel objected on the basis of hearsay. (V16, T1246). The objection was overruled. (V16, T1246). Gregory told Dyer "I personally want to thank you for ruining my family." (V16, T1246).

Section 90.803(3)(a), Florida Statutes (2006), governs the state of mind exception to the hearsay rule and provides in pertinent part:

> (a) A statement of the declarant's then-existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to:
>
> 1. Prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action.
>
> 2. Prove or explain acts of subsequent conduct of the declarant.

The state-of-mind exception authorizes the use of hearsay to establish the declarant's state of mind when his or her state of mind is material to the action. *See Monlyn v. State*, 705 So. 2d 1 (Fla. 1997)(hearsay statement made by the defendant to a fellow inmate that on the day before Monlyn escaped from jail, Monlyn told him that he was going to escape, get a shotgun, and kill the first person he saw with a car).

Additionally, a statement may be offered to prove a variety of things besides its truth. *See Williams v. State*, 338 So. 2d 251 (Fla. 3d DCA 1976) ("Merely because a statement would not be admissible for one purpose (i.e., its truth or falsity) does not mean it is not admissible for another (e.g., to show the declarant's state of mind.")). A statement may be offered, for instance, to show motive, *see Escobar v. State*, 699 So. 2d 988, 997 (Fla. 1997); *Chatman v. State*, 687 So. 2d 860, 862 (Fla. 1st DCA 1997); knowledge, *see Colina v. State*, 570 So. 2d 929, 932 (Fla. 1990); *Duncan v. State*, 616 So. 2d 140, 141 (Fla. 1st DCA 1993); or identity,

*see State v. Freber*, 366 So. 2d 426, 427 (Fla. 1978). Of course, the alternative purpose for which the statement is offered must relate to a material issue in the case and its probative value must not be substantially outweighed by its prejudicial effect. *See State v. Baird*, 572 So. 2d 904, 907 (Fla. 1990).

In *Foster v. State*, 778 So. 2d 906, 915 (Fla. 2000), the defendant argued that statements were hearsay within hearsay. This Court concluded that the trial court properly admitted the statements to establish both knowledge and motive, rather than to establish the factual truth of the contents of the statements. *See Colina v. State*, 570 So. 2d 929, 932 (Fla. 1990). In *Foster*, the statements were also admitted to establish that Foster had a motive for killing the victim when he found out the victim was going to talk to the authorities. *See Escobar v. State*, 699 So. 2d 988, 997 (Fla. 1997)(defendant's hearsay statement that "he would kill a police officer before he would go back to jail" was admitted to show motive).

In the present case, Gregory's statement to Dyer showed he knew Dyer was dating Skylar and Gregory's statement that Dyer "ruined his life" show motive for killing him. Knowledge and motive were both material for the prosecution to demonstrate why Dyer was killed. See *Foster, supra; Koon v. State*, 513 So. 2d 1253, 1255 (Fla. 1987) (admitting statement to show defendant could have formed the motive to kill a witness, rather than admitting it for the truth of the matter asserted). Error, if any, was harmless. *State v. DiGuilio*, 491 So. 2d 1129, 1139

(Fla. 1986); *See also Ibar v. State*, 938 So. 2d 451, 465 (Fla. 2006).

## ISSUES 5 and 6

### THE TRIAL JUDGE PROPERLY FOUND THE MURDERS WERE COLD, CALCULATED AND PREMEDITATED

Issue 5 of the Initial Brief appears to repeat Issue 6. The heading of Issue 5 mentions a motion *in limine*; however, there is no argument or record cite explaining any such motion *in limine*. As such, this issue is abandoned. *See Crain v. State*, 36 Fla. L. Weekly S593, 600 n. 13 (Fla. Oct. 13, 2011) *citing Pagan v. State*, 29 So. 3d 938, 957 (Fla. 2009) ("The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without further elucidation does not suffice to preserve issues, and these claims are deemed to have been waived.")(*quoting Duest v. Dugger*, 555 So. 2d 849, 852 (Fla. 1990)); *see also Doorbal v. State*, 983 So. 2d 464, 482 (Fla. 2008); *Scott v. State*, 66 So. 3d 923, 932 n.6 (Fla. 2011); *Johnston v. State/Buss*, 63 So. 3d 730, 745 (Fla. 2011); *Kilgore v. State/McNeil*, 55 So. 3d 487, 511 (Fla. 2010); *Simmons v. State*, 934 So. 2d 1100, 1111 n.12 (Fla. 2006)(*citing Coolen v. State*, 696 So. 2d 738, 742 n.2 (Fla. 1997)).

The issue which seems to be raised in both Issue 5 and Issue 6 is the applicability of the cold, calculated, and premeditated ("CCP") aggravating circumstance. The trial judge held:

**4. Florida Statutes, Section 921.141(5)(i): The capital felony**

**was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.**

The law has established that in order to find cold, calculated and premeditated as an aggravator, it must be established that (1) the murder was the product of â cool and calm reflection and not an act prompted by emotional frenzy, panic or a fit of rage, (2) the defendant had a careful plan or prearranged design to commit murder before the killing, (3) the defendant exhibited heightened premeditation, and (4) the defendant had no pretense or legal or moral justification. Jackson v. State, 648 So. 2d 85 (Fla. 1994); *Nelson v. State*, 748 So. 2d 237 (Fla. 1998). The court finds that the murders of Skyler Dawn Meekins and Daniel Arthur Dyer were each committed in a cold, calculated and premeditated manner.

In this case Mr. Gregory, on separate occasions, months before the murders respectively had conversations with Mr. Bowling and Mr. Graves where he said he would blow her head off and he would kill both she and any new boyfriend she might have if Skyler Dawn Meekins cheated on him. Consistent with this plan, Mr. Gregory became aware of Ms. Meekins' new love interest, Daniel Arthur Dyer. Having been unsuccessful at winning her back, he put his plan in action. He learned they would be together at the home of Skyler Dawn Meekins' grandparents and watched the house to confirm they were both present. Whether on foot or with the assistance of another person driving a vehicle to assist in the plan, Mr. Gregory traveled the five miles from his residence to that of Skyler Meekins' grandparents in furtherance of his plan.

Once at the residence he entered the house surreptitiously, located a 12-guage shotgun in a closet, located the shotgun shells on a shelf in the closet and loaded just two shells into the shotgun which was a weapon that was described as a difficult weapon to load. Mr. Gregory, at this point fully armed with a loaded weapon, passed by the separate rooms of Skyler Meekins' grandmother and grandfather and went to the sleeping room which Skyler Meekins occupied where she and Daniel Dyer were cuddling while sleeping. It has been clearly established, without refutation, that he placed the loaded weapon at

> point blank range and aimed at the heads of the respective victims where he killed each of them in execution style with devastating shots to the heads of both victims in an act that was totally consistent with his earlier announced plan.
>
> The murders complete he dropped the weapon and quickly left the home to avoid detection by' the grandparents who were also sleeping at the time. The evidence indicates that he returned to his house two hours later and in the interim had swum while still in his clothes, which included his wallet and shoes, in an apparent attempt to purge himself of shotgun residue. Shortly thereafter Mr. Gregory called 911 at 4:17 a.m. to report that he wanted to turn himself in for using drugs which was a transparent attempt to create an alibi for the murders, again all consistent with the plan. The court finds that the State has established that the murders of Skyler Dawn Meekins and Daniel Arthur Dyer were each committed in a cold, calculated and premeditated manner and that the first three elements of CCP have been met.
>
> This aggravator also requires that the conduct be without any pretense of moral or legal justification. The murders appear to be revenge killings by Mr. Gregory motivated by jealousy that his former girlfriend and mother of his child, Skyler Dawn Meekins, had found a new love interest in her new boyfriend, Daniel Arthur Dyer. A pretense of legal or moral justification is "any colorable claim based at least partly on uncontroverted and believable factual evidence or testimony that but for its incompleteness, would constitute an excuse, justification, or defense as to the homicide. Walls v. State, 641 So. 2d 381 (Fla. 1994).
>
> The court finds that there was no pretense of moral or legal justification for these murders and, therefore, the aggravator has been proven beyond and to the exclusion of reasonable doubt. The court assigns great weight to this aggravator as to the murders of Skyler Dawn Meekins and Daniel Arthur Dyer.

(V4, R720-722).

These findings are supported by competent substantial evidence. This Court's

review of a trial court's finding regarding an aggravator is limited to whether the trial court applies the correct law and whether its finding is supported by competent, substantial evidence. *Willacy v. State*, 696 So. 2d 693, 695 (Fla. 1997); *see also Cave v. State*, 727 So. 2d 227, 230 (Fla. 1998).

CCP can be indicated by the circumstances if they point to 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. *See Farina v. State*, 801 So. 2d 44, 53-54 (Fla. 2001); *Bell v. State*, 699 So. 2d 674, 677 (Fla. 1997); *Eutzy v. State*, 458 So. 2d 755, 757 (Fla. 1984) (sustaining CCP where there was no sign of struggle, yet the victim was shot execution-style);

This Court has explicitly held that a finding of mental and emotional distress and the domestic nature of a murder do not preclude a finding of CCP. *Lynch v. State*, 841 So. 2d 362, 371-72 (Fla. 2003) (*quoting Evans v. State*, 800 So. 2d 182, 193 (Fla. 2001)). In *Lynch*, the defendant shot his ex-girlfriend, Morgan, in the leg as she stood in her doorway, dragged her into her apartment, and then later shot her in the back of the head to "put her out of her misery." *Id*. at 366, 372. This Court found the evidence supported a finding of CCP.

Likewise, in *Zakrzewski v. State*, 717 So. 2d 488, 492 (Fla. 1998), this Court rejected the defendant's argument that it was impossible for him to have murdered in a cold, calculated, and premeditated fashion because he was under extreme

emotional distress at the time of the murders. This Court concluded that the murders were calculated and premeditated because Zakrzewski "proceeded to set up the murder scene before his family arrived home, by placing the machete behind the bathroom door." *Id*. As for "cold," this Court found that after Zakrzewski's wife asked for a divorce, he "had the entire day for "cool and calm reflection" and he "completed his daily routine" at work before murdering his family. Because Zakrzewski went about his normal daily routine, we found that the murders were not "prompted by emotional frenzy, panic, or a fit of rage." *Id.* (*quoting Jackson v. State*, 648 So. 2d 85, 89 (Fla. 1994)). *See also Silvia v. State*, 60 So. 3d 959, 970-971 (Fla. 2011) (sustaining CCP where defendant purchased weapon and ammunition, drove to wife's home, talked to wife, walked back to his truck, retrived his shotgun and fired seven shots, killing the wife and seriously injuring her mother; *Allred v. State*, 55 So. 3d 1267, 1277-1279 (Fla. 2010) (upholding CCP where defendant sent threatening text messages to victims, gained entry by shattering plate glass door with gun, selected victims specifically from among other persons, and killed two victims); *Carter v. State*, 980 So. 2d 473 (Fla. 2008) (defendant drove to ex-girlfriend's home with weapon, demanded she answer questions about their relationship, and deliberately shot the ex-girlfriend and her boyfriend multiple times at close range); *Davis v. State*, 2 So. 3d 952, 960 -961 (Fla. 2008) (double homicide in which defendant carried weapon to victims'

trailer, forced his way in, stabbed first victim then stopped when second victim entered room, persevered through multiple stabbings and obtained new knife when one broke, did not harm child).

The facts in this case fail to support frenzy, anger, passion or loss of control. The totality of the facts show that Gregory threatened to kill Skyler and any partner with whom she cheated, broke into the home, found a rifle and ammunition, loaded the rifle with two shotgun shells, then proceeded to shoot both Skyler and Daniel execution-style. Gregory did not harm any other person in the house – only those persons who were the object of his calculated plan. Gregory then snuck back out of the residence undetected and proceeded to either swim in the ocean or a pool to eliminate evidence. He went home and called "911" to contrive an alibi: that he violated probation.

## ISSUE 7

### Sufficiency of the Evidence and Proportionality

Gregory has not raised the issues of sufficiency of the evidence or proportionality. Notwithstanding, this Court conducts an independent review of the sufficiency of the evidence and proportionality. Therefore, the State has briefed both issues.

**Sufficiency of the Evidence.** In death penalty cases, this Court conducts an independent review of the sufficiency of the evidence. *See Insko v. State*, 969 So. 2d 992, 1002 (Fla. 2007). Regardless of whether the appellant raises this issue, the Court must "determine whether sufficient evidence exists to support a First-degree murder conviction." *Snelgrove v. State*, 921 So. 2d 560, 570 (Fla. 2005) (*citing Mansfield v. State*, 758 So. 2d 636, 649 (Fla. 2000)). Whether the evidence is sufficient is judged by whether it is competent and substantial. *See Blake v. State*, 972 So. 2d 839, 850 (Fla. 2007).

In the present case, there is competent, substantial evidence in the record to support Gregory's murder convictions. Gregory made statements before and after the murders implicating himself. He had motive and opportunity, having been recently jilted by Skyler, having broken into the Meekins home and spying on Skyler, and having lived in the Meekins home and knowing where weapons were kept. Gregory made repeated phone calls to the Meekins residence before the

murders, then called cab companies. Gregory attempted to contrive an alibi after the murders by calling "911" and reporting himself in violation of probation. He made incriminating statements regarding gunshot residue and tried to coach witnesses. His fingerprints were on the murder weapon.

**Proportionality.** This Court must review the proportionality of a death sentence, even if the issue has not been raised by the defendant. *Knight v. State*, 76 So. 3d 879, 889-890 (Fla. 2011); *Bolin v. State*, 869 So. 2d 1196, 1204 (Fla. 2004). Proportionality review "is not a comparison between the number of aggravating and mitigating circumstances." *Crook v. State*, 908 So. 2d 350, 356 (Fla. 2005) (*quoting Porter v. State*, 564 So. 2d 1060, 1064 (Fla. 1990)). Instead, the Court considers the totality of the circumstances to determine if death is warranted in comparison to other cases where the death sentence has been upheld.

In the instant matter, the jury recommended the death penalty by a vote of seven to five (7-5) for each of the two murders. The trial court found this recommendation appropriate after weighing the statutory aggravating circumstances against the statutory and nonstatutory mitigating circumstances. In imposing the death sentence, the trial court found four aggravating factors: (1) the crime was committed while the defendant had previously been convicted of a felony and was on felony probation; (2) the defendant was previously or contemporaneously convicted of a felony involving the use or threat of violence to

a person; (3) the crime was committed while the defendant was engaged in the commission of or an attempt to commit the crime of burglary; and (4) the murder was cold, calculated and premeditated. (V4, R718-28). The trial court found one statutory mitigating circumstance: the crime was committed while under the influence of extreme mental or emotional disturbance (slight weight). (V4, R722-23). The court also found six nonstatutory mitigating circumstances: (1) Long standing drug problem (slight weight); (2) Grew up without his father and was raised by his mother (slight weight); (3) Forced to witness sexual abuse during his childhood (slight weight); (4) Dysfunctional childhood (slight weight); (5) Impaired at the time of the homicides due to ingestion of drugs and/or alcohol (slight weight); and (6) employed and a good worker (slight weight). (V4, R724-27).

This Court has upheld the death penalty under similar circumstances. In *Pooler v. State*, 704 So. 2d 1375 (Fla. 1997), the trial court found the following statutory aggravating circumstances: (1) prior violent felony conviction (a contemporaneous attempted first-degree murder); (2) crime was committed during a burglary; and (3) HAC. *See id*. at 1377. The trial court found one statutory mitigating circumstance that the crime was committed while under the influence of extreme mental or emotional disturbance, and the following nonstatutory mitigating circumstances: "[t]he defendant's honorable service in the military and good employment record,

as well as the fact that he was a good parent, had done specific good deeds, possessed certain good characteristics, and could be sentenced to life without parole or consecutive life sentences." *Id.* To the extent the present case involved a domestic situation, this Court has found:

> We have never approved a per se "domestic dispute" exception to the imposition of the death penalty. As we explained in *Spencer v. State*, 691 So. 2d 1062 (Fla. 1997), there have been cases involving domestic disputes in which we struck the cold, calculated, and premeditated (CCP) aggravator on the basis that the heated passions involved negated the "cold" element of CCP. However, our reason for reversing the death penalty in those cases was that the striking of that aggravator rendered the death sentence disproportionate in light of the overall circumstances. *E.g., White v. State*, 616 So. 2d 21 (Fla. 1993); *Santos v. State*, 591 So. 2d 160 (Fla. 1991); *Douglas v. State*, 575 So. 2d 165 (Fla. 1991); *Farinas v. State*, 569 So. 2d 425 (Fla. 1990); *see also Wright v. State*, 688 So. 2d 298 (Fla. 1996) (finding death sentence disproportionate where aggravating circumstances of prior violent felony and commission during a burglary were all related to defendant's ongoing struggle with the victim and evidence in mitigation was copious); *Nibert v. State*, 574 So. 2d 1059 (Fla. 1990) (death sentence vacated as disproportionate in light of all the mitigating evidence that should have been found where sole aggravating circumstance was HAC). Indeed, we have upheld the death penalty as proportionate in a number of cases where the victim had a domestic relationship with the defendant. *See Spencer [v. State*, 645 So. 2d 377, 384 (Fla. 1994) ]; *Cummings-El v. State*, 684 So. 2d 729 (Fla. 1996); *Henry v. State*, 649 So. 2d 1366 (Fla. 1994); *Porter v. State*, 564 So. 2d 1060 (Fla. 1990). In *Spencer*, we affirmed the defendant's death sentence for the murder of his wife where the trial court found the aggravating circumstances of prior violent felony conviction and HAC and a number of mitigating circumstances, both statutory and nonstatutory. In this case, the established mitigation was similar to that in Spencer but there was also the additional aggravator that the murder was committed during the commission of a felony. Thus, under the circumstances of this case and in comparison to other

death cases, we cannot say that the death sentence is disproportionate.

*Id*. at 1381 (emphasis supplied) (footnote and some citations omitted).

*Pooler* negates any contention by Gregory that the death sentence is disproportionate when viewed in light of his extreme emotional disturbance arising from his belief that Skyler was unfaithful.

Based on the evidence set forth earlier, the aggravators the trial court found, and the totality of the circumstances, Gregory's death sentences are proportionate compared to other death sentences this Court has upheld. *See, e.g., Aguirre–Jarquin v. State*, 9 So. 3d 593, 610 (Fla. 2009) (finding the death sentence proportionate in a double murder where three aggravators were found for one murder, five for the other, including prior capital felony, commission during a burglary, and HAC for both and eight mitigating circumstances were found, three statutory); *Smithers v. State*, 826 So. 2d 916, 931 (Fla. 2002) (finding the death sentence proportionate in a double murder where three aggravators were found for one murder and two for the other, including HAC and prior violent felony for both, and two statutory and seven nonstatutory mitigating factors were found); *Francis v. State*, 808 So. 2d 110 (Fla. 2001) (finding the death sentence proportionate in the double stabbing murders of elderly sisters where the trial court found four aggravators for each murder, including HAC, the victims vulnerability due to age, prior violent felony based on the contemporaneous murder, that the murders were

committed during the course of a robbery, two statutory mitigators, and six nonstatutory mitigators); *Morton v. State*, 789 So. 2d 324 (Fla. 2001) (finding the death sentence proportionate in a double murder by gunshot and stabbing where trial court found three aggravators with respect to one murder and five with respect to the other, including prior violent felony based on the contemporaneous murder and cold, calculated and premeditated for both and two statutory mitigators and five nonstatutory mitigators): *See Connor v. State*, 803 So. 2d 598 (Fla. 2001) (holding death sentence proportionate where defendant murdered ex-girlfriend's daughter and Court upheld four aggravating circumstances, CCP, HAC, murder committed while engaged in a kidnapping, and previous capital felony; and four nonstatutory mitigating circumstances, mental illness at time of crime, good father, would die in prison if given life sentence, and no disciplinary problems in prison); *Blackwood v. State*, 777 So. 2d 399 (Fla. 2000) (holding death penalty proportionate after finding the HAC aggravating factor and one statutory mitigator of significant weight, no significant history of prior criminal conduct, and eight nonstatutory mitigating factors); *Zakrzewski*, 717 So. 2d 488 (holding death sentence proportionate where defendant murdered wife and children and trial court found three aggravators, previous capital felony, CCP, and HAC; and two statutory mitigators, extreme disturbance and no prior criminal history); *Lemon v. State*, 456 So. 2d 885, 888 (Fla. 1984) (holding death penalty proportionate where two

aggravating factors, prior violent felony and HAC, outweighed the mitigating effect of defendant's emotional disturbance.).

## CONCLUSION

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

## CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by U.S. MAIL to Richard R. Kuritz, 200 East Forsyth St., Jacksonville, Florida 32202, on March ___, 2012.

## CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Times New Roman 14-point font.

Respectfully submitted and certified,

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