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Orders and Opinions

Appendix A

Florida Supreme Court Opinion denying appeal of Defendant's Successive Motion to Vacate Death Sentence, dated September 20, 2018.
Lynch v. State, 254 So. 3d 312 (Fla 2018)

254 So.3d 312
Supreme Court of Florida.

Richard E. LYNCH, Appellant,
v.
STATE of Florida, Appellee.

No. SC17-2235
|
September 20, 2018

Synopsis

Background: Defendant, whose convictions for two counts of first-degree premeditated murder, one count of armed burglary of a dwelling, one count of kidnapping, and sentence to death, were affirmed on direct appeal, 841 So.2d 362, filed a successive motion for postconviction relief. The Circuit Court, Seminole County, Debra S. Nelson, J., denied the motion, and defendant appealed.

Holdings: The Supreme Court held that:

defendant knowingly and voluntarily waived his right to a penalty phase jury;

even if counsel's mitigation investigation and presentation was insufficient, it did not render defendant's waiver of his right to a penalty phase jury unknowing or unintelligent; and

defendant was procedurally barred from arguing that counsel's failure to investigate and present mitigation evidence rendered his waiver of his right to a penalty phase jury unknowing or unintelligent.

Affirmed.

An Appeal from the Circuit Court in and for Seminole County, Debra S. Nelson, Judge - Case No. 591999CF000881A000XX

Attorneys and Law Firms

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Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Donna M. Perry, Assistant Attorney General, West Palm Beach, Florida, for Appellee

Opinion

PER CURIAM.

This case is before the Court on appeal from an order denying a motion to vacate two sentences of death under Florida Rule of Criminal Procedure 3.851. Because the order concerns postconviction relief from two sentences of death, this Court has jurisdiction under article V, section 3(b)(1) of the Florida Constitution.

FACTS AND BACKGROUND

Richard E. Lynch pled guilty to two counts of first-degree premeditated murder, one count of armed burglary of a dwelling, and one count of kidnapping, all of which stemmed from events that occurred on March 5, 1999, and resulted in the deaths of Roseanna Morgan and her thirteen-year-old daughter, Leah Caday. *Lynch v. State* (*Lynch I*), 841 So.2d 362, 365-66 (Fla. 2003). The United States Court of Appeals for the Eleventh Circuit most concisely detailed the facts surrounding the murders:

> Lynch murdered Morgan and Caday on March 5, 1999, because he could not accept Morgan's decision to end their extramarital affair. *See Lynch* [*I*, 841 So.2d at 366]. The affair had lasted from August 1998 until February 1999. *Id.* While it was underway, although Lynch was unemployed and relied on his wife for financial support, he obtained three credit cards that were used to make more than $6,000 worth of purchases for Morgan. *See Lynch v. State* [(*Lynch II*)], 2 So.3d 47, 66 (Fla. 2008). She ended the affair on February 9, 1999 after her husband returned from Saudi Arabia where he had been working as a military contractor. *See Lynch* [*I*], 841 So.2d at 374. While Morgan moved on, Lynch did not. He began stalking Morgan, hanging around her apartment complex, showing up at her job, following her on her way home from work, and calling her apartment. Morgan's husband confronted Lynch several times and told him to leave her alone, but it did no good. Lynch persisted.

On March 3, 1999, about three weeks after Morgan had ended the affair, Lynch wrote a letter to his wife declaring his intention to kill Morgan and then himself. *See id.* at 366, 368. In that letter he asked his wife to send Morgan's parents copies of the letters and cards Morgan had written to him, as well as nude pictures of Morgan that he had taken. *Id.* at 366. He wrote that "I want them to have a sense of why it happened, some decent closure, a reason and understanding. ... I want them to know what she did, the pain she caused, that it was not just a random act of violence." *Lynch* [*II*], 2 So.3d at 64 (emphasis omitted). Lynch went on in the letter about the debts that had been run up on the credit cards, his fear that Morgan would not pay him back for any of the purchases, and the pain that she had caused him by ending their affair. After describing in explicit and unnecessary detail the various sexual acts he and Morgan had engaged in and how much he had enjoyed them, on the last page of the letter Lynch apologized to his wife "for all the pain, suffering, expense, embarrassment and hardship I will cause and give to you," but concluded that Morgan "must pay the price." Lynch left the letter in his garage.

Two days later, on March 5, he packed three pistols and ammunition into a black bag and drove to Morgan's apartment. *See id.* at 59. He parked his car down the street and around the corner from the apartment complex so that Morgan and her daughter Caday would not see it when they arrived at the complex. *Id.*; *Lynch* [*I*], 841 So.2d at 367 n.3. Lynch grabbed the bag with the three pistols and ammunition from the trunk of his car, walked to the complex, and picked an inconspicuous spot to wait for Morgan to return. *See Lynch* [*II*], 2 So.3d at 76.

Caday got home first. *See id.* Lynch talked the thirteen-year-old into letting him inside by telling her that he wanted to speak with her mother. *See id.* at 62. Once inside the apartment, he pulled one of the pistols from the black bag and held Caday at gunpoint for thirty or forty minutes while waiting for Morgan to arrive. *See Lynch* [*I*], 841 So.2d at 366. All the while, the young girl was "terrified." *Id.* She asked Lynch "why he was doing this to her." *Id.*

When Morgan finally returned home, Lynch met her at the door with a pistol in his hand. *See Lynch* [*II*], 2 So.3d at 59. Sensing what Lynch was going to do, Morgan refused to come inside. They had a heated discussion, which ended when Lynch fired seven shots. *See id.* at 58, 70. Three of the shots hit Morgan in the legs. *See id.* at 53, 69-70. One hit her eye and tore through her neck. *See id.* at 69-70. She fell to the floor in the hallway outside her apartment, bleeding and screaming for help. *See Lynch* [*I*], 841 So.2d at 366, 371. Lynch walked outside the apartment into the hallway where Morgan lay, and the door closed behind him. He dragged Morgan's bleeding body by her wrist back to the door, where he knocked and told Morgan's daughter to "Hurry up, open the door, your mom is hurt." *Id.* at 367. When Caday opened the door, Lynch dragged her mother inside, closing the door behind him. *Id.*

Inside the apartment, Lynch pulled a second pistol from his bag, and several minutes after he had first shot Morgan he killed her in front of her daughter by firing a single, execution-style shot to her head. *See id.* at 370-73; *Lynch* [*II*], 2 So.3d at 69. He then called his wife at their home, *Lynch* [*I*], 841 So.2d at 366, and told her he was "sorry for what I'm going to do." During that phone call, Lynch's wife could hear Caday screaming hysterically in the background. *See id.* at 369. After Lynch hung up, he killed the young girl by shooting her in the back. *See id.* at 366.

Lynch then called his wife again. *Id.* He told her that he had accidentally shot Caday and told her that he had left a letter in the garage. *See id.* When that call ended, Mrs. Lynch dialed 911. She told the operator about Lynch's phone calls and asked for the police to investigate. She then began to look for the letter. Her sister Juliette, whom Mrs. Lynch had paged after Lynch's first phone call, arrived at the home and joined in the search. Mrs. Lynch found the letter and started to read it but was interrupted when her husband called a third time. Both she and Juliette talked to him, begging him not to kill himself. *See id.* While Juliette was speaking with Lynch, Mrs. Lynch used her cell phone to call 911 again. She told the operator about the murder-suicide letter she had just found and that Lynch was willing to turn himself in. After that 911 call ended and Lynch had ended his call to Mrs. Lynch, she returned to reading the letter he had left. Before she could finish reading it, several police officers arrived at her home. *See Lynch* [*II*], 2 So.3d at 68. One officer, after confirming that she was Mrs. Lynch, asked her for the letter. *See id.* She did not want to hand it over until

she had finished reading it, but the officer kept asking and she gave him the letter.

While Mrs. Lynch was talking with the officers, Lynch himself called 911. *See Lynch* [*I*], 841 So.2d at 370. He talked with the 911 operator for the next thirty or forty minutes. *See Lynch* [*II*], 2 So.3d at 57-58. By the time that call began, two officers were at Morgan's apartment responding to the neighbors' reports of shots fired. The officers attempted to enter the apartment, but quickly retreated when Lynch fired a shot at them. *See Lynch* [*I*], 841 So.2d at 366. Eventually, the SWAT team arrived, there were negotiations, and Lynch gave himself up. Before he did that, Lynch told the 911 operator that he had killed two people, that he had shot Morgan to "put her out of her misery," and that he had fired at the two police officers who tried to enter the apartment. *Id.*

Lynch v. Sec'y, Fla. Dep't of Corrs. (*Lynch IV*), 776 F.3d 1209, 1212-14 (11th Cir. 2015). Lynch's trial counsel, in considering the abundance of evidence available against Lynch, recommended that he waive a penalty phase jury because a jury would be more emotional and unsympathetic to mitigation presented for the murder of a child than a seasoned trial judge would be. *Id.* at 1214. Accordingly, Lynch waived his right to a penalty phase jury. *Id.* at 1215. [1]

The testimony elicited during the penalty phase regarding the events of March 5, 1999, included a tape of a telephone call that appellant made to the "911" emergency assistance service while still in the apartment where the murders occurred. On that tape, Lynch is heard admitting to the 911 operator that he shot two people at 534 Rosecliff Circle. He said he initially traveled to the apartment only to attempt to have Morgan pay a credit card debt, but resorted to shooting her in the leg and in the back of the head. He told the 911 operator that he had three handguns with him and that he shot Morgan in the back of the head to "put her out of her misery." Appellant also admitted to firing at the police when they first arrived on the scene.

As to Caday, appellant informed the 911 operator that he had held Caday at gunpoint while waiting for Morgan to return home. He related that she was terrified during the process prior to the shootings and asked him why he was doing this to her. Appellant admitted that he shot Caday, and said "the gun just went off into her back and she's slumped over. And she was still breathing for awhile and that's it." Appellant told the operator he planned to kill himself.

During the course of these events on March 5, 1999, appellant telephoned his wife three times from the apartment. His wife testified that during the first call she could hear a woman screaming in the background. Appellant's wife further testified that the screaming woman sounded "very, very upset." When Lynch called a second time, he admitted to having just shot someone.

Prior to being escorted from the apartment by police, Lynch also talked to a police negotiator. The negotiator testified that Lynch told her that during the thirty to forty minutes he held Caday hostage prior to the shootings, Caday was terrified, he displayed the handgun to her, she was aware of the weapon, and appeared to be frightened. He confided in the negotiator that Caday had complied with his requests only out of fear. Finally, appellant described the events leading to Morgan's death by admitting that he had confronted her at the door to the apartment, shot her in the leg, pulled her into the apartment, and then shot her again in the back of the head.

Several of Morgan's neighbors in the apartment complex also testified as to the events of March 5, 1999. Morgan's neighbor across the hall[n.2] testified that she looked out of the peephole in her door after hearing the initial shots and saw Lynch dragging Morgan by the hands into Morgan's apartment. She further testified that Lynch knocked on the door to Morgan's apartment and said, "Hurry up, open the door, your mom is hurt." The neighbor testified that Morgan was screaming and was bloody from her waist down. Morgan's neighbor further testified that the door was opened, then after entering with Morgan, Lynch closed the door and approximately five minutes later she heard the sound of three more gunshots. A second neighbor in the apartment complex also testified that approximately five to seven minutes after she heard the initial gunshots, she heard three more.

[n.2] The neighbor lived in the apartment directly across the hall from Morgan's apartment in the same apartment building.

After his arrest, appellant participated in an interview with police in which he confessed to the murders. He again admitted the events of the day, telling police he

showed Caday the gun and that she was very scared while they were waiting for Morgan to arrive home. He told the detective that Caday was afraid and that he was "technically" holding her hostage. He admitted to shooting Caday's mother, Morgan, four or five times in the presence of her daughter.

In his post-arrest interview, Lynch also admitted that he planned to show Morgan the guns he brought with him to let her know he possessed them, and to force her to sit down and be quiet. He told the detectives he did not know why he did not just leave the guns in his car. [n.3] He admitted shooting Morgan four or five times, dragging her into the apartment, and then shooting her in the back of the head with a different firearm.

> [n.3] The detective conducting the interview with appellant testified that Lynch's car was parked down the street, around the corner, and away from Morgan's apartment. It could not be seen from the apartment.

The State's final witness was the medical examiner who testified that after receiving the gunshot wound, it probably would have taken "no more than several minutes" for Caday to die. On cross-examination, although he conceded that it was possible that Caday could have died in less than one minute from the wound, such was unlikely. Finally, he also testified that with the amount of blood loss suffered by Caday, she could have lost consciousness within ten to twenty seconds.

The defense presented only one witness, a mental health expert. She related that she had diagnosed Lynch with schizoaffective disorder, a condition which is a combination of schizophrenia and a mood disorder. Further, she testified that she did not believe the letter appellant wrote two days prior to the murders demonstrated an intent by Lynch to kill Morgan. She concluded that appellant was under the influence of an extreme mental and emotional disturbance on March 5, 1999, and that his psychotic process substantially impaired his capacity to conform his conduct with the requirements of the law.

The State attempted to rebut the defense mental health evidence through the testimony of another mental health expert. The State's expert opined that Lynch suffered from a depressive disorder. The State's expert admitted that it was his opinion that on the day of the incident, appellant was suffering emotional distress, but it was not extreme, and Lynch did not lack the ability to conform his conduct to the requirements of the law. Finally, the State's doctor opined that the letter appellant wrote prior to the murders evidenced a murder-suicide plot.

Lynch I, 841 So.2d at 366-68. After considering all the evidence presented at the penalty phase, the trial court sentenced Lynch to death for the murders of Morgan and Caday. *Lynch IV*, 776 F.3d at 1215. [2]

On direct appeal, we affirmed the judgments and sentences under review. *Lynch I*, 841 So.2d at 365. On October 6, 2003, the United States Supreme Court denied Lynch's petition for writ of certiorari. *Lynch v. Florida*, 540 U.S. 867, 124 S.Ct. 189, 157 L.Ed.2d 123 (2003). Thus, Lynch's sentence became final on that date.

We affirmed the denial of Lynch's initial motion for postconviction relief and denied his petition for writ of habeas corpus. *Lynch II*, 2 So.3d at 86. Additionally, Lynch sought federal relief pursuant to a writ of habeas corpus, which was granted in part and denied in part. *Lynch v. Sec'y, Dep't of Corrs.* (*Lynch III*), 897 F.Supp.2d 1277, 1286 (M.D. Fla. 2012). On appeal and cross-appeal, the Eleventh Circuit affirmed the part of the district court's judgment denying Lynch habeas relief and reversed the part of the district court's judgment granting him relief. *Lynch IV*, 776 F.3d at 1232. On January 11, 2016, the Supreme Court denied Lynch's petition for writ of certiorari to the Eleventh Circuit. *Lynch v. Jones*, —— U.S. ——, 136 S.Ct. 798, 193 L.Ed.2d 723 (2016).

Lynch now files a successive motion for postconviction relief, challenging the constitutionality of his convictions and sentences under *Hurst v. State*, 202 So.3d 40 (Fla. 2016), which the postconviction court below denied. This appeal follows.

ANALYSIS

On his successive motion for postconviction relief, Lynch asserts that he is entitled to *Hurst* relief due to (1) his invalid waiver of his penalty phase jury, and (2) the alleged changed analysis of the prejudice prong under *Strickland v. Washington*, [3] in light of *Hurst*. As explained at length below, we find both of these arguments to be meritless and thus affirm the postconviction court's denial of relief.

I.

Lynch first argues that he should be entitled to relief under *Hurst* because trial counsel's deficient advice with regard to the evidence available to defend his penalty phase case resulted in an invalid waiver of his right to a penalty phase jury. We conclude that this claim is meritless based on Lynch's valid waiver of his right to a penalty phase jury and on our precedent in *Mullens v. State*, 197 So.3d 16 (Fla. 2016), concerning such waivers.

When Lynch requested to waive his penalty phase jury, the trial court conducted an extensive colloquy with Lynch with regard to his understanding of the rights he sought to waive:

> THE COURT: ... Now the second thing that you have done is you have asked me to consider waiving a jury trial for the penalty phase of this proceeding. Do you understand that?
>
> MR. LYNCH: Yes.
>
> THE COURT: Is that what you want to do?
>
> MR. LYNCH: Yes, Your Honor.
>
> THE COURT: I need to advise you that you have the right to have a jury of twelve persons hear matters of aggravation which are limited by statute, and any matters in mitigation that you wish to present. You have the right to be represented by a lawyer during the course of that hearing. You're entitled to testify at the hearing or to remain silent, and your silence cannot be used against you. You have the right to the subpoena power of the Court to compel the attendance of any witnesses that you may wish to call in your behalf at the hearing. If the jury by a vote of at least six to six recommends that you be given a life sentence, I will not override that decision and will impose a life sentence upon you. Do you understand that?
>
> MR. LYNCH: Yes, Your Honor.
>
> THE COURT: On the other hand, if the jury should return by a vote of at least seven to five and recommend that you be sentenced to death, I would have to give that recommendation, quote, great weight, end quote, although the final decision on the penalty to be imposed is my responsibility alone; do you understand that?
>
> MR. LYNCH: Yes, Your Honor.
>
> THE COURT: Is that what you want to do, you want to waive the right to have a jury trial as far as the recommendation of the penalty is concerned?
>
> MR. LYNCH: Yes, sir.
>
> THE COURT: You're sure about that?
>
> MR. LYNCH: Yes, sir.
>
> THE COURT: You understand that if I allow you to do that, I'm not going to let you change your mind later?
>
> MR. LYNCH: Yes.
>
> THE COURT: All right. Does the State wish to be heard on that issue.
>
> [THE STATE]: I do, Your Honor.
>
> We understand, of course, it's completely discretionary with the Court at this point as to whether or not you will impanel a jury for its recommendation or not. The State's position is that this particular strategy has been employed a number of times by the Public Defender's office in this circuit. The track record so far is in every case it has been a successful strategy to avoid the imposition of the death penalty.
>
> This case will hopefully stand on its own merits and its own facts with the Court, and surely we recognize that, but I think on behalf of the State and in light of what has happened in the past cases, the State would ask that the Court impanel a jury. And we would state to the Court that the reason for our factual basis, which is six pages long, was to give the Court a bigger picture of what's involved in this case. This is a double homicide, it is a serious death penalty case. If anyone had any question about the prior ones, I would hope that none would be entertained about this case involving the death of a thirteen year old child.
>
> So we would ask that the Court impanel a jury and allow a jury of Mr. Lynch's peers to make a recommendation to the Court for its consideration, and that would be our preference. Obviously, it's the Court's discretion.

> THE COURT: All right. Well, I'm going to allow him to waive the jury, if that's what he wants to do, and it is. So I'll grant his motion.

In addition to the oral colloquy, Lynch also signed a written waiver, which detailed his understanding of his rights and his waiver of those rights:

> E} I understand that under Florida Law I have a right to have a jury empaneled to consider matters relevant to my sentence and to have that jury recommend to the Judge, by an advisory verdict, Life Imprisonment Without Parole or the Death Penalty as to Counts 1 and Count [sic] 2 or either of them.
>
> F} I further acknowledge I understand that, with the Court's consent, I may waive the Advisory Sentencing Jury and request that the Judge conduct the sentencing trial without a jury.
>
> I specifically request a Sentencing Trial Without a Jury before the Judge alone and waive my right to an Advisory Jury Sentencing recommendation. *See State vs. Hernandez, 645 So.2d 432 (Fla. 1994).*
>
> I understand by entering these pleas of guilty that I am submitting myself to the jurisdiction of the Court and that I will not be allowed to withdraw my pleas and the judge is required to sentence me to either Life in Prison Without Parole or the Death Penalty as authorized by law, for the offenses to which I have pled guilty.

Thus, as evidenced by both the oral and written waiver, Lynch was fully advised of his right to a penalty phase jury, and the postconviction court properly found that Lynch knowingly and voluntarily waived that right. *See Tucker v. State*, 559 So.2d 218, 220 (Fla. 1990) (holding that best practice is to obtain "both a personal on-the-record waiver and a written waiver").

Lynch, however, now attempts to obtain relief under this claim based upon the fact that trial counsel's insufficient mental health mitigation investigation ultimately caused him to make an unknowing and unintelligent waiver of his right to a penalty phase jury. We previously detailed the insufficient mental health mitigation at issue:

> Lynch's trial counsel originally retained Dr. David Cox, a neuropsychologist. Dr. Cox concluded that Lynch suffered from cognitive disorder NOS (not otherwise specified) and a possible paranoid personality disorder. Dr. Cox recommended further neuropsychological testing to determine the degree of Lynch's impairment. Trial counsel were not pleased with the style of this expert's report, which they felt (1) was "amateurish" and (2) did not properly connect the diagnosis to the events of March 5, 1999. Trial counsel later dismissed Dr. Cox in favor of another neuropsychologist, Dr. Jacquelyn Olander. Trial counsel did not inform Dr. Olander that Dr. Cox had previously diagnosed some level of cognitive impairment. However, trial counsel did inform Dr. Olander that they had previously retained Dr. Cox. Dr. Olander respected Dr. Cox, and she assumed that if Lynch suffered from a cognitive impairment, it would have already been discovered and reported by the previous expert. Dr. Olander also assumed that trial counsel would have informed her if Lynch had received an impairment diagnosis. Based on these assumptions, Dr. Olander did not conduct neuropsychological testing with Lynch, but rather conducted only psychological testing. Dr. Olander diagnosed Lynch with schizoaffective disorder, which is a combination of schizophrenic symptoms and a mood disorder. She specifically testified at trial that Lynch did not have any brain impairment. Consequently, in sentencing Lynch, the trial court was unaware of the fact that Lynch suffered from some level of cognitive impairment.
>
> During the postconviction hearing, [trial counsel] Mr. Figgatt and Mr. Caudill conceded that they were aware that Dr. Cox had diagnosed Lynch with a cognitive impairment. Further, they admitted that they did not follow up on this diagnosis, did not inform Dr. Olander, and did not obtain Lynch's school records or other background information to corroborate that Lynch suffered from some level of cognitive impairment. Lynch's school records might have been helpful in this regard because they reflect a disparity between his verbal and mathematic abilities (verbal exercises are predominately left-brain tasks, whereas math exercises are predominately right-brain tasks). Thus, Lynch's relatively good grades in English and religion, as compared to his low grades in mathematics courses and mechanical drawing, could have assisted his mental-health experts in diagnosing and attempting to corroborate a developmental cognitive impairment. Relatedly, Lynch's standardized test scores also reflect a disparity.

Lynch II, 2 So.3d at 74. It is this subsequent discovery of "*mild*" cognitive impairment, *id.* at 73, Lynch asserts, that now renders his waiver of his penalty phase jury unknowing and unintelligent.

Lynch's argument, however, has one fatal flaw. The evidence Lynch's lawyers did or did not present has no bearing on the knowing and intelligent nature of the waiver of his right to a penalty phase jury. Lynch was advised on the record of his right to a penalty phase jury and the consequences of waiving that right and further attested to his informed waiver in writing. Whether the mitigation investigated and presented, upon waiver of the penalty phase jury, was sufficient is something more appropriately presented under an ineffective assistance of counsel claim. *See McMann v. Richardson*, 397 U.S. 759, 774, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970) ("It is no denigration of the right to trial to hold that when the defendant waives his state court remedies and admits his guilt, he does so under the law then existing; further, he assumes the risk of ordinary error in either his or his attorney's assessment of the law and facts. Although he might have pleaded differently had later decided cases then been the law, he is bound by his plea and his conviction unless he can allege and prove serious derelictions on the part of counsel sufficient to show that his plea was not, after all, a knowing and intelligent act."). This Court, however, extensively analyzed whether Lynch's trial counsel were ineffective for failing to adequately investigate the mild cognitive impairment in his initial postconviction motion. *Lynch II*, 2 So.3d at 70-77. As discussed in more detail below, we held that, while counsel may have been deficient, Lynch had failed to prove that this deficiency prejudiced him—thus failing the *Strickland* test. *Id.* at 70-71, 77. Absent a showing that trial counsel was ineffective, Lynch cannot show his waiver of his penalty phase jury was unknowing or unintelligent. Therefore, the postconviction court properly held that Lynch's waiver was knowing and voluntary.

In *Mullens*, we held that when a defendant knowingly and voluntarily waives the right to a penalty phase jury, he is not later entitled to relief under *Hurst v. Florida*, —— U.S. ——, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016). *Mullens*, 197 So.3d at 39-40.

> If a defendant remains free to waive his or her right to a jury trial, even if such a waiver under the previous law of a different jurisdiction automatically imposed judicial factfinding and sentencing, we fail to see how Mullens, *who was entitled to present mitigating evidence to a jury as a matter of Florida law even after he pleaded guilty and validly waived that right,* can claim error. As our sister courts have recognized, accepting such an argument would encourage capital defendants to abuse the judicial process by waiving the right to jury sentencing and claiming reversible error upon a judicial sentence of death. This we refuse to permit. Accordingly, Mullens cannot subvert the right to jury factfinding by waiving that right and then suggesting that a subsequent development in the law has fundamentally undermined his sentence.

Id. (citation omitted). Furthermore, since issuing our decision in *Mullens*, we have repeatedly reaffirmed the principle that a defendant who knowingly and voluntarily waives his right to a penalty phase jury cannot later claim relief under *Hurst* and its progeny. *Hutchinson v. State*, 243 So.3d 880, 883 (Fla. 2018); *Rodgers v. State*, 242 So.3d 276, 276-77 (Fla. 2018); *Allred v. State*, 230 So.3d 412, 413 (Fla. 2017); *Deassure v. State*, 230 So.3d 411, 412 (Fla. 2017); *Twilegar v. State*, 228 So.3d 550, 551 (Fla. 2017); *Covington v. State*, 228 So.3d 49, 69 (Fla. 2017); *Wright v. State*, 213 So.3d 881, 903 (Fla.), *vacated on other grounds*, —— U.S. ——, 138 S.Ct. 360, 199 L.Ed.2d 260 (2017); *Knight v. State*, 211 So.3d 1, 5 (Fla. 2016); *Robertson v. State*, No. SC16-1297, 2016 WL 7043020, at *1 (Fla. Dec. 1, 2016); *Davis v. State*, 207 So.3d 177, 212 (Fla. 2016); *Brant v. State*, 197 So.3d 1051, 1079 (Fla. 2016). Based on our clear and repeated precedent, Lynch is not entitled to *Hurst* relief in light of his valid waiver of a penalty phase jury. Therefore, we affirm the postconviction court's denial of relief on this claim of Lynch's successive motion for postconviction relief.

II.

Next, Lynch asserts that the test for the prejudice prong under *Strickland* has changed post-*Hurst*. Thus, Lynch requests that his prior claim of ineffective assistance of counsel be reevaluated with regard to the prejudice prong, in light of the allegedly modified post-*Hurst Strickland* test. Although the concur in result opinion takes the position that Lynch's *Strickland* argument should not be addressed, we disagree. The altered post-*Hurst Strickland* argument was a major component of Lynch's successive postconviction motion and we would be remiss to ignore it. The *Strickland* analysis, however, remains unchanged post-*Hurst* and, therefore, we conclude that this claim of Lynch's successive postconviction motion is without merit.

In *Lynch II*, we extensively addressed the issue of whether Lynch's counsel were ineffective for failing to fully investigate his mental health mitigation evidence before advising him to waive his penalty phase jury. 2 So.3d at 70-77. Specifically, we noted that, while counsel may have been deficient for failing to fully investigate Lynch's "*mild*" cognitive impairment, their deficiency did not prejudice Lynch because he "failed to present any evidence connecting any cognitive condition to his behavior" on the day of the murders. *Id.* at 77. Thus, even if counsel had presented evidence of Lynch's mild cognitive impairment, the significant aggravation in this case would have nonetheless outweighed the mitigation. *Id.* at 70-71. Because this Court previously extensively analyzed the issue of trial counsel's ineffectiveness, Lynch's present claim is procedurally barred. *See Hendrix v. State*, 136 So.3d 1122, 1125 (Fla. 2014) ("Claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion." (citing *Van Poyck v. State*, 116 So.3d 347, 362 (Fla. 2013))); *see also Reed v. State*, 116 So.3d 260, 268 (Fla. 2013); *Grossman v. State*, 29 So.3d 1034, 1042 (Fla. 2010). Lynch cannot now resurrect a previously extinguished claim under the guise of a new *Strickland* prejudice analysis in the post-*Hurst* legal landscape.

Nevertheless, Lynch's claim also fails on the merits. We have repeatedly held that trial counsel is not required to anticipate changes in the law in order to provide effective legal representation. *See, e.g.*, *Lebron v. State*, 135 So.3d 1040, 1054 (Fla. 2014) ("This Court has 'consistently held that trial counsel cannot be held ineffective for failing to anticipate changes in the law ....' " (quoting *Cherry v. State*, 781 So.2d 1040, 1053 (Fla. 2000))). Furthermore, under *Strickland*, claims of ineffective assistance of counsel are assessed under the law in effect *at the time of the trial*. 466 U.S. at 690, 104 S.Ct. 2052. Therefore, Lynch is not entitled to a different prejudice analysis today, simply due to the release of *Hurst* and its progeny. As we previously explained, Lynch's trial counsel may have rendered deficient performance, but that deficiency did not ultimately prejudice Lynch. Thus, we affirm the denial of this claim of Lynch's successive postconviction motion.

CONCLUSION

Accordingly, we affirm the postconviction court's denial of Lynch's successive motion for postconviction relief.

It is so ordered.

CANADY, C.J., and LEWIS, POLSTON, LABARGA, and LAWSON, JJ., concur. PARIENTE, J., concurs in result with an opinion, in which QUINCE, J., concurs.

QUINCE, J., concurs.

PARIENTE, J., concurring in result.

Pursuant to this Court's opinion in *Mullens*, [4] I agree with the per curiam opinion's conclusion that *Hurst* [5] does not apply to Lynch's case because he waived his right to a penalty phase jury. *See* per curiam op. at 322. However, because *Hurst* does not apply to Lynch's case, I would not address Lynch's second claim regarding the effect, if any, that *Hurst* has on the analysis of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), claims. *See* per curiam op. at 322-23. Thus, I concur in result.

All Citations

254 So.3d 312, 43 Fla. L. Weekly S384

Footnotes

1 The State objected to Lynch's waiver of a penalty phase jury. The trial court conducted a colloquy of Lynch and ultimately accepted the waiver. Lynch also signed a written waiver.

2 As we stated in *Lynch II*:

> In imposing death sentences for the murders, the trial court found three aggravating factors as to the murder of Morgan: (1) the murder was cold, calculated and premeditated (CCP) (great weight);
>
> (2) Lynch had previously been convicted of a prior violent felony (the murder of Caday) (moderate weight); and (3) the murder was committed while Lynch was engaged in one or more other felonies (little weight). *See* [*Lynch I*, 841 So.2d at 368.] As to the murder of Caday, the trial court also found three aggravating factors: (1) the murder was heinous, atrocious, or cruel (HAC) (great weight); (2) Lynch had previously been convicted of a prior violent felony (the murder of Morgan) (great weight); and (3) the murder was committed while Lynch was engaged in one or more other felonies (moderate weight). *See id.* With regard to mitigation, the trial judge found one statutory mitigator and eight nonstatutory mitigators:
>
> > The statutory mitigating factor found was that Lynch had no significant history of prior criminal activity (moderate weight). The eight nonstatutory mitigators were: (1) the crime was committed while defendant was under the influence of a mental or emotional disturbance [*but the disturbance was not extreme*] (moderate weight); (2) the defendant's capacity to conform his conduct to the requirements of law was impaired [*but not severely impaired*] (moderate weight); (3) the defendant suffered from a mental illness at the time of the offense (little weight); (4) the defendant was emotionally and physically abused as a child (little weight); (5) the defendant had a history of alcohol abuse (little weight); (6) the defendant had adjusted well to incarceration (little weight); (7) the defendant cooperated with police (moderate weight); (8) the defendant's expression of remorse, the fact that he has been a good father to his children, and his intent to maintain his relationship with his children (little weight).
>
> *Id.* at 368 n.5.

Lynch II, 2 So.3d at 53-54 (second and third alterations in original) (footnote omitted).

3 *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

4 *Mullens v. State*, 197 So.3d 16 (Fla. 2016), *cert. denied*, —— U.S. ——, 137 S.Ct. 672, 196 L.Ed.2d 557 (2017).

5 *Hurst v. State* (*Hurst*), 202 So.3d 40 (Fla. 2016), *cert. denied*, —— U.S. ——, 137 S.Ct. 2161, 198 L.Ed.2d 246 (2017); *see Hurst v. Florida*, —— U.S. ——, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016).

Appendix B

Circuit Court of the Eighteenth Judicial Circuit Final Order Denying Defendant's Successive Motion to Vacate Death Sentence, dated November 21, 2017

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

RICHARD LYNCH,
Defendant.
_____/

CASE NO. 99-881CFA

ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE

THIS CAUSE comes before the Court on the Defendant's "Successive Motion to Vacate Sentences of Death Pursuant to Florida Rule of Criminal Procedure 3.851," filed on October 3, 2017. The State filed its response on October 20, 2017. Having conducted a case management conference and upon due consideration, the Court finds as follows:

The Defendant was charged with two counts of first degree premeditated murder, one count of armed burglary, and one count of kidnapping. On October 19, 2000, the Defendant entered an open plea to the court to all of the charges and waived a penalty phase jury. The penalty phase bench trial was held on January 10 through January 12, 2001. The Spencer hearing was held on February 6, 2001. Spencer v. State, 615 So. 2d 688 (Fla. 1993). On April 3, 2001, the Court sentenced the Defendant to death on both counts of first degree murder, and life in prison for the burglary and kidnapping counts. The Defendant appealed and the Florida Supreme Court affirmed. Lynch v. State, 841 So. 2d 362 (Fla. 2003).[1]

Following the affirmance of his conviction and sentence, the Defendant filed a Motion to Vacate Judgments and Sentence pursuant to Fla. R. Crim. P. 3.851. The Court denied the motion after an evidentiary hearing. The Defendant appealed and the Florida Supreme Court affirmed.

[1] The Supreme Court opinion contains a summary of facts of this case. Lynch, 841 So. 2d at 365–68.

Lynch v. State, 2 So. 3d 47 (Fla. 2008), as revised on denial of reh'g (Jan. 30, 2009). The Defendant filed a petition for writ of habeas corpus in federal court. The United States District Court for the Middle District of Florida granted, in part, and denied, in part, the Defendant's petition. Lynch v. Sec'y, Dept. of Corr., 897 F. Supp. 2d 1277 (M.D. Fla. 2012). The Eleventh Circuit Court of Appeals affirmed the denial and reversed the portion of the lower court's order granting the Defendant's petition. Lynch v. Sec'y, Florida Dept. of Corr., 776 F.3d 1209 (11th Cir. 2015).

In his current motion, the Defendant raises two claims for relief based upon the United States Supreme Court ruling in Hurst v. Florida, 136 S. Ct. 616, 621 (2016), hereinafter Hurst I, and the Florida Supreme Court ruling in Hurst v. State, 202 So. 3d 40, 45 (Fla. 2016), hereinafter Hurst II, Mosley v. State, 209 So. 3d 1248 (Fla. 2016), and Bevel v. State, 221 So. 3d 1168 (Fla. 2017). In Hurst I, the United States Supreme Court held that Florida's capital sentencing scheme is unconstitutional because the judge, and not the jury, makes the necessary findings of fact to impose the death sentence. 136 S. Ct. at 619. In Hurst II, the Florida Supreme Court held:

> before the trial judge may consider imposing a sentence of death, the jury in a capital case must unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that the aggravating factors are sufficient to impose death, unanimously find that the aggravating factors outweigh the mitigating circumstances, and unanimously recommend a sentence of death.

Hurst II, 202 So. 3d at 57. In Mosley, the Florida Supreme Court addressed whether Hurst I and Hurst II apply retroactively. The Court concluded that the Hurst rulings apply to all defendants whose sentences were not yet final when the United States Supreme Court issued its opinion in

Ring v. Arizona, 536 U.S. 584 (2002).[2] Mosley v. State, CITE SC14-2108, 2016 WL 7406506, at *25 (Fla. Dec. 22, 2016), reh'g denied, SC14-2108, 2017 WL 510491 (Fla. Feb. 8, 2017). Given that the Defendant's judgment and sentence were final after Ring, the Hurst rulings apply to the Defendant.

In his first claim, the Defendant asserts that he is entitled to Hurst relief despite the fact that he waived a penalty phase jury. However, following the issuance of Hurst I, the Florida Supreme Court held that a defendant who knowingly and voluntarily waives the right to a penalty phase jury is not entitled to relief under Hurst I. Mullens v. State, 197 So. 3d 16, 38–40 (Fla. 2016), reh'g denied, SC13-1824, 2016 WL 4377112 (Fla. Aug. 9, 2016), and cert. denied, 16-6773, 2017 WL 69535 (U.S. Jan. 9, 2017). Since issuing its opinion in Mullens, the Florida Supreme Court has consistently concluded that a defendant who waived a penalty phase jury is not entitled to Hurst relief. Allred v. State, SC17-846, 2017 WL 5494385, at *1 (Fla. Nov. 16, 2017); Dessaure v. State, SC17-1075, 2017 WL 5494384, at *1 (Fla. Nov. 16, 2017); Twilegar v. State, SC17-839, 2017 WL 4985519, at *1 (Fla. Nov. 2, 2017); Covington v. State, 42 Fla. L. Weekly S787 (Fla. Aug. 31, 2017), reh'g denied, SC15-1252, 2017 WL 4535061 (Fla. Oct. 11, 2017); Wright v. State, 213 So. 3d 881, 903 (Fla. 2017), cert. granted on other grounds, judgment vacated, 17-5575, 2017 WL 3480760 (U.S. Oct. 16, 2017); Knight v. State, 211 So. 3d 1, 5 n.2 (Fla. 2016); Robertson v. State, SC16-1297, 2016 WL 7043020, at *1 n.1 (Fla. Dec. 1, 2016); Davis v. State, 207 So. 3d 177, 211–12 (Fla. 2016), reh'g denied, SC13-1, 2017 WL 57010 (Fla. Jan. 5, 2017); Brant v. State, 197 So. 3d 1051, 1079 (Fla. 2016), reh'g denied, SC14-2278, 2016 WL 4446453 (Fla. Aug. 23, 2016). Furthermore, on the Defendant's direct appeal, the Florida

[2] In Asay v. State, the Florida Supreme Court held that the Hurst rulings do not apply retroactively to defendants whose sentences were final before the issuance of Ring. Asay v. State, 210 So. 3d 1, 22 (Fla. 2016), reh'g denied, SC16-102, 2017 WL 431741 (Fla. Feb. 1, 2017), and cert. denied, 86 USLW 3079 (U.S. 2017).

Supreme Court found that the Defendant waived any claims attacking the constitutionality of the Florida death penalty scheme based upon Ring by waiving his penalty phase jury. Lynch v. State, 841 So. 2d 362, 366 n.1 (Fla. 2003). Given that the Defendant knowingly and voluntarily waived a penalty phase jury, based upon the Florida Supreme Court case law, this Court finds that the Defendant is not entitled to relief pursuant to Hurst.

In his second claim, the Defendant asserts that he is entitled to have his previously raised and denied postconviction claims reevaluated in light of Hurst. The Defendant relies on Bevel to support this assertion. However, in Bevel, there was a penalty phase jury, and the postconviction motion on review was the defendant's initial motion, not a successive motion. Bevel, 221 So. 3d at 1171–72, 1175. Nothing in Bevel changed prior Florida Supreme Court rulings that "[c]laims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion." Hendrix v. State, 136 So. 3d 1122, 1125 (Fla. 2014); see also, Reed v. State, 116 So. 3d 260, 268 (Fla. 2013); Grossman v. State, 29 So. 3d 1034, 1042 (Fla. 2010). Therefore, this claim is procedurally barred.

Accordingly, it is

ORDERED AND ADJUDGED that the Defendant's motion is DENIED.

Defendant may file a notice of appeal within thirty days of the date this order is rendered.

DONE AND ORDERED in chambers at Sanford, Seminole County, Florida, this 21 day of November, 2017.

Debra S. Nelson

DEBRA S. NELSON, Circuit Judge

I hereby certify that copies of the foregoing have been furnished by mail this 21 day of November 2017 to:

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By: _____
DEPUTY CLERK

Appendix C

Florida Supreme Court Opinion denying direct appeal from trial, dated July 9, 2003
Lynch v. State, 841 So 2d 362 (2003)

841 So.2d 362
Supreme Court of Florida.

Richard LYNCH, Appellant,
v.
STATE of Florida, Appellee.

No. SC01-795.
|
Jan. 9, 2003.
|
Rehearing Denied March 21, 2003.

Synopsis

Following a guilty plea, defendant was convicted in the Circuit Court, Seminole County, O.H. Eaton, Jr., J., of two counts of first-degree premeditated murder, one count of armed burglary of a dwelling, and one count of kidnapping, and defendant was sentenced to death. Defendant appealed. The Supreme Court held that: (1) competent, substantial evidence existed to support finding that murder was heinous, atrocious, or cruel (HAC); (2) it was not improper for trial court to rely on defendant's incriminating letter to defendant's wife as evidence supporting finding that murder was cold, calculated, and premeditated (CCP); (3) defendant's execution-style murder of victim clearly satisfied "cold" element of CCP aggravating factor; (4) trial court properly found that murder was "calculated;" (5) victim's alleged rejection of defendant as a lover and victim's refusal to pay credit card debt did not constitute legal or moral justification; (6) defendant's guilty plea was knowing, intelligent, and voluntary; and (7) trial court properly sentenced defendant to death.

Affirmed.

Pariente, J., concurred in result only and filed opinion in which Anstead, C.J., and Shaw, Senior Justice, concurred.

Attorneys and Law Firms

***365** James B. Gibson, Public Defender, and Christopher S. Quarles, Assistant Public Defender, Seventh Judicial Circuit, Daytona Beach, FL, for Appellant.

Charlie Crist, Attorney General, and Judy Taylor Rush and Douglas T. Squire, Assistant Attorneys General, Daytona Beach, FL, for Appellee.

Opinion

PER CURIAM.

We have on appeal the judgment and sentence of the Circuit Court of the Eighteenth Judicial Circuit imposing the death penalty upon Richard Lynch. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. For the reasons stated below, we affirm the judgment and sentence under review.

FACTS AND PROCEDURAL HISTORY

On March 23, 1999, a grand jury returned an indictment against appellant, Richard Lynch, for two counts of first-degree premeditated murder, one count of armed burglary of a dwelling, and one ***366** count of kidnapping. The indictment was the result of events that occurred on March 5, 1999, culminating in the deaths of Roseanna Morgan ("Morgan") and her thirteen-year-old daughter, Leah Caday ("Caday").

On October 19, 2000, appellant pled guilty to all four counts of the indictment. Subsequently, the trial judge granted appellant's request to have the penalty phase conducted without a jury. [1] During the penalty phase, the State produced a letter written by the appellant two days prior to the murders. In the letter, addressed to appellant's wife, Lynch admitted to having a "long affair" with Roseanna Morgan, which lasted from August 1998 until February 9, 1999. He detailed the affair and asked his wife to send copies of cards Morgan had written to Lynch and nude pictures Lynch had taken of Morgan to Morgan's family in Hawaii. Lynch wrote: "I want them to have a sense of why it happened, some decent closure, a reason and understanding...."

The testimony elicited during the penalty phase regarding the events of March 5, 1999, included a tape of a telephone call that appellant made to the "911" emergency assistance service while still in the apartment where the murders occurred. On that tape, Lynch is heard admitting to the

911 operator that he shot two people at 534 Rosecliff Circle. He said he initially traveled to the apartment only to attempt to have Morgan pay a credit card debt, but resorted to shooting her in the leg and in the back of the head. He told the 911 operator that he had three handguns with him and that he shot Morgan in the back of the head to "put her out of her misery." Appellant also admitted to firing at the police when they first arrived on the scene.

As to Caday, appellant informed the 911 operator that he had held Caday at gunpoint while waiting for Morgan to return home. He related that she was terrified during the process prior to the shootings and asked him why he was doing this to her. Appellant admitted that he shot Caday, and said "the gun just went off into her back and she's slumped over. And she was still breathing for awhile and that's it." Appellant told the operator he planned to kill himself.

During the course of these events on March 5, 1999, appellant telephoned his wife three times from the apartment. His wife testified that during the first call she could hear a woman screaming in the background. Appellant's wife further testified that the screaming woman sounded "very, very upset." When Lynch called a second time, he admitted to having just shot someone.

Prior to being escorted from the apartment by police, Lynch also talked to a police negotiator. The negotiator testified that Lynch told her that during the thirty to forty minutes he held Caday hostage prior to the shootings, Caday was terrified, he displayed the handgun to her, she was aware of the weapon, and appeared to be frightened. He confided in the negotiator that Caday had complied with his requests only out of fear. Finally, appellant described the events leading to Morgan's death by admitting that he had confronted her at the door to the apartment, shot her in the leg, pulled her into the apartment, and then shot her again in the back of the head.

***367** Several of Morgan's neighbors in the apartment complex also testified as to the events of March 5, 1999. Morgan's neighbor across the hall [2] testified that she looked out of the peephole in her door after hearing the initial shots and saw Lynch dragging Morgan by the hands into Morgan's apartment. She further testified that Lynch knocked on the door to Morgan's apartment and said, "Hurry up, open the door, your mom is hurt." The neighbor testified that Morgan was screaming and was bloody from her waist down. Morgan's neighbor further testified that the door was opened, then after entering with Morgan, Lynch closed the door and approximately five minutes later she heard the sound of three more gunshots. A second neighbor in the apartment complex also testified that approximately five to seven minutes after she heard the initial gunshots, she heard three more.

After his arrest, appellant participated in an interview with police in which he confessed to the murders. He again admitted the events of the day, telling police he showed Caday the gun and that she was very scared while they were waiting for Morgan to arrive home. He told the detective that Caday was afraid and that he was "technically" holding her hostage. He admitted to shooting Caday's mother, Morgan, four or five times in the presence of her daughter.

In his post-arrest interview, Lynch also admitted that he planned to show Morgan the guns he brought with him to let her know he possessed them, and to force her to sit down and be quiet. He told the detectives he did not know why he did not just leave the guns in his car. [3] He admitted shooting Morgan four or five times, dragging her into the apartment, and then shooting her in the back of the head with a different firearm.

The State's final witness was the medical examiner who testified that after receiving the gunshot wound, it probably would have taken "no more than several minutes" for Caday to die. On cross-examination, although he conceded that it was possible that Caday could have died in less than one minute from the wound, such was unlikely. Finally, he also testified that with the amount of blood loss suffered by Caday, she could have lost consciousness within ten to twenty seconds.

The defense presented only one witness, a mental health expert. She related that she had diagnosed Lynch with schizoaffective disorder, a condition which is a combination of schizophrenia and a mood disorder. Further, she testified that she did not believe the letter appellant wrote two days prior to the murders demonstrated an intent by Lynch to kill Morgan. She concluded that appellant was under the influence of an extreme mental and emotional disturbance on March 5, 1999, and that his psychotic process substantially impaired his capacity to conform his conduct with the requirements of the law.

The State attempted to rebut the defense mental health evidence through the testimony of another mental health expert. The State's expert opined that Lynch suffered from a depressive disorder. The State's expert admitted that it was his opinion that on the day of the incident, appellant was suffering emotional distress, but it was not extreme, and Lynch did not lack the ability to conform his conduct to ***368** the requirements of the law. Finally, the State's doctor opined that the letter appellant wrote prior to the murders evidenced a murder-suicide plot.

After accepting written closing arguments and sentencing recommendations and conducting a *Spencer*[4] hearing, the judge sentenced appellant to death for the murders of Roseanna Morgan and Leah Caday. He found three aggravating factors as to the murder of Morgan: (1) the murder was cold, calculated, and premeditated ("CCP") (given "great weight"); (2) appellant had previously been convicted of a violent felony (given "moderate weight"); and (3) the murder was committed while appellant was engaged in committing one or more other felonies (given "little weight"). As to the murder of Caday, the judge found (1) that the murder was heinous, atrocious, or cruel ("HAC") (given "great weight"); (2) that appellant was previously convicted of a violent felony (given "great weight"); and (3) that the murder was committed while appellant was engaged in committing one or more other felonies (given "moderate weight"). He also found one statutory and eight nonstatutory mitigators as to each murder.[5]

On appeal, Lynch argues that the trial court erred in finding the aggravating factor of HAC as to the murder of Caday and the aggravating factor of CCP as to the murder of Morgan. He also asserts that the trial court's sentencing order is unclear as to the findings of the mental health mitigators, and therefore this Court must either construe them as statutory mitigators or remand to the trial court for clarification. Finally, he contends that his death sentence is disproportionate and Florida's death penalty is unconstitutional on its face and as applied.

ANALYSIS

The law is well settled as to this Court's review of a trial court's finding of an aggravating factor:

> [I]t is not this Court's function to reweigh the evidence to determine whether the State proved each aggravating circumstance beyond a reasonable doubt-that is the trial court's job. Rather, our task on appeal is to review the record to determine whether the trial court applied the right rule of law for each aggravating circumstance and, if so, whether competent substantial evidence supports its finding.

Way v. State, 760 So.2d 903, 918 (Fla.2000) (quoting *Willacy v. State,* 696 So.2d 693, 695 (Fla.1997)). Here, Judge Eaton found the State had proven the HAC aggravating factor beyond a reasonable doubt as to the thirteen-year-old victim, Leah Caday, and applied great weight to that factor. In his sentencing order, the trial judge found the following facts supported his ruling:

> ***369** Leah Caday was confined in the apartment with the defendant for between thirty and forty minutes before her mother came home. During that time she was terrified of the defendant and his gun. After her mother came home she watched in horror while her mother was brutally murdered. Virginia Lynch heard her screaming in the background during the first phone call the defendant made to her. She had time to contemplate her impending death. *See Hannon v. State,* 638 So.2d 39 (Fla.1994).

Further, the trial judge supported his ruling with the following legal analysis:

> Fear and emotional strain may be considered as contributing to the heinous nature of the murder, even when the victim's death is almost instantaneous. *Preston v. State,* 607 So.2d 404 (Fla.1992). The heinous, atrocious, or cruel aggravating circumstance may be proven in part by evidence of the infliction of "mental anguish" which

> the victim suffered prior to the fatal shot. *Henyard v. State,* 689 So.2d 239 (Fla.1997).

It is clear the trial judge used the correct rule of law in finding the HAC aggravating factor; therefore, the only remaining question for this Court is whether there is competent, substantial evidence to support his finding. The testimony elicited during the penalty phase provides competent, substantial evidence to support the finding of the HAC aggravating factor.

This Court has consistently held that "fear, emotional strain, and terror of the victim during the events leading up to the murder may make an otherwise quick death especially heinous, atrocious, or cruel." *James v. State,* 695 So.2d 1229, 1235 (Fla.1997); *see also Francis v. State,* 808 So.2d 110, 135 (Fla.2001); *Farina v. State,* 801 So.2d 44, 53 (Fla.2001). Moreover, this Court has held "the HAC aggravator focuses on the means and manner in which death is inflicted and the immediate circumstances surrounding the death." *Brown v. State,* 721 So.2d 274, 277 (Fla.1998); *see also Card v. State,* 803 So.2d 613, 625 (Fla.2001).

In determining whether the HAC factor was present, the focus should be upon the victim's perceptions of the circumstances as opposed to those of the perpetrator. *See Farina,* 801 So.2d at 53; *see also Hitchcock v. State,* 578 So.2d 685, 692 (Fla.1990). Further, "the victim's mental state may be evaluated for purposes of such determination in accordance with a common-sense inference from the circumstances." *Swafford v. State,* 533 So.2d 270, 277 (Fla.1988); *see also Chavez v. State,* 832 So.2d 730, 765-66 (Fla. 2002).

In *Farina,* the trial court found the victim suffered "real and excruciating" mental anguish and had an "acute awareness" of her impending death. 801 So.2d at 53. These facts, along with evidence showing the victim was held hostage and witnessed two coworkers being shot prior to her own death, supported the finding of HAC. *See id.* Similarly, this Court upheld the finding of HAC in *Francis v. State,* 808 So.2d 110 (Fla.2001), where elderly twin sisters were found dead in their home, both having been stabbed multiple times. To rebut the defendant's claim that HAC was not applicable because the deaths were instantaneous, the Court relied upon the medical examiner's testimony that both victims could have remained conscious for as little as a few seconds and for as long as a few minutes. *See id.* at 135. More significantly, the Court noted:

> In this case, although the evidence did not establish which of the two victims was attacked first, the one who was first attacked undoubtedly experienced a tremendous amount of fear, not only for herself, but also for what would happen to her twin. In a similar manner, the ***370** victim who was attacked second must have experienced extreme anguish at witnessing her sister being brutally stabbed and in contemplating and attempting to escape her inevitable fate. We arrive at this logical inference based on the evidence, including photographs presented at the guilt phase, which clearly establishes that these two women were murdered in their home only a few feet apart from each other.

Id. at 135.

Finally, in *Hannon v. State,* 638 So.2d 39 (Fla.1994), this Court upheld a finding of HAC where a man was shot after witnessing his roommate being brutally stabbed. There, the victim witnessed the roommate's death, pled for his own life, ran and hid, only to be found and shot six times. *Hannon,* 638 So.2d at 43. In *Hannon* this Court wrote: "Under these circumstances, where the victim undoubtedly suffered great fear and terror prior to being murdered, the trial court did not err in finding [the victim's] murder to be heinous, atrocious, or cruel." *Id.*

An examination of the evidence, along with the natural and proper common-sense inferences, establishes that Caday suffered enormous fear, emotional strain, and terror immediately prior to her death. The appellant admitted terrorizing this thirteen-year-old child by holding her hostage at gunpoint prior to shooting her mother and then turning the weapon on her. The appellant himself admitted to the 911 operator, whom he called following the shootings, and to the police in his post-arrest interview, that he held Caday at gunpoint in her home for thirty to forty minutes waiting for Morgan to

arrive.[6] Lynch told the 911 operator that "the daughter was just terrified. She says why are you doing this to me." When he spoke to the police negotiator prior to his arrest, Lynch used the term "petrified" to define Caday's emotion at the time of the incident. In his post-arrest interview, Lynch admitted having his firearm in his hand when he told Caday to sit down inside the apartment. Lynch himself said, "She was afraid." When asked whether he was holding Caday hostage, Lynch replied, "I guess technically in a way of speaking...." The appellant's wife confirmed that when the appellant called her during the time he was holding Caday hostage "[t]here was a lady in the background screaming." Appellant's wife further testified that the screaming woman sounded "very, very upset." Clearly, Caday was terrified during the thirty to forty minutes prior to her death when she was being held hostage by Lynch.

Also significant in this analysis are the events immediately preceding Caday's death after her mother arrived at the apartment. Lynch admitted to the police negotiator that after holding Caday hostage for thirty to forty minutes, Morgan arrived at the apartment, Lynch confronted her and shot her in the leg, then dragged her into the apartment. He admitted the same to the 911 operator: "She had a couple of body hits.... I dragged her back inside so I could talk to her." In his post-arrest interview Lynch admitted shooting Morgan several times in front of her daughter, Caday.

Although Lynch maintained that Caday was shot accidentally during the time Lynch fired the initial four to five shots at Morgan before dragging her into the apartment, testimony from other witnesses does not support this assertion. Morgan's ***371** neighbor across the hall testified that she looked out of the peephole in her door after hearing the initial shots and saw Lynch dragging Morgan by the hands into the apartment. She further testified that Lynch knocked on the door to Morgan's apartment and said, "Hurry up, open the door, your mom is hurt." The neighbor testified that Morgan was screaming and was bloody from her waist down. Morgan's neighbor further observed the door being opened, Lynch entering and closing the door behind him, and approximately five minutes later hearing three more gunshots. A second neighbor in the apartment complex also testified that approximately five to seven minutes after she heard the initial shots, she heard three more gunshots.

These facts are unlike those of *Rimmer v. State,* 825 So.2d 304 (Fla.2002), in which this Court explained that the victims, who had been held hostage for a short time during a robbery and were then killed, had not experienced the type of fear, pain and prolonged suffering necessary to support a finding of HAC. In that case, the facts were insufficient to support that the victims knew they would be killed or were in fear of their impending deaths. *See id.* at 327-29. Here, the evidence unquestionably supports the conclusion that the thirteen-year-old Caday feared for her own life while being held at gunpoint for thirty to forty minutes, and after witnessing her own mother being shot numerous times, surely experienced terror at the thought of her own impending death.

Lynch was totally indifferent to the suffering he caused Caday. The child undoubtedly witnessed her mother being shot several times. At any time during the thirty to forty minutes he held her hostage at gunpoint, Lynch could have released the child. He had complete disregard for her terror and suffering, and only heightened it by shooting her mother numerous times in her presence. The totality of the circumstances proves Caday suffered extreme fear and emotional strain just prior to her death, and also must have feared for her own life. Under these facts alone, the trial court properly found HAC.

Based upon the evidence, and giving due deference to Judge Eaton's ruling, appellant's argument that the trial court erred in finding the aggravating factor of HAC is meritless. The trial court judge applied the correct rule of law and his findings are supported by competent, substantial evidence. The evidence, along with the natural and proper common-sense inferences, establishes that Caday suffered fear, emotional strain, and terror during the events leading up to her murder, and thus HAC was appropriately found. There was utter indifference and total disregard for the suffering inflicted under these circumstances.

The trial court also properly applied the aggravating factor of CCP to the appellant's murder of Roseanna Morgan. This Court has established a four-part test to determine whether the CCP aggravating factor is justified: (1) the killing must have been the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); and (2) the defendant must have had a careful plan or prearranged design to commit

murder before the fatal incident (calculated); and (3) the defendant must have exhibited heightened premeditation (premeditated); and (4) there must have been no pretense of moral or legal justification. *Evans v. State,* 800 So.2d 182, 192 (Fla.2001) (quoting *Jackson v. State,* 648 So.2d 85, 89 (Fla.1994)).

Further, this Court has held that "[a] defendant can be emotionally and mentally disturbed or suffer from a mental illness but still have the ability to experience cool ***372** and calm reflection, make a careful plan or prearranged design to commit murder, and exhibit heightened premeditation." *Evans,* 800 So.2d at 193. Finally, this Court has noted that "[t]he facts supporting CCP must focus on the manner in which the crime was executed, e.g., advance procurement of weapon, lack of provocation, killing carried out as a matter of course." *Looney v. State,* 803 So.2d 656, 678 (Fla.2001) (quoting *Rodriguez v. State,* 753 So.2d 29, 48 (Fla.2000)).

Initially, we hold it was not improper for the trial judge to rely upon the appellant's letter to his wife, written two days prior to the murders, as evidence supporting CCP. This Court has held that "circumstantial evidence must be inconsistent with any reasonable hypothesis which might negate the aggravating factor." *Geralds v. State,* 601 So.2d 1157, 1163 (Fla.1992). In *Geralds,* the Court struck a finding of CCP because the circumstantial evidence in that case was "susceptible to ... divergent interpretations." *Id.* at 1164. Unlike the circumstances in *Geralds,* the totality of the evidence here unquestionably supports CCP. The letter was not the only piece of evidence that supports CCP. The factors that support a finding of CCP here demonstrate that Lynch waited two days between writing the incriminating letter and executing his plan, had knowledge of and experience with handguns, took three such weapons with him as he proceeded to Morgan's apartment, and held Morgan's daughter hostage for thirty to forty minutes before Morgan arrived home. Therefore, in conjunction with all of the other evidence, it was not error to rely upon the letter to support the finding of CCP.

This Court has held that execution-style killing is by its very nature a "cold" crime. *See Walls v. State,* 641 So.2d 381, 388 (Fla.1994). In *Looney,* this Court noted the significance of the fact that the victims were bound and gagged for two hours, and thus could not offer any resistance or provocation. 803 So.2d at 678. Further, the defendants in that case had "ample opportunity to calmly reflect upon their actions, following which they mutually decided to shoot the victims execution-style in the backs of their heads." *Id.*

Similarly, Lynch's killing of Morgan evinces the element of "cold" necessary for a finding of CCP. Lynch himself admitted to the 911 operator, the police negotiator, and the police in his post-arrest interview that he shot Morgan in the back of the head, killing her. Having already been shot at least four times prior to a final shot to the head, and knowing that her daughter was still in the apartment, Morgan did not offer any resistance or provocation. Further, witnesses reported a five- to seven-minute delay between the initial shots and the final three after Morgan had been wounded in the initial confrontation. During this time, Lynch had the opportunity to withdraw or seek help for Morgan by calling 911; instead he calculated to shoot her again, execution-style. Despite Lynch's subsequent attempted self-serving rationalization that he only wanted to put her out of her misery, the appellant's execution-style murder of Morgan clearly satisfies the "cold" element of CCP.

As to the "calculated" element of CCP, this Court has held that where a defendant arms himself in advance, kills execution-style, and has time to coldly and calmly decide to kill, the element of "calculated" is supported. *See Hertz v. State,* 803 So.2d 629, 650 (Fla.2001); *see also Knight v. State,* 746 So.2d 423, 436 (Fla.1998). Here, Lynch possessed three handguns as he traveled to Morgan's apartment where, after shooting her at least four times near the entrance, he then waited approximately five to seven minutes before ***373** shooting her again in the back of the head, execution-style. Lynch clearly had time to reflect upon these events before firing the final shots; in fact he purposely used a different weapon to shoot her in the head than he had used to inflict the initial wounds. *See Ford v. State,* 802 So.2d 1121, 1133 (Fla.2001) (finding CCP where defendant used three different weapons and had to stop and reload prior to shooting each victim execution-style). Clearly, in this case a finding of the "calculated" element was proper.

The third element, "heightened premeditation," is also supported by competent and substantial evidence. This Court has "previously found the heightened premeditation required to sustain this aggravator where a defendant has the opportunity to leave the crime scene and not commit the murder but, instead, commits the

murder." *Alston v. State,* 723 So.2d 148, 162 (Fla.1998); *see also Jackson v. State,* 704 So.2d 500, 505 (Fla.1997). In *Alston,* this Court upheld a trial court's finding of CCP where the defendant had ample time to reflect upon his actions and was not under the influence of alcohol, drugs, or the domination or pressure of another person. *Alston,* 723 So.2d at 161; *see also Dennis v. State,* 817 So.2d 741, 765 (Fla.2002) (upholding CCP where facts showed defendant arrived at apartment before victim and waited for her arrival), *cert. denied,* 537 U.S. 1051, 123 S.Ct. 604, 154 L.Ed.2d 527 (2002). Similarly, Lynch had the opportunity to leave the crime scene and not kill Roseanna Morgan. As in *Dennis,* Lynch arrived at Morgan's apartment and waited for thirty to forty minutes for her to arrive. During this time, regardless of what his intentions may have been prior to Morgan's arrival, Lynch had ample opportunity to leave the scene. Further, after initially shooting Morgan and then dragging her into the apartment, Lynch had five to seven minutes in which he could have left the scene and not inflicted the final harm. Despite this time to reflect, Lynch chose to shoot Morgan in the head, execution-style, killing her. The evidence of Lynch's actions competently and substantially supports "heightened premeditation."

The final element of CCP is a lack of legal or moral justification. "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.' " *Nelson v. State,* 748 So.2d 237, 245 (Fla.1999) (quoting *Walls,* 641 So.2d at 388). This Court has refused to find a moral or legal justification where the defendant offered evidence that he killed three people to prevent them from performing legal abortions, *see Hill v. State,* 688 So.2d 901, 907 (Fla.1997), and where the defendant offered the justification of wanting to spare his family from having to go through a divorce. *See Zakrzewski v. State,* 717 So.2d 488 (Fla.1998). Defendant's attempted justifications for the murder based on Morgan's alleged rejection of him as a lover and her refusal to fully pay a credit card debt are completely without merit or support, and are therefore rejected.

Further, appellant's reliance upon *Almeida v. State,* 748 So.2d 922 (Fla.1999), is misplaced. In *Almeida,* the defendant had been consuming alcohol prior to committing the crime, and the trial court found the defendant was "extremely disturbed at the time of the crime" and his ability to "appreciate the criminality of his conduct was substantially impaired." *Almeida,* 748 So.2d at 933. Appellant argues that his compromised mental health state caused him to believe he was without any other ***374** recourse and it rendered him without impulse control. However, the sentencing judge concluded that "defendant was sufficiently in control of his faculties to plan and carry out the murder of Roseanna Morgan." This determination is supported by the evidence. Lynch lay in wait, shot Morgan at least four times, then had the presence of mind to change firearms prior to inflicting the fatal shot. There is no evidence that Lynch was intoxicated. Clearly, this case differs significantly from *Almeida.*

Finally, defendant's claim that Florida's death penalty scheme is unconstitutional because the CCP aggravating factor is applied in an arbitrary and capricious manner is without merit. This Court has upheld the CCP aggravating factor as constitutional. *See Fotopoulos v. State,* 608 So.2d 784, 794 (Fla.1992). Therefore, because the trial judge properly found the CCP aggravating factor, and his determination is supported by competent, substantial and unrebutted evidence, appellant's second claim cannot be sustained.

With respect to the third issue, appellant argues that in his written sentencing order, Judge Eaton was unclear as to whether he found the mental health mitigators to be statutory or nonstatutory mitigators. In the body of his order, Judge Eaton wrote:

> *The crime for which the defendant is to be sentenced was committed while he was under the influence of extreme mental or emotional disturbance.*
>
> The experts called by the defense and the state presented evidence on this mitigating circumstance. They did not agree with each other. Dr. Olander believed the defendant was under the influence of extreme mental or emotional disturbance. Dr. Riebsame believed the disturbance to be less than extreme. Dr. Riebsame's testimony is the most credible. The defendant was emotionally disturbed. His girlfriend had decided to return to her husband and this meant loss of a sex partner for whom he had strong feelings. However, he was able to plan his course of action and carry out all but the suicide portion of the plan. The court gives

the emotional disturbance suffered by the defendant moderate weight.

The defendant's capacity to conform his conduct to the requirements of law was substantially impaired.

The experts, Dr. Olander and Dr. Riebsame, agreed that the defendant's capacity to conform his conduct to the requirements of law was impaired. They disagree on the degree of impairment. Dr. Olander believes the defendant has a schizoaffective disorder. Dr. Riebsame did not believe the defendant has a schizoaffective disorder. He noted that the defendant did not suffer delusions or have difficulty recalling events about the murders. He testified that it is usual for a person with such a disorder to report a very bizarre description of events that makes sense to him or her but not to anyone else. Dr. Riebsame's testimony on this issue is the most credible and is accepted by the court. The fact that the defendant's capacity to conform his conduct to the requirements of law was impaired, but not substantially impaired, is given moderate weight.

However, in the summary at the end of his sentencing order, Judge Eaton wrote:

The crime for which the defendant is to be sentenced was committed while he was under the influence of extreme mental or emotional disturbance.-Moderate weight.

The defendant's capacity to conform his conduct to the requirements of law was substantially impaired.-Moderate weight.

***375** Appellant argues that because Judge Eaton used the words "extreme" and "substantially" in his summary, but not in the body of his order, it is unclear whether he found these mental health mitigators to be statutory or nonstatutory. Therefore, Lynch reasons that because of the confusion, this Court should either deem the lower court to have found the mitigators to be statutory, or in the alternative, remand back to the lower court for clarification.

Initially, the State is incorrect in its argument that appellant is procedurally barred from presenting this issue here. Presumably,[7] the State's argument is based upon Florida Rule of Criminal Procedure 3.800(b), which holds that the defendant must file, in the lower court, a motion to correct a sentencing error, or the defendant will be procedurally barred from raising the issue on appeal. *See* Fla. R.Crim. P. 3.800. However, the rule itself expressly states "[t]his subdivision shall not be applicable to those cases in which the death sentence has been imposed and direct appeal jurisdiction is in the Supreme Court under [article I, section 3(b)(1) of the Florida Constitution]." *Id.* Therefore, because the rule itself is clear that appellant was not required to assert this issue in the lower court, he may properly present it here.

Arguably, the trial judge's sentencing order may not be as clear as perhaps it could have been. While there may be a minor discrepancy in his written order between the body of his order and the summary, it is clear from reading the totality of the order that Judge Eaton weighed the testimony of the mental health experts and found the State's expert to be the more persuasive. This is a question of form, not substance. Judge Eaton evaluated the two mental health mitigators and clearly found them to be nonstatutory and then afforded the weight he found appropriate under the evidence presented on mental health. Therefore, appellant's third claim is no basis for reversal.

In his fourth claim, appellant challenges the proportionality of his death sentence. Prior to determining the appropriateness of his sentence, this Court must examine the sufficiency of the evidence underlying the conviction. Here, the appellant pled guilty to two counts of first-degree premeditated murder, one count of armed burglary of a dwelling, and one count of kidnapping. When a defendant has pled guilty to the charges resulting in a penalty of death, this Court's review shifts to the knowing, intelligent, and voluntary nature of that plea. *See Ocha v. State,* 826 So.2d 956 (Fla.2002). "Proper review requires this Court to scrutinize the plea to ensure that the defendant was made aware of the consequences of his plea, was apprised of the constitutional rights he was waiving, and pled guilty voluntarily." *Id.* at 965. The record in this case contains substantial evidence which shows that the underlying guilty plea was knowing, intelligent, and voluntarily made. The trial judge conducted the following colloquy with the defendant:

***376** The Court: ... Mr. Lynch, is that what you want to do, enter a plea of guilty to those charges?

Mr. Lynch: Yes, Your Honor.

The Court: Have you read everything on this plea form?

Mr. Lynch: Yes, I have.

The Court: Do you understand everything on the plea form?

Mr. Lynch: Yes.

The Court: Do you have any questions about anything on the plea form?

Mr. Lynch: No. I've talked it over with my counsel.

The Court: Is everything on the plea form true?

Mr. Lynch: Yes.

....

The Court: You can read, write, speak and understand the English language?

Mr. Lynch: Yes.

The Court: Are you in good physical and mental health?

Mr. Lynch: Yes, as far as I know.

The Court: Have you had any drugs or alcohol in the last twenty-four hours?

Mr. Lynch: No, other than what the jail has prescribed for me, just some antidepression sleeping pill.

The Court: Okay. Do you feel that your mind is clear and you know exactly what you're doing this morning?

Mr Lynch: Yes, Your Honor.

The Court: Do you believe you're capable of exercising your best judgment today?

Mr. Lynch: Yes.

....

The Court: Do you understand that the maximum penalty you could receive in this case would be either life in prison without parole, or the death penalty; do you understand that?

Mr. Lynch: Yes, I do.

The Court: Do you understand that a plea of not guilty denies the truth of the charge, and a plea of guilty admits the truth of the charge?

Mr. Lynch: Yes.

The Court: You have the right to have a trial by jury to see, hear, face and cross-examine the witnesses against you in open court, and the subpoena power of the Court to call witnesses in your behalf. You have the right to testify at trial, or remain silent, and your silence cannot be held against you. You have to the right to be represented by lawyers at the trial. But if you enter a plea of guilty, you'll waive that right and give up those rights and there will be no trial; do you understand that?

Mr. Lynch: Yes, Your Honor.

The Court: Do you want to give up those rights?

Mr. Lynch: Yes.

....

The Court: Has any person threatened you or coerced you into entering this plea?

Mr. Lynch: No.

The Court: Has any person promised any leniency or any reward to get you to enter this plea, other that's what has been said here in open court here today?

Mr. Lynch: No.

The Court: Has there been any off the record assurances made to you by your lawyers or by anyone else?

Mr. Lynch: No.

The Court: Are you sure about your answers that you've given me this morning?

Mr. Lynch: Yes, Your Honor.

Further, after the judge read the charges to the defendant, the colloquy continued:

***377** The Court: Do you understand those are the charges?

Mr. Lynch: Yes, Your Honor.

The Court: Are you guilty of those charges?

Mr. Lynch: Yes.

Clearly the appellant understood the charges and pled to them voluntarily. The evidence here is sufficient to support that the guilty plea underlying the convictions was given knowingly, intelligently, and voluntarily.

Having determined the sufficiency of the evidence supporting Lynch's conviction, we next examine the appellant's sentence of death. It is well settled that the purpose of this Court's proportionality review is to "foster uniformity in death-penalty law." *Id.* (quoting *Tillman v. State,* 591 So.2d 167, 169 (Fla.1992)). Further, the number of aggravating factors cannot simply be compared to the number of mitigating factors, rather there must be "a thoughtful, deliberate proportionality review to consider the totality of the circumstances in a case, and to compare it with other capital cases." *Id.* (quoting *Beasley v. State,* 774 So.2d 649, 673 (Fla.2000)). When compared to other decisions of this Court, the death sentences for the murders in this case are proportionate.

Here, the trial court properly found three aggravating factors applicable to each murder. This Court has held that both HAC and CCP are "two of the most serious aggravators set out in the statutory scheme." *Larkins v. State,* 739 So.2d 90, 95 (Fla.1999). Further, the trial court found one statutory mitigator,[8] and eight nonstatutory mitigators.[9] Appellant asks this Court to reweigh the evidence and give each aggravating factor less weight, and afford each mitigating factor greater weight. However, Judge Eaton properly outlined the support for all of his factual findings, and the evidence supports his conclusions. Each aggravating factor is supported by competent, substantial evidence, and there is nothing to suggest he abused his discretion in determining the weight that should be given to each aggravating and mitigating factor. *See Sexton v. State,* 775 So.2d 923, 934 (Fla.2000) (holding abuse of discretion standard applicable in determining if trial court afforded proper weight to aggravating factor); *Cole v. State,* 701 So.2d 845, 852 (Fla.1997) (holding trial court's decision as to weight given to mitigating factors is subject to abuse of discretion standard).

This Court does not recognize a domestic dispute exception in connection with death penalty analysis. The State correctly asserts that Lynch had no domestic dispute with Caday, and therefore any such exception could not be even remotely considered or applicable to her murder. Further, there is competent and substantial evidence within the record which supports the finding of the CCP aggravator as to Morgan's murder. It is impossible to reconcile application of the CCP aggravator with a domestic dispute exception, and therefore it is likewise impossible ***378** to apply any such domestic dispute exception to Morgan's murder.

As we compare other cases decided by this Court, the death penalty is clearly applicable to both murders here. *See Smithers v. State,* 826 So.2d 916, 931 (Fla.2002) (upholding death sentence in double homicide where two aggravators, previous felony and HAC, two statutory mitigators, and seven nonstatutory mitigators were applicable to second victim); *Morton v. State,* 789 So.2d 324, 328-29 (Fla.2001) (upholding death sentence in double homicide where three aggravators, CCP, avoiding arrest, and committed while engaged in a felony, two statutory and five nonstatutory mitigating factors were applicable to one victim); *Robinson v. State,* 761 So.2d 269, 272-73 (Fla.1999) (upholding death sentence where trial court found three aggravating factors, pecuniary gain, avoiding arrest, and CCP, two statutory mitigating factors, and eighteen nonstatutory mitigating factors).

Lynch inflicted two deaths in the home of the victims, and had the opportunity to carefully reflect and consider his actions before both killings. This is not a case of a domestic dispute gone bad-this is a case of a murder-suicide plot that was only partially completed. Lynch had knowledge of and experience with firearms-this cannot be considered an accidental shooting. The trial court properly sentenced Richard Lynch to death for the murders of a thirteen-year-old girl and her mother.

Finally, appellant challenges the constitutionality of Florida's death penalty scheme. Because this Court has consistently upheld Florida's death penalty scheme, and has rejected all of appellant's claims, appellant is not entitled to relief on such issue. Appellant's first claim-that Florida's death penalty scheme is unconstitutional because it fails to provide notice as to aggravating circumstances-is rejected based on the ruling of *Vining v. State,* 637 So.2d 921 (Fla.1994). There this Court wrote: "The aggravating factors to be considered in determining the propriety of a death sentence are limited to those

set out in section 921.141(5), Florida Statutes (1987). Therefore, there is no reason to require the State to notify defendants of the aggravating factors that it intends to prove." *Vining,* 637 So.2d at 928. Appellant's second and third claims-the limitation of unrestricted consideration of mitigating evidence, and the fact that not all evidence is accepted as mitigating-are also rejected. In *Trease v. State,* 768 So.2d 1050, 1055 (Fla.2000), this Court upheld and clarified Florida's death penalty sentencing scheme as to the consideration of mitigating factors as applied here.

Appellant's fourth, fifth, and sixth claims-that the burden is shifted to the defendant to prove the mitigating circumstances, that the HAC aggravating factor is applied in a vague and inconsistent manner, and that the murder in the course of a felony aggravating factor creates an automatic aggravating factor in all felony murders, resulting in arbitrary application of this aggravating factor must be rejected based upon this Court's recent decision in *Floyd v. State,* 808 So.2d 175 (Fla.2002). In *Floyd,* this Court denied the defendant's burden shifting argument, *see id.* at 186, his argument challenging the HAC aggravating factor as vague and overbroad, *see id.* at 187, and his murder in the course of a felony argument, *see id.* at 186.

Appellant's final two arguments-that the statute allows excessive and disproportionate penalties to be imposed and that the death penalty is not the least restrictive means available to further the state's compelling goals where a fundamental right, human life, is involved-are also without merit. This Court has consistently ***379** upheld Florida's death penalty scheme as constitutional.

Based upon the foregoing we find no reason to reverse the appellant's convictions and sentences. We therefore affirm the judgment and sentence of the circuit court below.

It is so ordered.

WELLS, LEWIS and QUINCE, JJ., and HARDING, Senior Justice, concur.

PARIENTE, J., concurs in result only with an opinion, in which ANSTEAD, C.J., and SHAW, Senior Justice, concur.

PARIENTE, J., concurring in result only.

Although I concur with the majority in upholding the HAC aggravator, I do not agree with the portion of the majority opinion that characterizes the relevant inquiry as focusing on the victim's perceptions. *See* majority op. at 369. While I agree that whether the victim suffered before his or her death is part of the HAC determination, this inquiry is only part of the equation. As I discussed in my concurring in result only opinion in *Francis v. State,* 808 So.2d 110, 142-144 (Fla.2002), *cert. denied,* 537 U.S. 1090, 123 S.Ct. 696, 154 L.Ed.2d 635 (2002), for the HAC aggravator to apply, the defendant must have "acted with a desire to inflict a high degree of pain" or with "utter indifference to or enjoyment of the suffering of another." *Id.* at 142 (Pariente, J., concurring in result only).

In upholding the HAC aggravator against constitutional attack based on claims of vagueness, we explained:

> The aggravating circumstance which has been most frequently attacked is the provision that commission of an especially heinous, atrocious or cruel capital felony constitutes an aggravated capital felony.... It is our interpretation that heinous means extremely wicked or shockingly evil; that atrocious means outrageously wicked and vile; and, that cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. *What is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capital felonies-the conscienceless or pitiless crime which is unnecessarily torturous to the victim.*

State v. Dixon, 283 So.2d 1, 9 (Fla.1973) (emphasis supplied). Our emphasis in *Dixon* on "additional *acts* " supports the conclusion that the defendant's actions must be part of the evaluation of whether the crime under consideration is "especially heinous, atrocious or cruel."

Our explanation and definition of HAC from *Dixon* was then codified in the Florida Standard Jury Instructions, which provide:

> The crime for which the defendant is to be sentenced was especially heinous, atrocious or cruel. "Heinous" means extremely wicked or shockingly evil. "Atrocious" means outrageously wicked and vile. "Cruel" means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. The kind of crime intended to be included as heinous, atrocious, or cruel is one accompanied by additional acts that show the crime was conscienceless or pitiless and was unnecessarily torturous to the victim.

Fla. Std. Jury Instr. (Crim.) 7.11 Penalty Proceedings-Capital Cases.

As properly recognized by the majority, in this case Lynch did perform additional acts that demonstrate his utter indifference ***380** to the suffering of the thirteen-year-old victim: he held her hostage at gunpoint for thirty to forty minutes; he was aware of her "petrified" state and did nothing to allay her fears of impending death; and he intentionally shot her mother several times in front of this minor victim before taking the victim's own life. *See* majority op. at 11-14. For these reasons, I concur in the affirmance of the finding of the HAC aggravator.

ANSTEAD, C.J., and SHAW, Senior Justice, concur.

All Citations

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Footnotes

1 Because appellant requested and was granted a penalty phase conducted without a jury, he has not and cannot present a claim attacking the constitutionality of Florida's death penalty scheme under the United States Supreme Court's recent holding in *Ring v. Arizona,* 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). Therefore, we do not address this issue.

2 The neighbor lived in the apartment directly across the hall from Morgan's apartment in the same apartment building.

3 The detective conducting the interview with appellant testified that Lynch's car was parked down the street, around the corner, and away from Morgan's apartment. It could not be seen from the apartment.

4 *Spencer v. State,* 615 So.2d 688 (Fla.1993).

5 The statutory mitigating factor found was that Lynch had no significant history of prior criminal activity (moderate weight). The eight nonstatutory mitigators were: (1) the crime was committed while defendant was under the influence of a mental or emotional disturbance (moderate weight); (2) the defendant's capacity to conform his conduct to the requirements of law was impaired (moderate weight); (3) the defendant suffered from a mental illness at the time of the offense (little weight); (4) the defendant was emotionally and physically abused as a child (little weight); (5) the defendant had a history of alcohol abuse (little weight); (6) the defendant had adjusted well to incarceration (little weight); (7) the defendant cooperated with police (moderate weight); (8) the defendant's expression of remorse, the fact that he has been a good father to his children, and his intent to maintain his relationship with his children (little weight).

6 This fact is also supported by the appellant's guilty plea to the charge of kidnapping Leah Caday.

7 The State cites two cases for its proposition that appellant is procedurally barred from raising this issue, *Steinhorst v. State,* 412 So.2d 332 (Fla.1982), and *Wise v. State,* 767 So.2d 1162, 1163 (Fla.2000). Examination of these cases shows the State must be arguing Lynch is procedurally barred from raising this issue because it was not presented to the lower court and does not constitute a fundamental error that may be raised on direct appeal. In *Wise,* this Court relied upon the decision of *Maddox v. State,* 708 So.2d 617 (Fla. 5th DCA 1998) *approved in part, disapproved in part,* 760 So.2d 89 (Fla.2000). In *Maddox,* this Court examined the amendment to Florida Rule of Criminal Procedure 3.800(b).

8 The defendant has no significant history of prior criminal activity. The trial court found this element proven, but in light of the fact that this was a double murder, afforded it only little weight.

9 As to the remaining eight nonstatutory mitigators, the trial court afforded three "moderate" weight, and five "little" weight. It must be noted that in the body of his written sentencing order, Judge Eaton included a tenth mitigator-"When possible, the defendant has sought gainful employment"-and afforded it little weight. However, Judge Eaton did not include this mitigator in his oral pronouncement or in the summary of his written sentencing order, and therefore it is not considered here.

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Appendix D

Affidavit of James Figgatt, dated September 25, 2017

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. **CASE NO.: 591999CF000881A**

POSTCONVICTION CAPITAL CASE

RICHARD LYNCH,

Defendant.
_____/

STATE OF FLORIDA)

) ss

COUNTY OF SEMINOLE)

Affidavit of James Earl Figgatt

I, James Earl Figgatt, under penalty of perjury, declare on this 25th day of September 2017, that the following is true and correct:

1. My name is James Earl Figgatt, and I am licensed to practice law in the State of Florida. I represented the above-named Defendant, Mr. Richard Lynch, from 1999-2001, in this case. At the time, I was employed as an Assistant Public Defender with the Office of the Public Defender for the Eighteenth Judicial Circuit in and for Seminole County.

2. I was the lead counsel in Mr. Lynch's case and the ultimate decision-maker in this matter. Assistant Public Defender Timothy Dale Caudill was my co-counsel.

3. In January 2016, in *Hurst v. Florida*, the United States Supreme Court declared Florida's death-sentencing statute—the statute under which Mr. Lynch was sentenced to death—unconstitutional. The Court held that the jury must find all facts necessary for imposition of a death

sentence. In October 2016, in *Hurst v. State*, the Florida Supreme Court further held that the jury must unanimously make the findings of fact required to impose a death sentence. These post-*Hurst* constitutional principles would have changed the manner in which I proceeded in Mr. Lynch's case.

4. My trial preparation and advice to Mr. Lynch to waive his right to a jury was based on Florida's standard jury instructions and the death-sentencing statute and scheme in place in 2000. My strategy—including the approach to the investigation, the development of evidence, advising Mr. Lynch to waive his right to a jury, and my presentation to the judge at trial—relied on Florida's pre-*Hurst* law in effect at that time. Had this case taken place under a sentencing scheme as required by *Hurst v. Florida* and *Hurst v. State*, I would have taken a different approach and advised Mr. Lynch accordingly.

5. My approach to this case was determined by the existing sentencing scheme in which the jury's role was merely advisory, in which a majority vote was sufficient to recommend death, and in which the judge made the ultimate fact-finding required to impose the death penalty. My advice to Mr. Lynch would have been different under a post-*Hurst* sentencing scheme—where the jury is the finder of fact and is required to be unanimous in finding all facts necessary to impose a death sentence, including that the jurors unanimously agree on all the aggravators, that the jurors unanimously agree that the aggravation outweighs the mitigation, and finally, that the jury unanimously finds the aggravators "sufficient" to impose a death sentence—are numerous and profound.

6. In 2000, I advised Mr. Lynch to waive his right to a penalty phase advisory jury.

7. I advised Mr. Lynch to waive his right to a penalty phase advisory jury sentencing because I would have had to convince six jurors to vote for life in order to receive a life

recommendation. However, based on the current case law, I would now only have had to convince one juror to vote for life and the judge would not be able to override the jury's verdict to give a sentence of death. Moreover, under the current case law, the jury would have to know that they were the ones responsible for imposing the ultimate sentence, and were not merely issuing an advisory recommendation to the judge.

8. As I testified at Mr. Lynch's evidentiary hearing, I was concerned about a jury coming back with an 11-1 advisory recommendation. I had previously represented Mr. Edward T. James, and although the facts of Mr. James' case were more heinous, both his case and Mr. Lynch's involved a double homicide. In Mr. James' case, the jury came back with an 11-1 advisory recommendation. Therefore, I was concerned that an advisory jury would have also given Mr. Lynch an 11-1 recommendation.

9. In *Mosley v. State, Hurst* has been found to apply retroactively to capital defendants whose sentences became final after *Ring v. Arizona*. Mr. Lynch's sentence became final after *Ring*, therefore, the 11-1 advisory recommendation that I sought to avoid, would have actually granted Mr. Lynch a new penalty phase.

10. I was responsible for the mitigation in Mr. Lynch's case. As I testified at his evidentiary hearing, Mr. Lynch's mitigation was not complete at the time we advised him to waive his right to a jury. In addition, the mental health experts I retained in Mr. Lynch's case were not provided any of his school records, which I understand were later found to suggest that Mr. Lynch had organic brain damage.

11. To reiterate what I testified to at Mr. Lynch's 2005 postconviction evidentiary hearing, if I had known that Mr. Lynch suffered from brain dysfunction in his right cerebral hemisphere and his frontal lobe, I would have advised Mr. Lynch that penalty phase jurors are

more receptive to brain damage mitigation. If I had requested a PET scan and it had depicted brain damage, that would have been valuable to present to a penalty phase jury. As lead counsel, having failed to give him that advice, Mr. Lynch was not able to make an informed decision whether to waive his right to a penalty phase jury. If *Hurst* had been the law in 2000, I would not have advised Mr. Lynch waive a penalty phase jury at all.

12. I am available to testify at an evidentiary hearing and, if I am called to do so, I would testify consistently with this affidavit, and I will answer any additional questions about my decision-making at the time of trial not answered by this affidavit.

SIGNED:

[DATE] 25 September 2017

James Earl Figgatt
[PRINTED NAME]

SWORN TO AND SUBSCRIBED TO before me this 25 day of September, 2017, by James Figgatt, who is personally known to me or who provided the following identification: _____.

Shaunda DeBose
NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: April 21, 2020

SHAUNDA DEBOSE
MY COMMISSION # FF984687
EXPIRES April 21, 2020
(407) 398-0153 FloridaNotaryService.com

Appendix E

Plea and Waiver Colloquy, dated January 5, 2001

ORIGINAL

IN THE CIRCUIT COURT, IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

RICHARD LYNCH,

Defendant.

x

PLEA

CASE NO: 99-881-CFA

FILED IN OPEN COURT THIS
January 8 2001
MARYANNE MORSE
Clerk of Circuit Court
Seminole County, Florida
By: C. Hutchison
Deputy Clerk

BEFORE THE HONORABLE

O. H. EATON, JR.

JUDGE OF THE COURT

REPORTED BY:
DIANNE GAGNON, CSR
In Courtroom B
Seminole County Courthouse
Sanford, Florida
October 19, 2000

APPEARANCES:

OFFICE OF THE STATE ATTORNEY
EIGHTEENTH JUDICIAL CIRCUIT
100 East First Street
Sanford, Florida 32771
BY: CHRISTOPHER WHITE, ESQ.
EUGENE FELICIANI, ESQ.
APRIL KIRSHEMAN, ESQ.

THE OFFICE OF THE PUBLIC DEFENDER
114 West First Street
Sanford, Florida 32771
Attorneys for Defendant
BY: JAMES E. FIGGATT, ESQ.
TIMOTHY CAUDILL, ESQ.

WHEREUPON:

The following proceedings were had:

THE COURT: All right. Mr. Caudill, are you ready to proceed?

MR. CAUDILL: Mr. Figgatt, I believe, is having a brief conversation with the State about the matter.

THE COURT: All right.

MR. CAUDILL: But we are now ready.

MR. FIGGATT: I apologize for being late, I was before another tribunal.

THE COURT: All right. Wait just a minute. I've just been handed a document that's entitled factual basis, and let me have a chance to look at that.

MR. FIGGATT: Judge, what we're asking is that the Court not look at it until we address whether or not that is appropriately before the Court at this time. We just got served with that piece of paper this morning, we haven't read it very thoroughly yet.

THE COURT: Okay.

MR. WHITE: Judge, --

THE COURT: I thought you gave it to me.

MR. WHITE: I did, Your Honor.

THE COURT: All right.

MR. WHITE: But as you well know, it's typical that the Judge ask for one side or the other to give a factual basis for a plea, so we thought we'd write it out and give it to them. I gave it to Mr. Caudill some half an hour ago. I know Mr. Figgatt has been busy doing things, talking to his client, he may be just reading, but I don't understand that there should be any objection to it, I didn't have to give itit in writing, I could have read it into the record as a factual basis for the case.

THE COURT: All right. Let's let him have a chance to read it.

MR. WHITE: Okay.

MR. FIGGATT: Mr. Lynch, would you come forward.

THE COURT: I assume that this factual basis is what you believe the evidence would show at trial.

MR. WHITE: Yes, Your Honor.

And I tried to direct it primarily to the guilt phase of the trial and without making too many inferences, frankly.

THE COURT: All right.

MR. WHITE: Although the Defense may

disagree with that representation.

THE COURT: All right. This is the State of Florida versus Richard Lynch, case number 99-881.

I understand the matter is before me this morning for a change of plea.

MR. FIGGATT: It is, Your Honor.

If I may approach? I have a written petition to enter a plea of guilty as charged, in conjunction with an executed waiver of the advisory jury as to the penalty phase of a capital trial.

THE COURT: All right. Let me see it.

All right. Richard Lynch, I need you to raise your right hand to be placed under oath.

THE CLERK: Do you swear the answers you give to the Court's questions will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. LYNCH: Yes, I do.

THE COURT: You are Richard Lynch?

MR. LYNCH: Yes, Your Honor.

THE COURT: I have in my hand a plea form requesting me to accept a guilty plea to the charges that have been filed in this case, which include first degree premeditated murder, two counts of armed robbery . . . armed burglary of a dwelling, and armed kidnapping.

MR. FIGGATT: Your Honor, in respect to the notation in paragraph, or Count Three of actually the Indictment, --

MR. CAUDILL: Four.

MR. FIGGATT: Four, pardon me, the Indictment only charges burglary to a dwelling, not armed burglary.

THE COURT: It had charged arm burglary and then they changed it to --

MR. FIGGATT: I had it right the first time. In Count Four, Judge, we are pleading only to kidnapping.

MR. WHITE: Which is all that's charged.

MR. FIGGATT: Yes.

THE COURT: Okay.

Then Counts One and Two are first degree murder; Count Three is armed burglary to a dwelling; and Count Four is kidnapping, right?

Mr. Lynch, is that what you want to do, enter a plea of guilty to those charges?

MR. LYNCH: Yes, Your Honor.

THE COURT: Have you read everything on this plea form?

MR. LYNCH: Yes, I have.

THE COURT: Do you understand everything on

the plea form?

MR. LYNCH: Yes.

THE COURT: Do you have any questions about anything on the plea form?

MR. LYNCH: No. I've talked it over with my counsel.

THE COURT: Is everything on the plea form true?

MR. LYNCH: Yes.

THE COURT: I want to ask you a few questions, in any event, just to make sure that you understand.

It's about fifteen questions I want to ask you.

First, how old are you?

MR. LYNCH: Forty-seven.

THE COURT: How much education do you have?

MR. LYNCH: I have high school and approximately two years of college, I didn't finish college though.

THE COURT: You can read, write, speak and understand the English language?

MR. LYNCH: Yes.

THE COURT: Are you in good physical and mental health.

MR. LYNCH: Yes, as far as I know.

THE COURT: Have you had any drugs or alcohol in the last twenty-four hours?

MR. LYNCH: No, other than what the jail has prescribed for me, just some antidepression sleeping pill.

THE COURT: Okay. Do you feel that your mind is clear and you know exactly what you're doing this morning?

MR. LYNCH: Yes, Your Honor.

THE COURT: Do you believe you're capable of exercising your best judgment today?

MR. LYNCH: Yes.

THE COURT: You are represented by Mr. Caudill and Mr. Figgatt, who are known to the Court to be members of the Florida Bar; have you told your lawyers everything you know about your case?

MR. LYNCH: Yes.

THE COURT: Do you need any more time to talk to your lawyers before I accept your plea?

MR. LYNCH: No, not at this time.

THE COURT: Are you satisfied with the services your lawyers have given you up to this present time?

MR. LYNCH: Yes, so far.

THE COURT: Do you understand that the maximum penalty you could receive in this case would be either life in prison without parole, or the death penalty; do you understand that?

MR. LYNCH: Yes, I do.

THE COURT: Do you understand that a plea of not guilty denies the truth of the charge, and a plea of guilty admits the truth of the charge?

MR. LYNCH: Yes.

THE COURT: You have the right to have a trial by jury to see, hear, face and cross-examine the witnesses against you in open court, and the subpoena power of the Court to call witnesses in your behalf. You have the right to testify at a trial, or to remain silent, and your silence cannot be held against you. You have the right to be represented by lawyers at the trial. But if you enter a plea of guilty, you'll waive that right and give up those rights and there will be no trial; do you understand that?

MR. LYNCH: Yes, Your Honor.

THE COURT: Do you want to give up those rights?

MR. LYNCH: Yes.

THE COURT: Because you're entering a guilty

plea, your right to appeal anything which may have taken place in the case before today will be waived and the only issue that you can appeal is the legality of your sentence; do you understand that?

MR. LYNCH: Yes.

THE COURT: If you've made any statement in the nature of a confession or anything that was received from you as a result of a search, you're entitled to a hearing to determine the voluntariness of the confession or the legality of the search, but if you enter this plea you'll give up that right; do you understand that?

MR. LYNCH: Yes, sir.

THE COURT: If you're not a United States citizen and you enter this plea, you may be subject to deportation; do you understand that?

MR. LYNCH: Yes.

THE COURT: Has any person threatened you or coerced you into entering this plea?

MR. LYNCH: No.

THE COURT: Has any person promised any leniency or any reward to get you to enter this plea, other that's what has been said here in open court here today?

MR. LYNCH: No.

THE COURT: Has there been any off the record assurances made to you by your lawyers or by anyone else?

MR. LYNCH: No.

THE COURT: Are you sure about your answers that you've given me this morning?

MR. LYNCH: Yes, Your Honor.

THE COURT: If you come back and try to tell me later that you didn't understand what was on this plea form, or that you didn't understand what you were doing today, no one will believe you; do you understand that?

MR. LYNCH: Yes.

THE COURT: All right. The Indictment charges, in Count One, that in the County of Seminole, State of Florida, on March 5th, 1999, that you did unlawfully kill a human being, who was Roseanna Morgan by shooting Roseanna Morgan with a firearm, and said killing was perpetrated by you from a premeditated design to affect the death of Roseanna Morgan, contrary to Florida statute.

In Count Two, it's alleged in Seminole County, on that same date, that you did unlawfully kill a human being, who was Leah Caday, by shooting Leah Caday with a firearm, and killing . . . and said

killing was perpetrated by you from a premeditated design to affect the death of Leah Caday contrary to Florida Statutes.

In Count Three it's charged that in Seminole County, on that same date, that you did enter or remain in a structure, which was a dwelling, located at 534 Rosecliff Circle, in Sanford, the property of Roseanna Morgan or Leah Caday, as owner or custodian, with the intent to commit an offense therein, and in the course of committing said burglary that you were armed or became armed with an explosive or a dangerous weapon, which is a firearm, contrary to Florida Statutes.

In Count Four it's charged, on that same date, in Seminole County, that you did forcibly secrete or by threat confine, abduct, or imprison another person, who was Leah Caday, against her will and without lawful authority with intent to commit or facilitate the commission of a felony, which was murder, or with intent to inflict bodily harm or to terrorize said victim or another person, contrary to Florida Statutes.

Do you understand those are the charges?

MR. LYNCH: Yes, Your Honor.

THE COURT: Are you guilty of those charges?

MR. LYNCH: Yes.

THE COURT: All right. Mr. White, is there anything that is contained in your factual basis for the plea that I need to have recited on the record at this time, since he's admitted the matters in the Indictment?

MR. WHITE: Well, Your Honor, we do need a factual basis for the record.

Now, I understand from talking to Mr. Figgatt and Mr. Caudill that they take issue with some of the facts I've placed there in this factual basis, which I would offer for the record by reading, or by just placing it in the record, whichever. Whichever the Court pleases.

MR. FIGGATT: Your Honor, may I be heard on that?

THE COURT: Yes.

MR. FIGGATT: The reason I'm concerned is because the factual basis recited also may contain matters which relate to what would be sentencing aspects of this case, type of premeditated being the one I'm most concerned about, and hence the manner in which it is drafted suggests that, and we would take issue with some of the facts that are set out there.

I don't want to take issue with it point by

point, because to be quite candid with the Court, I haven't had an opportunity, since it was only delivered to Mr. Caudill thirty minutes ago and I haven't had a chance to read through the entire thing and study it.

What I can indicate to the Court is, that probably is along the lines of that particular document, is that my client had a relationship with the victim alleged in Count One of a romantic nature, it went off track. It went off track in a way where my client was attempting to rekindle the relationship. He went to her new home spelled out in the count related to the burglary, he approached her daughter who was coming home from school, he gained entry voluntarily into the home at that point in time. Subsequently removed from a bag that he had, one of two or three firearms. And at that point in time the kidnapping ensues, as well as what we contend or what the State contends and we admit was, in essence, a burglary, because whatever consent he had to be there was gone.

Subsequently, Ms. Morgan, the victim in Count One, arrived at her apartment, at her home. She was met at the door, we believe either by her daughter or by my client, she had a heated discussion with my

client, and refused to come into the apartment with him there.

We believe that based upon what my client related to the police shortly thereafter, as well as the physical evidence, that she was shot on her front stoop or porch area in front of the apartment, and then pulled inside. How seriously she was shot at that point in time we do not know. The medical examiner isn't able to tell us the sequence of how she was shot, but she was subsequently shot again.

How many times total, Mr. Caudill?

MR. CAUDILL: I believe there were a total of approximately six wounds.

MR. FIGGATT: And during one of those -- My client didn't shoot her with just one gun.

MR. CAUDILL: That's correct.

MR. FIGGATT: He shot her with more than one of the guns that he brought. And during one of those times, and I'm not sure if it was two or three times, that they were still having this heated exchange back and forth, Ms. Caday either went to her mother or attempted to leave and got in the way of the shooting and she was shot one time and she died.

While all this was going on, people at the apartment complex were calling the Sanford Police

Department. The Sanford Police Department, in conjunction with the Seminole County Sheriff's office, responded there.

In the meantime, my client's wife had found a letter he had left her and had called the Sanford Police Department and informed them at least briefly of the content. While my client was there he called the Sanford Police Department or 911 and got the Sanford Police Department dispatcher and related in detail what he had done to a dispatcher, who remained on the line with him from thirty-five to forty-five minutes. There is no issue of fact.

By the time he exited the building, the SWAT team was there. There is no issue of identity in this particular case. And there is no issue of the fact that when he left the building at least two people were dead in connection with what the forensic evidence indicates were firearms that were in his possession and brought into the building.

All of this happened in the City of Sanford, Seminole County, Florida, on the date indicated in the Indictment.

THE COURT: All right. Mr. Lynch, you've heard your lawyer announce the basic facts that he believes the State would be able to prove in this

case. Do you agree that those facts could substantially be proven?

MR. LYNCH: Yes, Your Honor.

THE COURT: Do you understand that by entering a plea today and waiving your right to have a trial, that what you've done is you've approved your lawyer's tactic, if you will, to avoid having a trial and to simply have a penalty phase with the focus on what penalty should be imposed rather than your guilt or innocence; do you understand that?

MR. LYNCH: Yes, Your Honor.

THE COURT: All right. The Court finds you're an alert, intelligent individual capable of exercising your best judgment; that your decision to enter a plea of guilty to these offenses has been made freely and voluntarily, after having received advice by your attorneys, with whom you're satisfied, and a factual basis exist for the plea by your admission under oath and by the recitation of your attorneys as to the facts that may be proven in this case. And the Court will accept the plea.

Now the second thing that you have done is you have asked me to consider waiving a jury trial for the penalty phase of this proceeding. Do you understand that?

MR. LYNCH: Yes.

THE COURT: Is that what you want to do?

MR. LYNCH: Yes, Your Honor.

THE COURT: I need to advise you that you have the right to have a jury of twelve persons hear matters of aggravation which are limited by statute, and any matters in mitigation that you wish to present. You have the right to be represented by a lawyer during the course of that hearing. You're entitled to testify at the hearing or to remain silent, and your silence cannot be used against you. You have the right to the subpoena power of the Court to compel the attendance of any witnesses that you may wish to call in your behalf at the hearing. If the jury by a vote of at least six to six recommends that you be given a life sentence, I will not override that decision and will impose a life sentence upon you. Do you understand that?

MR. LYNCH: Yes, Your Honor.

THE COURT: On the other hand, if the jury should return by a vote of at least seven to five and recommend that you be sentenced to death, I would have to give that recommendation, quote, great weight, end quote, although the final decision on the penalty to be imposed is my responsibility alone; do

you understand that?

MR. LYNCH: Yes, Your Honor.

THE COURT: Is that what you want to do, you want to waive the right to have a jury trial as far as the recommendation of the penalty is concerned?

MR. LYNCH: Yes, sir.

THE COURT: You're sure about that?

MR. LYNCH: Yes, sir.

THE COURT: You understand that if I allow you to do that, I'm not going to let you change your mind later?

MR. LYNCH: Yes.

THE COURT: All right. Does the State wish to be heard on that issue.

MR. WHITE: I do, Your Honor.

We understand, of course, it's completely discretionary with the Court at this point as to whether or not you will impanel a jury for its recommendation or not. The State's position is that this particular strategy has been employed a number of times by the Public Defender's office in this circuit. The track record so far is in every case it has been a successful strategy to avoid the imposition of death penalty.

This case will hopefully stand on its own

merits and its own facts with the Court, and surely we recognize that, but I think on behalf of the State and in light of what has happened in the past cases, the State would ask that the Court impanel a jury. And we would state to the Court that the reason for our factual basis, which is six pages long, was to give the Court a bigger picture of what's involved in this case. This is a double homicide, it is a serious death penalty case. If anyone had any question about the prior ones, I would hope that none would be entertained about this case involving the death of a thirteen year old child.

So we would ask that the Court impanel a jury and allow a jury of Mr. Lynch's peers to make a recommendation to the Court for its consideration, and that would be our preference. Obviously, it's the Court's discretion.

THE COURT: All right. Well, I'm going to allow him to waive the jury, if that's what he wants to do, and it is. So I'll grant his motion.

And we'll schedule the penalty phase at a later date. And I'm going to -- As a matter of fact, I think I asked y'all, if you would, please, this morning, to be ready to discuss that, if you're ready.

Why don't you have a seat, let's talk about it a few minutes and see what we're talking about.

Mr. White?

MR. WHITE: Yes, Your Honor.

THE COURT: Are you going to be doing the penalty phase?

MR. WHITE: The three of us will.

THE COURT: Can you give me an estimate as to how long it would take to present the State's side of it?

MR. WHITE: Your Honor, --

THE COURT: I assume you're going to want to present some facts.

MR. WHITE: Well, there is a good many cases which seem to indicate that that would be a good thing. In other words, even if we may have some aggravators that are proven by the plea itself, that if we allow the Court to make a decision and if you were to impose a death penalty based on that alone, the Supreme Court would send it back because they don't have enough facts to make proportionality review.

THE COURT: That's right. That's why I want to know what you think, what's your estimate?

MR. WHITE: My estimate.

MR. FELICIANI: Four or five days.

MR. WHITE: They are saying four to five days. I'm thinking that being we're doing it in front of Your Honor and it kind of speeds things up, that we're talking three to four days.

THE COURT: All right.

Mr. Figgatt, what's your estimate on the amount of time you're going to take?

MR. FIGGATT: Two days.

That would be testimonial. That's not inclusive of a Spencer hearing.

THE COURT: Well, okay, I understand that.

So we're talking about at least a week.

Right?

MR. WHITE: I'm sorry. At least a week.

THE COURT: At least a week.

MR. WHITE: Yes, Your Honor. And I gather the Court is thinking about moving this back, which I think Mr. Figattt is in favor of, in light of his schedule.

Are we on the same wavelength here?

THE COURT: No. I'm trying to find out how long it's going to take so I can figure out when I can schedule it. My thought is I'll go ahead and schedule it and try to schedule it during one of my

trial weeks, and get a senior judge to come handle my regular trials.

MR. WHITE: Well, that's fine. I guess, that's fine.

THE COURT: So, --

MR. WHITE: I agree with you, we're talking a week, it's going to be a week with the evidence and argument as set forth, I think we can count on that.

THE COURT: How long will you need to be ready.

MR. FIGGATT: I have some out of state people who are non expert mitigation people, that we have to get the right process on in order to force them to come, if force is necessary, and family.

Six weeks. I think we can accomplish it in six weeks.

THE COURT: Mr. White, what's your schedule?

MR. WHITE: The only -- as far as I know our counsel are all available. The only bad week is actually the week that apprehended --

MR. FIGGATT: That we might schedule.

MR. WHITE: -- that we might do this. For any of us.

Other than that, I think we're pretty open.

THE COURT: Well, as long as I've got most of

my courtroom working here, as you know the criminal division was schedule to be closed the last two weeks of December. Judge Dickey is thinking about keeping his division open during the week of the 18th. I don't know what y'all have planned. Is everybody relying on two weeks at the end of the year, or is it just we haven't got that far yet, or what?

Because that would be a good week to do this.

MR. FIGGATT: It would be, Your Honor, except for the fact that it is the week preceding Christmas and we have a lot of people who are up north, in our kind of . . . the people that we have. And I don't know what the weather is going to be like in New York the week before Christmas.

And as far as flights during that time period, they are always more expensive, is my experience, the flights between Thanksgiving and Christmas are more expensive.

MR. WHITE: And I suppose, on behalf of the family of the victims, I don't know that right around Christmas is a great time to go through this for them either.

MR. FIGGATT: I agree.

THE COURT: Well, that puts it over into January.

MR. WHITE: I know earlier that the State's position has been trying to get this thing to trial and I've been a little pushy at time, but now we have the guilt resolved, I'm a little bit more flexible and if we needed to move it into late January, that's fine.

THE COURT: All right. I have a trial week, which is the week after New Year's day. I don't remember what the date is.

MR. FIGGATT: The week of January 3.

THE COURT: Yeah.

THE COURT: And then my next trial period is three weeks after that.

MR. FIGGATT: The three weeks after that is the week time period you are contemplating doing Mr. Laltoo's case, is that right?

THE COURT: Yes.

MR. FIGGATT: Mr. Caudill and I are also involved in. I'm not trying to -- And the week after Christmas is the one I'm taking annual leave on.

THE COURT: Well, I could schedule it during one of my hearings weeks if I can get a senior judge that's local to handle my hearings.

MR. FIGGATT: The week of January 10th or 17th, is that what the Court's speaking about?

Either one of those are great.

MS. KIRSHEMAN: What's the difference?

THE COURT: Go get me my January schedule, would you?

I've got it.

How about the week of January 8th?

MR. FIGGATT: Pardon me?

THE COURT: How about the week of January 8th. That's a hearing week for me, but that's not . . . not much of a problem if I can get a senior judge.

MR. FIGGATT: January 8th.

THE COURT: Uh-huh.

MR. FIGGATT: That's a Saturday.

THE COURT: 2001.

MR. FIGGATT: I'm looking at 2000, I apologize.

MR. CAUDILL: That would give us a week between this proceeding and the Laltoo.

THE COURT: Yeah. Caudill that would be good for us.

THE COURT: Is that okay?

MR. WHITE: As far as we know there is no problem with that, Your Honor.

THE COURT: All right. Then I'll see if I

can get Judge Mize or Judge Wally Hall to take my motions that week.

Let's tentively schedule it for that time.

The contingency is I've got to have a courtroom and I've got to have a senior judge.

MR. WHITE: We have confidence you can do that.

THE COURT: We should have the ability to know something about that in the next couple days.

MR. WHITE: I'm a little troubled by one thing, but I think we can work out with Defense counsel, but I want to raise it for the record. That is, they're talking about witnesses from up north that we've never heard about. And I --

MR. FIGGATT: For the mitigation witnesses, the discovery cut-off date is tomorrow.

MR. WHITE: Fine. And we wouldn't want to do it earlier, would we?

Okay. You will disclose them.

MR. FIGGATT: Yes.

MR. WHITE: All right.

THE COURT: All right. The other thing was, as I understand, that there may be mental health issues raised.

MR. FIGGATT: Yes, Your Honor. The

deposition of our expert is schedule tomorrow, but we contemplate that being rescheduled so that the State Attorney can have copies of the raw data on which these cases are opinioned before they do deposition; is that correct.

WHITE: That's correct. I think that will speed up the depo.

THE COURT: And you don't know if you're going to name of a mental health --

MR. WHITE: I anticipate we're going to use Dr. William Riebsame.

MR. FIGGATT: Dr. Riebsame was hired by them within the first few weeks of this case being, they just never told us about him.

THE COURT: Okay.

MR. WHITE: Disclosed him a long time ago.

THE COURT: All right. Well, let me know if you need my help on that matter. We'll work on getting this thing scheduled.

Y'all have a good day.

MR. FIGGATT: Thank you, Your Honor.

THE DEPUTY: This Court is in recess.

(Whereupon, the foregoing proceedings were terminated.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF SEMINOLE

I, DIANNE GAGNON, CSR, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this the 5th day of January, 2001.

_____

DIANNE GAGNON, CSR

Exhibit 4

Affidavit for Search Warrant

STATE OF FLORIDA
COUNTY OF SEMINOLE

IN THE EIGHTEETH JUDICAL CIRCUIT COURT
IN AND FOR SEMINOLE COUNTY, FLORIDA

BEFORE ME, JUDGE Gene R. Stephenson PERSONALLY APPEARED ONE INVESTIGATOR KRISTIN ZIEGLER HARRIS, OF THE SANFORD POLICE DEPARTMENT, WHO, BEING FIRST DULY SWORN, DEPOSES AND SAYS THAT YOUR AFFIANT HAS REASON TO BELIEVE THAT EVIDENCE PERTAINING TO A HOMICIDE WHICH OCCURRED ON MARCH 5, 1999 AT 534 ROSECLIFF CIRCLE, SANFORD IS NOW CONTAINED ON THE COMPUTER OF RICHARD LYNCH AND ON TWO ZIP DRIVE DISKS AND THESE ITEMS ARE FURTHER DESCRIBED AS FOLLOWS: ONE DELL COMPUTER BEARING THE SERIAL NUMBER DSG67, ONE ZIP DRIVE DISK GRAY IN COLOR WITH BLACK MARKER WRITING ON FRONT STATING "RO LATE LAST 534 1", AND ON ZIP DRIVE DISK GRAY IN COLOR WITH BLACK MARKER WRITING STATING "2 OF 2".

AND WHEREAS, THE FACTS TENDING TO ESTABLISH THE GROUNDS FOR THIS APPLICATION AND THE PROBABLE CAUSE OF AFFICANT BELIEVING THAT SUCH FACTS EXISTS ARE FOLLOWS:

YOUR AFFIANT, K.ZIEGLER HARRIS, IS PRESENTLY EMPOLYED BY THE SANFORD POLICE DEPARTMENT, SEMINOLE COUNTY, FLORIDA, AS A SWORN POLICE OFFICER, AND HAS BEEN SO EMPLOYED SINCE AUGUST OF 1995, AND IS CURRENTLY ASSIGNED TO THE CRIMINAL INVESTIGATION DIVISION. YOUR AFFIANT ATTENDED AND SUCCESSFULLY COMPLETED THE FOLLOWING COURSES INTERVIEW AND INTERRATIONS, ADVANCE INTERVIEW AND INTERROGATIONS. YOUR AFFIANT SUCCESSFULLY COMPLETED THE FLORIDA POLICE STANARDS TRAINING PROGRAM REQUIRED BY THE STATE OF FLORIDA, WHICH INCORPORATED HOMICIDE INVESTGATIONS, CRIME SCENE PROCESSING, INTERVIEW TECHINQUES.

ON MARCH 5, 1999 THIS AFFIANT WAS CONTACTED BY SANFORD DISPACTH TO RESPOND TO 534 ROSECLIFF CIRCLE SANFORD, SEMINOLE COUNTY, FLORIDA REFERENCE TO A SHOOTING. UPON ARRIVAL AN UNIDENTIFIED SUBJECT WAS BARRICADED INSIDE THE APARTMENT. OFFICERS OF THE SANFORD POLICE DEPARTMENT UPON ARRVING ON SCENE HEARD SHOOTS BEING FIRED FROM WITHIN THE RESIDENCE MENTIONED ABOVE. AS OFFICERS REACHED THE THRID FLOOR LANDING THEY OBSERVED FRESH BLOOD ALONG WITH DRAG MARKING LEADING INTO APARTMENT 534 ROSECLIFF CIRCLE. SANFORD POLICE DEPARTMENT ALONG WITH THE SEMINOLE COUNTY SHERIFF'S DEPARTMENT SECURED THE SCENE AND MEMBERS FROM THE SEMINOLE COUNTY SHERIFF'S DEPARTMENT SPECIAL WEPAONS AND TACTIC UNIT (S.W.A.T.) WERE CALLED TO THE SCENE BY LT. MITCHELL TINDEL, OF THE SANFORD POLICE DEPARTMENT, THE ON SCENE SUPERVISOR.

AS MEMBERS OF THE SANFORD POLICE DEPARTMENT WERE ORGINALLY MAKING CONTACT ON THE THIRD FLOOR LANDING THE UNDENTIFIED SUBJECT, LATER KNOWN AS RICHARD E. LYNCH, HAD MADE A PHONE CALL TO HIS WIFE, VIRGINA LYNCH AT THEIR RESIDENCE 100 NORTH HAMPTON COURT, SANFORD. RICHARD LYNCH ADVISED HIS WIFE VIRGINA THAT HE HAD JUST KILLED SOMEBODY. HE CONTINUED TO ADVISE HIS WIFE VIRGINA OF AN AFFIAR HE WAS HAVING AND THAT HE HAD LEFT A LETTER INSIDE THE GARAGE OF THEIR RESIDENCE. ALL OF THIS INFORMATION WAS LEFT ON THE ANSWERING MACHINE INSIDE 100 NORTH HAMPTON COURT SANFORD, SEMINOLE COUNTY, FLORIDA. AFTER DISCONNTECTING WITH HIS WIFE HE NOTIFIED THE SANFORD POLICE DEAPRTMENT VIA 911 AND SPOKE WITH DISPACTHER JOYCE FAGAN.
RICHARD LYNCH STATES THAT HE WAS THE MAN CALLING FROM APARTMENT 534 ROSECLIFF CIRCLE AND THAT HE HAD SHOT TWO PEOPLE AND THAT HE DID NOT MEAN IT. DURING THE PHONE CONVERSATION WITH THE DISPATCHER FROM THE SANFORD POLICE DEPARTMENT MEMBERS OF THE SPECIAL WEPAONS AND TACTICAL UNIT ARRIVED ON SCENE.A HOSTAGE NEGOTIATOR BEGAN VERBALL COMMINITCATING WITH RICHARD LYNCH. AFTER A SHORT NEGOTIATION ARRANGEMENTS WERE MADE WITH LYNCH TO REMOVE THE BODIES OF HIS EX- GIRLFRIEND, ROSANNA MORGAN, AND HER DAUGHTER LEAH CADAY. THE TWO DECEASED VICTIMS WERE REMOVED FROM THE SCENE AND CARRIED DOWN TO THE SECOND FLOOR LANDING. A SHORT TIME LATER SPECIAL WEAPONS AND TATCICAL UNIT WAS ABLE TO SEE LYNCH SITTING ON THE BED IN THE MASTER BEDROOM WITH NO WEPONS NEAR HIM. THE UNIT MOVED IN AND SECURED LYNCH. RICHARD LYNCH WAS ESCORTED OUT OF THE RESIDENCE AND TAKEN TO THE SEMINOLE COUNTY SHERIFF'S DEPARTMENT BY OFFICER ALLAN McCoy.

AN INTERVIEW WITH RICHARD LYNCH WAS CONDUCTED BY THIS AFFIANT AND INVESTIGATOR RAY PARKER OF THE SEMINOLE COUNTY SHERIFF'S DEPARTMENT. DURING THIS INTERVIEW MR. LYNCH WAS READ HIS CONSITUTIONAL RIGHTS IN WHICH HE WAIVED MR. LYNCH STATED THAT HE HAD AN AFFAIR WITH THE DECEASED. ROSANNA MORGAN AND THAT THE AFFAIR HAD ENDED ON FEBRUARY 9, 1999.MR. LYNCH ADVISED OF CREDIT CARDS HE HAD OBTAINED TO PURCHASE ITEMS FOR THE DECEASED. MR. LYNCH STATES THAT HE SOLD NUMEROUS FIREARMS BELONGING TO HIM TO A GUN SHOP HERE IN SANFORD. LYNCH ADVISED HE WAS ABLE TO PURCHASE A VEHCILE FOR THE DECEASED AND WAS ABLE TO HELP HER GET THE APARTMENT 534 ROSECLIFF CIRCLE. MR. LYNCH HAD TAKEN NUMEROUS PORNOGRAPHIC PHOTOS OF ROSANNA MORGAN. MR. LYNCH STATES THAT HE WOULD USE THESE PHOTOS TO GRATIFY HIMSELF WHEN HE COULD NOT SEE HER FOR A PERIOD OF TIME. MR. LYNCH WAS CURRENTLY LIVING WITH HIS WIFE AT 100 NORTH HAMPTON COURT, SANFORD, FLORIDA.

THE DEFENDANT RICHARD LYNCH WROTE A LETTER TO HIS WIFE VIRGINIA LYNCH. IN THE LETTER RICHARD LYCH ASKED HIS WIFE TO PUBLISH THE LETTER TO ROSEANNA MORGAN'S PARENTS. THE LETTER STATES HOW HE HAD TWO ZIP DRIVE DISKS LOCATED IN HIS GUN SAFE LABELED 1 & 2. THE LETTER CONTINUES BY ADVISING THESE DISC CONTAIN PHOTOS OF THE VICTIM MORGAN. LYNCH STATES THAT ON ONE (1) DRIVE THEY ARE LABELED RWDEOPNPWK, R SPREAD, R FULREAR AND OTHER UNTITLED IMAGES.

YOUR AFFIANT AND INVESTIGATOR FRANK HILTON CONDUCTED A SEARCH OF RICARD LYNCHS VEHICLE ON MARCH 8, 1999. THIS SEARCH WAS CONDUCTED AFTER OBTAINING WRITTEN CONSENT FROM RICHARD LYNCH. THE SEARCH OF THE VEHICLE REVEALED NUMEROUS COMPUTER SCANNED PORNOGRAPHIC PHOTOGRAPHS OF THE VICTIM.A COMPUTER ON LINE PEOPLE LOCATE SEARCH REFERENCE ROSEANNA MORGAN. NUMEROUS GREETING CARDS. AND A LETTER WRITTEN TO THE VICTIM LEAH CADAY WERE ALSO LOCATED DURING THE SEARCH.

A SEARCH WARRANT WAS OBTAINED FOR RICHARD LYNCHS RESIDENCE, LOCATED AT 100 NOTH HAMPTON COURT SANFORD, SEMINOLE COUNTY, FLORIDA AND WAS AUTORIZED BY THE HONORABLE JUDGE HITT. DURING THE EXECUTION OF THE SEARCH OF THE RESIDENCE TWO ZIP COMPUTER DISC WERE LOCATED WITHIN A GUN CABINET OWNED BY RICHARD LYNCH.THE VICTIMS NAME AND APARTMENT NUMBER WAS WRITTEN ON THE OUTSIDE COVER OF THE COMPUTER DISC.

BASED UPON THE FOREGOING THE UNDERSIGNED HAS PROBABLE CAUSE TO BELIEVE THAT THERE IS CERTAIN EVIDENCE LOCATED WITHIN THE COMPUTER BELONGING TO RICHARD LYNCH AND WITHIN THE TWO ZIP DRIVE DISKS LOCATED AT THIS TIME AT THE SANFORD LAW ENFORCEMENT CENTER LOCATED AT 815 S. FRENCH AVENUE SANFORD, SEMINOLE COUNTY, FLORIDA.

WHEREFORE, AFFIANT MAKES THIS AFFIDAVIT AND PRAYS FOR THE ISSUANCE OF A SEARCH WARRANT DUE FORM FOR THE SEARCH OF RICHARD LYNCH'S COMPUTER AND THE TWO ZIP DRIVE DISKS, HERETOFORE DESRIBED AND FOR THE SEIZURE AND SAFE KEEPING, THEREOF, SUBJECT TO THE ORDER OF A COURT HAVING JURISDICTION THEREOF, BY THE DULY CONSTITUTED OFFICERS OF LAW.

KRISTIN ZIEGLER HARRIS
INVESTIGATOR
SANFORD POLICE DEPARTMENT

SWORN TO AND SUBSCRIBED BEFORE ME THIS 17th DAY OF March, 1999.
ICNOWN to me personally.

JUDGE

INVENTORY AND RECEIPT

DATED THIS_____ DAY OF _____, 1999

_____
INVESTIGATOR

Received this search warrant on the ___ day of _____, 1999, and executed the same in Seminole County, Florida, on the ____ day of _____, 1999, by searching the premises described herein and by taking into my custody the property described in the above Inventory and Receipt and by having read and delivered a copy of this Search Warrant and Inventory to _____.

_____
INVESTIGATOR

I, _____, the Officer by whom the Warrant was executed, do swear that the above Inventory and Receipt contains a true and detailed account of all the property taken by me on said warrant,

_____
INVESTIGATOR

IN THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

SEARCH WARRANT

IN THE NAME OF THE STATE OF FLORIDA.

TO ALL AND SINGULAR, THE SHERIFF AND HIS DEPUTY SHERIFF'S OF SEMINOLE COUNTY, FLORIDA, AND/OR THE ACTING CHIEF OF POLICE, THOMAS RAY BRONSON, OF THE CITY OF SANFORD AND HIS SWORN POLICE OFFICERS.

WHEREAS, COMPLAINT ON OATH AND IN WRITING, SUPPORTED BY AFFIDAVIT HAVING BEEN MADE THIS DAY BEFORE THE UNDERSIGNED JUDGE.

AND WHEREAS, SAID FACTS KNOWN TO ME HAVE CAUSED ME TO CERTIFY AND FIND THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE LAWS OF THE STATE OF FLORIDA HAVE BEEN VIOLATED TO WIT: HOMICIDE AND THAT EVIDENCE OF SAID VIOLATION IS STORED IN THE COMPUTER OF RICHARD LYNCH AND IN TWO ZIP DRIVE DISKS. SAID ITEMS ARE BEING STORED AT THE SANFORD LAW ENFORCEMENT CENTER LOCATED AT 815 S. FRENCH AVENUE, SANFORD, SEMINOLE COUNTY, FLORIDA. THE ITEMS TO BE SEARCH ARE SPECIFICALLY DESCRIBED AS ONE DELL COMPUTER BEARING THE SERIAL NUMBER DSG67, NOW LABELED SPD WM-28. ONE ZIP DRIVE DISK GRAY IN COLOR WITH BLACK MARKER WRITING ON FRONT STATING "RO-LATE LAST 534 1", AND ON ZIP DRIVE DISK GRAY IN COLOR WITH BLACK MARKER WRITING STATING "2 OF 2".BOTH DISKS NOW LABELED SPD WM-23 SECURED IN EVIDENCE.

AND WHEREAS, THE FACTS ESTABLISHING THE GROUNDS FOR THIS APPLICATION BEING SET FORTH IN THE AFFIDAVIT OF INVESTIGATOR KRISTIN ZIEGLER HARRIS

NOW THEREFORE, YOU OR EITHER OF YOU, WITH SUCH LAWFUL ASSISTANCE AS MAY BE NECESSARY, ARE HEREBY COMMANDED, IN THE DAYTIME, NIGHTTIME, OR ON SUNDAY AS THE EXIGENCIES OF THE SITUATION MAY REQUIRE, TO ENTER AND SEARCH THE DELL COMPUTER BEARING SERIAL NUMBER DSG67, THE ZIP DRIVE DISK MARKED "RO-LATE LAST 534 1" AND THE ZIP DRIVE DISK MARKED "2 OF 2" FOR THE PROPERTY DESCRIBED IN THIS WARRANT AND IF THE SAME OR ANY PART THEREOF BE FOUND, YOU ARE HEREBY AUTHORIZED TO SIEZE AND SECURE THE SAME, GIVING PROPER RECEIPT THEREFORE AND DELIVINERING A COMPLETED COPY OF THIS WARRANT TO THE PERSONS IN CHARGE OF THE PREMISES, OR IN THE ABSENCE OF ANY SUCH PERSON, LEAVING A COMPLETED COPY WHERE THE PROPERTY WAS FOUND, AND MAKING A RETURN OF DOINGS UNDER THIS WARRANT WITHIN TEN DAYS OF THE DATE HEREOF, AND YOU FURTHER DIRECTED TO BRING SAID PROPERTY SO FOUND AND ALSO THE BODIES OF THE PERSON OR PERSONS IN POSSESSION THEREOF BEFORE THE COURT HAVING JURISDICTION OF THIS OFFENSE TO BE DISPOSED OF ACCORDING TO LAW.

WITNESS MY HAND AND SEAL THIS 17th **DAY OF** March **1999**

JUDGE

Affidavit for Search Warrant

STATE OF FLORIDA
COUNTY OF SEMINOLE

IN THE EIGHTEETH JUDICAL CIRCUIT COURT
IN AND FOR SEMINOLE COUNTY, FLORIDA

BEFORE ME, JUDGE Frank K. M. Hatt PERSONALLY APPEARED ONE INVESTIGATOR KRISTIN ZIEGLER HARRIS, OF THE SANFORD POLICE DEPARTMENT, WHO, BEING FIRST DULY SWORN, DEPOSES AND SAYS THAT YOUR AFFIANT HAS REASON TO BELIEVE THAT EVIDENCE PERTAINING TO A HOMICIDE WHICH OCCURRED ON MARCH 05, 1999 AT 534 ROSECLIFF CIRCLE, SANFORD IS NOW KEPT IN CERTAIN PREMISES AND THE CURTILAGE THEROF IN SANFORD. SEMINOLE COUNTY, FLORIDA, AND THAT THOSE PREMISES ARE DESCRIBED AS FOLLOWS:

THE RESIDENCE IS UNIQUELY KNOWN AS 100 NORTH HAMPTON COURT, SANFORD, SEMINOLE COUNTY, FLORIDA. THE PROPERTY IS A SINGLE FAMILY DWELLING LOCATED BY TRAVELING SOUTH ON 17-92 FROM THE SANFORD POLICE DEPARTMENT. UPON REACHING THE INTERSECTION OF 17-92 AND AIRPORT BLVD A LEFT TURN WILL NOW BE MADE ONTO AIRPORT BOULEVARD. NOW TRAVELING EAST ON AIRPORT BLVD TO THE INTERSECTION OF SANFORD AVENUE. A RIGHT TURN WILL BE MADE ONTO SANFORD AVENUE. COUNTINUE BY TRAVELING SOUTH ON SANFORD AVE TO THE INTERSECTION OF STENSTROM BOULVEVARD. A LEFT TURN WILL NOW BE MADE ONTO STENSTROM BOULEVARD. TRAVELING EAST PAST RABUN COURT TO THE INTERSECTION OF NORTH HAMPTON COURT. THE RESIDENCE IS ON THE NORTH WEST CORNER OF THIS INTERSECTION. THE RESIDENCE IS BEIGE IN COLOR WITH DARK BEIGE TRIM. THE NUMBER 110 APPEAR ABOVE THE GARAGE DOOR IN DARK BEIGE. THIS IS THE REGISTERED RESIDENCE OF RICHARD EDWARD LYNCH AND VIRGINA LYNCH..

AND WHEREAS, THE FACTS TENDING TO ESTABLISH THE GROUNDS FOR THIS APPLICATION AND THE PROBABLE CAUSE FOR AFFIANT BELIEVING THAT SUCH FACTS EXISTS ARE AS FOLLOWS:

YOUR AFFIANT, K.ZIEGLER HARRIS, IS PRESENTLY EMPLOYED BY THE SANFORD POLICE DEPARTMENT,SEMINOLE COUNTY, FLORIDA, AS A SWORN POLICE OFFICER, AND HAS BEEN SO EMPLOYED SINCE AUGUST OF 1995, AND IS CURRENTLY ASSIGNED TO THE CRIMINAL INVESTIGATION DIVISION. YOUR AFFIANT ATTENDED AND SUCCESSFULLY COMPLETED THE FOLLOWING COURSES: INTERVIEW AND INTERROGATIONS, ADVANCE INTERVIEW AND INTERROGATIONS. YOUR AFFIANT SUCCESSFULLY COMPLETED THE FLORIDA POLICE STANDARDS TRAINING PROGRAM REQUIRED BY THE STATE OF FLORIDA, WHICH INCORPORATED HOMICIDE INVESTGATIONS, CRIME SCENE PROCESSING, INTERVIEW TECHINQUES.

ON MARCH 5, 1999 THIS AFFIANT WAS CONTACTED BY SANFORD DISPATCH TO RESPOND TO 534 ROSECLIFF CIRCLE SANFORD, SEMINOLE COUNTY, FLORIDA REFERENCE TO A SHOOTING. UPON ARRIVAL AN UNIDENTIFIED SUBJECT WAS BARRICADED INSIDE THE APARTMENT. OFFICERS OF THE SANFORD POLICE DEPARTMENT UPON ARRIVING ON SCENE HEARD SHOTS BEING FIRED FROM WITHIN THE RESIDENCE MENTIONED ABOVE. AS OFFICERS REACHED THE THIRD FLOOR LANDING THEY OBSERVED FRESH BLOOD ALONG WITH DRAG MARKS LEADING INTO APARTMENT 534 ROSECLIFF CIRCLE. SANFORD POLICE DEPARTMENT ALONG WITH THE SEMINOLE COUNTY SHERIFF'S DEPARTMENT SECURED THE SCENE AND MEMBERS FROM THE SEMINOLE COUNTY SHERIFF'S DEPARTMENT SPECIAL WEPAONS AND TACTIC UNIT (S.W.A.T.) WERE CALLED TO THE SCENE BY LT. MITCHELL TINDEL, OF THE SANFORD POLICE DEPARTMENT, THE ON SCENE SUPERVISOR.

AS MEMBERS OF THE SANFORD POLICE DEPARTMENT WERE ORGINALLY MAKING CONTACT ON THE THIRD FLOOR LANDING THE UNDENTIFIED SUBJECT, LATER KNOWN AS RICHARD E. LYNCH, HAD MADE A PHONE CALL TO HIS WIFE, VIRGINA LYNCH AT THEIR RESIDENCE 100 NORTH HAMPTON COURT, SANFORD. RICHARD LYNCH ADVISED HIS WIFE VIRGINA THAT HE HAD JUST KILLED SOMEBODY. HE CONTINUED TO ADVISE HIS WIFE VIRGINA OF AN AFFAIR HE WAS HAVING AND THAT HE HAD LEFT A NOTE INSIDE THE GARAGE OF THEIR RESIDENCE. ALL OF THIS INFORMATION WAS LEFT ON THE ANSWERING MACHINE INSIDE 100 NORTH HAMPTON COURT SANFORD, SEMINOLE COUNTY, FLORIDA.ACCORDING TO HIS WIFE WHO LIVES THERE. AFTER DISCONNECTING WITH HIS WIFE HE NOTIFIED THE SANFORD POLICE DEPARTMENT VIA 911 AND SPOKE WITH DISPACTHER JOYCE FAGAN. RICHARD LYNCH STATES THAT HE WAS THE MAN CALLING FROM APARTMENT 534 ROSECLIFF CIRCLE AND THAT HE HAD SHOT TWO PEOPLE AND THAT HE DID NOT MEAN IT. DURING THE PHONE CONVERSATION WITH THE DISPATCHER FROM THE SANFORD POLICE DEPARTMENT MEMBERS OF THE SPECIAL WEAPONS AND TACTICAL UNIT ARRIVED ON SCENE.A HOSTAGE NEGOTIATOR BEGAN VERBALLY COMMUNICATING WITH RICHARD LYNCH. AFTER A SHORT NEGOTIATION ARRANGEMENTS WERE MADE WITH LYNCH TO REMOVE THE BODIES OF HIS EX-GIRLFRIEND, ROSANNA MORGAN, AND HER DAUGHTER LEAH CADAY. THE TWO DECEASED VICTIMS WERE REMOVED FROM THE SCENE AND CARRIED DOWN TO THE SECOND FLOOR LANDING. A SHORT TIME LATER SPECIAL WEAPONS AND TACTICAL UNIT WAS ABLE TO SEE LYNCH SITTING ON THE BED IN THE MASTER BEDROOM WITH NO WEAPONS NEAR HIM. THE UNIT MOVED IN AND SECURED LYNCH. RICHARD LYNCH WAS ESCORTED OUT OF THE RESIDENCE AND TAKEN TO THE SEMINOLE COUNTY SHERIFF'S DEPARTMENT BY OFFICER ALLAN McCOY.

AN INTERVIEW WITH RICHARD LYNCH WAS CONDUCTED BY THIS AFFIANT AND INVESTIGATOR RAY PARKER OF THE SEMINOLE COUNTY SHERIFF'S DEPARTMENT. DURING THIS INTERVIEW MR. LYNCH WAS READ HIS CONSTITUTIONAL RIGHTS IN WHICH HE WAIVED. MR. LYNCH STATED THAT HE HAD AN AFFAIR WITH THE DECEASED, ROSANNA MORGAN AND THAT THE AFFAIR HAD ENDED ON FEBRUARY 9, 1999.MR. LYNCH ADVISED OF CREDIT CARDS HE HAD OBTAINED TO PURCHASE ITEMS FOR THE DECEASED. MR. LYNCH STATES THAT HE SOLD NUMEROUS FIREARMS BELONGING TO HIM TO A GUN SHOP HERE IN SANFORD. LYNCH ADVISED HE WAS ABLE TO PURCHASE A VEHCILE FOR THE DECEASED AND WAS ABLE TO HELP HER GET THE APARTMENT 534 ROSECLIFF CIRCLE. MR. LYNCH HAD TAKEN NUMEROUS PORNOGRAPHIC PHOTOS OF ROSANNA MORGAN. MR. LYNCH STATES THAT HE WOULD USE THESE PHOTOS TO GRATIFY HIMSELF WHEN HE COULD NOT SEE HER FOR A PERIOD OF TIME. MR. LYNCH WAS CURRENTLY LIVING WITH HIS WIFE AT 100 NORTH HAMPTON COURT, SANFORD, FLORIDA. THIS INVESTIGATOR ALONG WITH SUCH LAWFUL ASSISTANCE AS IS NECESSARY, WISHES TO EXECUTE SAID SEARCH WARRANT.

AFTER A CONSENT SEARCH OF RICHARD LYNCH'S 1997 DODGE CARAVAN, BURGUNDY IN COLOR, WITH FLORIDA TAG NUMBER VNY-50Y WAS CONDUCTED ON MARCH 8, 1999

YOUR AFFIANT FOUND THE FOLLOWING ITEMS INSIDE THE VEHICLE: NUMEROUS PHOTOS OF THE VICTIMS, PORNOGRAPHIC PHOTOS OF THE VICTIM ROSANNE MORGAN, COMPUTER IMAGES OF SCANNED PHOTOGRAPHS TAKEN BY MR. LYNCH OF BOTH VICTIMS, NUMEROUS UNSENT GREETING CARDS, A COMPUTER SEARCH OF THE VICTIM ROSANNE MORGAN CREDIT CARD HISTORY, AND A LETTER WRITTEN TO VICTIM LEAH CADAY.

BASED UPON THE FORGOING THE UNDERSIGNED HAS PROBABLE CAUSE TO BELIEVE THAT THERE IS EVIDENCE IN THE HOME OF RICHARD LYNCH, INCLUDING A TAPE OF HIS PHONE CALL TO HIS WIFE, PHOTOGRAPHS, PICTURES SCANNED INTO HIS COMPUTER, RECEIPTS FOR THE WEAPONS USED IN THE CRIME, AND OR NOTES, DAIRIES,AND OR JOURANALS KEPT BY RICHARD LYNCN OR BY THE DECEASD RELATING TO THEIR RELATIONSHIP.

WHEREFORE, AFFIANT MAKES THIS AFFIDAVIT AND PRAYS FOR THE ISSUANCE OF A SEARCH WARRANT OF DUE FORM OF LAW COMMANDING THE SHERIFF OF SEMINOLE COUNTY, OR ANY OF HIS DULY CONSTITUTED DEPUTIES, AND / OR THE ACTING CHIEF OF POLICE OF THE CITY OF SANFORD, OR ANY OF HIS DULY CONSTITUTED OFFICERS, WITH ANY PROPER AUTHORITY WITH NECESSARY ASSISTANCE,TO SEARCH THE RESIDENCE 100 NORTH HAMPTON COURT, INCLUDING ANY VEHCILE LOCTATED WITHIN THE CURTILAGE AND ANY PERSON ON THE PREMISES OR CURTILAGE REASONABLLY BELIVED TO BE ENGAGED OR CONNECTED WITH THE SEIZURE AND THE SAFE KEEPING THEREOF, EITHER IN THE DAYTIME OR IN THE NIGHTTIME, AND OR ON SUNDAY, AS EXIGENCIES OF THE OCCASION MAY DEMAND, IN ORDER THAT THE EVIDENCE MAYBE PROCURED TO BE USED IN THE PROSECUTION OF SUCH PERSON OR PERSONS WHO HAVE UNLAWFULLY USED, POSSESSED, OR ARE USING OR POSSESSING THE SAME IN VIOLATION OF THE LAWS OF THE STATE OF FLORIDA.

/S/
KRISTIN ZIEGLER HARRIS
INVESTGATOR
SANFORD POLICE DEPARTMENT

SWORN TO AND SUBSCRIBED BEFORE ME THIS 9TH DAY OF MARCH, 1999.

/S/
JUDGE
FREDERIC M. HERT

IN THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

SEARCH WARRANT

IN THE NAME OF THE STATE OF FLORIDA.

TO ALL AND SINGULAR, THE SHERIFF AND HIS DEPUTY SHERIFF'S OF SEMINOLE COUNTY, FLORIDA, AND/OR THE ACTING CHIEF OF POLICE, THOMAS RAYMOND BRONSON, OF THE CITY OF SANFORD AND HIS SWORN POLICE OFFICERS.

WHEREAS, COMPLAINT ON OATH AND IN WRITING, SUPPORTED BY AFFIDAVIT HAVING BEEN MADE THIS DAY BEFORE THE UNDERSIGNED JUDGE.

AND WHEREAS, SAID FACTS KNOWN TO ME HAVE CAUSED ME TO CERTIFY AND FIND THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE LAWS OF THE STATE OF FLORIDA HAVE BEEN VIOLATED IN AND ON CERTAIN PREMISES AND THE CURTILAGE THEREOF THE IN CITY OF **SANFORD, SEMINOLE COUNTY, FLORIDA** BEING KNOWN AND DESCRIBED AS FOLLOWS:

THE RESIDENCE IS UNIQUELY KNOWN AS 100 NORTH HAMPTON COURT, SANFORD, SEMINOLE COUNTY, FLORIDA. THE PROPERTY IS A SINGLE FAMILY DWELLING LOCATED BY TRAVELING SOUTH ON 17-92 FROM THE SANFORD POLICE DEPARTMENT. UPON REACHING THE INTERSECTION OF 17-92 AND AIRPORT BLVD A LEFT TURN WILL NOW BE MADE ONTO AIRPORT BOULEVARD. NOW TRAVELING EAST ON AIRPORT BLVD TO THE INTERSECTION OF SANFORD AVENUE. A RIGHT TURN WILL BE MADE ONTO SANFORD AVENUE. COUNTINUE BY TRAVELING SOUTH ON SANFORD AVE TO THE INTERSECTION OF STENSTROM BOULVEVARD. A LEFT TURN WILL NOW BE MADE ONTO STENSTROM BOULEVARD. TRAVELING EAST PAST RABUN COURT TO THE INTERSECTION OF NORTH HAMPTON COURT. THE RESIDENCE IS ON THE NORTH WEST CORNER OF THIS INTERSECTION. THE RESIDENCE IS BEIGE IN COLOR WITH DARK BEIGE TRIM. THE NUMBER 100 APPEAR ABOVE THE GARAGE DOOR IN DARK BEIGE. THIS IS THE REGISTERED RESIDENCE OF RICHARD EDWARD LYNCH AND VIRGINA LYNCH.

THERE IS NOW BEING KEPT IN OR ON SAID PREMISES AND CURTILAGE THEREOF CERTAIN EVIDENCE OF THE FOLLOWING CRIME AS DEFINED IN THE FLORIDA STATUTES: CHAPTER 782 ET.SEQ., (HOMICIDE), THAT OCCURRED ON MARCH 05, 1999 AT 534 ROSECLIFF CIRCLE, SANFORD, SEMINOLE COUNTY, FLORIDA. THE EVIDENCE REFERENCED ABOVE TO BE FOUND ON SAID PREMISES INCLUDE, BUT IS NOT LIMITED TO THE FOLLOWING: ANSWERING MACHINE AND OR ANSWERING MACHINE TAPE, PHOTOGRAPHS AND PHOTOGRAPH EQUIPMENT, COMPUTER PRINT OUTS, COMPUTER, CD ROMS, COMPUTER DISCS, CREDIT CARD AND BANK STATEMENTS, ALL WEAPONS, CLOTHING PERTINENT TO THE INVESTIGATION, DOCUMENTS OR LETTERS ADDRESSING THE IDENTIFICATION OF RICHARD LYNCH, LETTERS WRITTEN BY THE DEFENDANT RICHARD LYNCH OR THE VICTIMS OF THE HOMICIDE ROSEANNA MORGAN AND LEAH CADAY, AND ANY PAPER RECEIPTS, OR OTHER DOCUMENTS THAT PERTAIN TO, OR MAY PERTAIN TO THE CRIME REFERENCED ABOVE.

AND WHEREAS, THE FACTS ESTABLISHING THE GROUNDS FOR THIS APPLICATION BEING SET FORTH IN THE AFFIDAVIT OF INVESTIGATOR KRISTIN ZIEGLER.

NOW THEREFORE, YOU OR EITHER OF YOU, WITH SUCH LAWFUL ASSISTANCE AS MAY BE NECESSARY, ARE HEREBY COMMANDED, IN THE DAYTIME, NIGHTTIME, OR ON SUNDAY AS THE EXIGENCIES OF THE SITUATION MAY REQUIRE, TO ENTER AND SEARCH 100 NORTH HAMPTON COURT SANFORD, SEMINOLE COUNTY, FLORIDA , TOGETHER WITH THE YARD AND CURTILAGE THEREOF, AND ANY AND ALL OUTSTANDINGS AND VEHICLES THEREON, AND ANY PERSON THEREON FOR THE PROPERTY DESCRIBED IN THIS WARRANT AND IF THE SAME OR ANY PART THEREOF BE FOUND,YOU ARE HEREBY AUTHORIZED TO SIEZE AND SECURE THE SAME, GIVING PROPER RECEIPT THEREFORE AND DELIVERING A COMPLETED COPY OF THIS WARRANT TO THE PERSONS IN CHARGE OF THE PREMISES, OR IN THE ABSENCE OF ANY SUCH PERSON, LEAVING A COMPLETED COPY WHERE THE PROPERTY WAS FOUND, AND MAKING A RETURN OF DOINGS UNDER THIS WARRANT WITHIN TEN DAYS OF THE DATE HEREOF, AND YOU FURTHER DIRECTED TO BRING SAID PROPERTY SO FOUND AND ALSO THE BODIES OF THE PERSON OR PERSONS IN POSSESSION THEREOF BEFORE THE COURT HAVING JURISDICTION OF THIS OFFENSE TO BE DISPOSED OF ACCORDING TO LAW.

WITNESS MY HAND AND SEAL THIS 9TH DAY OF March 1999

JUDGE [signature]

FRANK M. HITT
COUNTY COURT JUDGE
SEMINOLE COUNTY, FL.

C00174

Exhibit 5

(1) 3/3/99

Dear Gigi: I am sorry. I am very despondent and depressed beyond description. There has been recent events which drove me to this. Forgive me for lying to you but it was necessary. Ever since Steven was born, it seems we have had no normal sex life. You are now seemingly addicted to computer chat rooms, that is your pleasure. I am a very sensual, sexual, physical person and I had a long affair with a beautiful Filipina named Roseanna Morgan (her married name) her maiden name was GAREN. She was born in Philippines, moved to Hawaii with parents and family. There she met a Marine and married him. She was raped in Philippines at age 17 by male caretaker and had a baby girl by him, now age 13, named Leah Caday. She also has 7yr old son J.R by husband. His family is here in Florida and I met end of July 98 while she was working in Cumberland Farms on Airport Blvd by Chris school. We got to know each other and fell in love. First made love on Aug 13 at her old house 1901 Lake Ave - go down 17-92 to 20 ST by Piggy-hut, make left - down 4 blocks to S. Lake and right. House in middle of block, right side with 2 globes in driveway, only house with lights in driveway. In my gun safe in Stevens room are 2 zip discs labeled 1+2 on top shelf. On them are all photos I took of her. You will find key (round Medeco key on top of my dresser, also on my keys. On 1 disc they are labeled R video pics - R spred, R fulrear, like that. On other there are 11 or 12 untitled images recent. The disc with most pictures he took in her old house, in motel, and in a park near where she worked. You can see how pretty and sexy she was, no slut or hooker, a nice girl, (so I thought). She was everything I dreamed of, my prayers answered. Where you seem sexless in public, always wearing long pants - shirts that show nothing, not panting you too, you can see the difference. She had sweet little size 5 feet, loved her feet and toes sucked, loved when I licked in between them and sucked them, massaged her feet often. She had small 32b boobs with great tootsie roll nipples as you can see, a sweet ass, she loved anal sex with my cock and especially having her asshole eaten when I also loved. You can see how sweet her pussy was, pink juicy wet, perfect, I have never tasted sweeter. I used to eat her for 20 minutes at a time. Where we are now —

(2)

so passive, she was an Aries, like Juliet, a sexual animal. She loved to be fucked and eaten, ass, yoni, toes, nipples, armpits everywhere. After I ate her so wet and my face was like a glazed donut from her juice she used to lick her juices from my mouth and chin. She even loved tasting herself. We last had sex on Sun Feb 6 she worked 3-11 nursing she worked in Manor Care in Winter Park, behind your hospital. I went over 12 PM and before work she sucked me dry, she was so good, sucking me till I came, swallowing all and licking her lips. Then we gone to work. That night I went out and over to apt and we made love and ate her pussy so long. Our lovemaking was volcanic. We had long love affair from Aug 98 till Feb 9, 1999. We were like sexual soulmates, so perfect everything I liked she did too. Juliet will know about it, she is Aries too, maybe she will tell you about the adventures we had in Bklyn. It was innocent, not ment to hurt you, she is so curious and passionate. I loved to eat her we never made love just oral. I last ate her pussy in 93 when she came to visit from Tx at X-mas on floor of Stevens room. But Juliet is good, her guilt bothered her so we stopped, so dont blame her, she is very passionat. Then of course she met Robert. As for Rose + I, we had a long affair for 7mo from Aug 98 till Feb 9. We loved each other. I was going to ask you for seperation after she made divorce final, even if I had to pay support. I would have missed Steven but would always have been there for him, with visitation, support, and see him often if you let me. You cant blame me, you seemed sexless compared to all I ever wanted sexually, a wildcat, everything I craved, that dark complexion, even darker than Juliet, you can see. That is where I was going all the time, meeting her after work when she worked 7-3 or on days off. We even went to motel sometimes before she got apt in Rosecliff on Lake Mary Blvd. We went shopping at Albertsons, Goodings on 436, Kmart in Lake Mary and next to Costanzos by Jackalone Mais. We ate in Costanzos a lot 7 or 8 times over 7 mos.

C00177

We met and shared happy times all over 17-92 and Aloma and 436 - McDon
K, Mart, Walmart on 436, Winn Dixie on Lake Mary Blvd, so close but yo
never go there. In blue stacked crates in garage by door, on my side
you will see computer gaming magazines on top shelf, left side top ro
says "50 best games". On bottom most magazine in pile you will
find copy of a letter she gave me Jan 11, and a card she gave me
Feb 2, a week before it ended. You can see how serious we were
and how animalistic she was sexually in card. She loved Steven to, also
fed him bottle, changed his diaper, gave him banana. Make copies of
the letter and card for me and copies of pics on disc, just print
them out on printer, dont have to be full page just 4x6 or so
I want you to send copies of letter + card and pictures to her family,
mom + dad in Hawaii, address is Garen, 84-731 Water St.
MAKAHA, WAIANAE, HI, 96792. GAREN, 84-731 WATER ST.
MAKAHA, HI. 96792 - her SS # was 576-31-0362 born 4/1/68
I want them to have a sense of why it happened, some decent
closure, a reason and understanding, they are good parents like yours
I want them to know what she did, the pain she caused, that
it was not just a random act of violence. I took 3 credit cards
I got by myself - Chase Visa, Peoples Mastercard and MBNA visa
She had no good credit, and I helped her buy car, 85 Buick, get
it in Rosecliff and buy things for apt. pay bills, she was
paying on cards and would have paid them little by little. She was
responsible. Suddenly she decided to get back with husband or ex
We did love each other, but he has some kind of control over her
She is afraid of him, or custody of kids or something. Suddenly just a
week after she gave me that card, it was over

he got very cold, made me return all her pictures I took, thought I was
ing to do something with them, she didnt know I copied them on scanner
e promised to pay credit cards, her bills and she made payment Feb 18
me. but I cannot live with that worry. The Chase Visa is 6,000 - I
d she will not pay all. So between the worry about bills, you finding out
t your anger and possibly getting thrown out on street, our sad life
close, I feel there is no way out for me. I am sorry for all the
in, suffering, expense, embarrassment and hardship I will cause.
d gave to you. I did love you and always would have from 87-88.
mething just went wrong, then I met Rose + had it all, emotional +
ical. We made beautiful love, no rubber or anything, great sex, oral,
al, regular looking into each others eyes, our sex was almost "spiritual",
d we were close emotionally; she even gave me key to car + apt and
going to put my name on her account in Natomas bank. Then he
me + did something to her and my world went black. Please give
love to your parents, try + make them understand. to Juliet + Robert, and
family. Pray for me, bury me quick, remember me. Give planes to
ris when he gets bigger and better sell cameras + guns - keep one
yourself - Robert will show you how. I will miss Steven. I loved
im so much. Show them my pictures when they get bigger and try and
ke them understand. and I love them both and you. For all you did
d putting up with me I love you Jiji. Take care of Steven, as he grows
big and good, please tell him how I loved him and took him riding all
me, he liked it so. Now life is empty + so dull, there is only
e peace I want. Try + understand. Forgive me.

Remember me

All my Love,

Richard.

XOXOXO

at is why she must pay the price. She built me
made me love her, loved me, gave me that
e on Feb 2, we made love on Feb 6 then on
she ended it. You cannot tell someone words like
t, then expect them to turn off like a switch.
n there's the $ worry.

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

RICHARD LYNCH,

Defendant.

_____/

CASE NO. 99-881-CFA

04 AUG -5 PM 12:20
SEMINOLE CO. FL
BY D.C.

MOTION TO WITHDRAW AND FOR SUBSTITUTION OF COUNSEL

Assistant Capital Collateral Regional Counsel, Leslie Anne Scalley, seeks to withdraw as attorney of record in the instant case and requests the Court to substitute attorney MARIE-LOUISE SAMUELS PARMER and as grounds for this motion states:

1. That the Law Office of the Capital Collateral Regional Counsel, Middle Region is the attorney of record for defendant, RICHARD LYNCH;

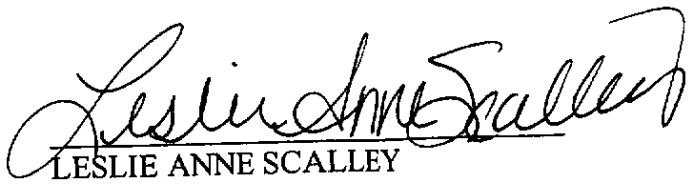
2. That Ms. Scalley has accepted employment with the Office of the Public Defender of the Eleventh Judicial Circuit and will no longer be employed by CCRC-Middle. The Movant is precluded from the practice of law outside her assigned duties with the Office of the Public Defender;

3. That Ms. Parmer has filed a Notice of Appearance to represent Mr. Lynch;

4. That Counsel certifies that this motion for substitution of counsel is for good cause and not for the purposes of delay;

WHEREFORE, Leslie Scalley seeks withdrawal from the instant case as attorney of record and asks that the Court substitute attorney MARIE-LOUISE SAMUELS PARMER as attorney of record.

Respectfully submitted,



LESLIE ANNE SCALLEY
Florida Bar No. 0174981
Assistant CCC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Withdraw and for Substitution of Counsel has been furnished by facsimile and United States Mail, first class postage prepaid, to all counsel of record on this 3rd day of August, 2004.

LESLIE ANNE SCALLEY
Florida Bar No. 0174981
Assistant CCC
CAPITAL COLLATERAL REGIONAL
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Assistant State Attorney
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Sanford, FL 32771

Richard Lynch
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Appendix F

Florida Supreme Court Order to Show Cause, dated February 9, 2018

Filing # 67737042 E-Filed 02/09/2018 09:08:46 AM

Supreme Court of Florida

FRIDAY, FEBRUARY 9, 2018

CASE NO.: SC17-2235
Lower Tribunal No(s).:
591999CF000881A000XX

RICHARD E. LYNCH vs. STATE OF FLORIDA

Appellant(s) Appellee(s)

The parties in the above case are directed to file briefs addressing why the lower court's order should not be affirmed based on this Court's precedent in *Mullens v. State*, 197 So. 3d 16 (Fla. 2016). Parties may include a brief statement to preserve arguments as to the merits of this Court's previously decided cases, as deemed necessary, without additional argument.

Appellant's initial brief, which is not to exceed twenty-five pages, is to be filed by March 1, 2018. Appellee's answer brief, which shall not exceed fifteen pages, shall be filed ten days after filing of appellant's initial brief. Appellant's reply brief, which shall not exceed ten pages, shall be filed five days after filing of Appellee's answer brief.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

cd
Served:

RAHEELA AHMED
MARIA CHRISTINE PERINETTI
LISA MARIE BORT
DONNA M. PERRY