IN THE SUPREME COURT OF FLORIDA

MESAC DAMAS,

Appellant,

v.

STATE OF FLORIDA

Appellee.
_____/

CASE NO. SC17-2062
L.T. No. 2009-CF-002298
DEATH PENALTY CASE

ON APPEAL FROM THE CIRCUIT COURT
OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR COLLIER COUNTY, FLORIDA

ANSWER BRIEF OF THE APPELLEE

PAMELA JO BONDI
ATTORNEY GENERAL
STATE OF FLORIDA

LISA MARTIN
Assistant Attorney General
Florida Bar No. 72138
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813)287-7910
Facsimile:(813)281-5501
capapp@myfloridalegal.com [*and*]
lisa.martin@myfloridalegal.com

COUNSEL FOR APPELLEE

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PRELIMINARY STATEMENT

Citations to the record in this brief will be designated as follows: the record on appeal concerning the original trial court proceedings shall be referred to as "R___" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

On September 17, 2009, Mesac Damas clocked out of work at 8:42 p.m. (R. 2051). At approximately 10:30 p.m. that evening, the defendant drove to Walmart and purchsed gum, duct tape and a 5-inch knife. (R. 2051). Damas then went to the family home, located at 864 Hampton Circle, Naples, Florida, and murdered his wife, Guerline Dieu Damas, and their five children: Meshach Zack Damas (age 9); Maven Damas (age 6); Marven Damas (age 5); Megan Damas (age 3); and Morgan Damas (age 19 months). (R. 9).

Damas then drove to Miami and purchased a one-way ticket to Port-Au-Prince, Haiti. (R. 2051). He departed the United States at 9:50 a.m on September 18, 2009, via American Airlines Flight 1291. (R. 2051). His 2001 GMC Yukon was found in the Flamingo Garage at Miami International Airport, having entered the garage at 6:40 a.m. on September 18, 2009. (R. 2051).

On September 19, 2009, the Collier County Sheriff's Office responded to 864 Hampton Circle, a two-story residence, for a welfare check. (R. 7). Upon entry to the residence, deputies found a deceased Guerline Dieu Damas, in a first-floor bathroom tied up with duct tape and had a black plastic bag over her head. (R. 9). Upon venturing upstairs, deputies located the bodies of the five Damas children. (R. 10). Deputy Chief Medical Examiner Dr. Manfred Borges determined that each of

the six victims died as the result of suffering sharp force injuries to their necks. (R. 2058).

On September 22, 2009, a warrant was issued for Damas' arrest for six counts of first-degree homicide. (R. 4). Damas was detained in Haiti, on September 20, 2009. (R. 8). Damas confessed to law enforcement and to the media that he murdered his family, with a detailed account of the offenses. (R.8).

Damas was arraigned on September 23, 2009, and the Office of the Twentieth Circuit's Public Defender was appointed to represent Damas. (R. 18). On October 14, 2009, Damas was indicted on six counts of first-degree homicide. (R. 24).

On December 3, 2009, the State filed its intention to seek the death penalty. for six counts of first-degree homicide. (R. 39).

In late 2010 and early 2011, on defense counsel's suggestion, the trial court appointed three experts (Dr. Herkov, Dr. Silver, and Dr. Schaerf) to examine Damas. to determine Damas' competency to stand trial. (R. 160, 165, 170). Dr. Silver opined that Damas was incompetent to proceed due to his religious beliefs preventing him from meeting the competency criteria. (R. 2041). Dr. Herkov opined that Damas was not incompetent to proceed, had no mental illness, but was narcissistic and had an adjustment disorder which caused him to be uncooperative. (R. 2041). Dr. Schaerf opined that Damas was competent and malingering due to his refusal to cooperate,

and that his hyper-religiousness was not due to a psychiatric condition. (R. 2041). On June 23, 2011, the trial court determined that Damas was competent to proceed. (R. 222).

Damas made a request for self-representation, which was denied on July 8, 2011. (R. 227). The trial court denied the request based on Defendant's inability to state a reason for the discharge and due to his lack of sufficient understanding of the legal process. (R. 227).

Dr. Herkov and Dr. Schaef were again ordered to evaluate Damas to determine his competency to proceed. (R. 484). Dr. Herkov now opined that Damas was not competent due to his religious beliefs preventing him from cooperating with his case. (R. 2041). He opined that Damas may be suffering from schizophrenia. Dr. Schaerf also found Damas incompetent to proceed based on worsening symptoms of untreated bipolar disorder. (R. 2041). On March 19, 2014, Damas was found incompetent to proceed and was ordered into the custody of the Department of Children and Families to have his competency restored. (R. 558).

On April 3, 2014, Damas was transported to the Treasure Coast Forensic Treatment Center. (R. 2042). Less than three weeks after Damas was admitted for treatment, his psychologist, Dr. Ali Mandelblatt, determined that Damas did not meet the criteria for hospitalization and was competent to proceed. (R. 562). Damas'

unwillingness to cooperate was not an indicator of incompetence without being attributable to "active symptoms of treatable mental illness". (R. 2042). The report noted that Damas makes a conscious choice to cooperate when it suits him to do so, indicative of a person with narcissistic personality and antisocial personality disorders. (R. 2042). Damas was found to be "grandiose, preoccupied with his own self-worth, is entitled and wants to be admired by others, lacks empathy and is arrogant" as well as aggressive and deceitful. (R. 2042).

Dr. Herkov and Dr. Schaerf were both reappointed for a re-evaluation [R. 569], and made findings consistent with Dr. Mandelblatt's. (R. 2042-43). The trial court found Damas competent to proceed on October 21, 2014. (R. 585).

On December 12, 2015, Damas indicated to the trial court his desire to plead guilty to the six counts of first-degree homicide. (R. 595). The Public Defender's Office certified a conflict and was withdrawn, on March 7, 2015, and the trial court appointed Office of Regional Conflict Counsel. (R. 604). Conflict counsel also certified a conflict and was withdrawn, on June 19, 2015 (R. 611). The trial court appointed registry counsel on that same day. (R. 611).

On September 3, 2015, the trial against Damas was stayed pending the outcome of *Hurst v. Florida*, 616 S. Ct. 616 (2016). (R. 667).

On June 7, 2017, the trial court accepted the State's amended notice of its intention to seek the death penalty. (R. 1131).

On June 23, 2017, Damas made a request for self-representation. (R. 1166). The trial court scheduled a *Faretta*[1] hearing for July 21, 2017. (R. 3749). The trial court conducted the *Faretta* hearing, but became concerned with the nature of Damas' responses:

> MR. DAMAS: I don't want to be sentenced to life, sir.
> THE COURT: What do you want to be sentenced to; death?
> MR. DAMAS: Death. Just--
> THE COURT: You want to be sentenced to death.
> So you want to –
> MR. DAMAS: You know --
> THE COURT: Do you understand – you understand that your attorneys could --
> MR. DAMAS: You know how hard it is, sir?
> THE COURT: Pardon me?
> MR. DAMAS: Do you know how hard it is to go every day for that long, you know, without my family? Do you know how hard it is?
> You don't know because you're not in my heart now, my dreams.
> THE COURT: You don't --
> MR. DAMAS: It's been painful.
> THE COURT: You don't have to ask me about what I know, okay? You don't have to ask me about what I know.
> MR. DAMAS: Okay.
> THE COURT: All right.
> MR. DAMAS: So how the -- how the State going to find me guilty when I stand over here and I say: State, give to Caesar what belong to Caesar, okay?

[1] *Faretta v. California*, 422 U.S. 806 (1975).

You want me -- you want to find me guilty. Okay. I'm going to stand right here and say: I'm guilty. Just go ahead and do what you got to do.
Look, what are they trying to do? They're trying to find me guilty, right, and sentence me to death?
To make it easy, like the Bible says, give to Caesar what belongs to Caesar. I believe I belong to God.
THE COURT: Mr. Damas, as I explained to you before, it's just not that simple. You can't just stand up and say, "I'm guilty," and then The Court says, "Okay. I sentence you to death." It doesn't work that way.
Maybe in some other countries it does, but not in the United States, okay? In the United States we have rules and laws and a Constitution. The law requires that before you enter -- you can enter a plea of guilty. But before The Court accepts it, and I may not accept it, in which case you will have a trial.
MR. DAMAS: I don't want no trial, sir.
THE COURT: Well, I understand. But, you know what, you need to listen to what I'm saying. If I don't accept your plea because you don't answer questions properly, then you will have a trial, okay?
If you want to represent yourself at that trial, that could be -- that could be a mistake.
MR. DAMAS: Sir, you can't do this. You can't do this.
THE COURT: That's why I think it would be wise for you to go ahead with your attorneys. But, you know, I can't make you do that at this point because I haven't finished asking you all the questions.
MR. DAMAS: You guys can do this with me or without me.
THE COURT: You know, a jury can assist you --
MR. DAMAS: You know what I'm saying?
THE COURT: A jury can assist you in selecting jurors -- your attorneys can assist you in selecting a jury. Your lawyers are trained in the law. They know the rules of procedure.
MR. DAMAS: I don't have a lawyer, sir.
THE COURT: They know the rules of evidence. Do you have any legal training?

MR. DAMAS: I don't have a lawyer, sir.
THE COURT: Do you have any legal training?
MR. DAMAS: What legal training?
THE COURT: Well, do you have legal training? Did you take any courses in law?
MR. DAMAS: I have a special lawyer you don't know, sir.
THE COURT: A lawyer can advise you on whether you should testify or not testify. A lawyer can assist in making sure that the jury instructions given are proper instructions. A lawyer can ensure that if there are any errors committed during the trial they're preserved for appellate review.
And, of course, in this case probably the most important thing the lawyers could do for you is to assist you in presenting evidence in mitigation, which would perhaps spare you the death penalty.
And so do you understand the lawyers can do all those things for you?
MR. DAMAS: I don't have a lawyer, sir.
THE COURT: Do you understand the lawyers can do all those things for you?
MR. DAMAS: I don't have a lawyer, sir.
THE COURT: Let the record show the Defendant is refusing to answer the question.
Do you understand that just because you represent yourself you will not get any special treatment from The Court?
MR. DAMAS: I don't need no special treatment, sir.
THE COURT: Do you understand that you will not be entitled to a continuance of the trial, which is set for September 5th, just because you want to discharge your lawyers?
Do you understand that?
MR. DAMAS: I don't want to go through September 5th. You say September 5th?
THE COURT: September 5th, that's when your trial starts.
MR. DAMAS: Yeah. I don't want -- I don't want to go through trial, sir.
THE COURT: That's when your trial is starting.
MR. DAMAS: You can do this with me or without me.

THE COURT: Well, if you don't want to attend the trial, that's another issue we can deal with.
We can have a trial without you here, if you want to do that. It's not a good idea. You have the right to be present during the trial.
MR. DAMAS: I don't want no trial, sir. I don't want my people -- my other people to see pictures. In trial, what's he going to do; show pictures to my family, pictures to the peoples -- to the world again and make them cry again? Bring sadness, tears, to my family, my wife's family.
THE COURT: I understand all that. And that's --
MR. DAMAS: Is that what you guys want to do? You know, bring tears again, you know, to people's eyes. You know what I'm saying?
It's not -- it's not right. It's not right. This thing has been done for over five years. Let them -- let them rest.
THE COURT: Oh, it's more than five years.
MR. DAMAS: I'm sorry?
THE COURT: It's more than five years.
MR. DAMAS: Okay.
THE COURT: It's about eight years.
MR. DAMAS: Okay. Eight years.
THE COURT: Yeah, eight years.
MR. DAMAS: Why can't you just let them --
THE COURT: And that's why this case is going to go -- this case is going to go to trial.
MR. DAMAS: Well, why am I going to -- you know, why do people have to hear the name of my kids, the name of my -- my wife again?
THE COURT: It's evidence in the case, sir.
MR. DAMAS: Do you think this is right? You guys doing something right? No, you're not doing anything right.
You're bringing tears and sadness to people's eyes. Both families. You know, my wife's family and my families. You know, is that what you guys want?
That's why I stand here and plead guilty to this case. Let me -- I take full responsibility for these actions. Let me go through this by myself.

> I don't want my people -- my wife's people to go through this again and my own family, mom and dad, brothers and sisters, to go through this. You know, it's very simple.
> THE COURT: All right…

(R. 3763-3770). The court then held a bench conference concerning whether the *Faretta* inquiry should extend to include the inquiry required when a defendant chooses to enter a plea. (R. 3771). The trial court expressed concern, and defense counsel agreed, that Damas was either refusing or not appropriately answering the questions pertaining to the *Faretta* inquiry. The trial court then decided that a competency evaluation was necessary, and appointed experts to evaluate Damas's competency to proceed. (R. 3775, 1318).

Dr. Herkov opined that Damas was still competent to proceed and was not manifesting signs of mental illness, and his religious zealousness was not due to a mental disorder. (R. 2043). Damas indicated to him that his desire to enter a plea and waive mitigation had been carefully considered. (R. 2043). Dr. Kling also opined that Damas competent to proceed, finding no psychosis associated with his personality dysfunctions. (R. 2044). The trial court determined that Damas was competent to proceed on August 18, 2017. (R. 1736).

On July 24, 2017, the trial court denied Damas' request for self-representation:

The Court inquired about Defendant's age, education, employment and experience in the legal field and advised the Defendant of the seriousness of the charges, the possible imposition of the death penalty, that he would be bound by the same rules of evidence and procedure with which lawyers must comply and inquired as to whether he had ever been involved in any other legal proceedings.

The Court advised the Defendant of the advantages of having the assistance of counsel trained in the law and the rules of procedure; that counsel could assist in the entry of a guilty plea; in the selection of a jury; ensure that the jury instructions were proper; advise the Defendant as to whether to testify or remain silent; to present mitigation evidence and to ensure that any errors during the trial are preserved for appellate review. Further, the Court advised the Defendant that he would not receive any special treatment and that there would be no continuance of the trial presently scheduled to begin on September 5, 2017. When asked if he understood the advantages of having counsel, the Defendant would not answer. Instead, he made rambling and disjointed statements, stating that "God is my lawyer."

The Court finds that Defendant failed to adequately articulate his answers to the Court's *Faretta* colloquy and failed to demonstrate sufficient understanding of the legal process in order to represent himself. In response to the Court's *Faretta* questions, the Defendant would not adequately respond, except to repeatedly state that he didn't want a trial and just wanted to plead guilty. The Court responded that before any plea could be accepted, the Court would have to conduct an extensive plea colloquy. It was apparent to the Court that the Defendant could not understand the plea process and related matters involved in a death penalty case without the assistance of counsel.

In questioning a defendant the Court must determine whether he is making a knowing and voluntary waiver of counsel. *Aguirre–Jarquin v. State*, 9 So. 3d, 602 (Fla. 2009). During the *Faretta*

> colloquy, Defendant refused to answer multiple questions, disregarded the Court's instructions, and was uncooperative and argumentative to the extent that the completion of the *Faretta* inquiry was thwarted. As a result, an adequate and thorough *Faretta* inquiry could not be conducted. Therefore, the Court finds that Defendant cannot be expected to make a knowing and voluntary waiver of counsel.

(R.1358-60).

On August 31, 2017, Damas filed a motion to recuse the trial judge, Frederick R. Hardt, which was granted on September 1, 2017. (R. 1775-93). Judge Christine Greider was immediately assigned to the case. (R. 1794).

On September 5, 2017, the morning of trial, Damas informed the trial court that he wanted to waive a jury trial, enter a plea to the charges against him, waive jury sentencing and mitigation evidence. (R. 2824).

The trial court conducted a plea colloquy based on his entry of guilty pleas, the waiver of penalty phase jury, and the waiver of mitigation evidence. (R. 2848-2871).

The trial court accepted the following factual basis, stipulated to by defense counsel and Damas:

> … On September 19, 2009, the Collier County Sheriff's Office responded to 864 Hampton Circle, a two-story residence, for a welfare check.

> Upon entry to the residence, deputies found a black female, later identified as Guerline Dieu Damas, in a first-floor bathroom tied up and deceased with sharp force injuries.
>
> The State would present evidence from District 20 Deputy Chief Medical Examiner Dr. Manfred Borges that the six victims each died as the result of suffering sharp force injuries to their necks.
>
> The State would present evidence that Mesac Damas was employed at Miller's Naples Ale House. On September 17, 2009, he clocked into work at 4:53 p.m., but he left earlier than his shift was supposed to end at 8:42 p.m.
>
> The State would present evidence that at approximately 10:30 p.m. on September 17, 2009, the defendant went to Walmart and bought gum, duct tape and a fillet knife.
>
> The evidence and testimony would show that Mesac Damas exited the United States on September 18, 2009, via American Airlines Flight 1291 departing from Miami at 9:50 a.m. and destined for Port-Au-Prince, Haiti. The defendant purchased a one-way ticket. His 2001 GMC Yukon was found in the Flamingo Garage at Miami International Airport, having entered the garage at 6:40 a.m. on September 18, 2009.
>
> The State would also present evidence of three express statements by the defendant admitting his guilt to committing six murders: one made to a U.S. Consular official, one to the Naples Daily News, and one to Detective Andy Henchesmoore of the Collier County Sheriff's Office.

(R. 3015). The trial court accepted his pleas and waivers as knowingly and voluntary.

(R. 2871). The trial court also accepted Damas' signed affidavit and plea form. (R.

1846-48). Pursuant to *Koon*[2], Damas' trial counsel indicted that he would proffer mitigation evidence at the sentencing hearing. (R. 2884).

A sentencing hearing began on October 23, 2017. (R. 2907). The State argued the existence of five aggravating circumstances: (1) the defendant was previously convicted of a prior violent felony; (2) the murder was especially heinous, atrocious, or cruel; (3) the murder was committed in a cold, calculated and premeditated manner without any pretense of a moral or legal justification; (4) the victim was a person less than 12 years of age; and (5) victim was particularly vulnerable because the defendant stood in a position of familial authority over the victim (R. 1999-2004). In addressing the aggravating circumstances, the State introduced certified copies of death certificates for each of the victims; autopsy reports for each of the victims; multiple audio and video statements made by Damas discussing the murders; transcript of videotaped statement to law enforcement; video interview by the Naples Daily News; law enforcement reports, extensive photograph evidence of the autopsies and the crime scene; and crime scene video. (R. 3564-3572). The State also presented Damas' clock out report from Miller Ale's House; the in-store video and receipt of Damas purchasing a knife, gum, and duct tape; photographs depicting

[2] *Koon v. Dugger*, 619 So. 2d 246 (Fla. 1993).

the Miami garage in which Damas parked his car when he flew to Haiti, as well as photos of his license plate and parking ticket, a certified motor vehicle report, and documentation of Damas' flight to Haiti on American Airlines. (R. 3564-3572). Finally, the pre-sentence investigation (PSI) was admitted into evidence. (R. 3564-3572).

The State presented testimony from Dr. Manfred Borges, Deputy Chief Medical Examiner, who testified as to the findings of the victims' autopsies [R. 2057, 2926]; Jessica Gerster, a crime scene investigator, through whom the State introduced the 5-inch knife into evidence [R. 2057, 2958-61]; and Mackindy Dieu, Guerline Damas' brother, who testified as to the impact the murders have had on him. (R. 2058-59, 2973-2981).

After the State rested its penalty phase case, defense counsel called Ron McAndrew, who was sustained from testifying due to having no personal knowledge of Damas. (R. 2059, 2981-2994). Defense counsel presented testimony from Dr. Elizabeth McAlister and Dr. Mark P. Rubino. (R. 3000, 3057). Dr. McAlister specializes in Haitian studies and religions. (R. 3001). She testified as to Damas' roots in Haiti, and how religious tension within Damas family affected him. (R. 2059-60, 3006) Dr. Rubino is a neurologist who testified that his exam of Damas showed brain abnormalities, which could be consistent with schizophrenia, and that

Damas' voodoo idealizations would be schizophrenic delusions. (R. 2060-60, 3058, 3065, 3083). Rubino then testified that he does not read images or treat patients with schizophrenia. (R. 2060-61, 3318). Defense counsel also presented the following evidence in support of its mitigating factors: (1) voodoo video from Haiti; (2) cd of neurological images; (3) letter from Robert Ouaou; and (4) document from Ron McAndrew, a prison consultant. (R. 3572).

Pursuant to *Koon*, defense counsel proffered the following mitigation factors:

1. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. [untreated mental health which exacerbated his religious fear of Vodou].

2. The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired. [untreated mental health issues coupled with organic brain damage and traumatic brain injury].

3. Mesac suffered from organic brain damage since birth including severe malformation and damage of the brain.

4. Mesac suffered memory loss from a motor vehicle accident in July 2009 with loss of consciousness, inappropriate behavior, he was anxious, confused and agitated. His level of consciousness was altered and he had difficulty speaking.

5. Mesac suffers from untreated mental illness and was evaluated as possibly delusional, unspecified schizophrenia spectrum, other psychotic disorder with evidence of possible underlying mood disorder - bipolar depressive disorder.

6. Mesac suffers from cognitive functioning deficits including poor

judgment and lack of impulse control.

7. Mesac has deficits in perceptions of others, understanding his environment and the actions of others.

8. Mesac suffers from delusions.

9. Paternal abandonment - his father left Haiti in 1981 when Mesac was only 5 years old.

10. Maternal abandonment - his mother left Haiti in 1986 when Mesac was only 10 years old.

11. Mesac lived in extreme poverty in Haiti.

12. Mesac lived in unstable housing moving to multiple houses and living with various relatives and extended family members.

13. Mesac was physically abused as a child.

14. Mesac witnessed violence in his childhood home.

15. Mesac was influenced by the conflict between his paternal family's Protestant Christian religious beliefs and his maternal family's Vodou religious ceremonies and activities.

16. As a child Mesac was sent to live with his maternal grandmother who was a Vodou priestess.

17. Mesac had no male role model as his father abandoned him and his maternal grandfather did not live in the home with his maternal grandmother.

18. Mesac lived in fear of the crosses, bottles of potions and Vodou practices he witnessed by his grandmother.

19. Mesac had no example of positive marital relationships.

20. Mesac had difficulty adjusting when he left Haiti at the age of 18 to live in the United States.

21. Mesac live in unstable housing moving to multiple houses and living with various relatives and extended family members.

22. Mesac witnessed domestic violence between his parents.

23. Mesac became very involved in the First Haitian Baptist Church and became a youth pastor and worked with marital groups.

24. Mesac worked hard to become a US citizen and was sworn in as an American citizen in Miami.

25. Mesac and Guerline had a mutually combative relationship noted in domestic violence reports.

26. Mesac was noted by the David Lawrence Center to show improved understanding of parenting techniques taught in class and he successfully completed the Making Parenting a Pleasure class.

27. Mesac was noted to be a good and interactive father to his children in the past by child welfare.

28. Mesac was a good worker and often helped other co-workers.

29. Mesac feared for his children due to evil spirits and his perceived malevolent Vodou influence of his mother-in-law.

30. Mesac has been a positive role model for other inmates and has developed a group of inmates to whom he preaches.

31. Mesac can be easily managed in prison.

32. Mesac loves his mother and she loves him.

33. Mesac loves his father and he loves him.

34. Impact of execution on family members.

35. Mesac was failed by the DCF who did not provide sufficient services.

36. Mesac was failed by the David Lawrence Center who did not recognize his underlying mental health problems.

(R. 2025-26).

After reviewing the entire case file and evidence and testimony admitted at the sentencing hearing, and evidence admitted by stipulation, the trial court made its factual findings:

> **FACTS OF THE CASE:**
>
> On Saturday September 19, 2009, the family of Guerline Damas contacted the Collier County Sheriff's Office (CCSO), to file a missing person's report and request a welfare check for Guerline and her five (5) children, all under the age of 10. They had not heard from their sister since Thursday September 17, 2009, and were concerned that she did not report to the Publix store where she worked. At 7:03PM that evening, CCSO deputies arrived at Guerlinre's residence to meet her family and landlord, who had the key to the two-story townhouse residence at 864 Hampton Circ1e, Naples, Collier County. While Guerline's brother, Makindy Dieu waited in the parking lot of the complex, CCSO Corporal Mantalvanos and Deputy Drew entered the residence and noticed what appeared to be blood leaking from a closed door under the stairs, with floor rugs pushed against it, to cover the space between the bottom of the door and the tile floor. They stopped the welfare check, secured the residence and called for back-up officers (State's Exh. 8).
>
> The back-up officers arrived on scene and the welfare check of Guerline and her children resumed. The officers entered the residence. They attempted to open the closed door under the stairs described above, but it was locked. They pried the lock, opened the door and found Guerline's body on the floor of a small bathroom, face down with a black trash bag over her head. Her upper torso and arms, from shoulder to e1bows were completely bound and encapsulated by duct tape, with her arms,

elbows and hands forced behind her back. Guerline's hands were bound so extensively that only a portion of her fingers were visible, with her palms facing away from each other. (See State's Exh. 16-22; 16-23). A white electrical extension cord appeared to be wrapped and loosely tied around her arms and her lower back, where her hands were bound. Duct tape bound her thighs, knees and lower legs together tightly and extensively, from an area above her knees encircling the entirety of both legs to just above her ankles. Her bare feet were situated vertically, inside a small wicker waste basket. (See State's Exh. 16-1; 16-2) Later, more duct tape is found wrapped multiple times around the entirety of Guerline's neck. (See State's Exh. 16-26). Her upper torso is bound with so much duct tape that it is impossible to determine what she was wearing from the waist up. (See State's Exh. 16-1) Guerline's head, neck and upper torso area lay atop a large pool of dried blood. (See State's Exh. 8; 16-36).

Dr. Manfred Borges, Deputy Chief Medical Examiner, District 20, was called to the residence and arrived at 5:00AM the next morning (Sunday, September 20, 2009). He conducted a scene investigation and autopsy examination of Guerline Dieu Damas.

GUERLINE DIEU DAMAS was 32 years old, 5 feet, 6 inches tall and weighed 165 pounds at the time of her death. Her autopsy examination indicates blunt force injury to her right elbow and right eye, including her upper and lower eyelids. There are extensive, gaping incised sharp force injuries to her neck and left shoulder. Incised sharp force injury at the front [of] her neck is 5.5 inches in length, and 2 inches in depth, cutting both the muscle and both external and internal jugular veins. Dr. Borges coordinated and received an osteological examination of the cervical vertebrae situated within the neck area. The osteological examination of Guerline's cervical vertebrae bone (C3/C4/C5), indicates six (6) sharp force injuries. (See State's Exh. 13A).

After finding Guerline's body on the first floor, the officers turned their attention to the welfare of the five (5) Damas children. They went to the second floor of the residence and

entered the master bedroom. The room was in disarray, with clothing scattered across the floor, but no one inside the room. They entered the second bedroom with a single bed, to find the body of the Meshach Zack Damas.

MESHACH DAMAS had just turned nine years of age, was 5 feet 1 inch tall and weighed 165 pounds at the time of his death. (State's Exh. 13B). He was found lying face down on a bed mattress, atop an area of dried blood, wearing black boxer briefs. The wooden bed frame holding the mattress is broken, causing the mattress upon which Meshach's body was found to be uneven, with part of the mattress touching the floor. (State's Exh. 16-41, 16-45). Meshach's left calf and foot extend beyond the foot of the bed and bed frame. His right foot is found lodged between the foot of the bed frame and the mattress. There is blood spatter on the foot of the mattress, next to Meshach's right foot and on the floor under the foot of the bed and bed frame. (State's Exh. 16-3, 16-46).

Dr. Borges' scene investigation report notes multiple sharp force injuries that encircle Meshach's neck, as well as sharp force injuries on the palm of his left hand. The autopsy examination of Meshach reveals that the extensive, incised sharp force injuries encircle almost the entirety of his neck. There are multiple incisions of various lengths, penetrating Meshach's neck muscles and thyroid cartilage. The osteological examination of Meshach indicates nine (9) sharp force injuries to cervical vertebrae 2 and 3, caused by a minimum of four (4) sharp penetrating injuries. (State's Exh. 13B).

Upon entry into, the third bedroom, the officers find the bodies of the remaining four (4) Damas children. Directly inside the bedroom door, the body of Megan Damas is found. (State's Exh. 16-4, 16-7, and 13D).

MEGAN DAMAS was three years old, 3 feet, 2 inches tall and weighed 30 pounds at the time of her death. Megan was found lying on her back on the floor. Under her head, neck and

shoulders is a large pool of dried blood. A green plastic fork was clasped in her right hand (State's Exh. 16-4). The autopsy examination of Megan indicates extensive sharp force injury to her neck and left shoulder. Contusions and abrasions found on her left shoulder indicate blunt force trauma. There is sharp force injury to her left ankle. The length of the sharp force injury around her neck is approximately 3.5 inches. Consistent with the green plastic fork found in her right hand, Dr. Borges notes partially solid food found in her stomach. The osteological examination of Megan indicates seven incised wounds to cervical vertebrae 3 and 4, caused by a minimum of three (3) penetrating injuries. (State's Exh. 13D).

MARVEN ISAAH DAMAS was five years old, 4 feet 3 inches tall and weighed 65 pounds at the time of his death. (State's Exh. 13C). His body was found perpendicular to his sister Megan, face down on the floor, with his head and face turned to the left, toward Megan and directly next to his older brother Maven. (State's Exh. 16-4, 16-5, 16-55). The autopsy report indicates a sharp force injury on the right side of Marven's face as well as an incised sharp force injury to his neck which is 4.25 inches in length (State's Exh. 13C). The right side of Marven's neck is more significantly injured than the left side. The sharp force injury around his neck incised muscle, internal jugular veins, thyroid cartilage, his trachea and esophagus. There are sharp force injuries on his right hands and fingers. The osteological examination of his cervical vertebrae indicates 10 incised wounds, which correspond to a minimum of eight (8) penetrating injuries to his C2/C3 vertebrae.

MAVEN ISAACK DAMAS was six years old, 4 feet 3 inches tall and weighed 70 pounds at the time of his death, (State's Exh. 13F). He was found lying on his back next to his younger brother, Marven. His head and shoulders were situated on a mattress on the floor of the bedroom. His face was turned to his left; away from his brother Marven, who is approximately 8-12" away. (State's Exh. 16-8). Incised, sharp force injuries are observed on

the left and right side of his neck. The predominant incised sharp injury around his neck is 4.5 inches in length. The osteological examination of Maven indicates nine (9) sharp force injuries to his C2/C3 vertebrae, evidencing a minimum of three (3) penetrating wounds.

MORGAN DAMAS was 19 months old, 32 inches tall and weighed 20 pounds at the time of her death. Morgan was found face down on a bed, in the bedroom, with her sister Megan and brothers, Maven and Marven. The incision around her neck is 4.5 inches in length. The osteological examination of Morgan indicates one incised wound to the C5 vertebrae.

As stipu1ated by the parties, the cause of death of Guerline Damas and her five (5) children was sharp force injuries to each of their necks.

DEFENDANT-MESAC DAMAS: At the time of her death, Guerline was married to the Defendant, Mesac Damas, the father of Meshach, Maven, Marven, Megan and Morgan. Guerline and the Defendant were together for a total of 12 years and were married on April 4, 2006. (State's Exh. 11A/B). The Defendant worked as a chef at a local restaurant. He was 32 years old, 6'2" tall and according to his arrest warrant, weighted 230 pounds.

Nine months prior to Guerline's death, the Defendant was arrested and charged with domestic violence battery against Guerline, occurring on January 5, 2009. (State's Exh. 11B/Page 31). It was alleged and admitted by the Defendant that the incident involved his suspicion that Guerline had been unfaithful and resulted in the Defendant slapping Guerline across her face while she was holding their youngest child Morgan, who was 10 months old at the time. (State's Exh. 11A/B, Pg. 31-32). When the Defendant slapped Guerline, Morgan dropped to the concrete kitchen… (State's Exh. 11A/B, Page 32-33, Collier County Court Case #09-56-MM). At his first appearance hearing, the Defendant was given a bond and ordered to have no contact with Guerline as a condition of his release. The Defendant admits that he violated the no contact condition of his pretrial release by

going to Guerline's residence and breaking a window to get inside to see her and the children. (St. Exh. 11A/B, Pg. 37).

On April 2, 2009, the no contact order was lifted in the misdemeanor case and the Defendant moved into the Hampton Circle townhouse with Guerline and the children; (State's Exh. 11A/B Line 38-3 9) On June 1, 2009, the Defendant entered a plea of no contest to the charge of Battery and was placed on 12 months supervised probation and was ordered to complete 200 hours of community service and to attend a batterer intervention program (as required by statute) and a parenting class.

As a result of the January 5, 2009 incident involving Morgan being dropped on the floor, Guerline and the Defendant were also served with a Petition for Dependency, alleging that the domestic violence incident involving Morgan (in the presence of the other children), subjected the Damas children to abandonment, abuse and/or neglect. (See Collier County Circuit Case #2009DP55). The children were not removed from the home and the Defendant was initially provided supervised contact with the children. At the time of Guerline and the children's deaths, the Defendant was on supervised probation in the misdemeanor case and working under a case plan in the dependency case.

On the last day that Guerline's family and neighbors recall seeing or hearing from her or their children (Thursday, September 17, 2009), the Defendant left work earlier than scheduled, because according to him, he "wasn't feeling well and had a pounding headache". (State's Exh. 11B, Pg. 55). He clocked out of work at 8:42pm, working less than two hours.

At 10:21pm that same evening, the Defendant is seen inside a Walmart. Supercenter in Naples. Surveillance video shows him dressed in his kitchen work clothes (black pants, t-shirt and a black baseball cap). (State's Exh. 2). An overhead view of Defendant's purchase of a fillet (sic) knife, 55 yards of 1.88 inch wide silver duct tape, and the package of chewing gum reflect a time stamp of 10:30:50. He paid $5.00 cash for the "fillet" (sic) knife and $3.97 for the 55 yard roll of Duct tape. (State Exh. 3-10). The Defendant was able to find, select, and purchase the items located in Walmart Super Center in less than 10 minutes.

At 6:40am the next morning (Friday September 18, 2009), a 2001 dark colored GMC Yukon, license plate number M360PR, registered to the Defendant entered the "Flamingo" parking garage section of the Miami International Airport. (See State's Exh. 4(a-200), 4(b-203), 5 and 6). An American Airlines one-way ticket from Miami to Port Au Prince, Haiti is purchased with $213.10 in cash at the American Airlines ticket counter. Ticketholder: Mesac Damas. Departure time: 9:50am. (See State Exh. 7-90). The Defendant arrives in Port Au Prince, Haiti at 10:50 a.m. that morning. The bodies of Guerline and his five (5) children are found the following day (September 19, 2009), as described above.

On Monday, September, 21, 2009, (three days after his arrival in Port Au Prince, Haiti), the was apprehended by Special Agent Peter Kolshom. (See State's Exh. 9) The Defendant voluntarily provided a sworn statement to Agent Kolshom, telling him "You think I want to live after what I did?" "I know what I did was wrong, Bad spirits made me do it" "Now I have to kill the bad spirits to join them". The Defendant described how he had "been arrested earlier that year for domestic violence and was, in his words, "so upset, because she called the cops after ten years instead of working it out with me." The Defendant recalled that ever- since he went to jail (in January), he had been a "mad man".

The Defendant said, "I love her to death. If I lose her I'll lose my kids." (State's Exh. 9) He told the Agent that his mother-in-law disapproved of him moving back in with Guerline and the children after the arrest and that she … "had been doing voodoo on my ass ever since we been making children". The Defendant felt that Guerline had sided with her mother since his return and "she talked about divorcing me". In response he asked her, "How … you expect me to live without (my) kids and without you and you with any other man… Only death would separate us… only death! Only death!" (Exhibit 9/pg. 2 (also Page 531 discovery). Later in the statement, when he recounted Guerline telling him on the evening of Wednesday, September 16, 2009 that her mother and sister discussed the topic of divorce, he said he told Guerline "Divorce me? I fucking kill you"…. He told the Agent

that he couldn't blame "everything" on the devil and asked him why he thought the Defendant would kill his wife and children.

In his statement, the Defendant described his employment at a local restaurant as a chef and he was, "the best of the best". He then told the agent" I said I married you to stay with you the rest of my life". He said that Guerline promised to help him finish his "probations classes" after which she would then file for divorce.

The Defendant told Agent Kolshorn that the following day, (Thursday September 17, 2009), he was angry and had a headache thinking about Guerline's threat of divorce. He left for work that evening but according to him, "couldn't work" because he had a headache and bad spirits and voices in his head telling him that Guerline would leave him. After leaving work and while in the car, he began thinking about various scenarios, if he killed himself and her, if he killed her alone, and where the children would live. He disliked his mother-in-law so much-that he felt he should kill her so that the children would live with his mother after he killed Guerline.

He said that when he got home, Guerline didn't speak to him except to ask him to sign immigration papers and tell him that she still intended on leaving. He said Guerline had never "disrespected" him like this. He grabbed a knife tied her with a rope and used duct tape around her mouth so she couldn't call out. He told her that he would let her-live, but he would kill all the children in front her. He removed the duct tape from around her mouth and she told him that she wanted to talk and told him, "I love you so much". She begged him not to hurt the children.

Although he thought about his family, according to him, a voice said if "I let her go, she will take the kids away, my life is over, I might as well kill everyone and myself". He said he grabbed the knife and that he couldn't describe any of the events or actions after that, except that "it's bad, it's criminal."

He told the agent that he came to Haiti to say goodbye to his family and that "he knew what he did and that he didn't deserve to live"… that he didn't want to spend time in jail and only the death penalty would set him free.

On Tuesday September 22, 2009, while the Defendant was still in Haiti and being escorted from a building and placed in the back seat of a car, a video recording of the Defendant is taken by a reporter from the Naples Daily News when he admits to killing his wife and children and stated that he wanted the death penalty. (State's Exh-10-111).

On Tuesday, September 22, 2009, the Defendant is back in Collier County and in the custody of the Collier County Sheriff's Office. A video-audio recording is made of the Defendant. (State's Exh. 11A/11B). Detectives Henchesmoore, Wilkinson and Wrobleski are present.

After being read, and signing a waiver of his Miranda rights, Defendant stated that he "knew that he was there to explain why he killed his five (5) children and his wife" and that he "can't believe I killed my daughter"…

As with Special Agent Kolshorn, 'he recounted his prior arrest for domestic violence battery earlier that year, how he violated the no contact order before it was lifted and moving back in with Guerline and the children after the Order, was lifted. He told the Detectives that three (3) months prior to killing Guerline and his children, he told Guerline that if she ever again said that she was going to divorce him, he wou1d "kill your mom, kill you, kill myself". (State's Exh. 11B-Pg. 43). He explained to the Detectives, "If I lose my wife, I lose everything I have". He also told the detectives that Guerline's mother was upset with her for allowing him back in the house and because of that, Guerline's mother would not speak to her. He told the Detectives that if he had the opportunity he would have killed Guerline's mother before killing Guerline and before he left for Haiti on Friday, September 18, 2009. He shared his thoughts about different scenarios as a result of him killing Guerline's mother and how someone else would be with Guerline and "my kids" and how the devil got inside of him because Guerline's mother… who "drove him crazy, she was the freaking devil" (State's Exh. 11B:/Pg 41) He told them that ever since his arrest and incarceration earlier, that year, he "stopped reading the Bible. And "pretty much stayed away from the Lord, allowing anger

inside". As a result, so too was the devil who had been talking to him "pretty much the whole time", since he was arrested in January.

He recounted how he and Guerline argued on Wednesday night, September 16, 2009. She then told him "Straight up in my face", that… she had been seeing another guy". He got "crazy, upset, the devil came out to him, to not hurt Guerline or the children, but to find the "other guy" to warn him to stay away from his family. (Page 44).

He described to the detectives the events of Thursday, September 17, 2009. How Guerline had gone to her job at Publix that morning at 5:00am and how he followed her to work to make sure she was "really there" and the argument that resulted when she discovered him at her work. (State Exh. 11b- Page 52).

The Defendant's account of the remainder of the evening, involving an exchange of vehicles between himself and a friend after 9:00PM is difficult to follow or describe. He says that he returns to the residence at l0:00PM, parks his vehicle behind the residence, watching Guerline through the back lanai window until after midnight, never acknowledging his trip to Walmart at 10:21pm that night; He watches Guerline talk on her cell phone and describes her as appearing happy. According to the Defendant, he ripped the screen off the back lanai porch and opened the sliding and entered the residence. Guerline screamed, he punched her and he knew that he would go to jail. He told them that Guerline grabbed a knife from the counter and stabbed the Defendant twice, although he could not show the areas where he was stabbed, as four (4), days had gone by. He said that although the cut to him from the knife wasn't "big" it was a sharp knife and "blood was everywhere". (State's Exh. 11b- Page 59), so he pulled her hair, and in his words "just like slice her throat with the knife". All of these events "occurred in the kitchen", although none of the crime scene photos indicate blood any significant amount of in it. He said he thought about duct tape being in the drawer, so he put the duct tape around her mouth so she wouldn't scream and "taped her body" with the whole tape. According to him, "his wife was still alive, but stopped

> screaming and moving. There was blood everywhere, so he "dragged her" into the bathroom to contain the blood. (State's Exh. 11b-Page 63).
>
> He thought about his children, thinking he wasn't going to kill them, that he would let them live, until the "devil" asked him "who's going to take care of them?" (State's Exh. 11b-Page 64). He went upstairs with the knife in his hand. He then picked up and moved their bodies (with the exception of his oldest son Meshach), and in his words, put them in one room and sliced their throats, one by one, but left his oldest son Meshach and youngest child Morgan alive. He thought, "I don't want her mom to get custody", and went back upstairs with the knife and cut the throat of Morgan and then Meshach, who struggled and fought back. In the Defendant's words, he was almost dead, but he didn't want to die (State's Exh. 11b-page 71) He told the detectives that he watched Meshach bleed to death.
>
> He said that he stayed in the house until 7:00am, thinking about how he was going to kill himself. (State's Exh. 11b-page 71) He changed clothes, *packed a suitcase* and drove his vehicle across I-75E, toward Miami. He explained how he was able to purchase a one-way ticket to Haiti at the American Airlines ticket counter at the Miami International Airport and that when he arrived in Port Au Prince, he checked the internet for news and discovered on Saturday that the news of the death of his wife and children was "everywhere". (State's Exh. 11b-page 95) When asked whether he committed the crimes without help, he said that a "visible spirit" helped him, but not a physical person. (State's Exh. 11b-page 114) At the conclusion of the interview, the Defendant was served with the arrest warrant.

(R. 2045- 2056). In determining the appropriate sentences, the trial court made the following legal determinations:

D. IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH

The Defendant waived his right to a sentencing proceeding by a jury. §921.141(3)(b) Fla. Stat. (2017) applies.

(3)(b) If the Defendant waived his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death only if the court finds at least one aggravating factor has been proven to existbeyond a reasonable doubt.

The following analysis applies to the Court's consideration of all aggravating factors and mitigating circumstances presented in this case:

1. Has the aggravating factor(s) asserted by the State been found to exist and proven beyond a reasonable doubt?
2. Does the aggravating factor(s) sufficiently support the imposition of a sentence of death?
3. Does the aggravating factor(s) proven beyond a reasonable doubt outweigh the mitigating circumstances reasonably established by the evidence to warrant the imposition of a sentence of death?

AGGRAVATING FACTORS:

1. THE DEFENDANT WAS PREVIOUSLY CONVICTED OF ANOTHER CAPITAL FELONY OR OF A FELONY INVOLVING THE USE OR THREAT OF VIOLENCE TO THE PERSON. § 921.141(6)(b), FLA. STAT. (2017):

The State asserts that this factor applies to all six (6) counts, based on the Defendant's adjudications of guilt for the murder of six (6) separate victims from a single criminal episode. Generally, in cases involving a contemporaneous conviction for a violent crime, this factor does not apply. However, when more than one victim is involved, this circumstance may be considered and in fact, has been clarified to include contemporaneous capital or violent felony convictions from a single criminal episode involving more than one (1) victim. *James v. State* 695 So.2d 1229, 1236 (Fla. 1997), *Francis v. State* 808 So.2d 110, 136 (Fla. 2001), *Mahn v. State* 714 So. 2d 391, 399 (Fla. 1998).

The Defense argues that this aggravating factor cannot apply to all six (6) counts and should not apply to Count I (victim Guerline Damas), because her death occurred before the deaths of her five (5) children. This issue was addressed by the Florida Supreme Court in *James v. State* 695 So.2d1229,1235(Fla.1997), finding this aggravating factor applicable to the deaths of two (2) victims from a single criminal episode, specifically using the word "vice versa" as to the name of each victim.

FINDINGS:

A. The Defendant's six (6) contemporaneous convictions for first-degree murder on September 5, 2017 supports the application of this aggravating factor to each count.

B. The State of Florida has proven beyond a reasonable doubt the existence of this aggravating factor in each count.

C. This aggravating factor sufficiently supports the imposition of a sentence of death in each count.

D. The Court gives great weight to this aggravating factor in each count.

2. THE CAPITAL FELONY WAS ESPECIALLY HEINOUS ATROCIOUS OR CRUEL. § 921.141(6)(h) FLA. STAT 2017:

The State asserts that this aggravating factor applies to:

COUNT I: The murder of Guerline Dieu Damas

COUNT II: The murder of Meshach Zack Damas

COUNT IV: The murder of Marven Damas

The heinous, atrocious and cruel (HAC) aggravating factor focuses on the means and manner in which death is inflicted and the immediate circumstances surrounding the death. *Stano v. State*, 460 So. 2d 890, 893(Fla.1984).

In *Diaz v. State*, 860 So. 2d 960, 966 (Fla. 2003), the Florida Supreme Court wrote that heinous means extremely wicked or shockingly evil; that atrocious means outrageously wicked and vile; and, that cruel means designed to inflict a 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.

Therefore, in order for this aggravator to apply, the murder must be conscienceless or pitiless and unnecessarily torturous to the victim. The State asserts and the records supports the following:

MULTIPLE SHARP FORCE INJURIES: The HAC aggravating factor is applicable and has been upheld in cases that involve multiple and repeated sharp force injuries caused by a knife. *Brown v. State*, 721 So. 2d 274 (Fla. 1998), *Guzman v. State* 721 So. 2d 1155 (Fla. 1998).

The autopsy examinations and osteological findings of the cervical vertebrae of Guerline, Meshach and Marven establish that each sustained multiple and repeated sharp force injuries from the Defendant's use of the filet knife. (Guerline: six (6); Meshach: a minimum of four (4); and Marven, a minimum of eight (8) sharp force injuries).

DEFENSIVE WOUNDS: The HAC aggravating factor is applicable and has been upheld in cases where defensive wounds on the victim are present. Defensive wounds on a victim evidence awareness of impending death. *Oyola v State* 99 So.3d 431 (Fla. 2012); *Guardado v. State* 965 So.2d 108, 116 (Fla. 2007).

The testimony of Dr. Manfred Borges on October 23, 2017, confirmed and described the defensive wounds present on Guerline, Meshach and Marven.

FAIRLY QUICK OR INSTANTANEOUS DEATH: The fear and emotional strain suffered by a victim can be a consideration in determining the applicability of the HAC aggravating factor. *Lott v. State* 695 So.2d 1239, 1244 (Fla. 1997). This is not strictly determined by a specific length of time relating to the victim's consciousness but rather the victim's perceptions of the circumstances as well as the actions of the Defendant that precede the killing. The duration, or length of a victim's

consciousness is not the only factor considered when determining whether the HAC aggravating factor is applicable. *Beasley v. State* 774 So.2d 649, 669 (Fla. 2000), *Hernandez v. State* 4 So.3d 642, 669 (Fla. 2009).

Dr. Borges estimated that the deaths of Guerline, Meshach and Marven could have taken anywhere from seconds to a minute or more. Dr. Borges could not estimate how long each was conscious, before their deaths. However, the Defendant's statements to law enforcement, specifically as to Guerline and Meshach, provide evidence of sufficient time and responsive behaviors by each of them to indicate they could, and did perceive the circumstances of their death.

As to Guerline, the Defendant told Agent Kolshorn that after he had tied and duct taped her, he told her that he would let her live, but would kill the children in front of her. He removed the duct tape that covered her mouth, and allowed her to speak before cutting her throat. Similarly, the Defendant told the CCSO Detectives that after he pulled her hair while standing behind her and "just like slice her throat with the knife", Guerline fought back, making a lot of noise, slapping the Defendant with her hands, pushing the wall. It was then, while she was still alive, that he encircled her mouth, neck, upper torso, arms, forearms, hands, and legs with duct tape. (State's Exh. 11b-pgs 77-79).

The roll of duct tape that the Defendant purchased earlier that evening was 55 yards in length. When taken off the roll, the distance from one end to the other would exceed more than half of a football field. (State's Exh. 16-100, 16-101). The empty roll was left on the kitchen counter. (State's Exh. 16-31). With the exception of a small, wadded amount found in the left kitchen sink (State's Exh. 16-29), the remainder of the 55 yards of tape was used to tightly bind and encapsulate Guerline's arms, legs and torso to stop her from "fighting back". That act required time.

This evidence establishes the fear and emotional strain that preceded Guerline's death and further supports the HAC aggravating factor.

As to Meshach, Dr. Borges' testimony regarding evidence of a struggle in the bedroom where Meshach was murdered together with the Defendant's description of Meshach struggling and fighting back, or as he stated "he was almost dead, but didn't want to die" (State's Exh. 11b- Pg. 71), establishes the fear and emotional strain that preceded Meshach's death.

As to Marven, the presence of defensive wounds described as superficial sharp force injury to his thumb, and index fingers of both hands, without more, are insufficient for the court to consider the fear and emotional strain preceding his death as a factor to support a finding that the HAC aggravating factor should be applied.

FINDINGS:

COUNT I: GUERLINE DAMAS:

A. The multiple sharp force injuries, defensive wound and fear and emotional strain that proceeded the death of Guerline Damas support the application of the heinous, atrocious or cruel aggravating factor.
B. The State of Florida has proven beyond a reasonable doubt the existence of this aggravating factor as to Count I.
C. This aggravating factor sufficiently supports the imposition of a sentence of death in Count I.
D. The Court gives great weight to this aggravating factor in Count I.

COUNT II: MESHACH ZACK DAMAS:

A. The multiple sharp force injuries, defensive wounds and fear and emotional strain that preceded the death of Meshach Zack Damas support the application of the heinous, atrocious or cruel aggravating factor.
B. The State of Florida has proven beyond a reasonable doubt the existence of this aggravating factor as to Meshach Zack Damas.
C. This aggravating factor sufficiently supports the imposition of a sentence of death in Count II.
D. The Court gives great weight to this aggravating factor in Count II.

COUNT IV: MARVEN DAMAS

A. The multiple sharp force injuries that preceded the death of Marven Damas support the application of the heinous, atrocious or cruel aggravating factor.

B. The State of Florida has proven beyond a reasonable doubt the existence of this aggravating factor as to Marven Damas.

C. This aggravating factor sufficiently supports the imposition of a sentence of death in Count IV.

D. The Court gives great weight to this aggravating factor in Count IV.

3. THE CAPITAL FELONY WAS A HOMICIDE AND WAS COMMITTED IN A COLD CALCULATED AND PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION. §921.14(6)(i) FLA.STAT. (2017).

The State argues that this aggravating factor applies to all six (6) counts. In order to establish this aggravating factor, the evidence must show that:

l) The killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic or a fit of rage (cold).

2) The Defendant had a careful plan or prearranged design to commit murder before the killing (calculated).

3) The Defendant exhibited heightened premeditation (premeditated) and;

4) The Defendant had no pretense of moral or legal justification. *Franklin v. State* 965 So.2d 79, 98 (Fla. 2007).

COUNT I: GUERLINE DAMAS: The record shows that the Defendant's belief that Guerline would divorce him and take "his" children was the true catalyst for the murders. He expressed that belief repeatedly during his arguments with Guerline dating back three (3) months prior to her death. This is evidenced throughout his statements to Special Agent Kolshom and CCSO detectives, where he recounted telling Guerline he would kill her if she brought up the subject of divorce and that "only death" could separate them (State's Exh. 9 and 11b-Pg. 43). Although this evidence may provide context, it is alone insufficient to

prove that the Defendant planned, or prearranged to commit the murder of his Wife.

However, the Defendant's trip to Walmart and his selection and purchase of the five (5) inch blade filet knife and the 55 yard roll of duct tape are actions that are both calculated and premeditated. These purchases, made more than an hour and a half prior to his entry to the residence on the night/early morning hours of the murders, are evidence of the Defendant's prearranged plan and careful design to murder Guerline.

The Defendant's use of the duct tape to bind and subdue Guerline was not decision made in the heat of the moment. In fact, the evidence establishes that before making entry into the residence through the back lanai, he unwrapped and removed the roll of duct tape from its plastic packaging. (State's Exh. 16-96 and 16-17, duct tape packaging wrapper on floorboard 2001 of 2001 GMC Yukon).

The Defendant's early departure from work, together with his purchase of the weapon and duct tape, as well as watching Guerline through the back lanai window for almost two hours and unwrapping the duct tape to bind her prior to entering the residence is evidence of an unhurried course of action carried out by the Defendant.

COUNTS II-VI: THE DAMAS CHILDREN:

The evidence established that the Defendant murdered his five (5) children because he murdered Guerline and could not bear the thought of his mother-in-law (who he believed was the source of voodoo and "the devil"), raising "his" children if he went to jail for killing their mother. In his statements to law enforcement, he shares his thought process as to various scenarios affecting the children as a result of murdering their mother. (State's Exh. 9, Pg. 4, State's Exh. 11B). In his first statement to Special Agent Kolshom, the Defendant said that he told his Guerline he was going to kill the children in front of her, but wouldn't kill her. After considering each scenario, his conclusion was the same. He would kill everyone. (State's Exh. 9, Pg. 4). After killing Megan, Marven and Maven, he stopped and walked down the stairs with the knife, leaving his oldest and

youngest child alive. But, after further considering the possibility of his mother-in-law getting custody of them, he walked back up the stairs with the knife and murdered Meshach and Morgan. (State's Exh., Pages 68-71).

These facts are similar to those in *Zakrzewski v. State* 717 So.2d 488 (Fla. 1998), where the defendant murdered his wife and two (2) children, ages seven and five. Similarly, the defendant and his wife were experiencing marital problems **and** wife was killed first, before the killing his children. The Florida Supreme Court affirmed the application of the CCP aggravator as to all three murders.

The evidence surrounding the murders of the Damas children support the application of the cold, calculated and premeditated aggravating factor. There was no legal or moral justification for their murders. No one may take the life of another indiscriminately, regardless of what that person may perceive as justification. *Dougan v. State* 595 So.2d 1 (Fla. 1992).

FINDINGS:

COUNT I: GUERLINE DAMAS:

A. The circumstances of the killing of Guerline Damas and the conduct of the Defendant in doing so are evidence that her murder was cold, calculated and premeditated, without any pretense of moral or legal justification.

B. The State of Florida has proven beyond a reasonable doubt the existence of this aggravating factor as to Count I.

C. This aggravating factor sufficiently supports the imposition of a sentence of death in Count I.

D. The Court gives great weight to this aggravating factor in Count1.

FINDINGS:

COUNT II-VI: THE DAMAS CHILDREN

A. The methodical manner in which the Defendant carried out the killing of each child, including moving and placing them in specific locations in a matter of course fashion is evidence that each of their murders were committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification.

B. The State of Florida has proven beyond a reasonable doubt the existence of this aggravating factor as to Counts II-VI.

C. This aggravating factor sufficiently supports the imposition of a sentence of death as to each count.

D. The Court gives **great weight** to this aggravating actor in each count.

4. THE VICTIM OF THE CAPITAL FELONY WAS A PERSON LESS THAN 12 YEARS OF AGE. § 921.141(6)(l) FLA. STAT. (2017)

The State submits that this aggravating factor applies to each of the Defendant's five (5) children given their ages, with his oldest child Meshach having just turned nine years old. The evidence established the ages of each child through the certified copies of the State of Florida Office of Vital Statistics Certificates of Death. (State's Exh. 15b-195, 15c-196; 15d-197; 15e-198, 15f-199). All of the children were under the age of 12.

FINDINGS:

COUNTS II-VI THE DAMAS CHILDREN

A. The State of Florida has proven beyond a reasonable doubt the existence of this aggravating factor as to each child being under the age of 12.

B. This aggravating factor sufficiently supports the imposition of a sentence of death as Counts II-VI.

C. The Court gives **great weight** to this aggravating factor in Counts II-VI.

4. THE VICTIM OF THE CAPITAL FELONY WAS PARTICULARLY VULNERABLE DUE TO ADVANCED AGE OR DISABILITY OR BECAUSE THE DEFENDANT STOOD IN A POSITION OF FAMILIAL OR CUSTODIAL AUTHORITY OVER THE VICTIM. §921.141(6)(m) FLA.STAT. (2017)

The State submits that this aggravating factor applies to each of the Defendant's five (5) children, given his familial relationship to them. The Defendant is the father of each murdered child, a fact confirmed by the certified copies of the State of Florida Office of Vital Statistics Certificates of Death. (State's Exh. 15b-195, 15c-196; 15d-197; 15e-198, 15f-199).

FINDINGS:

COUNTS II-VI THE DAMAS CHILDREN

A. The State of Florida has proven beyond a reasonable doubt the existence of this aggravating factor. The Defendant is the father of each child identified in Counts II- VI.

B. This aggravating factor sufficiently supports the imposition of a sentence of death as Counts II-VI.

C. The Court gives **great weight** to this aggravating factor in Counts II-VI.

MITIGATING CIRCUMSTANCES:

"Whenever a reasonable quantum of competent, uncontroverted evidence of mitigation has been presented, the trial court must find that the mitigating circumstance has been proved." *Nelson v. State*, 850 So. 2d 514, 529 (F1a.2003). "The court must find as a mitigating circumstance each proposed factor that is mitigating in nature and has been reasonably established by the greater weight of the evidence." *Campbell v. State*, 571 So. 2d 415, 419 (Fla. 1990). A mitigating circumstance can be anything in the life of the Defendant which might indicate that the death penalty is not appropriate. It is not limited to the facts surrounding the crime and may include any aspect of the Defendant's character, background or life or any circumstance of the offense that may reasonably indicate that the death penalty is not an appropriate sentence in the case. No. SC17-583, IN RE: STANDARD CRIMINAL JURY INSTRUCTION IN CAPITAL CASES. (April 13, 2017).

Even though the Defendant waived presentation of mitigating evidence, mitigation evidence was presented by defense counsel, together with a summary of the additional mitigation evidence he would have presented. Defense counsel proposed as mitigating circumstances: Defendant's history of mental illness; Defendant never received adequate treatment for his mental illness; the capacity of Defendant to appreciate the criminality of his conduct; Defendant was under the influence of extreme mental or emotional disturbance; Defendant provided information leading to the resolution of the case; Defendant's positive qualities; Defendant is amenable to rehabilitation and a

productive life in prison; and other circumstances attached to Defendant's sentencing memorandum.

l. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. §921.14l(7)(b) Fla. Stat 2017.

This mitigating circumstance has been held to apply where the defendant's mental or emotional disturbance is "less than insanity but more than the emotions of an average man, however inflamed." *State v. Dixon*, 283 So. 2d 1, 10 (Fla. 1973).

To support this, the Defense presented the testimony of Dr. McAlister, a professor in African American Studies and Religion with a particular emphasis on the Haitian culture and Voudo. Dr. McAlister spoke to the Defendant twice, while he was in jail and twice with his mother. She traveled to Haiti with the defense mitigation specialist to visit the Defendant's uncle and the town where the Defendant lived before coming to the United States in 1996, when he was 19. She testified that Defendant's childhood was influenced by domestic violence, poverty, and the tension between Haitian Vodou culture and Evangelical Christianity. According to the Defendant's paternal uncle, his Father left the family to move to the United States when the Defendant was five years old. When he was ten, his mother moved from Haiti to the United States to join the father. The Defendant remained in Haiti and was raised by his maternal grandmother, paternal uncles and a number of other family members.

Dr. McAlister testified that his upbringing between two families who espoused different beliefs presented a conflict between Haitian voudo and Evangelical Christianity, resulting in him believing that he was under attack either by voudo evil spirits or the devil.

The Defendant's statements to law enforcement and his statements in open court during the proceedings leading up to sentencing, indicate that he believed a curse or hex had been placed on him by his mother-in-law or that the devil possessed him and caused him to commit the murders. In his statement to law enforcement, Defendant described feeling like a zombie during the commission of the murders.

The testimony of Dr. McAlister is based heavily on Defendant's own self report, or that of his family, who would have a reason to be biased in his favor. The Defendant's statement to law enforcement that the devil made him commit the murders is ultimately suspect as a self-serving statement. Dr. Mandelblatt's competency evaluation, concluding that the Defendant is manipulative, deceitful, aggressive, violent, and uncooperative unless it suits him demonstrates that Defendant will do or say whatever will best serve his interests. All the evaluations note Defendant's refusal to cooperate or answer questions he did not wish to answer. Dr. Kling's evaluation notes that jail staff believed Defendant was manipulating the system. Based on the evaluations, the record, and Defendant's uncooperative and obstructionist behavior throughout these proceedings, the Court finds that the greater weight of the uncontroverted evidence does not support the existence of this mitigating circumstance.

2. The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of the law was substantially impaired 921.141(7)(f), Fla. Stat (2017).

Defense counsel's sole basis for this mitigating circumstance is Defendant's purported history of mental illness, reflected in the competency evaluations finding Defendant incompetent and mentioning the possibility of various mental illnesses from which Defendant might have been suffering. At the sentencing hearing, defense counsel did not cite to the existence of any records that would demonstrate Defendant had a history of mental illness prior to the murders. The Court notes that the competency evaluations finding Defendant incompetent all indicate Defendant's lack of cooperation. These evaluations were also contradicted by the evaluation of Dr. Mandelblatt, who, 20 days after Defendant was admitted to the state hospital, indicated that Defendant was manipulating the system and was deceitful.

Dr. Rubino testified that he believed Defendant had abnormalities in his brain, and possible brain damage due to an

automobile accident that occurred in July 2009. He also opined that the MRI images taken in 2014 of the Defendant's brain, (five (5) years after the murders) showed significant abnormalities and were consistent with schizophrenia. However, Dr. Rubino admitted he was a neurologist and not a psychiatrist or psychologist able to diagnose schizophrenia. Dr. Rubino testified that the abnormalities "could" affect judgment, impulse control, and planning. The Court finds Dr. Rubino's testimony on this issue to be speculative, and is not competent substantial evidence that if Defendant had brain damage or an abnormality, such would have substantially impaired his ability to appreciate the criminality of his conduct, or conform his conduct to the law. The greater weight of the uncontroverted evidence does not support the existence of this mitigating circumstance.

3. The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty §921.141(7)(h), Fla. Stat. (2017)

The Court considered the possibility that other factors may exist in the Defendant's character, record or background that would mitigate against the imposition of the death penalty. Specifically, the Court has considered the following mitigating circumstances provided by defense counsel:

(a) Defendant has a history of mental illness.

There is nothing in the record to support a finding that Defendant had a "long and well-documented history of mental illness before the murders. The evidence relied on by defense counsel to support this mitigating circumstance, the evaluations by Dr. Herkov and Dr. Schaerf finding Defendant incompetent, are rebutted by Dr. Mandelblatt's evaluation finding that Defendant is manipulative, deceitful, and essentially, malingering. To the extent that Defendant may have a mental illness, the Court gives this mitigating circumstance some weight.

(b) Defendant never received treatment for his mental illness.

While the record demonstrates diagnoses of various mental illnesses, no evidence was presented, or the existence cited to,

which would show that treatment for these mental illnesses would have prevented the murders. Further, the diagnoses of mental illnesses are rebutted by Dr. Mandelblatt's evaluation finding Defendant to be manipulative and deceitful in his behavior, and that same behavior was relied on by Dr. Herkov and Dr. Schaerf as being consistent with bipolar disorder or schizophrenia. The Court finds that it is more likely than not that Defendant behaved purposefully during the evaluations with Dr. Herkov and Dr. Schaerf in such a way so as to be found incompetent. To the extent Defendant had a mental illness which was untreated, the Court gives this mitigating circumstance some weight.

(c) Defendant provided information leading to the resolution of the case.

Once Defendant was apprehended after fleeing to Haiti following the murders, the record does reflect that Defendant admitted guilt to both the media and law enforcement, and that Defendant provided a full statement to law enforcement. To the extent that Defendant did eventually enter a plea, he did so after seven years and only after being found to be manipulating the system by Dr. Mandelblatt. The Court gives this mitigating circumstance some weight.

(d) Defendant has positive qualities.

Defense counsel cites as positive qualities that: Defendant has skills as a cook, is a hard worker, performed kind deeds for others, attempted to be a positive influence on others despite his incarceration, and is religious. Counsel's sentencing memorandum also indicates that Defendant has taken responsibility and expressed remorse. There is evidence in the record that Defendant had been employed, was religious, and had preached to other inmates. Defendant has taken responsibility, and has expressed some remorse. The Court gives this mitigating circumstance some weight.

(e) Defendant is amenable to rehabilitation and a productive life in prison.

Defense counsel argued that Defendant could be well controlled in prison, and, if given a life sentence would be in the

general population where he could be gainfully employed and productive. The Court gives this mitigating circumstance little weight.

(f) Other factors.

The sentencing memorandum lists 36 other factors for the Court's consideration. The Court finds that numbers 1-8 were in large part discussed above.

Numbers 9-22 relate to Defendant's childhood and background of poverty, domestic abuse, and abandonment by his parents. These factors are given moderate weight.

Numbers 23, 24, 26, 27, 30-33 are positive traits, which are given some weight.

Number 25 indicates that Defendant and his wife had a mutually combative relationship. The Court finds that this factor is not mitigating to the fact that Defendant bound his wife with duct tape, then cut her throat while she struggled, and that this occurred not during any mutual combat, but after Defendant bought a knife and duct tape and then watched his wife through the lanai window for two hours.

Number 34 is the impact the execution of Defendant would have on his family members. The Court gives this factor some weight.

Numbers 35 and 36 are that the Department of Children and Families and the David Lawrence Center failed Defendant by not recognizing his mental health issues and providing sufficient services to him. The Court has discussed Defendant's alleged mental illnesses above. To the extent there were services that could have been provided that those agencies failed to provide, the Court gives these factors little weight.

(F) SENTENCING CIRCUMSTANCE AND PROPORTIONALITY:

In evaluating the aggravating and mitigating factors, the Court does not engage in a mere counting procedure, but instead makes a reasoned judgment based on the totality of the circumstances. *See Terry v. State*, 668 So. 2d 954 (Fla. 1996). In reaching this decision, the Court is mindful that, because death is a unique punishment in its finality, its application is reserved

only for those cases where the most aggravating and least mitigating circumstances exist. *Id*. The law never requires the imposition of a sentence of death.

The totality of the aggravating circumstances in this case include the fact that Defendant, with premeditation, purchased a knife. He then watched his wife through the sliding glass door for two hours before entering. Upon entering, he bound his wife with duct tape, stabbed her multiple times while she struggled and received defensive wounds, and cut her throat through the duct tape. Defendant then went upstairs, and killed his children, one by one, by cutting their throats, after moving the small children into one room. The oldest child also struggled, and he received defensive wounds before he died. Defendant related that he paused to pack before killing the last two children, thinking he might leave them alive, until he realized that his mother-in-law would get custody of them. Then he went back and killed them as well, by cutting their throats. Dr. Borges testified that the victims would have suffered a few seconds to a few minutes before their death.

The totality of the mitigating circumstances include the possibility that Defendant suffered from a mental illness which was not treated, or has brain abnormalities, which could have impaired his judgment. Defendant came from a background of poverty, domestic violence, abandonment by his parents, and tension between his family's religions. Defendant has some positive qualities. Defendant would be well controlled and productive if given life in prison. Defendant's family would be impacted if he were executed.

The aggravating factors proven beyond a reasonable doubt in this case outweigh the mitigating circumstances reasonably established by the evidence and warrant that the Defendant, Mesac Damas be sentenced to death. Given the facts of the case, there is nothing in the Defendant's background or mental state that would suggest that a death sentence is disproportionate. This Court's review of other reported capital cases has led the Court to conclude that the death penalty is not disproportionate.

(R. 2061-2079).

The trial court sentenced Damas to death for each of the murders perpetrated on his wife and their five children. (R. 2079). This appeal follows.

SUMMARY OF THE ARGUMENT

Appellant committed six premeditated, first-degree murders and sought the death penalty. Appellant proceeded to enter into guilty pleas, waived the right to a jury recommendation, and waived the presentation of any mitigation evidence before the trial judge.

Damas now raises three issues on appeal, none of which are preserved. In the first issue, Damas challenges the sufficiency of the court's findings in denying his request for self-representation. The trial court correctly determined that Damas was unable to make a knowing and intelligent waiver to represent himself because he was not responding in an appropriate manner during the *Faretta* inquiry.

In the second issue, Damas raises a claim of improper doubling of the "victim under 12" aggravator and the "particularly vulnerable because the defendant was in a position of familial authority" aggravator. However, because the aggravators in question do not solely rely on the age of the child, but pertain to different aspects of the case, the trial court did not err.

Lastly, capital punishment is not per se unconstitutional; therefore, the trial court did not err in sentencing Damas to death.

ARGUMENT

ISSUE I

THE TRIAL COURT CORRECTLY DENIED MR. DAMAS' MOTION FOR SELF-REPRESENTATION ON THE BASIS THAT HE "FAILED TO ADEQUATELY ARTICULATE HIS ANSWERS TO THE COURT'S FARETTA COLLOQUY AND FAILED TO DEMONSTRATE SUFFICIENT UNDERSTANDING OF THE LEGAL PROCESS IN ORDER TO REPRESENT HIMSELF."

A. Preservation and Standard of Review.

Damas contends that the trial court should have granted his request for self-representation. "When reviewing a trial court's handling of a request for self-representation, the standard of review is abuse of discretion." *Aguirre–Jarquin v. State*, 9 So. 3d 593, 602 (Fla. 2009). "Discretion is abused only 'when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable [person] would take the view adopted by the trial court.' " *Ocha v. State*, 826 So. 2d 956, 963 (Fla. 2002) (quotation and citations omitted). Because the trial court has the superior vantage point and is in the best position to evaluate the credibility of witnesses and make findings of fact, appellate courts are obligated to give great deference to the findings of the trial court. *Durousseau v. State*, 55 So. 3d 543, 562-63 (Fla. 2010).

Damas does not claim that the trial court failed to conduct a *Faretta* hearing based on an unequivocal request, nor does he argue that the trial court failed to conduct an adequate inquiry; instead, he challenges the sufficiency of the court's findings in denying his request. The State argues that this issue has been waived. Damas pled guilty to six counts of first-degree homicide. (R. 1846-87). As part of the plea agreement, Damas waived his right to appeal all matters related to the judgment and sentences to a higher court. (R. 1846). *See Florida v. Nixon*, 543 U.S. 175, 187 (2004). Additionally, Damas' September 5, 2017, assertion that he was satisfied with trial counsel's representation in his case constituted a valid waiver of the challenge to the sufficiency of the August 18, 2017 order denying his request for self-representation. *See Bland v. State*, 241 So. 3d 975 (Fla. 5th DCA 2018) ("Under these circumstances, where Bland indicated he was satisfied proceeding with counsel subsequent to the *Faretta* inquiry, we find that Bland abandoned his request for self-representation." *See also Lindsey v. State*, 69 So. 3d 363, 365 (Fla. 5th DCA 2011) ("A waiver occurs if it is reasonably shown that the defendant has abandoned an initial request for self-representation").

Even if this Court does not agree that this issue has been waived, the State argues that this specific argument is not preserved. Proper preservation entails three components: (1) the litigant must make a timely, contemporaneous objection; (2) the

litigant must state a legal ground for that objection; and (3) in order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below. *Harrell v. State*, 894 So. 2d 935, 940 (Fla. 2005), *citing Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982).When challenging the sufficiency of a trial court's findings, it is generally required for preservation to bring any deficiency to the court's attention so that it may rectify any such error. *See, for example, Elwell v. State*, 954 So. 2d 104 (Fla. 2d DCA 2007) ("Prior to raising the issue in this appeal, Elwell never raised any objection concerning the sufficiency of the trial court's findings . . . The trial court was never placed on notice of any error with respect to its findings and thus was never given an opportunity to correct the deficiency in the findings. *See Harrell*, 894 So. 2d at 940.Accordingly, under the general rules governing preservation of error, the issue of the sufficiency of the findings was clearly unpreserved."). Damas made no challenge to the sufficiency of the trial court's findings.

Therefore, the State argues that this Court should review the issue for fundamental error. Fundamental error is "error which goes to the foundation of the case or goes to the merits of the cause of action." *Sanford v. Rubin*, 237 So. 2d 134, 137 (Fla.1970). "[F]or an error to be so fundamental that it can be raised for the first

time on appeal, the error must be basic to the judicial decision under review and equivalent to a denial of due process." *State v. Johnson*, 616 So. 2d 1, 3 (Fla.1993).

B. The trial court properly found that Damas was unable to make a knowing and intelligent waiver of counsel.

In *Faretta v. California*, 422 U.S. 806 (1975), the Supreme Court held that a defendant "has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so." *Id*. at 807. Courts must conduct a *Faretta* hearing when a defendant makes an unequivocal request for self-representation. *Id*. Florida Rule of Criminal Procedure 3.111(d)(2) provides that when a defendant seeks to waive assistance of counsel, the trial court must conduct a thorough inquiry "into both the accused's comprehension of that offer and the accused's capacity to make a knowing and intelligent waiver." However, *Faretta* does not mandate that a trial court grant a request for self-representation where there is a question of mental competency to represent oneself. *Indiana v. Edwards*, 554 U.S. 164, 171 (2008).

The United States Supreme Court has recognized that "*Faretta* itself and later cases have made clear that the right of self-representation is not absolute." *McCray v. State*, 71 So. 3d 848 (Fla. 2011). Self-representation may not be used to abuse the court system. *Perry v. Mascara*, 959 So. 2d 771, 773 (Fla. 4th DCA 2007). Self-representation is inappropriate where: 1) the defendant demonstrates an

unwillingness to abide by the rules of criminal law or courtroom procedure; or (2) the defendant is disruptive in the courtroom. *Amend. to Fla. Rule of Crim. Pro. 3.111(d)(2)–(3)*, 719 So. 2d 873, 877 (Fla. 1998).

On June 23, 2017, Damas made a request to the trial court to represent himself. On July 21, 2017, the trial court conducted a *Faretta* hearing. Damas contends that the trial court's findings were not sufficient to support its denial of the request for self-representation. He argues that the trial court erred in denying his request for self-representation because it focused on the capability to represent himself rather than a knowing and intelligent waiver. In support of his argument, Damas claims that he answered every question the trial court asked, and he provides a block quote of the transcript as support. However, the record proves otherwise. Following the block quotation Damas includes in his brief, the trial court continued the *Faretta* inquiry, yet Damas ceased to answer questions in an intelligible manner:

> MR. DAMAS: I don't want to be sentenced to life, sir.
> THE COURT: What do you want to be sentenced to; death?
> MR. DAMAS: Death. Just--
> THE COURT: You want to be sentenced to death.
> So you want to –
> MR. DAMAS: You know --
> THE COURT: Do you understand – you understand that your attorneys could --
> MR. DAMAS: You know how hard it is, sir?
> THE COURT: Pardon me?

MR. DAMAS: Do you know how hard it is to go every day for that long, you know, without my family? Do you know how hard it is?
You don't know because you're not in my heart now, my dreams.
THE COURT: You don't --
MR. DAMAS: It's been painful.
THE COURT: You don't have to ask me about what I know, okay? You don't have to ask me about what I know.
MR. DAMAS: Okay.
THE COURT: All right.
MR. DAMAS: So how the -- how the State going to find me guilty when I stand over here and I say: State, give to Caesar what belong to Caesar, okay?
You want me -- you want to find me guilty. Okay. I'm going to stand right here and say: I'm guilty. Just go ahead and do what you got to do.
Look, what are they trying to do? They're trying to find me guilty, right, and sentence me to death?
To make it easy, like the Bible says, give to Caesar what belongs to Caesar. I believe I belong to God.
THE COURT: Mr. Damas, as I explained to you before, it's just not that simple. You can't just stand up and say, "I'm guilty," and then The Court says, "Okay. I sentence you to death." It doesn't work that way.
Maybe in some other countries it does, but not in the United States, okay? In the United States we have rules and laws and a Constitution. The law requires that before you enter -- you can enter a plea of guilty. But before The Court accepts it, and I may not accept it, in which case you will have a trial.
MR. DAMAS: I don't want no trial, sir.
THE COURT: Well, I understand. But, you know what, you need to listen to what I'm saying. If I don't accept your plea because you don't answer questions properly, then you will have a trial, okay?
If you want to represent yourself at that trial, that could be -- that could be a mistake.
MR. DAMAS: Sir, you can't do this. You can't do this.

THE COURT: That's why I think it would be wise for you to go ahead with your attorneys. But, you know, I can't make you do that at this point because I haven't finished asking you all the questions.
MR. DAMAS: You guys can do this with me or without me.
THE COURT: You know, a jury can assist you --
MR. DAMAS: You know what I'm saying?
THE COURT: A jury can assist you in selecting jurors -- your attorneys can assist you in selecting a jury. Your lawyers are trained in the law. They know the rules of procedure.
MR. DAMAS: I don't have a lawyer, sir.
THE COURT: They know the rules of evidence. Do you have any legal training?
MR. DAMAS: I don't have a lawyer, sir.
THE COURT: Do you have any legal training?
MR. DAMAS: What legal training?
THE COURT: Well, do you have legal training? Did you take any courses in law?
MR. DAMAS: I have a special lawyer you don't know, sir.
THE COURT: A lawyer can advise you on whether you should testify or not testify. A lawyer can assist in making sure that the jury instructions given are proper instructions. A lawyer can ensure that if there are any errors committed during the trial they're preserved for appellate review.
And, of course, in this case probably the most important thing the lawyers could do for you is to assist you in presenting evidence in mitigation, which would perhaps spare you the death penalty.
And so do you understand the lawyers can do all those things for you?
MR. DAMAS: I don't have a lawyer, sir.
THE COURT: Do you understand the lawyers can do all those things for you?
MR. DAMAS: I don't have a lawyer, sir.
THE COURT: Let the record show the Defendant is refusing to answer the question.

Do you understand that just because you represent yourself you will not get any special treatment from The Court?
MR. DAMAS: I don't need no special treatment, sir.
THE COURT: Do you understand that you will not be entitled to a continuance of the trial, which is set for September 5th, just because you want to discharge your lawyers?
Do you understand that?
MR. DAMAS: I don't want to go through September 5th. You say September 5th?
THE COURT: September 5th, that's when your trial starts.
MR. DAMAS: Yeah. I don't want -- I don't want to go through trial, sir.
THE COURT: That's when your trial is starting.
MR. DAMAS: You can do this with me or without me.
THE COURT: Well, if you don't want to attend the trial, that's another issue we can deal with.
We can have a trial without you here, if you want to do that. It's not a good idea. You have the right to be present during the trial.
MR. DAMAS: I don't want no trial, sir. I don't want my people -- my other people to see pictures. In trial, what's he going to do; show pictures to my family, pictures to the peoples -- to the world again and make them cry again? Bring sadness, tears, to my family, my wife's family.
THE COURT: I understand all that. And that's --
MR. DAMAS: Is that what you guys want to do? You know, bring tears again, you know, to people's eyes. You know what I'm saying?
It's not -- it's not right. It's not right. This thing has been done for over five years. Let them -- let them rest.
THE COURT: Oh, it's more than five years.
MR. DAMAS: I'm sorry?
THE COURT: It's more than five years.
MR. DAMAS: Okay.
THE COURT: It's about eight years.
MR. DAMAS: Okay. Eight years.
THE COURT: Yeah, eight years.
MR. DAMAS: Why can't you just let them --

> THE COURT: And that's why this case is going to go -- this case is going to go to trial.
> MR. DAMAS: Well, why am I going to -- you know, why do people have to hear the name of my kids, the name of my -- my wife again?
> THE COURT: It's evidence in the case, sir.
> MR. DAMAS: Do you think this is right? You guys doing something right? No, you're not doing anything right.
> You're bringing tears and sadness to people's eyes. Both families. You know, my wife's family and my families. You know, is that what you guys want?
> That's why I stand here and plead guilty to this case. Let me -- I take full responsibility for these actions. Let me go through this by myself.
> I don't want my people -- my wife's people to go through this again and my own family, mom and dad, brothers and sisters, to go through this. You know, it's very simple.
> THE COURT: All right…

(R. 3763-3770). The court then held a bench conference concerning whether the *Faretta* inquiry should extend to include the inquiry required when a defendant chose to enter a plea. The trial court expressed concern, and defense counsel agreed, that Damas was either refusing or not appropriately answering the questions pertaining to the *Faretta* inquiry. The trial court determined that a competency evaluation was necessary, and appointed two psychologists, both of whom found Damas to be competent to proceed. The trial court concluded that the request for self-representation should be denied because Damas was unable to make a knowing

and intelligent waiver of counsel, which was evidenced by Damas' inability to comply with the trial court's inquiry while it was conducting the *Faretta* hearing:

> The Court inquired about Defendant's age, education, employment and experience in the legal field and advised the Defendant of the seriousness of the charges, the possible imposition of the death penalty, that he would be bound by the same rules of evidence and procedure with which lawyers must comply and inquired as to whether he had ever been involved in any other legal proceedings.
>
> The Court advised the Defendant of the advantages of having the assistance of counsel trained in the law and the rules of procedure; that counsel could assist in the entry of a guilty plea; in the selection of a jury; ensure that the jury instructions were proper; advise the Defendant as to whether to testify or remain silent; to present mitigation evidence and to ensure that any errors during the trial are preserved for appellate review. Further, the Court advised the Defendant that he would not receive any special treatment and that there would be no continuance of the trial presently scheduled to begin on September 5, 2017. When asked if he understood the advantages of having counsel, the Defendant would not answer. Instead, he made rambling and disjointed statements, stating that "God is my lawyer."
>
> The Court finds that Defendant failed to adequately articulate his answers to the Court's *Faretta* colloquy and failed to demonstrate sufficient understanding of the legal process in order to represent himself. In response to the Court's *Faretta* questions, the Defendant would not adequately respond, except to repeatedly state that he didn't want a trial and just wanted to plead guilty. The Court responded that before any plea could be accepted, the Court would have to conduct an extensive plea colloquy. It was apparent to the Court that the Defendant could not understand the plea process and related matters involved in a death penalty case without the assistance of counsel.

> In questioning a defendant the Court must determine whether he is making a knowing and voluntary waiver of counsel. *Aguirre–Jarquin v. State*, 9 So. 3d, 602 (Fla. 2009). During the *Faretta* colloquy, Defendant refused to answer multiple questions, disregarded the Court's instructions, and was uncooperative and argumentative to the extent that the completion of the *Faretta* inquiry was thwarted. As a result, an adequate and thorough *Faretta* inquiry could not be conducted. Therefore, the Court finds that Defendant cannot be expected to make a knowing and voluntary waiver of counsel.

(R. 1355-1356).

The trial court did not err: the court conducted a proper *Faretta* hearing by informing Damas of the advantages of having a lawyer and questioning Damas about his understanding of the limitations and disadvantages of self-representation. The trial court determined that Damas was unable to make a knowing and intelligent waiver. Damas' behavior and refusal to answer questions appropriately, which prompted the trial court to order a competency evaluation, showed that Damas was not able to be an active participant in the proceedings. *See Indiana v. Edwards*, 554 U.S. 164 (2008) (even though a person was mentally competent to stand trial, due to mental defect, he was not competent to represent himself). Further, the trial court specifically found that Damas was "uncooperative and argumentative". Therefore, if Damas had been permitted to represent himself, it would only serve to abuse and distract from the judicial process. The trial court is in best position to make factual

findings based on whether Damas' behavior, tone, and demeanor suggest he would be able to follow proper courtroom procedure and etiquette. For all these reasons, the trial court properly denied Damas' request. *See Amend. to Fla. Rule of Crim. Pro. 3.111(d)(2)-(3),* 719 So. 2d at 877 (Self-representation is inappropriate where the defendant demonstrates an unwillingness to abide by the rules of criminal law or courtroom procedure; or (2) the defendant is disruptive in the courtroom). Additionally, following the denial of Damas' request for self-representation, he did not raise the issue again, yet he continued to be uncooperative and refuse to acknowledge and respond to the trial court. (R. 2044).

Damas cites *Thompson v. State*, 37 So. 3d 939 (Fla. 2d DCA 2010), as support. However, the instant case is distinguishable from *Thompson* because Thompson did not refuse to cooperate with the court during the *Faretta* inquiry as Damas did here. Additionally, the trial court did not deny Damas' request to represent himself based on how well he could represent himself, as was the situation in *Thompson*. Rather, the trial court found that Damas could not make a knowing and intelligent waiver of counsel, and that he was "uncooperative and argumentative": a finding which this Court gives great deference.

Damas also cites *Smith v. State*, 956 So. 2d 1288 (Fla. 4th DCA 2007), as support. Damas' case is distinguishable from *Smith* because, in *Smith*, the appellate

court reversed finding the *Faretta* inquiry to be inadequate. However, Damas has not argued that trial court failed to conduct a proper inquiry. Therefore, *Smith* is not relevant to this issue.

In conclusion, the State argues that this issue has been waived. Nevertheless, Damas cannot show that any error occurred, as there was competent, substantial evidence to support the trial court's decision to deny the motion for self-representation. As such, the trial court neither fundamentally erred, nor did it abuse its discretion, in denying Damas' request for self-representation. Therefore, he is not entitled to relief.

ISSUE II

THE TRIAL COURT CORRECTLY FOUND AGGRAVATION BASED ON FOUR VICTIMS BEING LESS THAN TWELVE YEARS OLD IN ADDITION TO AGGRAVATION DUE TO THE VULNERABILITY OF THE CHILDREN BEING MURDERED BY A PERSON IN A POSITION OF FAMILIAL AUTHORITY.

A. Preservation and Standard of Review.

As recognized in the initial brief, because trial counsel did not object to the aggravators, this issue is not preserved. *See Spann v State*, 857 So. 2d 845 (Fla. 2003). Allegations of error which have not been preserved by contemporaneous objection can be considered on direct appeal only if the error is fundamental. *See Jackson v. State*, 983 So. 2d 562, 569 (Fla. 2008). Fundamental error is "error which goes to the foundation of the case or goes to the merits of the cause of action." *Jackson,* 983 So. 2d at 569.

B. There was no improper doubling of aggravators.

There is no merit to Damas' argument that the trial court improperly doubled the aggravators "victim under 12" and "victim was particularly vulnerable because the defendant was in position of familial authority". Improper doubling occurs when multiple aggravators are based on the same aspect of the crime. "*Aspect*" is defined as " 'a particular status or phase in which something appears or may be regarded.' Two aggravating factors are improperly doubled, therefore, only if they refer to the

same status or phase of the capital crime." *Griffin v. State*, 820 So. 2d 906 (Fla. 2002) The facts of a case may support multiple aggravating factors "so long as they are separate and distinct aggravators and not merely restatements of each other." *Banks v. State*, 700 So. 2d 363, 367 (Fla. 1997) In other words, "where these two aggravating factors are not based on the same essential feature of the crime or of the offender's character, they can be given separate consideration." *Cannon v. State*, 180 So. 3d 1023 (2015), citing *Agan v. State*, 445 So. 2d 326, 328 (Fla.1983). Therefore, when considering the issue of doubling, the focus is on the aggravators themselves, not on the overlapping facts. *Spann*.

Damas argues that there was improper doubling because both aggravators are based on the "tender ages of the victims". The State disagrees. Concerning the "victim under 12 years" aggravator, pursuant to 921.141(6)(1) (2017), the trial court found that the aggravator was found beyond a reasonable doubt as to all five children: Meshach Zack Damas (age 9); Maven Damas (age 6); Marven Damas (age 5); Megan Damas (age 3); and Morgan Damas (age 19 months). This aggravating factor is not specifically based on vulnerability, but based on numerical age. *Smith v. State*, 28 So. 3d 838 (Fla. 2009). In support of the aggravator, the trial court relied on certified copies of each of their death certificates to prove the ages of the victims. The trial court did not make a specific finding that the children were "vulnerable"

due to their age. The trial court gave great weight to the aggravator, which was sufficient to support a sentence of death in each of counts II to VI.

The trial court found that the aggravator "victim was vulnerable due to the defendant in a position of familial authority", pursuant to 921.141(6)(m) (2017), was applicable because defendant was the biological father to all five children: Meshach Zack Damas; Maven Damas; Marven Damas; Megan Damas; and Morgan Damas. In support of the aggravator, the trial court relied on certified copies of each of their death certificates to prove parentage. The focus is not on the age of the children; rather the focus is on the vulnerability of the victims based on the parent's role in his children's lives. "Section 921.141(5)(m), enacted on May 30, 1996, allows for the finding of an aggravating circumstance where the victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim." *Francis v. State,* 808 So. 2d 110 (Fla. 2001). One who is under the "familial or custodial *authority*" of another is already "particularly vulnerable" to the authority figure simply by virtue of the balance of power in the relationship. Children are meant to obey their parents, and they should be able to trust them, which makes them particularly vulnerable to parental abuse and violence, regardless of whether they are under or over the age of 12. *See Covington v. State*, 228 So. 3d 49 (2017). The

trial court gave great weight to the aggravator, which was sufficient to support a sentence of death in each of counts II to VI.

Damas cites *Lukehart v. State*, 776 So. 2d 906 (Fla. 2000), as support. However, *Lukehart* is distinguishable. This Court in *Lukehart* found that there was improper doubling of aggravators ("victim under 12" and "commission of child abuse"), albeit harmless, based on the status of being a child. However, as argued above, the aggravators challenged in the instant case are not both based on age: one aggravator is based on age and the other is based on vulnerability due to being under the control of the parent. Additionally, this Court has found that there was not improper doubling where the "victim was under 12" and the "murder occurred during the commission of a sexual battery on a child under the age of 12". *Smith v. State*, 28 So. 3d 838 (Fla. 2009). This Court in *Smith* held that the aggravators were separate and distinct because one was based on age and the other was based on the additional sexual battery at the time of murder, regardless of her age. This is akin to the situation in the instant case.

Additionally, this Court has upheld convictions in which both aggravators challenged here, "victim under 12" and "victim was particularly vulnerable because the defendant was in position of familial authority", were found against the defendant. *See, eg., Covington v. State*, 228 So. 3d 49 (2017). Although Covington

did not specifically raise the issue of improper doubling, this Court did not note any error associated with both aggravators being applied.

Finally, even if there had been improper doubling, it would have been harmless given the great weight assigned to each of the five aggravators, and slight mitigation found. Accordingly, even if this Court strikes any of the challenged aggravators, the trial judge would have nevertheless imposed the death penalty. *See Lukehart*:

> While the treating of these aggravators as two aggravators is error, the fact that the victim was under twelve years of age is properly considered in weighing the aggravating factor that the murder occurred while Lukehart was engaged in the commission of aggravated child abuse. The fact that the victim was a helpless infant increases the weight of that aggravator.

Id. at 925.

C. Trial counsel was not ineffective on the face of the record.

As an alternative argument, Damas claims that trial counsel was ineffective on the face of the record for failing to preserve this issue. Claims of ineffective assistance of counsel are not generally cognizable on direct appeal. *Mansfield v. State*, 758 So. 2d 636 (Fla. 2000). The Fourth District Court of Appeal has said such instances are rare indeed. *Henley v. State*, 719 So. 2d 990 (Fla. 4th DCA 1998). That court has noted such claims "may be raised for the first time on direct appeal only when the facts giving rise to the claim are apparent on the face of

the record, a conflict of interest is shown, or prejudice to the defendant is shown." *Fones v. State*, 765 So. 2d 849, 850 (Fla. 4th DCA 2000). This issue is reviewed "[o]nly in cases where the incompetence and ineffectiveness of counsel is apparent on the face of the record and prejudice to the defendant is obvious." *McMullen v. State*, 876 So. 2d 589, 590 (Fla. 5th DCA 2004) This Court has said there is a "strong presumption" that counsel was effective "and made all significant decisions in the exercise of reasonable professional judgment. . . " *Jennings v. State*, 583 So. 2d 316, 320 (Fla. 1991).

The State asserts that Appellant's claim of ineffectiveness does not fall into these categories and also that there must be further inquiry into Appellant's allegations because it is not apparent from the face of the record that counsel was ineffective. Counsel cannot be deemed ineffective merely because current counsel disagrees with trial counsel's decisions. *Davis v. State*, 875 So. 2d 359, 366 (Fla. 2003). The State asks this Court to decline to engage in speculative, second-guessing of trial counsel's strategy in this direct appeal.

The issue of trial counsel's ineffectiveness must be decided on the basis of more than the current record because the reasons for trial counsel's decisions are not apparent on the face of the record. For example, Appellant, himself, could have requested that there be no challenge to the aggravator.

Finally, as discussed at length above, the improper doubling argument has no merit, and counsel cannot be found ineffective for making non-meritorious objections. *See, eg. Gettel v. State*, 449 So. 2d 413 (Fla. 2d DCA 1984). As such, no relief is warranted.

ISSUE III

UNDER THE EIGHTH AMENDMENT, CAPITAL PUNISHMENT IS NOT INHERENTLY CRUEL AND UNUSUAL PUNISHMENT.

A. Preservation and Standard of Review.

On appeal, Damas argues that the trial court erred in sentencing Damas to death because capital punishment is per se cruel and unusual punishment, based on evolving standards of decency. This argument was not raised below and is not preserved. Therefore, this Court would review this issue for fundamental error. Fundamental error is "error which goes to the foundation of the case or goes to the merits of the cause of action." *Jackson*, 983 So. 2d at 569. This Court has held "the doctrine of fundamental error should be applied only in the rare cases where a jurisdictional error appears or where the interests of justice present a compelling demand for its application". *Ray v. State*, 403 So. 2d 956, 960 (Fla. 1981).

However, even fundamental error may be waived when invited. *See, eg., Gonzalez v. State*, 136 So. 3d 1125 (Fla. 2014). The State argues that this issue was

waived on the basis that, during trial proceedings, Damas had repeatedly sought to receive death sentences. He should not be able to complain that the death penalty is per se unconstitutional on appeal.

B. Capital punishment does not constitute per se cruel and unusual punishment.

Damas contends that capital punishment constitutes cruel and unusual punishment under the Eighth Amendment of the United States Constitution. This issue has no merit. Capital punishment does not violate the Eighth Amendment's prohibition against cruel and unusual punishment under the current standards of decency. *See Provenzano v. Moore*, 744 So. 2d 413 (Fla. 1999) The United States Supreme Court has specifically enunciated that the death penalty is a valid punishment choice to be determined by individual jurisdictions, and is not per se unconstitutional. *Gregg v. Georgia*, 428 U.S. 153 (1976); *see also Proffitt v. Florida*, 428 U.S. 242 (1976). This Court has also already decided that capital punishment is not per se cruel and unusual punishment. *See Foster v. State*, 810 So. 2d 910, 916 (Fla. 2002).

Damas relies on Justice Marshall's concurring opinion in *Furman v. Georgia*, 408 U.S. 238, 288-90 (1972), and Justice Breyer's and Justice Ginsburg's dissent in *Glossip v. Gross*, 135 S Ct. 2726, 2755- 2777 (2015), as support. However, none of

the passages cited by Damas represents the current state of the law.

Neither Florida nor the Supreme Court has ever found capital punishment to be per se unconstitutional. Therefore, the trial court did not fundamentally err in sentencing Damas to death for each of the six homicides he committed.

SUPPLEMENTAL ISSUE

APPELLANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY ENTERED INTO GUILTY PLEAS, THERE WAS COMPETENT AND SUBSTANTIAL EVIDENCE TO SUPPORT HIS CONVICTIONS, AND HIS DEATH SENTENCES ARE PROPORTIONATE.

Although not raised on appeal, the State will briefly address the validity of his guilty pleas, the sufficiency of the evidence, and the proportionality of his death sentences.

A. Damas knowingly, intelligently and voluntarily entered guilty pleas.

As this Court stated in *McCoy v. State*, 132 So. 3d 756, 765 (Fla. 2013), even when the defendant does not challenge his conviction for first-degree murder, this Court has a mandatory obligation to determine that the pleas were voluntary. In this case, the plea colloquy clearly establishes that Damas knowingly, intelligently, and voluntarily entered into guilty pleas. At the plea hearing, the parties stipulated to a number of matters regarding the details of the murder and Damas' decision to plead guilty. The court accepted an affidavit signed by Damas explaining his legal rights

and waiver of those rights. The court also conducted a colloquy with Damas and he affirmed that he had reviewed the plea form with his attorney and was entering the guilty pleas knowing that he had two sentencing options; life in prison or a death sentence. Because the record establishes that Damas' pleas were knowing, intelligent, and voluntary, and that he was made aware of the consequences of his pleas and was apprised of the constitutional rights he was waiving as a result, this Court should affirm his conviction for first-degree murder.

B. There was competent, substantial evidence to support the six convictions for first-degree homicide.

As this Court stated in *Russ v. State*, 73 So. 3d 178, 199 (Fla. 2011), even when the defendant who enters into a plea does not challenge the sufficiency of the evidence, this Court has a mandatory obligation to review the basis for a conviction.

The State set forth the following factual basis for Damas' convictions:

> … On September 19, 2009, the Collier County Sheriff's Office responded to 864 Hampton Circle, a two-story residence, for a welfare check.
>
> Upon entry to the residence, deputies found a black female, later identified as Guerline Dieu Damas, in a first-floor bathroom tied up and deceased with sharp force injuries.
>
> The State would present evidence from District 20 Deputy Chief Medical Examiner Dr. Manfred Borges that the six victims each died as the result of suffering sharp force injuries to their necks.

> The State would present evidence that Mesac Damas was employed at Miller's Naples Ale House. On September 17, 2009, he clocked into work at 4:53 p.m., but he left earlier than his shift was supposed to end at 8:42 p.m.
>
> The State would present evidence that at approximately 10:30 p.m. on September 17, 2009, the defendant went to Walmart and bought gum, duct tape and a fillet knife.
>
> The evidence and testimony would show that Mesac Damas exited the United States on September 18, 2009, via American Airlines Flight 1291 departing from Miami at 9:50 a.m. and destined for Port-Au-Prince, Haiti. The defendant purchased a one-way ticket. His 2001 GMC Yukon was found in the Flamingo Garage at Miami International Airport, having entered the garage at 6:40 a.m. on September 18, 2009.
>
> The State would also present evidence of three express statements by the defendant admitting his guilt to committing six murders: one made to a U.S. Consular official, one to the Naples Daily News, and one to Detective Andy Henchesmoore of the Collier County Sheriff's Office.

(R. 3015). The factual basis for the pleas, which was confirmed by defense counsel and Damas and was proven by the forensic evidence and Damas' confessions, provides competent, substantial evidence to support the conviction for first-degree murder.

C. Damas' six death sentences are proportionate.

In addition to affirming Appellant's conviction for murder, this Court should also affirm his death sentences based on a finding that his sentences are

proportionate. This Court has previously noted that it has an independent obligation to perform proportionality review in all death cases.

> Due to the uniqueness and finality of death, this Court addresses the propriety of all death sentences in a proportionality review. This review is a unique and highly serious function of this Court, the purpose of which is to foster uniformity in death-penalty law. It is not a comparison between the number of aggravating and mitigating circumstances; rather, it is a thoughtful, deliberate proportionality review to consider the totality of the circumstances in a case, and to compare it with other capital cases.

McCoy v. State, 853 So. 2d 396, 408 (Fla. 2003) (quotation marks and citations omitted). This Court compares the case under review to others to determine if the crime falls within the category of both (1) the most aggravated, and (2) the least mitigated of murders. *Almeida v. State*, 748 So. 2d 922, 933 (Fla. 1999).

A review of the aggravating and mitigating evidence established in the instant case demonstrates the proportionality of the death sentences imposed. In this case, the court found five aggravating factors applicable to the murders: (1) Appellant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person; (2) the murder was especially heinous, atrocious, or cruel; and (3) the murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification; victim under 12 ; and

victim was particularly vulnerable because defendant was in a position of familial authority.

The trial court found the following statutory mitigating factors under § 921.141(7)(h), Fla. Stat. (2017): (a) Damas may have a mental illness (some weight); (b) he has not been treated for any mental illness he may have (some weight); (c) Damas provided information which led to the resolution of the case(some weight); (d) Damas has some positive qualities (some weight); and (e) defendant is amenable to rehabilitation and may be productive in prison (little weight). The trial court found the following nonstatutory mitigators, in addition to the above factors: mitigators 9-22, which relate to Damas' childhood and background of poverty, domestic abuse, and abandonment by his parents (moderate weight); additional positive traits (some weight); the impact an execution would have on family members (some weight); and, any alleged failure of state agencies to recognize and treat Damas' alleged mental illness (little weight).

This Court has previously held that the HAC and CCP aggravators are two of "the most serious aggravators set out in the statutory sentencing scheme." *Larkins v. State*, 739 So. 2d 90, 95 (Fla. 1999). Here, Appellant, Damas murdered his wife and their five minor children, by stabbing them and/or slitting their throats with a five-inch filet knife. The weighty aggravating factors far outweighed the mitigation

presented in this case and establish that Appellant's death sentences are proportionate. *See, e.g., Kopsho v. State,* 84 So. 3d 204 (Fla. 2012) (upheld death sentence for shooting murder of defendant's wife, based on the following aggravation: prior violent felony, CCP, defendant on probation, and murder was committed during the course of a kidnapping); *Way v. State*, 760 So. 2d 903 (Fla. 2000) (upholding the death sentence for the murder of defendant's wife and daughter by hitting them in the head with a hammer and setting them on fire, based on the following aggravation: prior violent felony, CCP, HAC, and murder was committed during the course of an arson)*; Zakrzewzski v. State*, 717 So. 2d 488 (Fla. 1998) (upheld death sentences for "domestic dispute" homicides, murdering his wife and two children); *Henry v. State*, 649 So. 2d 1366 (Fla.1994) (affirming death penalty where defendant stabbed his wife repeatedly in the throat and kidnapped and stabbed her five-year-old son from a previous marriage); *Davis v. State*, 461 So. 2d 67 (Fla. 1984) (affirming death penalty where defendant beat a mother over the head with a pistol, tied one child up and shot her twice, and both beat and shot the second child). *See also Mullens v. State*, 197 So. 3d 16 (Fla. 2016) (death sentences proportionate where defendant murdered two people and attempted to murder a third victim); *McWatters v. State*, 36 So. 3d 613 (Fla. 2010) (death sentences proportionate where defendant murdered three victims with prior violent felony aggravator);

State, 29 So. 3d 1045 (Fla.2010) (in a robbery with multiple gunshot victims, death sentence proportionate with prior violent felony aggravator and committed during a robbery aggravator).

Because Appellant's death sentences are proportional to other death cases, based on the significant aggravating factors and slight mitigation in this case, this Court should affirm Appellant's judgment and death sentences.

CONCLUSION

Based on the foregoing arguments and authorities, Appellee, State of Florida, respectfully urges this Court to affirm the judgment and sentences.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL
STATE OF FLORIDA

/s/ Lisa Martin
LISA MARTIN
Assistant Attorney General
Florida Bar No. 72138
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813)287-7910
Facsimile:(813)281-5501
capapp@myfloridalegal.com [*and*]
lisa.martin@myfloridalegal.com

COUNSEL FOR APPELLEE

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman, in compliance with Fla. R. App. P. 9.210(a)(2).

/s/ Lisa Martin
COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of August, 2018, I electronically filed the foregoing with the Clerk of the Court by using the e-portal system which will send a notice of electronic filing to the following: Valerie Linnen, Esquire, Post Office Box 330339, Atlantic Beach, Florida 32233, **vlinnen@live.com**.

/s/ Lisa Martin
COUNSEL FOR APPELLEE