JUDICIAL NOMINATING COMMISSION

SEVENTH JUDICIAL CIRCUIT OF FLORIDA

CIRCUIT COURT APPLICATION

OF

K. MARK JOHNSON

JUDICIAL NOMINATING COMMISSION
SEVENTH JUDICIAL CIRCUIT OF FLORIDA

CIRCUIT COURT APPLICATION

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TAB 2

APPLICATION FOR NOMINATION TO THE SEVENTH JUDICIAL CIRCUIT COURT

Instructions: *Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.*

Full Name: Kenneth Mark Johnson **Social Security No.:** [redacted]

Florida Bar No.: 0378320 **Date Admitted to Practice in Florida:** 10/2/2000

1. Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.

   Assistant State Attorney, Homicide Investigations Unit
   Office of the State Attorney, Seventh Judicial Circuit
   2446 Dobbs Rd.
   St. Augustine, FL 32086
   (904) 209-1300

2. Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number).

   [redacted]

   I have lived at this residence for 10 years and within the State of Florida for 42 years.

3. State your birthdate and place of birth.

   March 30, 1974
   Murfreesboro, TN

4. Are you a registered voter in Florida (Y/N)?

   Yes.

5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

Court or Administrative Body	Date of Admission	Suspension / Resignation
The Florida Bar	October 2, 2000	No
U.S. Court of Appeals, 11th Circuit	December 6, 2001	No
U.S. District Court, M.D. Florida	December 14, 2001	No

I have continuously maintained my membership with The Florida Bar since the date of my admission. I allowed my membership with the U.S. Court of Appeals for the 11th Circuit and the U.S District Court for the Middle District of Florida to expire when my legal practice transitioned to focus exclusively on state court cases.

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias.

No.

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

Schools	***Class Standing***	***Dates of Attendance***	***Degree***
Stetson University College of Law Gulfport, Florida	71/133 2.815 GPA	8/1997 – 5/2000	Juris Doctor May 5, 2000
Florida State University Tallahassee, Florida	3.20 GPA	1-1995 – 12/1996	Bachelor of Science Criminology Dec. 14, 1996
Pensacola State College Pensacola, Florida	3.43 GPA	8/1992 – 12-1994	Associate of Arts Criminal Justice Dec. 15, 1994
Faith Christian School Milton, Florida	Valedictorian 4.0 GPA	8/1988 – 5/1992	High School Diploma May 22, 1992

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

Name	*School*	*Position / Title*	*Dates*
Phi Alpha Delta Law Fraternity	Florida State University	Member	1995-96
Pi Gamma Mu Social Science Honor Society	Florida State University	Member	1996
Moot Court Board	Stetson University College of Law	Associate Justice	1998-2000
Christian Legal Society	Stetson University College of Law	Member	1998-2000

EMPLOYMENT:

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

Date	*Title*	*Employer*	*Address / Phone Number*
1/2010 – Present	Assistant State Attorney	Office of the State Attorney, Seventh Judicial Circuit	251 N. Ridgewood Ave. Daytona Beach, FL 32114 Phone: (386) 239-7710
1/2004 – 1/2009	Assistant State Attorney	Office of the State Attorney, Second Judicial Circuit	301 South Monroe St. Tallahassee, FL 32399 Phone: (850) 606-6000
9/2000 – 11/2003	Associate	Gibbs Law Firm, P.A.	5666 Seminole Blvd., Ste. 2 Seminole, FL 33772 Phone: (727) 399-8300

1/2000 – 5/2000	Certified Legal Intern	Office of the State Attorney, Sixth Judicial Circuit	14250 49th St. N. Clearwater, FL 33762 Phone: (727) 464-6221
2/2000 – 5/2000	Library Clerk	Stetson University College of Law	1401 61st St. South Gulfport, FL 33707 (727) 562-7821
5/1999 – 8/1999 5/1998 – 8/1998	Intern	Gibbs Law Firm, P.A.	5666 Seminole Blvd., Ste. 2 Seminole, FL 33772 Phone: (727) 399-8300
6/1997 – 7/1997	Lifeguard / Counselor	Georgia FFA-FCCLA Center	720 FFA-FHA Rd. Covington, GA 30014 Phone: (770) 786-6926
1/1997 – 5/1997	Sales Associate	K-Mart	6050 Hwy. 90 Milton, FL 32570 (now out of business)
1/1997 – 5/1997	Driver	Pizza Hut Delivery	5149 Dogwood Dr. Milton, FL 32570 Phone: (850) 626-0633
6/1996 – 7/1996 6/1995 – 8/1995	Lifeguard / Counselor	Georgia FFA-FCCLA Center	720 FFA-FHA Rd. Covington, GA 30014 Phone: (770) 786-6926

10. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

For almost 17 years, I have had the distinct privilege to serve as a prosecutor for the State of Florida. For the last 12 years, I have worked with the Homicide Investigations Unit of the State Attorney's Office for the Seventh Judicial Circuit. Within that unit, I am a part of a team of attorneys, investigators, and support staff who assist local law enforcement during the

investigation of any homicide or suspicious death that occurs within St. Johns, Putnam and Flagler County. My duties involve advising law enforcement concerning the numerous legal issues that may arise during their investigation, reviewing search warrants, and determining the sufficiency of evidence in the commencement of any criminal charge in the case. When a charging decision has been made, I am responsible for all aspects of the prosecution, including presenting the case to a grand jury for an indictment, responding to discovery demands, conducting depositions, and trying the case before a jury. While my sole client is technically the State of Florida, I also work closely with the family members of homicide victims.

During my tenure with the Seventh Judicial Circuit, I also had the opportunity to serve for 3 1/2 years as the Division Chief of the State Attorney's office in Putnam County. The office there employs approximately 20 staff, including attorneys, secretaries, victim advocates and investigators. In that role, I had the responsibility of overseeing all office operations, training new attorneys, and working closely with local judges, clerks and law enforcement in working to ensure that our criminal justice system operated efficiently and fairly.

Prior to working as a prosecutor, I practiced for three years as an associate with a law firm that specialized in assisting churches, schools, non-profit organizations and individuals with issues such as tax, zoning, contract, employment and constitutional law. Our firm also frequently represented individual clients in personal injury and wrongful death claims as well as estate planning. During my time with the firm, I generally handled cases involving real property, zoning and constitutional claims.

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates) was:

Court		Area of Practice	
Federal Appellate	_____ %	Civil	_____ %
Federal Trial	_____ %	Criminal	100 %
Federal Other	_____ %	Family	_____ %
State Appellate	_____ %	Probate	_____ %
State Trial	100 %	Other	_____ %
State Administrative	_____ %		
State Other	_____ %		
TOTAL	100 %	TOTAL	100 %

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation:

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were:

Jury?	90+	Non-jury?	20+
Arbitration?	0	Administrative Bodies?	0
Appellate?	0		

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument, and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

None.

14. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended, or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

15. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain full.

No.

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

1. ***State of Florida v. David Snelgrove, Flagler Co. Case #2000-323-CF***

   Charges: First Degree Murder (2 counts) (death penalty resentencing)
   Robbery With a Deadly Weapon
   Burglary of Dwelling with Assault or Battery

State counsel: Jennifer Dunton

[redacted]

Mark Johnson (applicant)

Defense counsel: Michael Nielsen

[redacted]

Appellate decisions: My involvement in *Snelgrove* was limited to what was the third death penalty resentencing trial in the history of the case. That trial took place in January of 2020. The jury did not return a unanimous death verdict; therefore, the defendant was sentenced to life without parole and no appeal was filed. The defendant's original conviction and death sentences occurred in 2002. Those sentences were later overturned by the Florida Supreme in 2005. *Snelgrove v. State*, 921 So.2d 560 (Fla. 2005). Following a second penalty phase trial, the defendant again received a death sentence, which was affirmed by the Florida Supreme Court. *Snelgrove v. State*, 107 So.3d 242 (Fla. 2012). Following its decision in *Hurst v. Florida*, 202 So.3d 40 (Fla. 2016), the Florida Supreme Court again vacated the defendant's death sentences and ordered a new resentencing trial. *Snelgrove v. State*, 217 So.3d 992 (Fla. 2017). I was not involved in the two previous trials from which those appeals were taken.

2. ***State v. Joseph Bova*, Flagler Co. Court Case #2013-763-CF**

Charge: First Degree Murder

State counsel: Mark Johnson (applicant)

Jason Lewis

[redacted]

Defense counsel: Joshua Mosley

[redacted]

Appellate decisions: Appeal pending – *Bova v. State*, Fla. 5th DCA Case #5D19-3199

3. ***State v. Norman McKenzie*, St. Johns Co. Case #2006-1864-CF**

Charges: First Degree Murder (2 counts) (death penalty case)

State counsel: Mark Johnson (applicant)

Jennifer Dunton
[redacted]

Defense counsel: Junior Barrett
[redacted]

Appellate decisions: Appeal pending – *McKenzie v. State*, FSC Case #SC20-243

4. ***State v. William Sanders*, Putnam Co. Court Case #2015-1320-CF**

Charges: First Degree Murder
Possession of Firearm by Convicted Felon

State counsel: Mark Johnson (applicant)

Defense counsel: William Fletcher
[redacted]

Appellate decisions: Appeal pending – *Sanders v. State*, Fla. 5th DCA Case #5D20-69

5. ***State v. James Colley*, St. Johns Co. Court Case #2015-1248-CF**

Charges: First Degree Murder (2 counts) (death penalty case)
Attempted First Degree Murder (2 counts)
Burglary of Dwelling
Burglary of Dwelling With a Firearm
Aggravated Stalking After Injunction

State counsel: Jennifer Dunton
[redacted]
Mark Johnson (applicant)

Defense counsel: Terry Shoemaker
[redacted]

Garry Wood
[redacted]

Appellate decisions: Appeal pending – *Colley v. State*, FSC Case #SC18-2014

- *See Tab 3 for News4Jax article on the James Colley trial (July 25, 2018)*

6. *State v. Kevin Daniels*, Putnam Co. Court Case #2014-973-CF

Charges: First Degree Murder
Attempted First Degree Murder
Burglary of Dwelling With Firearm

State counsel: Mark Johnson (applicant)

James Nealis
[redacted]

Defense counsel: Garry Wood
[redacted]

Appellate decisions: *Daniels v. State*, 284 So.3d 532 (Fla. 5th DCA 2019) (PCA).

17. For your last six cases, which were either settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

1. *State v. Jeffrey Balcom*, St. Johns Co. Court Case #2018-1386-CF

State counsel: Mark Johnson (applicant)

Defense counsel: Joshua Mosley
[redacted]

Appellate decisions: None filed as of yet

2. *State v. Xavier Williams*, St. Johns Co. Court Case #2018-1387-CF

State counsel: Mark Johnson (applicant)

Defense counsel: Tyler Gates
[redacted]

Appellate decisions: None filed as of yet

3. ***State v. Zared Matthews*, St. Johns Co. Court Case #2018-1388-CF**

State counsel: Mark Johnson (applicant)

Defense counsel: Ray Forbes, Jr. [redacted]

Appellate decisions: None filed as of yet

4. ***State v. Christopher Pettigrew*, St. Johns Co. Court Case #2018-1390-CF**

State counsel: Mark Johnson (applicant)

Defense counsel: Casey Stripling [redacted]

Appellate decisions: None filed as of yet

5. ***State v. Larry Burgess*, Putnam Co. Court Case #2018-1406-CF**

State counsel: Mark Johnson (applicant)

Defense counsel: Kevin Monahan [redacted]

Appellate decisions: None filed as of yet

6. ***State v. Michael Cummings*, Flagler Co. Court Case #2018-058-CF**

State counsel: Mark Johnson (applicant)

Defense counsel: Joshua Mosley [redacted]

Appellate decisions: Appeal pending – *Cummings v. State*, Fla. 5th DCA Case #5D20-85 (*Anders* brief filed)

18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

During the last five years, I have worked in a special unit prosecuting homicide cases arising out of three counties. These cases bring me to appear in court on average approximately five to 10 times per month. A little over a decade ago, I worked as a line prosecutor, handling a numerically greater caseload that resulted in my appearing in court on a near-daily basis. During one two-year period as a line prosecutor, my caseload was large enough that I tried 36 jury trials and 20 in a single year.

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel.

N/A

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants?

N/A

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant.

1. *State of Florida v. Luis Toledo*	
Case No.	2013-102888-CFDL (Volusia Co. Circuit Court)
Judge	Raul Zambrano
State Counsel	Mark Johnson Ryan Will, [redacted]
Defense Counsel	Jeffrey Dean, [redacted] Michael Nielsen, Michael Nappi, [redacted]
Trial Dates	October 2 – November 3, 2017
Client	State of Florida

Appellate case(s)	*Toledo v. State*, 280 So.3d 76 (Fla. 5th DCA 2019) (PCA)

Luis Toledo, a former leader in the Latin Kings gang, was charged with murder following the disappearance of his wife, Yessenia Suarez, and her two young children, Michael and Thalia Otto. On the day they were last seen alive, Toledo discovered that his wife was having an affair with a co-worker and confronted them at their job site. Despite this tension, Yessenia made the decision later that evening to leave her mother's home and return to her own with her children. During the night, Toledo killed them and disposed of their bodies in an unknown location. They were never seen again.

This case involved the rare murder prosecution where the victims' bodies were never recovered. As a result, it presented unique and challenging legal issues, such as establishing *corpus delicti* and the cause and manner of death. The case also generated heavy media coverage in the Orlando and Daytona Beach area, which forced a change of venue. Finally, the U.S. Supreme Court issued its opinion in *Hurst v. Florida*, striking down Florida's death penalty, just days before the *Toledo* trial was set to begin. This caused the trial to be delayed until the establishment of new procedures that comported with the *Hurst* decision. The trial was extensive, lasting a full month. The jury found the defendant guilty of murder of his wife and her children, and 10 of the 12 jurors voted in favor of the death penalty. However, since the penalty verdict was not unanimous, the defendant received a sentence of life without parole.

- *See Tab 4 for News Chief article on the Luis Toledo trial (Nov. 3, 2017)*

2. State of Florida v. Quentin Truehill, Kentrell Johnson & Peter Hughes	
Case Nos.	2010-0763-CF; 2010-0764-CF & 2010-0765-CF (St. Johns Co.)
Judge	Raul Zambrano
State Counsel	Mark Johnson & Jason Lewis (561) 310-6893
Defense Counsel	Truehill: Jim Valerino, [redacted] Ray Warren, [redacted] Rosemarie Peoples, [redacted] Johnson: Junior Barrett; [redacted] Hughes: Sung Lee; [redacted] Richard Kuritz, [redacted]

Trial Dates	February 3 – March, 2014 (Truehill) June 9-24, 2014 (Johnson)
Client	State of Florida
Appellate case(s)	*Truehill v. State*, 211 So.3d 930 (Fla. 2017). *Johnson v. State*, 238 So.3d 726 (Fla. 2018).

Following their escape for a Louisiana jail, Quentin Truehill, Kentrell Johnson and Peter Hughes started a crime spree that extended from Louisiana all the way to Miami. They committed several robberies, including one in which they chopped a Pensacola woman's fingers off during the crime. As they made their way through Tallahassee, they encountered and kidnapped Vincent Binder, a graduate student at FSU. After robbing him of his credit cards, they drove him to St. Augustine where they brutally hacked him to death with a large knife. They continued all the way to Miami, where they continued to use his credit card. They were eventually caught, but Binder's body was not found until almost a full month after his disappearance. Once his body was found in St. Augustine, the defendants were charged here with his murder.

This case was significant to me on several fronts. First, I personally connected with the case because I had worked for the State Attorney's Office in Tallahassee for several years and had attended FSU. The brutal murder in our jurisdiction of a student from there struck me in a profound way. Second, the case was, by far, the most extensive and complicated murder case I had handled up to that point. The cased involved approximately 10 different crime scenes from Louisiana to Miami; numerous law enforcement agencies from both federal and state jurisdictions; and hundreds, if not thousands, of pieces of evidence. At trial, we called 50-60 witnesses, who lived in jurisdictions as far away as Montana, Louisiana, Alabama and several counties within the State of Florida. Moreover, each defendant had to be tried separately since their trials were severed. The juries in both Truehill's and Johnson's trials convicted both of first degree murder and unanimously returned death recommendations before the *Hurst* decision required it. Hughes eventually entered a guilty plea in exchange for a life sentence. Johnson's death sentence was later overturned by the Florida Supreme Court, who held that he was entitled to be sentenced to life due to negotiations that he had engaged in with the Tallahassee State Attorney's Office prior to Binder's body being discovered in St. Augustine. Truehill's death sentence was upheld by the Florida Supreme Court.

- *See Tab 5 for News4Jax article on the Quentin Truehill trial (Feb. 18, 2014)*

3. *State of Florida v. Sean Bush*	
Case No.	2011-1604-CF (St. Johns Co.)
Judge	Howard Maltz
State Counsel	Mark Johnson Jennifer Dunton, [redacted]
Defense Counsel	Rosemarie Peoples, [redacted] Ray Warren, [redacted]
Trial Dates	October 2 – November 3, 2017
Client	State of Florida
Appellate case(s)	*Bush v. State*, 295 So.3d 179 (Fla. 2020).

On May 31, 2011, Nicole Bush, a single mother, was found in her home shot, stabbed and severely beaten. She had recently separated from the defendant and had purchased her own home, which she moved into with her two small sons. In the days leading up to her murder, she had informed the defendant that she intended to file for a divorce and had begun filling out the paperwork to do so. The defendant had already begun planning to murder Nicole by asking for help to find a gun and conducting internet research on how to build a suppressor for the handgun he eventually obtained. He decided to carry out his plan on the Memorial Day weekend when he had custody of his two sons. In the early morning hours of May 31, he left his home, drove to Nicole's house, turned off her alarm system, then put a pillow over her head as she slept, and shot her multiple times in the head. When the shots did not kill her, he then stabbed her several times, then brutally beat her with an aluminum baseball bat. He then attempted to hide the baseball bat in the living room couch before leaving. Nicole eventually managed to call a friend, who then contacted law enforcement. She later died at the hospital, leaving behind her two boys.

This case was significant because it involved a single mother, who was attempted to separate herself from an abusive husband and make a better life for herself and her two boys. The defendant has a violent past, including an unsuccessful attempt to murder his previous wife in New Jersey. It was especially important to me to be sure he was finally held accountable for his horrible crimes. Also, it wound up being was one of the first death penalty cases to be tried in the State of Florida following the *Hurst* decision and then, later on appeal, established major precedent when the Florida Supreme Court used the circumstances of the case to abolish the special circumstantial evidence standard for criminal cases within the State of Florida.

- *See Tab 6 for St. Augustine Record article on the Sean Bush trial (Nov. 4, 2017)*

4. *State of Florida v. James Colley*	
Case No.	2015-1248-CF (St. Johns Co.)
Judge	Howard Maltz
State Counsel	Jennifer Dunton [redacted] and Mark Johnson
Defense Counsel	Terry Shoemaker, [redacted] Garry Wood, [redacted]
Trial Dates	July 9-25, 2018
Client	State of Florida
Appellate case(s)	Appeal pending – *Colley v. State*, FSC case #SC18-2014

On August 27, 2015, James Colley obtained multiple firearms, drove to his estranged wife's home, entered the home, and executed his wife and her best friend. Minutes before, he had left court in St. Johns County where he had entered a plea agreement on a violation of injunction charge his wife had filed against him. The murder were captured in their entirety by the recorded 911 calls made by each one of the victims. After the murders, the defendant fled to Virginia where he was arrested and taken into custody.

This case highlighted the significant problem of domestic violence-related homicides that is certainly not unique to our jurisdiction. The Colley case was the fourth consecutive case I was involved in trying between 2016 and 2017 that involved a husband killing his wife. In the end, the jury convicted Colley of the first degree murders and returned a unanimous verdict in favor of the death penalty.

5. *State of Florida v. Timothy Fletcher*	
Case No.	2009-0648-CF (Putnam Co.)
Judge	Wendy Berger
State Counsel	Mark Johnson Jason Lewis, [redacted]

Defense Counsel	Garry Wood, [redacted]
Trial Dates	May 21 – June 12, 2012
Client	State of Florida
Appellate case(s)	*Fletcher v. State*, 168 So.3d 186 (Fla. 2015)

In April of 2009, Timothy Fletcher and Doni Ray Brown escaped from the Putnam Co. Jail using a hydraulic jack that Fletcher had obtained from a jail transport van, hid in a leg cast, and smuggled into his cell. After stealing a nearby truck, they drove to the home of Helen Googe, Fletcher's step-grandmother. They then broke into her house and forced Mrs. Googe to open a safe in which Fletcher believed to hold a large sum of money. When Fletcher discovered that there was no money in the safe, he manually strangled Mrs. Googe to death, stole her credit cards and car, and fled to Kentucky. At trial, a jury found Fletcher guilty of first degree murder and recommended a death sentence by a 8-4 vote. The trial court subsequently sentenced him to death. On direct appeal, the Florida Supreme Court upheld the death sentence. However, it was later overturned as a result of the *Hurst* decision. Fletcher is currently awaiting a penalty phase retrial.

This case was significant in that it involved a significantly appalling and personal crime. The idea of someone strangling their grandmother with their bare hands over nothing was unfathomable. These facts and the "Escape From Alcatraz"-like breakout attracted national media attention. Immediately after the escape, the case was featured on "America's Most Wanted" and then was later the subject of an episode on the Discovery Channel's "I (Almost) Got Away With It."

- *See Tab 7 for St. Augustine Record article on the Timothy Fletcher trial (May 24, 2012)*

22. Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

1. State's Sentencing Memorandum, *State v. Quentin M. Truehill*, St. Johns Co. Case #2010-0763-CF (May 1, 2014). I was the sole author of this memorandum. *See Tab 8 for Writing Sample #1.*

2. State's Sentencing Memorandum, *State v. Norman McKenzie*, St. Johns Co. Case #2006-1864-CF (Dec. 6, 2019). I was the sole author of this memorandum. *See Tab 9 for Writing Sample #2.*

3. State's Response to Defendant's Amended Motion for Postconviction Relief, *State v. Christopher Fries*, St. Johns Co. Case #2011-1684-CF (June 3, 2019). I was the sole author of the response. *See Tab 10 for Writing Sample #3.*

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

23. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved, the dates of service or dates of candidacy, and any election results.

No.

24. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

This is my fourth application for judicial appointment, all with the Judicial Nominating Commission for the Seventh Judicial Circuit. In August and November of 2018, I submitted successive applications for the Circuit Court seats vacated by Judge Scott Dupont and the late Judge Clyde Wolfe. In August of 2019, I also applied to fill a newly created county court seat in Flagler County. In September of 2018, I was honored by the Commission to have my name certified to the Governor's Office for consideration of the appointment to replace former Judge Dupont.

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard.

None.

26. If you have prior judicial or quasi-judicial experience, please list the following information:

(i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;
(ii) the approximate number and nature of the cases you handled during your tenure;
(iii) the citations of any published opinions; and
(iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

N/A

27. Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

N/A

28. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

N/A

29. Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give the date, describe the complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

N/A

30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

N/A

31. Have you ever held or been a candidate for any other public office? If so, state the office, location, dates of service or candidacy, and any election results.

No.

NON-LEGAL BUSINESS INVOLVEMENT

32. If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

I am not involved in the management of any business enterprise, nor do I hold any office, title or any other position related to the same.

33. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, explain and provide dates. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received.

No.

POSSIBLE BIAS OR PREJUDICE

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you, as a general proposition, believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

None.

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

35. List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

None,

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

None.

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

Johnson, M. & Ferebee, C. (2018). *Search Warrant Issues.* Lecture presented at a detectives training course that was hosted by the St. Johns Co. Sheriff's Office for law enforcement agencies in St. Johns, Putnam, and Flagler counties.

Lewis, J., Johnson, M., & Dunton, J. (2018). *Homicide Investigative Strategies for Overdose-Related Deaths.* Lecture presented at a symposium hosted by the St. Johns Co. Sheriff's Office for law enforcement agencies in St. Johns, Putnam, and Flagler counties.

Johnson, M. (2017). *4th Amendment Issues.* Lecture presented at a detectives training course that was hosted by the St. Johns Co. Sheriff's Office for law enforcement agencies in St. Johns, Putnam, and Flagler counties.

Johnson, M. & Lewis, J. (2015). *Traffic Homicide Legal Issues*. Lecture presented at a training hosted by the State Attorney's Office for the Seventh Judicial Circuit for traffic homicide investigators with the Florida Highway Patrol.

Johnson, M. & Dunton, J. (2015). *Legal Issues: Body Cameras, Social Media & Technology.* Lecture presented at the New Detectives College hosted by the Daytona State Advance Technology College.

Johnson, M. & Dunton, J. (2014). *Legal Issues: Body Cameras, Social Media & Technology.* Lecture presented at the New Detectives College hosted by the Daytona State Advance Technology College.

Johnson, M. (2014). *Closing Arugments: Legal & Ethical Considerations.* Lecture to new prosecutors hosted by the State Attorney's Office for the Seventh Judicial Circuit.

Johnson, M. (2013). *Closing Arugments: Legal & Ethical Considerations.* Lecture to new prosecutors hosted by the State Attorney's Office for the Seventh Judicial Circuit.

Johnson, M. (2013). *Case Handling; Miranda Issues; Report Writing & Testimony Preparation; Search & Seizure Issues; Joint & Constructive Possession Issues.* Organized a series of lectures on these topics to be presented to deputies with the Putnam Co. Sheriff's Office.

38. Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

No.

39. List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

40. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

No.

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

The Florida Bar, member (2000-present)
Putnam Co. Bar Association, member (2009-present)
St. Johns Co. Bar Association, member (2009-present)
Federalist Society, member (2000-03; 2018-present)

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

Rotary Club of Palatka, member (2013-present)
SMA Healthcare Foundation, Board of Directors (2015-present)
Crescent Beach Baptist Church, member (2009-present) & Deacon Board (2011-present)
Maranatha Baptist Church (Tallahassee), member (2004-08) & Trustee (2007-08)
Westgate Baptist Church (Tampa), member (2001-03)
Bible Baptist Church (St. Petersburg), member (2000-01)

43. Do you now or have you ever belonged to a club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

My employment with the State of Florida has precluded me from performing any legal pro bono work. However, I have donated to the Jacksonville Area Legal Aid for the many pro bono services they provide to the public.

45. Please describe any hobbies or other vocational interests.

I enjoy spending time with family and watching my children participate in organized sports, band, Cub Scouts and other school activities. I also personally enjoy running, hiking, camping, and studying American history.

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

N/A

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram.

I do not have any social media accounts.

FAMILY BACKGROUND

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

Marital status: Married

Spouse's name: Ralenda Thornton Johnson

Date of marriage: December 29, 2001

Spouse's occupation: Part-time administrative assistant

I have never been previously married or divorced.

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

Name	Age	Occupation	Address	Phone Number
[redacted]		N/A	Same as applicant	N/A
		N/A	Same as applicant	N/A
		N/A	Same as applicant	N/A

CRIMINAL AND MISCELLANEOUS ACTIONS

50. Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

52. Have you ever been arrested, regardless of whether charges were filed? If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction.

No.

53. Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

No.

54. To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?

No.

55. To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.

No.

56. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, provide the particulars of each finding or investigation.

No.

57. To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior against you with any regulatory or investigatory agency or with your employer? If so, please state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition.

No.

58. Are you currently the subject of an investigation which could result in civil, administrative, or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation, and the expected completion date of the investigation.

No.

59. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? If so, please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy.

No.

60. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No.

61. Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

I have annually filed all legally required tax returns with the IRS. I have never been required to pay any tax penalty or had a tax lien filed against me.

HEALTH

62. Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?

No.

63. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania,

Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism? If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.] Please describe such treatment or diagnosis.

No.

64. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner: experiencing periods of no sleep for two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering from extreme loss of appetite, issuing checks without sufficient funds, defaulting on a loan, experiencing frequent mood swings, uncontrollable tiredness, falling asleep without warning in the middle of an activity. If yes, please explain.

No.

65. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

No.

66. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, provide full details as to court, date, and circumstances.

No.

67. During the last ten years, have you unlawfully used controlled substances, narcotic drugs, or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal or State law provisions.)

No.

68. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such

action was taken, the name(s) of any persons who took such action, and the background and resolution of such action

No.

69. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal, and the reason why you refused to submit to such a test.

No.

70. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No.

SUPPLEMENTAL INFORMATION

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

During my career as a prosecutor, I have personally tried over 100 cases. As a result of this extensive litigation experience, I have developed a strong working knowledge of the Florida Evidence Code and case law that would well serve the parties and counsel that would appear before me. Also, my tenure as a Division Chief, overseeing all office operations and managing a staff of approximately 20 individuals has equipped me with many of the leadership and organizational skills that are necessary for a judge to manage a docket and move cases efficiently, but fairly, toward a resolution.

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

I have extensive experience litigating in a subject area that involves some of the most consequential and complex issues in criminal law. Many of these cases have literally involved life and death decisions. For almost two decades, it has been my duty to make difficult decisions whether sufficient evidence existed to bring criminal charges and what sentences should be sought consistent with justice and the law. While I have had the joy and honor of helping many victims and their families see justice carried out, I have also had the painful duty to explain to others that the evidence in a particular case was insufficient to file a charge or seek a particular punishment. Making these hard decisions has taught me that my duty, first and foremost, is to the rule of law, regardless of which side the law favors. In that way, I have already been in the position to make

many of the types of legally complicated and emotionally challenging decisions that judges are called upon to make every day. As a result, I believe I am well-prepared to serve as a circuit judge.

REFERENCES

73. List the names, addresses, e-mail addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for a judicial position and of whom inquiry may be made by the Commission and the Governor.

Name	*Address*	*Telephone Number*
Hon. R.J. Larizza State Attorney, 7th Judicial Circuit	251 N. Ridgewood Ave. Daytona Beach, FL 32114	[redacted]
Hon. Howard Maltz Circuit Judge, 7th Judicial Circuit	4010 Lewis Speedway, Rm. 344 St. Augustine, FL 32084	
Chief Rob Hardwick St. Augustine Beach Police Dept.	2300 A1A South St. Augustine, FL 32080	
Hon. Edward Hedstrom Circuit Judge (retired), 7th Judicial Circuit	601 St. Johns Ave. Palatka, FL 32177	
Hon. Chris France Circuit Judge, 7th Judicial Circuit	1769 E. Moody Blvd. Bunnell, FL 32110	
Hon. Matthew Foxman Circuit Judge, 7th Judicial Circuit	251 N. Ridgewood Ave. Daytona Beach, FL 32114	
Hon. Dennis Hollingsworth St. Johns Co. Tax Collector	4030 Lewis Speedway St. Augustine, FL 32084	
Hon. Joe Boatwright Putnam County Judge	410 St. Johns Ave. Palatka, FL 32177	
Hon. Frank Allman Circuit Judge, 2nd Judicial Circuit	301 S. Monroe St., Suite 301-B Tallahassee, FL 32301	
Sung Lee, Esq. Shorstein & Lee	305 Kingsley Lake Dr., #701 St. Augustine, FL 32092	

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 12th day of October, 2020.

Kenneth Mark Johnson
Printed Name

Signature

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . *The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.*

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

   Current Year-To-Date: $76,874.22 (2020)

   Last Three Years: $102,498.96 (2019) $99,583.06 (2018) $98,249.91 (2017)

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

   Current Year-To-Date: $76,874.22 (2020)

   Last Three Years: $102,498.96 (2019) $99,583.06 (2018) $98,249.91 (2017)

3. State the gross amount of income or loses incurred (before deducting expenses or taxes)

   Current Year-To-Date: $0.00

   Last Three Years: $0.00 $0.00 $0.00

4. State the amount you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

   Current Year-To-Date: $0.00

   Last Three Years: $0.00 $0.00 $0.00

5. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

   Current Year-To-Date: $0.00

   Last Three Years: $0.00 $0.00 $0.00

FORM 6
FULL AND PUBLIC

DISCLOSURE OF
FINANCIAL INTEREST

PART A – NET WORTH

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of October 10, 2020 was $342,119.88

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is $ $20,000.00

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Bank accounts [redacted]	$5,595.46
Florida Retirement Account (Investment Plan)	$208,915.78
Home [redacted] (Real Property)	$300,000.00
2019 Jeep Cherokee (Vehicle)	$18,000.00
2013 Chrysler Town & Country (Vehicle)	$2,500.00

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
[redacted] (Student Loan)	$48,697.31
[redacted] (Mortgage)	$148,151.86
[redacted] (Auto Loan)	$16,042.19

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D - INCOME

You may ***EITHER*** (1) file a complete copy of your latest federal income tax return, *including all W2's, schedules, and attachments,* ***OR*** (2) file a sworn statement identifying each separate source and amount of income which exceeds $1,000 including secondary sources of income, by completing the remainder of Part D, below.

☑ I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.
(if you check this box and attach a copy of your latest tax return, you need *not* complete the remainder of Part D.]

PRIMARY SOURCE OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTTITY	None	None	None
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE ☐

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

Mark [illegible]

SIGNATURE

STATE OF FLORIDA

COUNTY OF St. Johns

Sworn to (or affirmed) and subscribed before me this 14 day of Oct., 20 20 by _____

Michelle M. Smith

(Signature of Notary Public—State of Florida)

Michelle M. Smith

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ *OR* Produced Identification _____

Type of Identification Produced _____

MICHELLE M. SMITH
Commission # GG 081466
Expires June 19, 2021
Bonded Thru Troy Fain Insurance 800-385-7019

INSTRUCTIONS FOR COMPLETING FORM 6:

PUBLIC RECORD: The disclosure form and everything attached to it is a public record. **Your Social Security Number is not required and you should redact it from any documents you file.** If you are an active or former officer or employee listed in Section 119.071(4)(d), F.S., whose home address is exempt from disclosure, the Commission is required to maintain the confidentiality of your home address ***if you submit a written request for confidentiality.***

PART A – NET WORTH

Report your net worth as of December 31 or a more current date, and list that date. This should be the same date used to value your assets and liabilities. In order to determine your net worth, you will need to total the value of all your assets and subtract the amount of all of your liabilities. Simply subtracting the liabilities reported in Part C from the assets reported in Part B will not result in an accurate net worth figure in most cases.

To total the value of your assets, add:

(1) The aggregate value of household goods and personal effects, as reported in Part B of this form;

(2) The value of all assets worth over $1,000, as reported in Part B; and

(3) The total value of any assets worth less than $1,000 that were not reported or included in the category of "household goods and personal effects."

To total the amount of your liabilities, add:

(1) The total amount of each liability you reported in Part C of this form, except for any amounts listed in the "joint and several liabilities not reported above" portion; and,

(2) The total amount of unreported liabilities (including those under $1,000, credit card and retail installment accounts, and taxes owed).

PART B – ASSETS WORTH MORE THAN $1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

The value of your household goods and personal effects may be aggregated and reported as a lump sum, if their aggregate value exceeds $1,000. The types of assets that can be reported in this manner are described on the form.

ASSETS INDIVIDUALLY VALUED AT MORE THAN $1,000:

Provide a description of each asset you had on the reporting date chosen for your net worth (Part A), that was worth more than $1,000 and that is not included as household goods and personal effects, and list its value. Assets include: interests in real property; tangible and intangible personal property, such as cash, stocks, bonds, certificates of deposit, interests in partnerships, beneficial interest in a trust, promissory notes owed to you, accounts received by you, bank accounts, assets held in IRAs, Deferred Retirement Option Accounts, and Florida Prepaid College Plan accounts. You are not required to disclose assets owned solely by your spouse.

How to Identify or Describe the Asset:

— Real property: Identify by providing the street address of the property. If the property has no street address, identify by describing the property's location in a manner sufficient to enable a member of the public to ascertain its location without resorting to any other source of information.

— Intangible property: Identify the type of property and the business entity or person to which or to whom it relates. **Do not list simply "stocks and bonds" or "bank accounts."** For example, list "Stock (Williams Construction Co.)," "Bonds (Southern Water and Gas)," "Bank accounts(First

National Bank)," "Smith family trust," Promissory note and mortgage (owed by John and Jane Doe)."

How to Value Assets:

— Value each asset by its fair market value on the date used in Part A for your net worth.

— Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. However, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.

— Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.

— Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.

— Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.

— Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.

— Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.

— Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by "buy-out" agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.

— Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

PART C—LIABILITIES

LIABILITIES IN EXCESS OF $1,000:

List the name and address of each creditor to whom you were indebted on the reporting date chosen for your net worth (Part A) in an amount that exceeded $1,000 and list the amount of the liability. Liabilities include: accounts payable; notes payable; interest payable; debts or obligations to governmental entities other than taxes (except when the taxes have been reduced to a judgment); and judgments against you. You are not required to disclose liabilities owned *solely* by your spouse.

You do not have to list on the form any of the following: credit card and retail installment accounts, taxes owed unless the taxes have been reduced to a judgment), indebtedness on a life insurance policy owned to the company of issuance, or contingent liabilities. A "contingent liability" is one that will become an actual liability only when one or more future events occur or fail to occur, such as where you are liable only as a partner (without personal liability) for partnership debts, or where you are liable only as a guarantor, surety, or endorser on a promissory note. If you are a "co-maker" on a note and have signed as being jointly liable or jointly and severally liable, then this is not a contingent liability.

How to Determine the Amount of a Liability:

— Generally, the amount of the liability is the face amount of the debt.

— If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.

— If you are jointly and severally liable with another person or entity, which often is the case where more than one person is liable on a promissory note, you should report here only the portion of the liability that corresponds to your percentage of liability. *However*, if you are jointly and severally liable for a debt relating to property you own with one or more others as tenants by the entirely or jointly, with right of survivorship,

report 100% of the total amount owed.

— If you are only jointly (not jointly and severally) liable with another person or entity, your share of the liability should be determined in the same way as you determined your share of jointly held assets.

Examples:

— You owe $10,000 to a bank for student loans, $5,000 for credit card debts, and $60,000 with your spouse to a saving and loan for the mortgage on the home you own with your spouse. You must report the name and address of the bank ($10,000 being the amount of that liability) and the name and address of the savings and loan ($60,000 being the amount of this liability). The credit cards debts need not be reported.

— You and your 50% business partner have a $100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and $50,000 as the amount of the liability. If your liability for the loan is only as a partner, without personal liability, then the loan would be a contingent liability.

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

List in this part of the form the amount of each debt, for which you were jointly and severally liable, that is not reported in the "Liabilities in Excess of $1,000" part of the form. Example: You and your 50% business partner have a $100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and $50,000 as the amount of the liability, as you reported the other 50% of the debt earlier.

PART D – INCOME

As noted on the form, you have the option of either filing a copy of your latest federal income tax return, including all schedules, W2's and attachments, with Form 6, or completing Part D of the form. If you do not attach your tax return, you must complete Part D.

PRIMARY SOURCES OF INCOME:

List the name of each source of income that provided you with more than $1,000 of income during the year, the address of that source, and the amount of income received from that source. The income of your spouse need not be disclosed; however, if there is a joint income to you and your spouse from property you own jointly (such as interest or dividends from a bank account or stocks), you should include all of that income.

"Income" means the same as "gross income" for federal income tax purposes, even if the income is not actually taxable, such as interest on tax-free bonds. Examples of income include: compensation for services, gross income from business, gains from property dealings, interest, rents, dividends, pensions, IRA distributions, distributive share of partnership gross income, and alimony, but not child support. Where income is derived from a business activity you should report that income to you, as calculated for income tax purposes, rather than the income to the business.

Examples:

— If you owned stock in and were employed by a corporation and received more than $1,000 of income (salary, commissions, dividends, etc.) from the company, you should list the name of the company, its address, and the total amount of income received from it.

— If you were a partner in a law firm and your distributive share of partnership gross income exceeded $1,000, you should list the name of the firm, its address, and the amount of your distributive share.

— If you received dividend or interest income from investments in stocks and bonds, list only each individual company from which you received more than $1,000. Do not aggregate income from all of these investments.

— If more than $1,000 of income was gained from the sale of property, then you should list as a source of income the name of the purchaser, the purchaser's address, and the amount of gain from the sale. If the purchaser's

identity is unknown, such as where securities listed on an exchange are sold through a brokerage firm, the source of income should be listed simply as "sale of (name of company) stock," for example.

— If more than $1,000 of your income was in the form of interest from one particular financial institution (aggregating interest from all CD's, accounts, etc., at that institution), list the name of the institution, its address, and the amount of income from that institution.

SECONDARY SOURCE OF INCOME:

This part is intended to require the disclosure of major customers, clients, and other sources of income to businesses in which you own an interest. It is not for reporting income from second jobs. That kind of income should be reported as a "Primary Source of Income." You will ***not*** have anything to report ***unless***:

(1) You owned (either directly or indirectly in the form of an equitable or beneficial interest) during the disclosure period, more than 5% of the total assets or capital stock of a business entity (a corporation, partnership, limited partnership, LLC, proprietorship, joint venture, trust, firm, etc., doing business in Florida); and

(2) You received more than $1,000 in gross income from that business entity during the period.

If your ownership and gross income exceeded the two thresholds listed above, then for that business entity you must list every source of income to the business entity which exceeded 10% of the business entity's gross income (computed on the basis of the business entity's more recently completed fiscal year), the source's address, the source's principal business activity, and the name of the business entity in which you owned an interest. You do not have to list the amount of income the business derived from that major source of income.

Examples:

— You are the sole proprietor of a dry cleaning business, from which you received more than $1,000 in gross income last year. If only one customer, a uniform rental company, provided more than 10% of your dry cleaning business, you must list the name of your business, the name of the uniform rental company, its address, and its principal business activity (uniform rentals).

— You are a 20% partner in a partnership that owns a shopping mall and your gross partnership income exceeded $1,000. You should list the name of the partnership, the name of each tenant of the mall that provided more than 10% of the partnership's gross income, the tenant's address and principal business activity.

PART E – INTERESTS IN SPECIFIED BUSINESS

The types of businesses covered in this section include: state and federally chartered banks; state and federal savings and loan associations; cemetery companies; insurance companies; mortgage companies, credit unions; small loan companies; alcoholic beverage licensees; pari-mutuel wagering companies; utility companies; and entities controlled by the Public Service Commission; and entities granted a franchise to operate by either a city or a county government.

You are required to make this disclosure if you own or owned (either directly or indirectly in the form of an equitable or beneficial interest) at any time during the disclosure period, more than 5% of the total assets or capital stock of one of the types of business entities listed above. You also must complete this part of the form for each of these types of business for which you are, or were at any time during the year an officer, director, partner, proprietor, or agent (other than a resident agent solely for service of process).

If you have or held such a position or ownership interest in one of these types of businesses, list: the name of the business, its address and principal business activity, and the position held with the business (if any). Also, if you own(ed) more than a 5% interest in the business, as described above, you must indicate that fact and describe the nature of your interest.

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: October 12, 2020

JNC Submitting To: Seventh Judicial Circuit

Name (please print): Kenneth Mark Johnson

Current Occupation: Assistant State Attorney

Telephone Number: [redacted] Attorney No.: 378320

Gender (check one): ☑ Male ☐ Female

Ethnic Origin (check one):
- ☑ White, non-Hispanic
- ☐ Hispanic
- ☐ Black
- ☐ American Indian/Alaskan Native
- ☐ Asian/Pacific Islander

County of Residence: St. Johns

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR
FDLE TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Kenneth Mark Johnson
Printed Name of Applicant

Signature of Applicant

Date: October 12, 2020

TAB 3

https://www.news4jax.com/news/florida/st-johns-county/jury-recommends-death-penalty-for-james-colley-jr

News4JAX

St Johns County

Jury recommends death penalty for James Colley Jr.

St. Johns County man gunned down wife, her best friend in 2015 rampage
By Francine Frazier - Senior web producer, Elizabeth Campbell - Reporter
Posted: 12:28 PM, July 25, 2018Updated: 11:41 PM, July 25, 2018

ST. AUGUSTINE, Fla. - James Colley Jr. should be executed by the state for the 2015 shooting deaths of his estranged wife and her best friend. The jury that convicted Colley last week of the murders of Amanda Colley, 36, and Lindy Dobbins, 39, took less than three hours to return the unanimous recommendation of the death penalty in both murders.

Assistant State Attorney Jennifer Dunton called the jury's recommendation "bittersweet." "It's not an easy process the jury has go through, but we're very happy they considered case the same way we did and it brings some measure of justice and closure for Amanda and Lindy."

Circuit Judge Howard Maltz will consider the jury's recommendation, along with arguments presented by the prosecution and defense, and will hand down his sentence for Colley, 38, at a later date.

Colley will have a Spencer hearing on Oct. 2, which gives him another chance to present evidence that could convince Maltz to set aside the jury's recommendation and sentence him to life. Maltz can still choose to do so, but that would be an unusual decision, considering the unanimous recommendation that is now required for any death penalty sentence in Florida.

Death or life?

Assistant State Attorney Kenneth Johnson argued Wednesday that Colley had plenty of chances on Aug. 27, 2015, to decide not to murder his estranged wife, but instead he continued with the shooting

rampage because "he was on a mission." That rampage also claimed the life of Amanda Colley's best friend, Lindy Dobbins.

Johnson said Colley planned the shooting because he was losing control of Amanda, who was in a relationship with someone new, and Colley couldn't let her go.

"Remember that real people were involved. They were human beings, and now they're dead. They're dead because of one man -- the selfish choices he made," Johnson said, pointing at Colley in court.

The jury decided the state successfully proved the murders were "cold, calculated and premeditated," and also "heinous, atrocious and cruel" -- two of the aggravating factors that could warrant the death penalty.

To prove his point about the heinous nature of the crimes, Johnson recounted the brutal details of the murders, including the nine gunshot wounds Amanda suffered, and again played the 911 calls that recorded the women's deaths and their pleas for Colley to stop.

Johnson said Colley had "no conscience, no pity" as he repeatedly pulled the trigger.

"Whatever he thought about Amanda Colley, he was not the judge, jury and executioner of her character. What she did, did not deserve a death sentence," Johnson said.

But what Colley did does, he argued.

The jury unanimously agreed, despite the defense's plea that they show mercy and recommend Colley spend the rest of his life in prison.

The three other aggravating factors the state argued were already proven when the jury convicted Colley last week of two counts of first-degree murder, two counts of attempted first-degree murder, two burglary counts and a count of aggravated stalking, Johnson said:

1. Colley was previously (or simultaneously) convicted of a capital felony or felony involving use of violence.
2. The murders were committed while Colley was in the commission of a burglary.
3. The victim had an injunction against the killer at the time of the murder (applies only to Amanda Colley).

The jury said the state proved all of the aggravating factors beyond a reasonable doubt and that although some mitigating circumstances existed, they did not outweigh the aggravating factors.

TAB 4

NEWS CHIEF

Jury deliberates whether Luis Toledo should live or die

By Frank Fernandez

Posted Nov 3, 2017 at 8:38 PM

Updated Nov 3, 2017 at 8:39 PM

ST. AUGUSTINE — Jurors have begun deciding whether to recommend that Luis Toledo be sentenced to death for killing two children or spend the rest of his life in prison.

Luis Toledo, 35, was convicted of second-degree murder a week ago for killing his wife, Yessenia Suarez, 28. He faces up to life on that charge. Toledo also was convicted of first-degree murder in the deaths of her children Thalia Otto, 9, and Michael Elijah Otto, 8.

The same panel of nine women and three men that convicted Toledo began deliberating at 2:53 p.m. on whether he should receive the death penalty.

Assistant State Attorney Mark Johnson told jurors during his closing arguments that Toledo killed the children to eliminate them as witnesses in hopes of avoiding arrest for killing their mother.

"There can be nothing more cold-hearted than the murder of an innocent child," Johnson said.

Defense attorney Michael Nielsen asked jurors to think of Toledo as a bird in their palm.

"Luis is in your hand and you have a choice to make," Nielsen said. "You can either vote that he should be killed and tossed away or you can take that little Luis bird and put him in a tiny little cage. Let him go for the rest of his life in misery in a little cage. You have that choice."

The killings took place four years ago as Toledo's marriage with Suarez came apart. Suarez worked in human resources at American K9 in Lake Mary and was on track to graduate from Rollins College in the spring of 2014. She was unhappy with the marriage to Toledo and the recurring conflicts.

Suarez had an affair with a co-worker named Kevin Dredden at American K9, consummating it during a business trip to Alabama in early October 2013. She also told Toledo she wanted a divorce. Toledo suspected she was having an affair and installed spyware on her phone.

Toledo confirmed his suspicions of an affair on Oct. 22, 2013. Prosecutors said the next morning, between 1:03 a.m. and 5 or 5:30 a.m., Toledo killed his wife and then killed the children to eliminate them as witnesses.

Toledo then disposed of the bodies which have not been found.

Jurors are now working on their final task in the trial which began with jury selection on Oct. 2 at the Richard O. Watson Judicial Center. Jurors must first unanimously agree that there is at least one aggravating factor that supports imposing death on Toledo. If they agree on that, then they must weigh aggravating factors versus mitigating circumstances.

Under a new state law, jurors must unanimously recommend death for the judge to have the option of imposing death. If the jury vote is not unanimous, then Toledo must be sentenced to life in prison without parole.

Johnson, who is working the case along with Ryan Will, gave the jurors several aggravating factors during his closing arguments:

- Toledo killed the two children to eliminate them as witnesses and avoid arrest.
- The murders were cold, calculated and premeditated.
- The children were younger than 12.
- The children were particularly vulnerable because Toledo was in a position of familial or custodial authority over them.
- Toledo had a prior violent felony in 1999 when he and two other men armed themselves with a gun and burst into a man's home in Davie, robbing him of some jewels and other items. The murder of Suarez also counts for this aggravator as does the murder of either one of the children.

Johnson, in his closing, said there was no excuse for the killing of the innocent children. Johnson said kids when they get scared in the middle of the night run to their parent's room.

"On this particular night when they went to their mother's and defendant's bedroom they were running to a death trap," Johnson said.

Blood spots found in the home showed that Toledo first attacked Thalia just outside the master bathroom. The spots show she fell to the floor and was hit again. She tried to escape into the master bathroom. That's where Toledo finished off the girl, Johnson said.

Nielsen, who defended Toledo along with Jeff Deen and Michael Nappi, argued in his closing that defense psychological experts said Toledo had a damaged frontal lobe from traumatic brain injuries and concussions he had suffered throughout his life. That brain damage kept him from being able to control his impulses. Nielsen also said that Toledo was admitted to a mental health hospital for seven months when he was 9-years-old. He said records showed Toledo suffered from bipolar disorder.

Johnson argued that his own expert had said that the defense expert could not say that Toledo had brain damage simply based on a PET scan. He also said there was no medical record that Toledo had ever suffered a traumatic brain injury and the only time he was diagnosed with bipolar disorder was while in prison. He had not been diagnosed with that since his release in 2007.

TAB 5

https://www.news4jax.com/news/local/jury-votes-12-0-for-death-penalty-in-fsu-students-killing

News4JAX

Jury votes 12-0 for death penalty in FSU student's killing

Prison escapee convicted of kidnapping man, dumping body in St. Augustine

Posted: 10:40 PM, February 18, 2014; Updated: 10:40 PM, February 18, 2014

ST. JOHNS COUNTY, Fla. - A 12-member jury has unanimously recommended the death penalty for a man it convicted last month of kidnapping and murdering a Florida State University student.

Quentin Truehill, 26, was the first of three suspects to stand trial in the killing of Vincent Binder (pictured below) in 2010. The jury that convicted Truehill of first-degree murder spent hours Friday deliberating whether to recommend the death penalty or let him face life in prison without parole.

The sentencing phase of the trial lasted all week, with testimony from both sides. The judge will make the ultimate decision on sentencing sometime in the next few weeks.

Vincent Binder

"The jury sent a very strong message with a unanimous 12-vote verdict. So we are pleased that finally at lea one measure of justice has been done," Assistant State Attorney Mark Johnson said.

A large group of Binder's family was in the courtroom to hear the killer's suggested sentence.

"It's a bittersweet moment for them," Johnson said. "A trial like this reminds them of what they have lost. H was a very unique individual. He had a bright future ahead of him."

Truehill, Peter Hughes, 26, and Kentrell Johnson, 43, (pictured below) were jail escapees from Louisiana.

Binder was abducted in Tallahassee and his body was dumped along State Road 16 in St. Augustine. It becom known in court that Binder died of multiple stab wounds.

After friends reported Binder missing on April 8, 2010, the Tallahassee Police Department said it bega reviewing Binder's phone and financial information. The review led investigators to Miami.

St. Johns County Sheriff's Office booking photos of Peter Hughes and Kentrell Johnson

Tallahassee police said they were notified by the South Florida U.S. Marshals Violent Fugitive Task Force that it had located a stolen pickup truck believed to be used by three prison escapees from Louisiana. Investigators linked the three fugitives to Tallahassee and possibly to the disappearance of Binder.

U.S. marshals apprehended the fugitives on April 12, 2010.

Investigators said they later received information from one of the fugitives that further linked them to Binder's disappearance.

Florida Department of Law Enforcement agents searching for evidence in conjunction with the case found Binder's body in a field near the intersection of Interstate 95 and State Road 16.

Hughes and Johnson are awaiting trials. The state will also seek the death penalty in their cases if they're convicted.

TAB 6

THE ST. AUGUSTINE RECORD
staugustine.com
COVERING THE ANCIENT CITY AND ST. JOHNS COUNTY SINCE 1894

Sentencing in Bush case scheduled for December

By Jared Keever
Posted Nov 4, 2017 at 12:01 AM

The St. Johns County courthouse saw two death penalty murder cases inch toward conclusion Friday morning as jurors were set to decide the fate of a Volusia County defendant who was convicted of three counts of murder last month, and Circuit Judge Howard Maltz heard witness testimony and attorneys' final arguments before deciding whether to affirm or override a jury's decision to impose the death sentence in the state's case against Sean Alonzo Bush.

It was a busy day for Assistant State Attorney Mark Johnson who, in a brief set of arguments Friday morning at the conclusion of what is called a Spencer hearing, told Maltz that he believed the five aggravating factors that the he and Assistant State Attorney Jennifer Dunton proved to a jury in August were sufficient for imposition of the death penalty for Bush, who was convicted earlier that same month of killing his estranged wife, Nicole Bush.

Less than an hour after appearing before Maltz in the third-floor courtroom, Johnson was scheduled to be on the second floor of the courthouse appearing before a jury and Circuit Judge Raul Zambrano to make closing arguments in the penalty phase of the case against Luis Toledo, who was convicted last of killing his wife and her two children in 2013. The state is seeking the death penalty.

(For more on that Volusia County case, see the story on page 3.)

Jurors convicted Bush in early August of first-degree murder for killing Nicole Bush, who was found shot, beaten with an aluminum baseball bat and stabbed in her Julington Creek home in May 2011. She died later that same day in a Jacksonville hospital.

Jurors voted unanimously for a death sentence on Aug. 17 after finding that, among other things, the murder was done for financial gain, was "heinous, atrocious and cruel," and was "cold, calculated and premeditated."

Johnson told Maltz Friday that it was those last two factors that were the most important in the case. Not only had Bush planned the killing, Johnson argued, by searching the Internet for ways to build to silencer for a gun and disconnecting the security system in Nicole Bush's home, but when shooting her six times did not kill her, he "transitioned" to the "heinous, atrocious and cruel" act of trying to beat her to death with the bat.

"This is a proportionate sentence," Johnson said.

Most of the morning's hearing though was given over to Bush's defense attorney Rosemarie Peoples, with the Public Defender's Office, who, just as she had in the penalty phase, argued that Bush's difficult childhood in Newark, New Jersey, where he was raised, virtually homeless, by a schizophrenic mother and was witness to, and victim of, various forms of abuse was a sufficient mitigating factor to spare her client's life.

She also called a former prison warden who testified that Bush appears to have adjusted to a life of incarceration and would be a benefit to the general population in a state prison where he could mentor younger inmates instead of living out his last days in near-solitary confinement on death row.

In her closing argument, Peoples argued that Bush was not among the "worst of the worst" defendants for whom the death penalty should be reserved and pointed to infamous Florida defendants, Ted Bundy and Danny Rolling, for contrast.

She also drew on trial testimony from the first responding Sheriff's deputy at the scene, who testified that Nicole Bush said, before she died, that she did not know who attacked her.

In one of the only times he as spoken at length during courtroom proceedings, Bush told Maltz that he feels "horrible for the family," but said he did not kill his wife.

"While I appreciate the magnitude of the situation, I am innocent and I maintain that," he said.

Maltz scheduled sentencing in the case for Dec. 18.

TAB 7

THE ST. AUGUSTINE RECORD
staugustine.com
COVERING THE ANCIENT CITY AND ST. JOHNS COUNTY SINCE 1894

Murder trial 'like movie script' with man facing possibility of execution if found guilty

By Douglas Jordan
Posted May 24, 2012 at 12:01 AM

Timothy Fletcher, who had been listening intently and taking notes, lowered his head and stared at his yellow legal pad as Putnam County Sheriff's Detective Lynn Nicely described finding the body of 66-year-old Helen Key Googe - Fletcher's step-grandmother - face down in her living room on April 15, 2009.

Fletcher, 28, is charged with the first-degree murder of Googe, along with escape from the Putnam County jail, home invasion robbery, grand theft of a motor vehicle and burglary of a motor vehicle.

He has pleaded not guilty.

A jury of seven men and five women will decide Fletcher's fate in the capital murder case. If he is convicted, Fletcher faces death by lethal injection or life in prison.

His escape along with his cell mate, Doni Ray Brown, reads like a movie script and resulted in a nationwide manhunt that made headlines all over the country. The pair made it all the way to Kentucky before they returned to Putnam County, where they were caught three days later.

Fletcher's trial, which began Wednesday after two days of jury selection, was moved to St. Augustine because of publicity surrounding the escape and crime spree in Putnam County.

Looking gaunt and chewing gum, he stood before Circuit Court Judge Wendy Berger dressed in a light gray shirt, dark slacks and a blue tie. Occasionally whispering to his attorney, he remained stone-faced through the proceedings.

Assistant state attorneys Mark Johnson and Jason Lewis called 14 witness during preliminary testimony in the trial, which is expected to continue through the week.

Much of Wednesday's early testimony was related to the escape, which afterward pointed to serious security issues at the Putnam County jail, resulting in multiple disciplinary actions, the resignation of the jail director and the firing of one corrections officer.

The state alleges that the two men broke out of the jail, located in Palatka, around 2 a.m. on April 15, 2009.

According to a sheriff's investigation report, Fletcher had smuggled a car jack back into the jail that he had stolen from a jail transport van after a court appearance. He had been wearing a cast on his left leg, which helped him conceal it from corrections officers.

It was also disclosed during an investigation that Fletcher had not been patted down before re-entering the jail and being placed into a holding cell.

Johnson showed the jury video footage of Fletcher, who appeared to be laboring to hide something, in the holding cell with other prisoners.

Once back inside, Fletcher stuffed the jack in an overhead fixture in his cell, where it stayed for 12 days before the pair made their escape.

The men reportedly used the jack to remove a sink and toilet in the cell, then sneaked through a utility hallway to an outside door. Outside, they made their way under one fence, then climbed through another that was rusty and in a state of disrepair.

According to authorities, the escapees then ran across a field and tried unsuccessfully to steal at least two vehicles before grabbing a red and white pickup truck from Louis Tire Store on Highway 17 North. Next, they drove it to Googe's home in Bardin, where Fletcher once lived.

Authorities say the two men killed Googe, who had worked for the Putnam County Tax Collector's office for more than 30 years prior to her retirement, and stole her Lincoln Town Car, heading across several states. Her car was later found in Kentucky, prompting police to go to her home, where they found her body.

Fletcher had originally been in jail after being arrested on March 3, 2009, on three counts of failure to appear on an aggravated assault charge, and Brown had been arrested Aug. 17, 2008, and charged with robbery with a firearm.

State testimony continues through this week, after which the defense will present its case.

TAB 8

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA

v. CASE NO. 2010-763-CF

QUENTIN M. TRUEHILL,

Defendant.
_____/

STATE'S SENTENCING MEMORANDUM

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and files this sentencing memorandum to present the State's legal authority, facts and argument supporting the imposition of the death penalty in this cause as follows:

CASE HISTORY

On May 10, 2010, a St. Johns County Grand Jury returned a True Bill and Indictment against the Defendant, Quentin Marcus Truehill, for Kidnapping to Facilitate a Felony and First Degree Murder. Upon presentment of the charging documents to the Circuit Court, an arrest warrant was issued. On May 14, 2010, the Defendant was arrested in Leon County, Florida, and transported to St. Johns County to stand trial for the these charges.

Jury selection began on Monday, February 3, 2014. On Tuesday, February 18, 2014, the jury chosen returned verdicts of guilty as charged on both counts. The penalty phase commenced on Monday, March 3, 2014, and during that phase the State requested and the Court allowed the jury to be presented with evidence and to receive argument as to the following six (6) aggravating circumstances:

1. The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment.

2. The Defendant was previously convicted of a felony involving the use or threat of violence to the person.

3. The capital felony was committed while the Defendant was engaged, or an accomplice, in the commission of . . . a kidnapping and/or robbery.

4. The capital felony was committed for the purpose of avoiding or preventing a lawful arrest.

5. The capital felony was especially heinous, atrocious or cruel.

6. The capital felony was a homicide and was committed in a cold, calculated and premeditated manner without the pretense of moral or legal justification.

In an effort to establish mitigating circumstances, the defense presented a number of witnesses and items of evidence during the penalty phase of the trial and a Spencer hearing. The evidence submitted by the defense primarily involved allegations and opinions regarding the Defendant's age, childhood, mental condition, and life experiences. The primary piece of evidence presented in mitigation was the testimony of Dr. Frederick Sautter, a psychologist from New Orleans, Louisiana, who opined that, as a

result of a number of traumatic events, the Defendant suffered from posttraumatic stress disorder that he alleged had a substantial influence on him during the commission of the crimes in question.

At the conclusion of the presentation of evidence and closing arguments, the jury retired and returned with an advisory verdict that recommended the death penalty by a unanimous vote of 12-0. This Court must now consider the evidence and argument presented at the guilt and penalty phases of the trial and at the Spencer hearing in accordance with the law to determine whether the appropriate sentence in this case is a sentence of life in prison without the possibility of parole or the death penalty.

AGGRAVATING CIRCUMSTANCES

1. **Florida Statutes § 921.141(5)(a): The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment.**

2. **Florida Statutes § 921.141(5)(b): The Defendant was previously convicted of a felony involving the use or threat of violence to the person.**

The existence of these aggravating circumstances is proven by the admission of certified copies of the Defendant's convictions and sentences for the crimes of Armed Robbery and Manslaughter. At the time of his escape from the Avoyelles Parish Jail in Marksville, Louisiana and the murder of Vincent Binder, the Defendant was serving a sentence of 40 years hard labor out of Rapides Parish, Louisiana, for crime of Armed Robbery and 30 years hard labor out of Lafayette Parish, Louisiana, after being convicted

of Manslaughter. In the Armed Robbery conviction, the Defendant was sentenced on June 23, 2007. He was sentenced on the Manslaughter conviction on July 21, 2007.

In addition to the certified convictions, the State presented the testimony of Kristine Keegan, a qualified fingerprint examiner with the St. Johns County Sheriff's Office. Ms. Keegan compared the Defendant's known fingerprints to those attached to the certified copy of the Armed Robbery conviction and testified during the penalty phase that they matched.

Former Assistant District Attorney Keith Stutes from Lafayette Parish, Louisiana also identified the Defendant in court as the person who pleaded guilty to and was convicted of Manslaughter. Mr. Stutes also testified that, during the plea colloquy in that case, the Defendant admitted to shooting the victim in the face, then, after the victim fell to the ground, standing over the victim and shooting him three more times in the chest. This evidence demonstrated beyond a reasonable doubt that, while the Defendant may have pleaded to the charge of Manslaughter, the crime involved a greater violent offense. *See Miller v. State*, 42 So.3d 204, 225-26 (Fla. 2010).

With this evidence, the State has proven these aggravating circumstances beyond any reasonable doubt. The Florida Supreme Court has observed that the "prior violent felony" aggravator is one of the "most weighty in Florida's sentencing calculus." *Sireci v. Moore*, 825 So.2d 882, 887 (Fla. 2002). For this reason and those outlined above, the State submits that the Court should give this aggravating circumstance great weight.

3. **Florida Statutes § 921.141(5)(d): The capital felony was committed while the Defendant was engaged, or an accomplice, in the commission of . . . a kidnapping and/or robbery.**

The State has also proven this aggravating factor beyond a reasonable doubt. Evidence was submitted to the jury that the murder of Vincent Binder occurred during the commission of both a kidnapping and a robbery.

During the guilt phase of the trial, Beth Frady and Rebecca Edwards testified that at approximately midnight on April 1-2, 2010, Vincent Binder left their apartment in Tallahassee to walk home. Video from a surveillance camera was also introduced showing the Defendant at an ATM inside the Half Time Keg convenience less than 30 minutes later. Also admitted into evidence were credit card records that revealed that the Defendant had used the ATM at that time and location to withdraw $160.00 from Binder's credit card account. Importantly, Vincent Binder never appeared on the store surveillance video using his credit card.

Binder's wallet was later found in a pair of jeans located in a Miami hotel where the Defendant was staying. The victim's credit card and driver's license were seized at a Miami Wachovia bank where the Defendant personally attempted to withdraw $1,300.00 from the victim's bank account.

On April 28, 2010, Vincent Binder's deceased body was found lying in a vacant field on Commercial Drive in St. Augustine, approximately 200 miles away from Tallahassee. Dr. Frederick Hobin, who performed an autopsy on Binder's body, testified that Binder has suffered approximately 5-10 chopping-type injuries to the head that were

consistent with a Rambo-style knife that was found covered in the victim's blood in Miami. Dr. Hobin also found that they victim had suffered multiple defensive injuries to his left arm, hands, and fingers.

Dr. Hobin also testified that the injuries inflicted on Vincent Binder would have caused a substantial amount of bleeding. Philipp Balunan, a crime scene technologist with the Florida Department of Law Enforcement, processed the black Chevy truck that the Defendant and his cohorts used to travel from Louisiana, through Tallahassee and St. Augustine, to Miami. At trial, Mr. Balunan testified that he processed or visually inspected both the interior and exterior of the truck, including the truck bed, for the presence of blood and found none. This evidence proves beyond a reasonable doubt that the Defendant and his cohorts kidnapped Vincent Binder from Tallahassee, robbed him of his credit card, used his credit card at multiple locations between Tallahassee and Miami, and transported Binder alive to St. Augustine, where they murdered him during the commission of the ongoing kidnapping and robbery.

Notwithstanding the above, the proof of this aggravating circumstance is most clearly reflected by the jury's unanimous verdict finding the Defendant guilty of Kidnapping beyond a reasonable doubt. As summarized, this verdict was supported by an overwhelming array of evidence presented during the guilt phase of the trial. Accordingly, this Court should give this aggravator great weight.

4. Florida Statutes § 921.141(5)(e): The capital felony was committed for the purpose of avoiding or preventing a lawful arrest.

The State asserts that this aggravating factor applies because the dominant motive for the murder of Vincent Binder was to eliminate him as a witness to the Defendant's crimes. This aggravating circumstance has been repeatedly upheld in cases where the victim was abducted from the scene of one crime and then taken to a remote area and killed for no other apparent motive. *See Jones, v. State*, 748 So.2d 1012, 1027 (Fla. 199); *Preston v. State*, 607 So.2d 404, 409 (Fla. 1993); *Hall v. State*, 614 So.2d 473, 477 (Fla. 1993); *Routly v. State*, 440 So.2d 1257 (Fla. 1983). *See also*, *Cole v. State*, 36 So.3d 597, 607-08 (Fla. 2010); *Card v. State*, 803 So.2d 613, 625-26 (Fla. 2001).

In *Jones v. State*, 748 So.2d at 1027, the Florida Supreme Court ruled that the "avoid arrest" aggravator was supported by competent, substantial evidence based on the following findings by the trial court in that case:

> "[T]he facts are clear that the Defendant selected [the victim] . . . in order to rob her and obtain money to purchase to crack cocaine . . . . However, there was [no] reason for the Defendant to kill the victim after he had obtained her money to buy crack cocaine. The Defendant had abducted the victim from the parking lot in Duval County and had used the victim's ATM card approximately two hours later in Nassau County, where he extracted $300 from the ATM machine. He could not have used this card any other way than obtaining the PIN number from the victim. Once the money had been obtained from the machine the Defendant had no reason to kill the victim, yet he transported her to Baker County where her body was left in a wooded area . . . . By transporting [the victim] to the remote location in Baker County where he killed her, the only reasonable inference that the Court can glean from the evidence was that he intended to eliminate her as a witness to [the] crime."

These facts are virtually identical to those the State has proven in the instant case. Video evidence presented at trial shows beyond a reasonable doubt that the Defendant kidnapped Vincent Binder and, less than 30 minutes later, used his credit card at an ATM machine inside the Half Time Keg convenience store in Tallahassee. The purpose for obtaining this money was to finance the Defendant's continuous escape from custody. Credit card records show that the Defendant was able to withdraw $160.00 from the ATM machine. The records also show that Binder's credit card was used to obtain more money from a number of ATM machines in the Miami / Opa Locka, Florida area. The Defendant could not have withdrawn this money from these ATM machines without obtaining the PIN number from Vincent Binder.

Once the Defendant was able to obtain the PIN number to Vincent Binder's credit card and was able to use it successfully to withdraw money from the ATM in Tallahassee, there was absolutely no reason to kill him. However, the Defendant continued to confine Binder in the back of the black Chevy truck, which was used to transport him to St. Augustine. Once there, the Defendant and his collaborators drove him to a dark, isolated field and murdered him.

Accordingly, there can be no reasonable doubt that the Defendant's dominate motive for killing Vincent Binder was to eliminate him as a witness. The State submits that this aggravating circumstance should be given <u>great weight.</u>

5. Florida Statutes § 921.141(5)(h): The capital felony was especially heinous, atrocious, or cruel.

In *Rogers v. State*, the Florida Supreme Court held:

> In order for the HAC aggravating factor to apply, the murder must be conscienceless or pitiless and unnecessarily torturous to the victim. A finding of HAC is appropriate only when a murder evinces extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another.

783 So.2d 980, 994 (Fla. 2003) (citations omitted). The evidence presented during the guilt phase of this trial leaves this Court with no reasonable doubt that the murder of Vincent Binder was characterized by all the elements of this definition. Accordingly, a finding of HAC in this case is appropriate.

The evidence introduced at trial clearly shows that shortly after midnight on April 2, 2010, the Defendant, along with Kentrell Johnson and Peter Hughes, kidnapped Vincent Binder as he was walking home from his friends' apartment in Tallahassee. After successfully using Binder's credit card at an ATM machine minutes later, the Defendant and his partners in crime continued to confine Binder to the back of the black Chevy pickup truck they had stolen in Louisiana, rather than releasing him unharmed.

They then transported Binder from Tallahassee to St. Augustine, a journey of over 200 miles that took between five (5) and six (6) hours. Binder was alive for the entirety of this trip, throughout which he had an extraordinarily long time to contemplate not only the probability that he was going to die, but also how death would be inflicted on him.

Twice before arriving in St. Augustine, the Defendant and his cohorts stopped to use Binder's credit card to buy gas and ask for directions, each time raising, and then extinguishing Binder's hope that he would be released alive.

Sometime before dawn, the Defendant and his accomplices decided that the time had come to dispose of Vincent Binder. They pulled off of I-95 at State Road 16 in St. Augustine and snaked their way to Commercial Drive, where they found a vacant field. They then pulled over and removed Binder from the truck. Based on the distance between the roadway and the location where Binder's mutilated body would later be found, the evidence shows that the Defendant and his accomplices then either led or chased Binder over 450 feet across the field where they executed him with at least two (2) knives.

Vincent Binder did not die a quick and easy death. To the contrary, the evidence shows that he suffered great physical and emotional pain as he fought for his life against impossible odds.

During the trial, Dr. Frederick Hobin, a forensic pathologist who performed an autopsy on the body of Vincent Binder, testified that the victim suffered between five (5) and ten (10) blows to the head with a heavy, sharp instrument; four stab wounds to the left lower back with a second knife; a broken left arm; and between two and four incised and hacking wounds to his hands and fingers. Dr. Hobin also testified that the injuries to Binder's left arm, hands, and fingers were consistent with the victim, in a struggle against his attackers, raising his arm and hands over his head in a defensive posture to protect

himself from the blows of one of the murder weapons. Dr. Hobin opined that these defensive injuries showed that Vincent Binder was conscious and alive for at least the initial portion of the attack.

Dr. Michael Warren, a forensic anthropologist, also testified that Binder had suffered a minimum of six (6) blows to the head with a heavy, sharp instrument and had sustained at least three (3) "nightstick" type injuries to the ulna bone of his left forearm. Two (2) of the blows inflicted on Binder's left arm literally chopped into the bone, leaving hack marks, while one (1) or more additional blows actually broke the ulna bone in two. Dr. Warren concurred with Dr. Hobin's opinion that these injuries to Binder's left arm were classic defensive wounds. Photographs of the injuries to Binder's body were offered into evidence supporting the testimony of Dr. Hobin and Dr. Warren.

a. Consciousness / Awareness of Impending Death:

The Florida Supreme Court has consistently upheld findings that a murder was heinous, atrocious or cruel in beating and stabbing deaths if the evidence also showed that the victim was conscious and aware of impending death. *See King v. State*, 130 So.3d 676, 684 (Fla. 2013) (citing *Douglas v. State*, 878 So.2d 1246, 1261 (Fla. 2006) and *Bogle v. State*, 655 So.2d 1103, 1109 (Fla. 1995)) (beating deaths); *Guardado v. State*, 965 So.2d 108, 115-16 (Fla. 2007) (beating and stabbing death); *Buzia v. State*, 926 So.2d 1203, 1212-14 (Fla. 2006) and cases cited therein (beating deaths); *Dennis v. State*, 817 So.2d 741, 766 (Fla. 2002); *Aguirre-Jarquin v. State*, 9 So.3d 593, 608-09 (Fla. 2009) (stabbing death); *Schoenwetter v. State*, 931 So.2d 857, 874 (Fla. 2006) (stabbing

death); *Perez v. State*, 919 So.2d 347, 378-79 (Fla. 2006) and cases cited therein (stabbing deaths); *Cox v. State*, 819 So.2d 705, 720 (Fla. 2002) (stabbing death); *Francis v. State*, 808 So.2d 110, 134-35 (Fla. 2002) (stabbing death); *Pittman v. State*, 646 So.2d 167, 172-73 (Fla. 1994) and cases cited therein (stabbing deaths).

It has also repeatedly found the existence of defensive wounds extremely relevant to the determination of a victim's consciousness and awareness. *See King*, 130 So.3d at 684 (citing *Guardado v. State*, 965 So.2d 108, 116 (Fla. 2007); *Boyd v. State*, 910 So.2d 167, 191 (Fla. 2005); *Dennis v. State*, 817 So.2d 741, 766 (Fla. 2002); *Roberts v. State*, 510 So.2d 885, 894 (Fla. 1987); *Heiney v. State*, 447 So.2d 210, 216 (Fla. 1984). Nevertheless, the Florida Supreme Court has also emphasized that it has never required a minimum number of defensive wounds in order to sustain a finding of HAC. *King*, 130 So.3d at 685. *See also Heiney*, 447 So.2d at 211, 215-16 (Fla.1984) (holding that the record amply supported a finding of HAC where the victim suffered defensive wounds only to the back side of the victim's hands and wrists).

In this case, Vincent Binder was obviously aware of his impending death. The physical evidence and the presence of defensive injuries prove that he was conscious and fighting for his life. Dr. Hobin and Dr. Warren were clear in their testimony that the medical and anthropological evidence showed that Vincent Binder engaged in a violent struggle to defend himself from his attackers. The evidence shows that, as he was being attacked, Binder used his left arm and hands to shield his head and body from the deadly blows of the eventual murder weapon. From this response, it is reasonable to conclude

that Vincent Binder feared for his life and was doing what little was within his power to save it. There can be no question that as the almost half dozen blows chopped into his left arm and hands, breaking his left arm and severing the fingers on his right hand, Vincent Binder experienced great physical pain and suffering at the hands of the Defendant and his cohorts before he eventually succumbed to their vicious attack.

b. Fear, Emotional Strain & Terror of the Victim:

The Florida Supreme Court has also explained that the actual length of the victim's consciousness is not the only factor relevant to the determination of the HAC aggravating circumstance. *Davis v. State*, 121 So.3d 462, 498 (Fla. 2013). It has consistently held that the "fear, emotional strain, and terror of the victim during the events leading up to the murder may make an otherwise quick death especially heinous, atrocious, or cruel." *Lynch v. State*, 841 So.2d 362, 369 (Fla. 2003) (citing *James v. State*, 695 So.2d 1229, 1235 (Fla. 1997), *Francis v. State*, 808 So.2d 110, 125 (Fla. 2001); and *Farina v. State*, 801 So.2d 44, 53 (Fla. 2001). Moreover, in determining whether the HAC factor is present, the focus should be on the victim's perceptions of the circumstances as opposed to those of the perpetrator. *Id.* (citing *Farina*, 801 So.2d at 53, and *Hitchcock v. State*, 578 So.2d 685, 692 (Fla. 1990).

Looking through these lenses, the Florida Supreme Court has, in numerous cases, affirmed a finding of HAC when the evidence has shown that the victim was abducted, transported to a remote location, and executed. *See Baker v. State*, 71 So.3d 802, 821 (Fla. 2011); *Parker v. State*, 873 So.2d 270, 287 (Fla. 2004); *Cave v. State*, 727 So.2d

227, 229 (Fla. 1999); *Alston v. State*, 723 So.2d 148, 160-61 (Fla. 1998); *Preston v. State*, 607 So.2d 404 (Fla. 1992); *Routly v. State*, 440 So.2d 1257, 1264-65 (Fla. 1983); *Smith v. State*, 424 So.2d 726, 728, 733 (Fla. 1983); *Griffin v. State*, 414 So.2d 1025, 1029 (Fla. 1982); *Steinhorst v. State*, 412 So.2d 332, 339-40 (Fla. 1982); *Knight v. State*, 338 So.2d 201, 202, 205 (Fla. 1976). The common element in these cases is that, before death occurred, the victims were subjected to agony over the prospect that death was soon to occur. *Routly*, 440 So.2d at 1265.

There can be no reasonable doubt that Vincent Binder suffered fear, emotional strain, and terror during the events leading up to the actual killing. He was abducted in the middle of the night from the streets of Tallahassee, robbed of his wallet and credit card, and then taken on a terrifying ride that extended over 200 miles and approximately five (5) to six (6) hours.

Again, the evidence shows that Binder was alive throughout this entire journey, giving him an excruciatingly lengthy time to deliberate on when and how he would be murdered. The Defendant and his cohorts stopped at least twice during the trip, which no doubt raised the victim's hope of survival, only to be crushed when they continued on.

Sometime before sunrise, the Defendant and his accomplices decided that the time had come to get rid of Vincent Binder. They pulled off of I-95 at State Road 16 in St. Augustine and found a dark, vacant field on Commercial Drive. They then pulled over and removed Binder from the truck. Any remaining hope of survival to which Vincent Binder might have clung up until that point no doubt vanished upon his arrival at this

dark and isolated location. Because there was no other reason for them to have stopped in this area, he could have come to no other conclusion than that they selected this spot for the specific purpose to kill him.

Given that his body was found over 450 feet from the roadway it is reasonable to conclude either that Vincent Binder was frog-marched to his execution site in the field or was chased down after managing to break free and attempting to escape. Either way, the fear and terror that must have been going on in Vincent Binder's mind as he contemplated the end of his life cannot be fathomed.

The evidence in this case, as outlined above, clearly proves that the Defendant's murder was especially heinous, atrocious, or cruel. Like the "prior violent felony" aggravator, HAC is among "the most weighty in Florida's sentencing calculus," *Sireci*, 825 So.2d at 887, and has been considered sufficient by itself to sustain a death sentence, *see Butler v. State*, 842 So.2d 817 (Fla. 2003). Accordingly, the State submits that this aggravating circumstance should be given great weight.

6. Florida Statutes § 921.141(5)(i): The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

To establish the CCP aggravating factor, Florida law requires the State to prove that: (1) the killing must have been the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage ("cold"); (2) the defendant must have had a careful plan or prearranged design to commit murder before the killing

("calculated"); (3) the defendant must have exhibited heightened premeditation ("premeditation"); and (4) the defendant had no pretense of legal or moral justification. *Lynch v. State*, 841 So.2d 362, 371 (Fla. 2003) (citing *Evans v. State*, 800 So.2d 182, 192 (Fla. 2001). "The CCP aggravator pertains specifically to the state of mind, intent, and motivation of the defendant." *Wright v. State*, 19 So.3d 277, 298 (Fla. 2009).

a. "Cold":

As stated above, the first element that the State must prove is that the murder was "cold," in the sense that that the killing was "the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage." *Lynch*, 841 So.2d at 371. "[E]xecution-style killing is by its very nature a 'cold' crime." *Id.* at 372.

The evidence in this case leads to no other reasonable conclusion than that the murder of Vincent Binder was an execution. Long before the Defendant and his cohorts arrived in St. Augustine with the victim as their captive, he had everything he could want or obtain from Binder. He had already obtained Binder's credit card, along with the PIN, and had successfully used it once to withdraw money from an ATM and three times to purchase gas. When they exited I-95 in St. Augustine just before dawn on April 2, 2010, they made their way to a vacant field along Commercial Drive, which at that hour was a dark, isolated area where they could easily dispatch Vincent Binder without being discovered. There was no other reason for the Defendant and his accomplices to have been at that location except to execute Vincent Binder.

b. "Calculated":

Second, to prove that a murder was "calculated," "the defendant must have had a careful plan or prearranged design to commit murder before the fatal incident." *Id.* at 371. "The calculated element applies in cases where the defendant arms himself in advance, kills execution-style, plans his actions, and has time to coldly and calmly decide to kill." *Wright v. State*, 19 So.3d 277, 299 (Fla. 2009).

As explained previously, the only explanation for the fact that the Defendant and his accomplices continued their kidnapping of Vincent Binder even after they had obtained his credit card and PIN number and used it successfully was that they planned from the beginning to eventually murder him and prevent him from ever being a witness against them. The careful and calculated nature of Binder's murder is proven even more so by the evidence that the Defendant armed himself with the murder weapon prior to the killing. The Rambo-style knife that DNA evidence proved was the weapon that was used to hack Binder to death was not one of mere happenstance. James Mose, the operator of the black Chevy truck the Defendant and his accomplices stole, testified that the knife was not his and that it was not in the truck at the time it was stolen. Therefore, the knife wasn't simply a weapon that the Defendant happened upon at the time of the killing. Long before Binder's murder, the Defendant sought out and obtained the knife to be used to commit murder when the opportunity presented itself.

c. "Premeditated":

Third, the State must show that the circumstances of the crime must indicate that the defendant killed the victim with heightened premeditation. *See Lynch*, 841 So.2d at 371. "Heightened premeditation necessary for CCP is established where . . . the defendant had ample opportunity to release the victim but instead, after substantial reflection, 'acted out the plan [he] had conceived during the extended period in which [the] events occurred.'" *Turner v. State*, 37 So.3d 212, 225-26 (Fla. 2010) (quoting *Alston v. State*, 723 So.2d 148, 162 (Fla. 1998)), *cert. denied*, 131 S.Ct. 426, 178 L.Ed. 2d 332 (2010). "[T]his element exists where a defendant has the opportunity to leave the crime scene with the victims alive but, instead, commits the murders." *Wright*, 19 So.3d at 300.

The existence of heightened premeditation cannot be reasonably doubted in this case. The Defendant had between five (5) and six (6) hours to contemplate and reflect on what he and his accomplices would do with Vincent Binder. He had ample opportunities to release Binder unharmed, including the multiple occasions when they stopped between Tallahassee and St. Augustine to purchase gas or ask for directions. Instead, the Defendant chose to continue on with his prearranged plan to murder Vincent Binder.

d. "No Pretense of Moral or Legal Justification":

Finally, the State must demonstrate that the murder was committed without any pretense of moral or legal justification. *See Lynch*, 841 So.2d at 371. "[A] pretense of moral or legal justification is any colorable claim based at least partly on uncontroverted

and believable factual evidence or testimony that, but for its incompleteness, would constitute an excuse, justification, or defense to the homicide." *Walls v. State*, 641 So.2d 381, 388 (Fla. 1994).

It hardly needs to be said that there is not one scintilla of evidence that even remotely suggests that the Defendant in this case had any pretense of moral or legal justification in killing Vincent Binder. The proof is overwhelmingly to the contrary.

The evidence in this case proves beyond a reasonable doubt that the Defendant's murder of Vincent Binder was cold, calculated, and premeditated. The Florida Supreme Court has also classified CCP as one of the most serious aggravating circumstances set out in the statutory sentencing scheme. *Suggs v. State*, 923 So.2d 419, 436 (Fla. 2005) (citing *Larkins v. State*, 739 So.2d 90, 95 (Fla. 1999)). Therefore, the Court should give this aggravating factor great weight.

MITIGATING CIRCUMSTANCES

At the Defendant's request, the jury received instructions pertaining to the following statutory mitigating circumstances, pursuant to Florida Statutes § 921.141(6)(b), (d), (e), (f), and (g):

1. The capital felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance.

2. The Defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.

3. The Defendant acted under extreme duress or under the substantial domination of another person.

4. The capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

5. The age of the Defendant at the time of the crime.

During closing argument, the defense argued that the following non-statutory circumstances should be considered as "other factors in the Defendant's background that [should] mitigate against imposition of the death penalty" under Florida Statutes § Section 921.141(6)(h):

6. The Defendant was affected by his father's extra-marital relationship.

7. The Defendant was affected by his parents' divorce.

8. The Defendant was affected by his father's remarriage.

9. The Defendant played basketball in high school.

10. The Defendant graduated from high school.

11. The Defendant was affected by his father not attending his high school graduation.

12. The Defendant enrolled in an automobile collision repair course.

13. The Defendant helped his girlfriend's family evacuate New Orleans after Hurricane Katrina.

14. The Defendant was affected by the fact that he was unable to obtain assistance from FEMA following Hurricane Katrina.

15. The Defendant lost two homes.

16. The Defendant participated in community service.

17. The Defendant went fishing with his brother.

18. The Defendant worked at Baskin Robbins.

19. The Defendant has family that supports and loves him.

20. Lack of future dangerousness.

21. The Defendant has exhibited good behavior while incarcerated in jail.

22. The Defendant will adjust well to prison.

23. The Defendant was a follower, not a leader.

24. The Defendant witnessed his father abuse his mother.

25. The Defendant witnessed his father abuse his siblings.

26. The Defendant was abused by his father.

27. The Defendant grew up in a dysfunctional family.

28. The Defendant had a girlfriend whose child died of SIDS.

29. The Defendant had a girlfriend who was shot and killed.

30. The Defendant was present when a school shooting took place.

31. The Defendant had no support from his siblings.

32. The Defendant suffered trauma as a result of Hurricane Katrina.

33. The Defendant was never treated for mental health or emotional problems.

34. The Defendant suffers from post-traumatic stress disorder (PTSD).

The State asserts that the mitigating circumstances offered by the defense in this case should not be given great weight. To the extent that this Court finds that mitigation does exist and assigns it some level of weight, the State further argues that such mitigation does not outweigh the aggravating circumstances that have been proven beyond a reasonable doubt in the murder of Vincent Binder. Because some of the

mitigating circumstances offered by the defense are supported by the same evidence, the State will, in some cases, combine its response to these claims.

1. **Florida Statutes § 921.141(b): The capital felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance.**

To establish that the murder of Vincent Binder was committed while the Defendant was under the influence of extreme mental or emotional disturbance, the defense relied upon the testimony of Dr. Gregory Sautter, a psychologist from New Orleans, Louisiana. During the penalty phase, Dr. Sautter opined that the Defendant suffers from Post-Traumatic Stress Disorder ("PTSD"). His diagnosis was based on number of traumatic events the Defendant was alleged to have experienced, including verbal and physical abuse by his father, a school shooting he witnessed, the shooting death of a former girlfriend, and surviving Hurricane Katrina.

An essential element in the proof of this mitigator is the requirement that the defense show that a defendant was *under the influence* from an extreme mental or emotional disturbance *at the time of the murder*. Evidence that the circumstances of a homicide involved a coherent and well-thought-out plan can demonstrate that the defendant's commission of the crime was not influenced by the disturbance at the time. *See Hoskins v. State*, 965 So.2d 1, 17 (Fla. 2007); *Philmore v. State*, 820 So.2d 919, 935-37 (Fla. 2002) (emphasis added). Moreover, with regard to the issue of expert psychological evaluations of a defendant's mental health, the Florida Supreme Court has explained that "expert testimony alone does not require a finding of extreme mental or

emotional disturbance." Even uncontroverted opinion testimony can be rejected, especially when it is hard to reconcile with the other evidence presented in the case. *Hoskins*, 965 So.2d at 16; *Philmore*, 820 So.2d at 936 (quoting *Knight v. State*, 746 So.2d 423, 436 (Fla. 1998).

In *Hoskins v. State*, the defense presented unrebutted expert testimony that the defendant suffered from a brain abnormality that could result in reduced ability to control impulsive behavior. Nevertheless, the Florida Supreme Court held that the trial court's rejection of this mitigator was appropriate where the evidence also showed that the defendant placed the victim in the truck of his car and drove her around for six (6) hours before obtaining a shovel, transporting her to a remote location, and strangling her to death. 965 So.2d at 17. In *Philmore v. State*, the defense offered expert opinion that the defendant suffered from a psychotic disturbance that contributed to his criminal behavior and perhaps brain damage and PTSD. As in *Hoskins*, the Supreme Court in *Philmore* held the trial court's refusal to recognize this evidence as mitigation was supported by substantial, competent evidence where the expert's testimony was strongly rebutted by the State's expert witness and where the defendant – in the process of carrying out a plan to steal a car – abducted the victim, robbed her, then drove her to a remote location and shot her. *Philmore*, 820 So.2d at 936-37.

In this case, Dr. Sautter testified that he was of the opinion that that the Defendant's behavior was "strongly affected" by PTSD during the murder. He did agree, though, that PTSD did not "cause" the Defendant to commit the murder.

However, Dr. Sautter admitted that he neither knew anything about the circumstances of the kidnapping and murder of Vincent Binder nor what the Defendant was thinking or feeling at the time he committed these crimes. He conceded that he never asked the Defendant any of these questions or even reviewed a single report relating to the crimes. In fact, he erroneously believed that Vincent Binder had been shot to death.

On the other hand, Dr. Gregory Prichard, a forensic psychologist called by the State, testified that, in addition to conducting his own face-to-face evaluation of the Defendant, he spent approximately 17 hours reviewing records in the case. These records included police reports concerning the kidnapping and murder of Vincent Binder as well as the previous crimes committed by the Defendant. Dr. Prichard emphasized that it was critically important to review these records in order to determine whether PTSD, if legitimately present, had any influence over the Defendant at the time of Vincent Binder's murder.

Dr. Prichard testified that, while he agreed that the Defendant had experienced some traumatic events in his life, he did not agree that they rose to the level of causing PTSD. He further emphasized that what limited criteria the Defendant did meet for a diagnosis of PTSD had absolutely no influence on the Defendant's participation in the kidnapping and murder of Vincent Binder.

Even if this Court were to agree with Dr. Sautter's opinion that the Defendant has PTSD, it should disregard his testimony that it the Defendant was "strongly affected" by

the disorder at the time of the murder. Dr. Sautter did not ask the Defendant a single question about the circumstances of the murder or even review a single police report documenting the same. It is virtually impossible for him to have reached this conclusion without any knowledge of the facts of the case or what was going through the Defendant's mind at the time.

This stands in stark contrast with the testimony of Dr. Prichard, who after spending 17 hours reviewing reports in the case and conducting his own evaluation, rejected Dr. Sautter's diagnosis and opinion that the Defendant was under the influence of PTSD at the time he murdered Vincent Binder.

Even apart from Dr. Prichard's testimony, Dr. Sautter's opinion cannot be reconciled with the evidence establishing that the murder of Vincent Binder followed a coherent and well-thought-out plan. Similar to the facts in *Hoskins and Philmore*, the Defendant kidnapped Binder for the specific purpose of robbing him, continued to confined him to the back of a truck for five (5) to six (6) hours, drove him to a remote location approximately 200 miles from his home, and then executed him. These circumstances clearly show that the Defendant was not under the influence of an extreme mental or emotional disturbance at the time of the murder.

Accordingly, the State asserts that this mitigating circumstance was not proven at trial. Thus, it should not be given any weight.

2. **Florida Statutes § 921.141(d): The Defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.**

3. **Florida Statutes § 921.141(e): The Defendant acted under extreme duress or under the substantial domination of another person.**

In closing argument, the defense argued that the evidence showed that Co-Defendant Kentrell Johnson was the one who actually killed Vincent Binder and that the Defendant's role was relatively minor. It also argued that the Defendant acted under extreme duress or the substantial domination of Kentrell Johnson. In support of this argument, the defense pointed to the relative age and size differences between the Defendant and Johnson as well the testimony of Shirley Marcus, who agreed with the defense that, during their stay with her in Miami, it seemed that Johnson was the leader in that he would frequently tell the Defendant and Co-Defendant Peter Hughes what to do.

However, the evidence is overwhelmingly clear that the Defendant was no shrinking violet and that he played a leading, if not a starring role in the kidnapping and murder of Vincent Binder and the crimes leading up to those events. The video from the Avoyelles Parish Jail in Marksville, Louisiana, clearly show the Defendant attacking a corrections officer with a homemade shank while his unarmed co-defendants forced another officer to open a door leading to the outside. The video from the Half-Time convenience store in Tallahassee shows the Defendant using the victim's credit card to withdraw money from an ATM. Additionally, Shirley Marcus testified that when she drove the Defendant and his cohorts to the Wachovia Bank in Miami to withdraw money

from Vincent Binder's bank account, it was the Defendant who filled out the withdrawal slip and handed it, along with the victim's driver's license and credit card, to her to give to the teller. Furthermore, the victims of three other robberies – Brenda Jo Brown, Mario Rios, and Chris Pavlish – all identified the Defendant as the one who brandished a weapon during the attacks. The weapon that Brown and Rios identified with the Defendant was the knife that DNA evidence confirmed was used to kill Vincent Binder.

The evidence in this case could not more strongly refute the claim that the Defendant was a minor participant in Vincent Binder's murder or that his involvement was forced upon him by Kentrell Johnson. Accordingly, the Court should reject these mitigating circumstances.

4. **Florida Statutes § 921.141(f): The capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.**

To establish this mitigating factor, the defense relied *solely* on the expert testimony of Dr. Gregory Sautter. However, following a lengthy discussion concerning Dr. Sautter's opinion that the Defendant suffered from PTSD, defense counsel explicitly asked him his opinion as it related to this mitigating factor. Dr. Sautter's candid answer quickly sums up the evidence in this case:

Mr. Warren:	In your opinion, does PTSD affect or impair an individual, and in this case, Quentin Truehill's capacity to appreciate the criminality of his conduct?
Dr. Sautter:	I don't know.

Little more needs to be said to establish that the defense did not prove this mitigating circumstance. Therefore, the Court should assign it no weight.

5. Florida Statutes § 921.141(g): The age of the Defendant at the time of the crime.

It has been established that the Defendant was 22 years of age at the time Vincent Binder was murdered. The State does not dispute this fact.

However, there is no *per se* rule that pinpoints a particular age as an automatic factor in mitigation. *Peek v. State*, 395 So.2d 492, 498 (Fla. 1980). The Florida Supreme Court has frequently held that "a sentencing court may decline to find age as a mitigating factor even in cases where the defendants were twenty to twenty-five years old at the time their offenses were committed." *Caballero v. State*, 851 So.2d 655, 661 (Fla. 2003) (upheld rejection of age as a mitigating factor where defendant was 20 years old). *See also*, *Mungin v. State*, 689 So.2d 1026, 1031 (Fla. 1995) (upheld rejection of age as a mitigating factor where defendant was 24-years-old, had no neurological impairment, and did not graduate from high school); *Garcia v. State*, 492 So.2d 360, 367 (Fla. 1986) (20-year-old defendant); *Mills v. State*, 476 So.2d 172, 179 (Fla. 1985) (22-year-old defendant).

Furthermore, the Florida Supreme Court has observed that "age is simply a fact, every murderer has one." *State v. Ballard*, 956 So.2d 470, 475 (Fla. 2007); *Ramirez v. State*, 739 So.2d 569, 582 (Fla. 1999); *Mungin* , 689 So.2d at 1031; *Garcia*, 492 So.2d at 367; *Echols v. State*, 484 So.2d 568, 575 (Fla. 1985) *cert. denied*, 479 U.S. 871, 107 S.Ct.

241, 93 L.Ed. 166 (1986). "Chronological age standing alone is of little import." *Campbell v. State*, 679 So.2d 720, 726 (Fla. 1996). If it is to be accorded any significant weight, it must be linked with some other characteristic of the defendant or the crime such as immaturity or senility. *Echols*, 484 So.2d at 575.

While the defense called Dr. Frederick Sautter to testify that the Defendant suffered from PTSD, it offered no evidence from him or any other mental health expert that the Defendant suffered from an intellectual disability or was otherwise psychologically immature. To the contrary, evidence of the Defendant's trade skills, his past actions in leading people out of danger, and his criminal conduct in this case, show a person with a high level of intelligence and maturity.

During the penalty phase, the defense introduced evidence that, during high school, the Defendant was employed at an automobile collision repair shop. While working there, he repaired his grandfather's car that had been involved in a crash. According to his mother, the Defendant did an "excellent job." The Defendant eventually graduated from high school, and then began courses in collision repair at Louisiana Technical College in New Orleans.

The defense also presented evidence about the Defendant's "heroic" actions in directing his girlfriend and her family out of New Orleans in aftermath of Hurricane Katrina. Eleanor Smith, the mother of the Defendant's girlfriend, testified about his efforts to obtain a boat and car and lead her and her family safely out of the city after the

massive flooding that occurred. These are not the actions of an unsophisticated, timid adolescent.

The planning and leadership role the Defendant took in committing the crimes in this case also show a person with a high level of maturity and intelligence. His use of a homemade shank during his escape from the Avoyelles Parish Jail shows that the Defendant was part of a well-thought-out plan to escape. His action in assaulting the corrections officer with the shank and attacking Brenda Jo Brown, Mario Rios, and Chris Pavlish with a weapon demonstrates, not a passive role in these crimes, but a violently assertive one. Furthermore, his use of Vincent Binder's credit card to withdraw money from ATMs and his attempt to use the victim's credit card, driver's license, and a deposit slip to extract money directly from a bank reveals a bold and cunning intellect.

In sum, there is no evidence that the Defendant's age was coupled with immaturity, whether as a result of an intellectual disability or psychological weakness. To the contrary, the evidence shows that the Defendant clearly operated as an intelligent and assertive leader who was mature beyond his years. It is not enough that the Defendant simply happened to be 22 years old at the time of the murder. Therefore, the Court should find that this mitigating circumstance has not been established and assign it no weight.

6. **The Defendant was affected by his father's extra-marital relationship.**
7. **The Defendant was affected by his parents' divorce.**
8. **The Defendant was affected by his father's remarriage.**

As a mitigating factor, the defense claims that the Defendant was affected by his father having an extra-marital relationship with Miranda Farr, his parents' subsequent divorce, and his father's remarriage. The State agrees that the Defendant's parents, Marshall and Valli Truehill, divorced in July of 1999 and that his father married Miranda Farr in December of that same year. And, it is difficult to contest the claim that the Defendant's father had an extra-marital relationship with Miranda Farr while he was still married to the Defendant's mother. The State is even willing to concede that these events were upsetting to the Defendant. What the State does dispute, however, is the extent to which these events affected the Defendant and his claim that they had a substantial impact on his decision to participate in the kidnapping and gruesome murder of Vincent Binder.

Again, the latest of these events – the father's marriage to Miranda Farr – took place in December of 1999. The murder of Vincent Binder, which occurred in April of 2010, occurred over 10 years later. Given the remote nature of these events from the crimes at issue, it is unreasonable to conclude that they have any significance as a mitigating factor. Accordingly, the Court should assign this mitigating circumstance little, if any weight.

9. The Defendant played basketball in high school.

The State does not dispute the fact that the Defendant played basketball in high school. However, it is unfathomable to conceive how the Defendant's participation in a recreational activity several years ago could mitigate even slightly his participation in the gruesome murder of Vincent Binder. Involvement in a team sport often has the positive benefit of teaching teamwork, discipline, hard work, sacrifice, playing fair and by the rules, setting and achieving goals, and overcoming adversity. Unfortunately, the Defendant's actions in this case demonstrate that he perhaps only learned the value of teamwork. The Court should reject this as a mitigating factor.

10. The Defendant graduated from high school.

The defense submitted evidence in the form of testimony and a diploma that established that the Defendant graduated in 2005 from John McDonogh High School in New Orleans. The State accepts this evidence as true.

Nevertheless, the Defendant's achievement of a high school diploma only highlights the fact that he was provided the tools to be a productive and law-abiding member of society. However, the Defendant chose to throw all of that away and, within two years of graduating from high school, began committing violent felonies. This mitigating circumstance, if found, should be given minimal weight.

11. The Defendant was affected by his father not attending his high school graduation.

The State does not dispute the claim that the Defendant's father did not attend his high school graduation. However, this circumstance, too, should only be given minimal weight.

12. The Defendant enrolled in an automobile collision repair course.

Testimony was presented that the Defendant began taking college-level courses in automobile collision repair at Louisiana Technical College in New Orleans. While evidence was also offered that this instruction was abruptly halted as a result of Hurricane Katrina, it was also established that the Defendant decided not to continue that education when the opportunity later presented itself. The Defendant's mother testified that, following their resettlement in Lafayette, Louisiana, he attempted to enroll in another collision repair course there, but he was required to go through a screening process since the school there did not accept a transfer of his enrollment in the school in New Orleans. She further testified that he missed the screening because he had a flat tire on his way to the school and never went back. It was shortly after this time that the Defendant turned to a life of crime.

His decision to not continue his education is tragic not only because society may have benefitted from his training and labor, but also because Vincent Binder would probably be alive today if the Defendant had only followed a different path. The Court should give this mitigating factor minimal weight.

13. The Defendant helped his girlfriend's family evacuate New Orleans after Hurricane Katrina.

The State does not contest the basic claim that the Defendant helped his girlfriend's family evacuate New Orleans following Hurricane Katrina. This evidence was offered by the defense through the testimony of Eleanor Smith, the mother of the Defendant's girlfriend. As has already been argued, the Defendant's actions in this regard demonstrated his maturity and ability to overcome adversity. Nevertheless, the State argues that the Court should assign this mitigator little weight.

14. The Defendant was affected by the fact that he was unable to obtain assistance from FEMA following Hurricane Katrina.

During her penalty phase testimony, the Defendant's mother stated that, following Hurricane Katrina, she and her father relocated to Lafayette, Louisiana. The Defendant, who evacuated New Orleans separately with his girlfriend, Sharell Smith, found lodging at a shelter in Broussard, Louisiana, which is about 20 miles from Lafayette. Eventually, the Defendant's mother was able to buy a house in Lafayette, which she moved into with her father. The decision was made at some point thereafter to allow her fiancée to move into the house as well.

Valli Truehill also testified that, during this same timeframe, the Defendant was still living in the shelter. Previously, he had decided to live separately from his mother because he needed to find a place that would allow him to keep his dog. When his mother purchased the house, he asked if he could move in. However, the house, which was occupied by that time by his mother, her father and her fiancée, was full.

During this time, the Defendant applied for housing assistance from FEMA, but was turned down because he was on his mother's registration. In other words, the housing assistance his mother was receiving from FEMA already accounted for him. According to Valli Truehill, the Defendant became extremely frustrated that FEMA had denied him assistance and that he was not able to live with her. He was angry that she was receiving money for him to have a place to live, but was denying him a place in her house in favor of her fiancée.

At a certain point in time, the Defendant's anger over these circumstances reached a breaking point. According to his mother, he came over to her house one day and was allowed in by her fiancée. The Defendant then walked directly into the garage and slashed three (3) tires on her car.

The defense argues that the Defendant's frustration and anger as a result of being denied assistance from FEMA should be considered as a mitigating factor in the murder of Vincent Binder. However, the account provided by his own mother reveals an individual with an entitlement mentality and who was willing to lash out violently when he didn't get what he thought was rightfully his. The Court should reject this claim.

15. The Defendant lost two homes.

During the penalty phase, the defense presented evidence that the Defendant was required to leave two homes, one as a result of foreclosure and the other as a result of Hurricane Katrina. The State does not dispute these events, but asserts that they should only be given slight weight as mitigating factors.

16. The Defendant participated in community service.

The Defendant's brother, Marshall Truehill, III, testified during the penalty phase that the Defendant participated in community service through their father's church while he was growing up. This evidence dovetailed with the testimony of Valli Truehill, that the Defendant's father tried to instill in his children a love of their community by having them perform neighborhood service projects. The State does not dispute this evidence.

It should be noted, however, that no evidence was presented that the Defendant voluntarily performed community service as an adult when he was out from under his father's authoritative upbringing. Such evidence would have been a more significant example of the Defendant's character as it relates to this mitigation claim. Accordingly, the Court should only give it slight weight.

17. The Defendant went fishing with his brother when they were children.
18. The Defendant worked at Baskin Robbins.

During the penalty phase, the Defendant's brother shared a few anecdotes about occasions when he and the Defendant went fishing as children. The Defendant's mother also testified that for a period of three or four months during high school, the Defendant worked at a Baskin Robbins ice cream shop. During the penalty phase, she recounted a story about how she and the rest of the family would go to the shop while the Defendant was working, order ice cream, and sit and watch as he worked. The State does not dispute the truth of these sentimental accounts; rather it argues that they should be given no weight.

19. The Defendant has family that supports and loves him.

Regarding this proposed mitigation, the State does not argue that these statements are untrue. However, this evidence again only highlights the fact that the Defendant had the resources to be a productive and law-abiding member of society. He chose to throw that away by committing violent crimes and, in turn, disappointing his family. This mitigating circumstance should be given little weight.

20. Lack of future dangerousness.
21. The Defendant has exhibited good behavior while incarcerated in jail.
22. The Defendant will adjust well to prison.

The defense claims three (3) mitigating factors that it presented through the testimony of prison expert James Aiken. The primary thrust of Mr. Aiken's testimony was his opinion that the Defendant did not represent a future danger if incarcerated for life. He also concluded that the Defendant would adjust well to prison. These opinions, Mr. Aiken stated, were based on his review of jail records that he said showed that the Defendant was compliant and had displayed good behavior throughout the four years he has been incarcerated in the St. Johns County Jail awaiting trial.

In *Bevel v. State*, 983 So.2d 505, 520 (Fla. 2008), the Florida Supreme Court affirmed the trial court's rejection as mitigation the claim that the defendant was a good inmate and did well in the structured environment of a jail. This claim had been rebutted by evidence that the defendant in that case had exhibited aggressiveness, had been involved in physical fights or assaults, and had received two (2) disciplinary reports for being in an unauthorized area and disregarding an order to stop running laps in an indoor

area. The trial court had also based its decision to reject this mitigation on the fact that the defendant had previously been incarcerated after a prior conviction for attempted robbery and then had committed the murders at issue less than a year after his release.

Despite Mr. Aiken's testimony that the Defendant in this case was well-behaved in the St. Johns County Jail, he admitted on cross-examination that the Defendant had received four (4) disciplinary reports during his incarceration there. Mr. Aiken acknowledged that one of these reports documented an incident in which the Defendant threatened to bash in a correction officer's head.

Additionally, the Defendant in this case, like the defendant in *Bevel*, was incarcerated in jail shortly before he participated in the victim's murder. However, the Defendant's behavior here in relation to his prior incarceration is even more egregious and was in closer proximity. The defendant in *Bevel* murdered the victim less than a year *following his release* from prison. In this case, the Defendant *escaped* from jail before he and his cohorts went on a crime spree that culminated in the kidnapping and murder of Vincent Binder three (3) days later.

The Defendant's past violent criminal conduct also repudiates the defense's claim that he represents a lack of future dangerousness. It has been said that the best predictor of the future conduct is past behavior. The defense stated during closing arguments that the circumstances of Vincent Binder's murder will not reoccur if the Defendant receives a life sentence. However, this is not a fact; it is a prediction – and one that gambles on an individual who has already killed, not once, but *twice* before. The evidence does not

support the claim that the Defendant does not represent a future danger. In fact, the proof is overwhelmingly to the contrary.

23. The Defendant was a follower, not a leader.

The defense attempted to establish this mitigating factor through the testimony of Walter Goodwin, one of the Defendant's high school principals, and Miranda Farr Truehill, the Defendant's step-mother. Both described the Defendant as a "follower." It also pointed again to the testimony of Shirley Marcus to support their argument that the Defendant followed orders from Kentrell Johnson, "who was always bossing him around." The State asserts the several reasons why this testimony should be disregarded.

First, testimony of Walter Goodwin and Miranda Farr Truehill offered hardly any specific explanations or details about *why* they considered the Defendant to be follower. The closest either got to providing a specific example was Mr. Goodwin's relatively vague statement that the Defendant preferred to be "one of the guys" instead of "being out in front" while in high school. This language could be used to describe just about every teenage male in high school.

Second, much time had passed between the time when Walter Goodwin testified and when he last had contact with the Defendant. Mr. Goodwin stated that the last time he saw the Defendant was when he left John McDonogh High School in 2004. This would have been six (6) years prior to the kidnapping and murder of Vincent Binder. During that time, the Defendant graduated from high school, endured Hurricane Katrina, and been found guilty of organizing the robbery of a man at gunpoint and shooting and

killing another. Even if he had been a follower in high school, he, like many other young adults in life, grew up and learned how to take charge.

Third, their testimony was strongly rebutted by Dr. Prichard, a psychologist who testified that that the Defendant appeared to him in his evaluation to be very smart, independent, assertive and opinionated. These observations by Dr. Prichard were corroborated by a transcript of the sentencing hearing that followed the Defendant's conviction for Armed Robbery in [location], Louisiana in [date/year]. That transcript revealed that the judge in that case made the following finding of fact, which Dr. Prichard read into the record:

> The offender was a leader or his violation was in concert with one or more persons with whom the offender occupied a position of organizer, a supervisory position or . . . other position of management.

Accordingly, Dr. Prichard testified that the Defendant was, in his opinion, more of a leader than a follower.

As for the testimony of Shirley Marcus, the evidence of the Defendant's participation in the crimes involved in this case unequivocally refutes the notion that the Defendant was a vassal of Kentrell Johnson. As explained previously, his actions in attacking the jail guard with a shank during his escape, using the victim's credit card, filling out a withdrawal slip to extract money from the victim's bank account, and attacking other victims with the same knife used to kill the victim all show conclusively that the Defendant took a leading role in the kidnapping and murder of Vincent Binder.

Based on the above, the State asserts that this mitigating circumstance has not been proven. Therefore the Court should not give it any weight.

24. The Defendant witnessed his father abuse his mother.
25. The Defendant witnessed his father abuse his siblings.
26. The Defendant was abused by his father.
27. The Defendant grew up in a dysfunctional family.

The State accepts that the Defendant's home during the time that his parents were married was one that experienced moments of turmoil and dysfunction, particularly during the time leading up to his parents' divorce. During the penalty phase, the defense offered testimony from members of the Defendant's family that described his father, Marshall Truehill, Jr., as abusive and controlling during this time.

Some of this evidence, however, was conflicting. For example, while the Defendant's mother and sister testified that his father physically abused him and the other siblings, the Defendant's brother said there was no abuse outside of normal corporal punishment. The Defendant's step-mother, Miranda Farr Truehill, testified similarly. Nevertheless, the State will accept that the Defendant likely witnessed or experienced behavior in the home during his childhood that some people may characterize as harsh or abusive.

However, as the Defendant's mother admitted on cross-examination, the testimony concerning the family's bad times did not tell the whole story. Valli Truehill stated that there were many happy times as well. She acknowledged that Marshall Truehill, Jr. was a loving father who provided for his family. And, while he was a strict disciplinarian, he

sought to instill in his children strong moral values and a love for their community. Accordingly, he involved them in church activities and community service projects.

The Defendant's father also provided financial assistance to his children even after high school, helping the Defendant's sister Brianna pay for college and medical school. And, although the Defendant's mother testified that Marshall Truehill was guilty of slightly favoring his daughters over his sons, his generosity did not end with his daughters. Following the Defendant's graduation from high school, his father bought him a Mustang sports car to help the Defendant get around.

Furthermore, the alleged incidents of abuse, which everyone in the household either witnessed or suffered from, apparently did not negatively affect the Defendant's four siblings. The Defendant's oldest sister Brianna graduated from LSU medical school and currently works as an OB/GYN in Arizona. His second oldest sister, Tracy, is also employed in Arizona as an administrative officer of a franchise and has also worked as an actress and model. His brother Marshall owns his own marketing and television production business in Houston, Texas. His youngest sister, Jessica, is a professional ballet dancer and costume designer for movies and television shows in Los Angeles, California. All of them appear to be very well-adjusted and highly successful in their respective careers.

Finally, there was no evidence presented that any abuse occurred after the Defendant's parents' divorce in July of 1999. In fact, the Defendant's mother and step-mother both testified that they could not recall a single incident. Valli Truehill also

testified that, following the divorce, the Defendant primarily lived with her and that during that time the only form of discipline she imposed on the Defendant was talking to him and restricting his activities, such as watching TV and playing video games. Therefore, at the time he murdered Vincent Binder, at least a decade had passed since the Defendant had witnessed or experienced any abuse at the hands of his father or anyone else.

The State will concede that this mitigating circumstance has been established. However, in light of the above, the Court should only assign it little weight.

28. The Defendant had a girlfriend whose child died of SIDS.
29. The Defendant had a girlfriend who was shot and killed.

During closing argument, the defense argued that two (2) mitigating circumstances the jury should consider was testimony that the Defendant had a girlfriend by the name of Amber Brown who had a child who died of SIDS and that she was later shot and killed. This testimony was somewhat confusing, incomplete, and perhaps conflicting for a number of reasons. First, there was testimony from Eleanor Smith that her daughter, Sharell Smith, was the Defendant's girlfriend at the time he helped them evacuate from New Orleans following Hurricane Katrina in 2005. Second, Dr. Prichard testified that during his review of the information pertaining to the shooting of Amber Brown, he learned that she was shot by an individual by the name of Curtis Brown, who was described as her boyfriend.

No evidence was presented that established when these incidents occurred, when the Defendant had a relationship with Miss Brown, or if he was in this relationship at the time the child passed away. From the small amount of information that is in the record, it is possible that the Defendant's relationship with her, if there ever was one, was so remote in time that these events were negligible in its impact. It seems that if they had as profound an effect on the Defendant as is being claimed, the circumstances of these events would have been developed more than in a few passing references. To the extent that the Court finds that this mitigating circumstance was established, the State argues that it should be given minimal, if any, weight.

30. The Defendant was present when a school shooting took place.

The State does not dispute that the Defendant was present when a shooting took place at John McDonogh High School in New Orleans. While there was no evidence presented during the trial concerning the exact date of the shooting, the State will stipulate, based on documented news accounts, that it took place on April 14, 2003 – almost exactly 7 years prior to the murder of Vincent Binder.

The State will also concur that this mitigating factor has been established. However, because of the remoteness in time between this event and the victim's murder, the State contends that it should only be given little weight.

31. The Defendant had no support from his siblings.

During the penalty phase, the defense presented testimony from Dr. Sautter that the Defendant felt abandoned when all of his siblings moved away from home to pursue

their college education and careers. The State does not contest this claim, but submits that it only warrants minimal weight.

32. The Defendant suffered trauma as a result of Hurricane Katrina.

The defense presented evidence that the Defendant was present when Hurricane Katrina struck New Orleans and then evacuated the city once the flooding began in its aftermath. The State does not question these accounts or the proposition that this experience was traumatic. However, Hurricane Katrina occurred five years prior to the murder of Vincent Binder. And, according to Dr. Prichard, whatever trauma the Defendant experienced as a result had no influence on his involvement in the murder of Vincent Binder. Therefore, the Court should only give this mitigating factor little weight.

33. The Defendant was never treated for mental health problems.
34. The Defendant suffers from post-traumatic stress disorder (PTSD).

These mitigating circumstances are premised on the finding that the Defendant has suffered from mental health problems. The only evidence presented at trial concerning such a diagnosis was Dr. Sautter's testimony that the Defendant suffered from PTSD. However, in light of the testimony of Dr. Prichard, who rejected Dr. Sautter's analysis, the State disputes the foundation on which these mitigating factors rest. Accordingly, it asserts the Court should give it no weight.

CONCLUSION

In conclusion, the mitigating circumstances that were presented in this case are insubstantial when weighed against any of the six (6) aggravating circumstances proved beyond a reasonable doubt. In a capital case, the death penalty is appropriate even if one aggravator is found and outweighs (or is not outweighed by) the mitigation found to have been established. *Foster v. State*, 369 So.2d 928 (Fla. 1979). The aggravating circumstances in this case should be given great weight. The mitigation in this case is so weak that even if the State only proved one of the aggravating circumstances presented, that factor (any one you chose) would outweigh the mitigation presented. The "prior violent felony," HAC, and CCP aggravators are three (3) of the most serious set out in the death penalty statute. The State has proven all three (3) of these aggravating factors beyond a reasonable doubt, and each of them alone justifies a death sentence in this case.

The jury in this case returned a death recommendation by a vote of 12-0. A unanimous vote is a rare occurrence, which in itself should send a strong message that a death sentence is appropriate. Furthermore, as this Court is aware, the law requires it to give the jury's recommendation great weight in its determination of a proper, legal penalty for the violent and vicious murder of Vincent Binder.

Respectfully, the State submits to the Court that the death penalty is an appropriate, lawful and justified sentence for the Defendant and requests this Court to sentence Quentin Marcus Truehill to death.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Sentencing Memorandum has been furnished by electronic mail, hand delivery, and/or U.S. Mail to James R. Valerino and Raymond Warren, counsel for Quentin M. Truehill, Office of the Public Defender, 4010 Lewis Speedway, Suite #1101, St. Augustine, FL 32084, this 1st day of May, 2014.

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TAB 9

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IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO: CF06-01864

STATE OF FLORIDA

VS.

NORMAN BLAKE MCKENZIE,
DEFENDANT.
_____/

STATE'S SENTENCING MEMORANDUM

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and, pursuant to Paragraph 3 of the Court's Order Scheduling *Spencer* Hearing, files this sentencing memorandum setting forth the facts, legal authority and argument in support of the imposition of the death as unanimously recommended by the jury in the trial of this cause as follows:

PROCEDURAL HISTORY

On October 17, 2006, the defendant was indicted by a St. Johns County Grand Jury for the First Degree Murder of Randy Wayne Peacock and the First Degree Murder of Charles Frank Johnston. On March 2, 2007, the State filed a notice of intent to seek the death penalty. Trial for the guilt phase commenced with voir dire on August 20, 2007. The following day, a St. Johns County jury found the defendant guilty as charged on both counts.

The trial then proceeded to the penalty phase, and on August 23, 2007 the jury recommended that the defendant be sentenced to death by a vote of 10-2. On October 19, 2007, the trial court concurred and sentenced the defendant to death.

Following the Florida Supreme Court's decisions in *Hurst v. State*, 202 So.3d 40, 57 (Fla. 2016); *Mosely v. State*, 209 So.3d 1248, 1283 (Fla. 2016); and *Asay v. State*, 210 So.3d 1 (Fla. 2016), this Court, on June 19, 2017, entered an order vacating the defendant's death sentences because the original death recommendation was less than unanimous. The court then re-docketed the case for a potential penalty phase in the event the State chose to continue seeking the death penalty.

On August 28, 2017, the State filed a Renewed Notice of Intent to Seek the Death Penalty and List of Aggravating Factors. On January 23, 2019, the State provided notice of its intent to amend its list of aggravating factors. In total, the aggravating factors the State listed were as follows:

1. The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

2. The capital felony was committed while the defendant was engaged in the commission of, or attempted commission of, a robbery.

3. The capital felony was committed for pecuniary gain.

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

5. The capital felony was especially heinous, atrocious, or cruel.

Jury selection for the penalty phase retrial began on August 26, 2019. Following the selection of a jury and the presentation of evidence by both the State and the defense, the jury returned with a verdict on August 29, 2019. In that verdict, the jury unanimously found that (1) the State had proven all five of the listed aggravating factors beyond a reasonable doubt, (2) the aggravating factors were sufficient to warrant a death sentence, (3) one or more mitigating circumstances were established by the greater weight of the evidence, (4) the aggravating factors outweighed the mitigating circumstances, and (5) the defendant should be sentenced to death.

A *Spencer* hearing was held on November 22, 2019, during which time the defense presented testimony from the defendant and an expert witness as well as a written statement from the defendant's overseas spouse. The State presented two additional written victim impact statements. At that time, the Court scheduled sentencing to take place on February 14, 2020.

Pursuant to Florida Statutes § 921.141(3)2, the Court must now consider the evidence presented during the trial and the subsequent *Spencer* hearing and determine, in accordance with the law, whether the appropriate sentence is one of life in prison without the possibility of parole or the death penalty. For the reasons

set forth below, the State contends that the defendant's brutal murders of Randy Peacock and Charles Johnston warrant sentences of death for each victim.

AGGRAVATING FACTORS – COUNTS I & II

At the penalty phase trial, the State asserted five (5) aggravating factors for both Counts I and II. The jury was instructed, as required by Florida Statute § 921.141(2) (2017), that in order to find the existence of an aggravating factor it must unanimously determine that the aggravating factor had been proven beyond a reasonable doubt. The evidence presented at trial that supported each of the aggravating factors is outlined and discussed below. Since the same aggravating factors have been alleged with regard to both the murder of Randy Peacock and the murder of Charles Johnston and the evidence supporting each is either similar or occurred during the same intermingled course of events, the State will address these factors as they relate to both victims together.

1. The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person. Section 921.141(6)(b), Florida Statutes.

The bases for this aggravating factor are the defendant's convictions for the contemporaneous murders of Charles Johnston (as it relates to the defendant's conviction for the murder of Randy Peacock in Count I) and Randy Peacock (as it

relates to the defendant's conviction for the murder of Charles Johnston in Count II), and his prior convictions for the following nine violent felonies:

Kidnapping and Robbery	*State v. Norman B. McKenzie*, Case No. 1984-3907-CF, Broward Co., FL, Nov. 8, 1984
Robbery	*State v. Norman B. McKenzie*, Case No. 1990-19206-CF, Broward Co., FL, May 28, 1991
Robbery	*State v. Norman B. McKenzie*, Case No. 2007-586-CF, Alachua Co., FL, May 17, 2007
Robbery	*State v. Norman B. McKenzie*, Case No. 2007-532-CF, Alachua Co., FL, May 17, 2007
Robbery	*State v. Norman B. McKenzie*, Case No. 2007-585-CF, Alachua Co., FL, May 17, 2007
Attempted Robbery	*State v. Norman B. McKenzie*, Case No. 2006-5259-CF, Alachua Co., FL, May 17, 2007
Kidnapping with a Firearm	*State v. Norman B. McKenzie*, Case No. 2006-CF-005261, Alachua Co., FL, May 17, 2007
Carjacking with a Firearm	*State v. Norman B. McKenzie*, Case No. 2006-4213-CF, Marion Co., FL, Mar. 6, 2007

Certified copies of these prior judgments were entered into the evidence by the State, who also presented testimony from fingerprint expert Samantha Otter that the fingerprints attached to the judgments matched standards from the defendant. The State also presented live testimony from six victims and one detective concerning the circumstances of all of the offenses dating from 1990 to 2007. Each of them described the violence, terror and, in one victim's case, the extensive and

permanent physical injuries inflicted by the defendant during those crimes. Finally, the State admitted into evidence a recorded interview in which the defendant not only confessed to the murder of Randy Peacock and Charles Johnston, but also recounted in extensive detail his actions in committing virtually all of these crimes. His description of these events substantially matched the accounts given by the victims.

As for the defendant's conviction for the murders of Randy Peacock and Charles Johnston, it is well-established that contemporaneous convictions for capital or violent felonies on different victims may be considered. *Bevel v. State*, 983 So.3d 505 (Fla. 2008); *Francis v. State*, 808 So.2d 110 (Fla. 2002); *Pardo v. State*, 563 So.2d 77 (Fla. 1990); *King v. State*, 390 So.2d 315 (Fla. 1980). Additionally, Kidnapping, Robbery, Attempted Robbery and Carjacking have all been considered felonies involving the use or threat of violence. *See e.g., Lugo v. State*, 845 So.2d 74, 111 (Fla. 2003) (recognizing prior conviction for kidnapping as a prior violent felony); *Johnson v. State*, 442 So.2d 193, 197 (Fla. 1984) (holding that robbery and attempted robbery were violent felonies); *Cannon v. State*, 180 So.3d 1023, 1033 (Fla. 2015) (recognizing carjacking as a violent felony).

The evidence of these convictions were presented to the penalty phase jury, and they unanimously agreed that this aggravating factor, as it applies to the murder

of both victims, had been proven beyond a reasonable doubt. *Verdict as to Sentence, Count I – First Degree Murder of Randy Peacock (Question A.1)*, Aug. 29, 2019 (R.502); *Verdict at to Sentence, Count II – First Degree Murder of Charles Johnston (Question A.1)*, Aug. 29, 2019 (R.503). The Florida Supreme Court has observed that the "prior violent felony" aggravating factor is one of the "most weighty in Florida's sentencing calculus." *Sireci v. Moore*, 825 So.2d 882, 887 (Fla. 2001). The State submits that this is particularly the case here, where the defendant has not only previously committed many of the most violent non-lethal felonies, but also murdered two innocent human beings in this case. Accordingly, the Court should give this aggravating factor GREAT WEIGHT.

2. The first degree murders of Randy Peacock and Charles Johnston were committed while the defendant was engaged in the commission of, or an attempt to commit a robbery. Section 921.141(6)(d), Florida Statutes.

The evidence supporting this aggravating factor (as it relates to both murders) is derived, in short, from the defendant's own words. During the penalty phase, the State admitted into evidence two video recorded interviews of the defendant on October 5, 2006, and February 15, 2007. The defendant's statements during these interviews clearly show that he was engaged in the commission of a robbery when he murdered Randy Peacock and Charles Johnston.

In his interview on February 15, 2007, the defendant told Det. Timothy Burress that he went to the victims' home for the purpose of stealing their money because he was running low on drugs. Similarly, he told Det. Timothy Rollins on October 5, 2006, that he went to the victims' home intending to kill Randy Peacock and Charles Johnston and steal their money.

Additionally, the evidence introduced at trial established that after brutally killing Randy Peacock and Charles Johnston, the defendant took their wallets, money and credit cards, and also stole Randy Peacock's car. Upon arrest, the defendant was found in possession of Randy Peacock's wallet, which contained credit cards in both victims' names. Charles Johnston's wallet was found in Randy Peacock's abandoned car.

The defendant's original description of the events during his two interviews clearly demonstrate that he killed Randy Peacock during the course of a robbery. His claim at the *Spencer* hearing that he killed the victims in a sudden fit of anger following a disagreement over money owed to him is inconsistent with his repeated assertions that drug addiction drove him to commit the murders, is irreconcilable with his previous statements, and defies common sense.

The penalty phase jury in this case unanimously found beyond a reasonable doubt that the defendant committed the murder of Randy Peacock and Charles

Johnston while he was engaged in the commission of a robbery. *Verdict as to Sentence, Count I – First Degree Murder of Randy Peacock (Question A.2)* (R.502); *Verdict at to Sentence, Count II – First Degree Murder of Charles Johnston (Question A.2)* (R.503). The Court should give this aggravating factor GREAT WEIGHT.

3. The first degree murders of Randy Peacock and Charles Johnston were committed for pecuniary gain. Section 921.141(6)(f), Florida Statutes.

This aggravating factor is supported by the same evidence that proved that the defendant murdered Randy Peacock during the commission of a robbery. This factor has been held to apply where the "murder is an integral step in obtaining some sought-after specific gain." *Henyard v. State*, 689 So.2d 239, 253 (Fla. 1996) (citing *Hardwick v. State*, 521 So.2d 1071, 1076 (Fla. 1988)); *see Bowles v. State*, 804 So.2d 1173, 1179-80 (Fla. 2002) (holding that defendant's statement that he expected to find money at victim's home was sufficient evidence that the murder was committed for pecuniary gain despite defendant's later claim that he found no money and that the property that he did take was simply an afterthought). The defendant's statements clearly demonstrate that he murdered Randy Peacock in order to steal money from him to continue fueling his consumption of drugs.

The jury also found this aggravating factor to have been proven beyond a reasonable doubt. *Verdict as to Sentence, Count I – First Degree Murder of Randy Peacock (Question A.3)* (R.502); *Verdict at to Sentence, Count II – First Degree Murder of Charles Johnston (Question A.3)* (R.503). Case law, however, dictates that when a murder occurs during the course of a robbery, the felony-murder and pecuniary-gain aggravating factors cannot be considered separately. *Francis*, 808 So.2d at 136-37. Therefore, the Court's consideration of this aggravating factor must merge with its deliberation on the felony-murder factor.

4. The first degree murders of Randy Peacock and Charles Johnston were especially heinous, atrocious, or cruel. Section 921.141(6)(h), Florida Statutes.

The Florida Supreme Court has held that the heinous, atrocious or cruel (HAC) aggravating factor applies "only in tortuous murders – those that evince extreme and outrageous depravity as exemplified by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another." *Chesire v. State*, 568 So.2d 908, 912 (Fla. 1990). Additionally, the crime must be both conscienceless or pitiless and unnecessarily torturous to the victim. *Nelson v. State*, 748 So.2d 237, 245 (Fla. 1999); *Knight v. State*, 746 So.2d 423, 438-39 (Fla. 1998); *Zakrzewski v. State*, 717 So.2d 488, 492 (Fla. 1998); *Hartley v. State*, 686 So.2d 1316, 1323 (Fla. 1996); *Richardson v. State*, 604 So.2d 1107, 1109 (Fla.1992).

A predicate component of the HAC aggravator is that the victim was conscious and aware of his or her impending death or the circumstances that contributed to the death. *Zakrzewski*, 717 So.2d at 493 (citations omitted).

Furthermore, HAC focuses on the means and manner in which the death is inflicted and the immediate circumstances surrounding the death, rather than on the intent and motivation of a defendant, where a victim experiences the torturous anxiety and fear of impending death. Thus, if a victim is killed in a torturous manner, a defendant need not have the intent or desire to inflict torture, because the very torturous manner of the victim's death is evidence of a defendant's indifference. *Barnhill v. State*, 834 So.2d 836, 849-50 (Fla. 2002). Therefore, the focus should be on the victim's perceptions of the circumstances as opposed to those of the perpetrator. *Lynch v. State*, 841 So.2d 362, 369 (Fla. 2003).

During both of the defendant's recorded interviews, the defendant described in explicit detail his murder of Randy Peacock and Charles Johnston. After waiting for several hours for a neighbor to leave, the defendant asked Charles Johnston for a hammer and a piece of wood, which he told Charles Johnston he needed to knock a dent out of his car. Charles Johnston found and gave the defendant a hatchet to use as a hammer and walked into a backyard shed to look for a piece of wood. With hatchet in hand, the defendant entered the shed behind Charles Johnston and struck

him once in the head with the blade edge of the hatchet. Charles Johnston then fell into some shelves before collapsing to the shed floor.

After attacking Charles Johnston, the defendant walked into the house where Randy Peacock was cooking soup on the stove in the kitchen. He struck Randy with the hammer side of the hatchet once in the back of the head, which caused Randy to fall into the pot in which he was cooking. However, Randy did not fall down. Rather, he stood there at the stove with his elbows and arms in the scalding hot soup. The defendant stated that he then struck Randy once or twice more in the head again. He then pulled Randy away from the stove, and Randy fell to the floor. At that point, the defendant mistakenly thought Randy was dead or dying based on the sound of Randy's breath. The defendant then indifferently stated, "So, I didn't have to . . . freak out about it anymore, fuck him."

The defendant said he then left the house and went back to the shed to steal Charles Johnston's watch. Upon his return, he found Charles Johnston struggling to get up. During his interview, the defendant said that not only was Charles Johnston conscious and still alive at that point, but also that he might have survived if the defendant had called an ambulance. Rather than doing so, the defendant then struck Charles Johnston in the face with the blade end of the hatchet three more times, killing him. In describing his initial failed effort to kill Charles Johnston during the

first attack, the defendant told detectives, "Man, you wouldn't believe how hard it is to kill somebody."

The defendant then left the hatchet in the shed and walked back to the house. Upon re-entering the kitchen area, he surprisingly found Randy on his feet, struggling to get up. The defendant stated that he could see that Randy was blind from the previous blows he had inflicted to Randy's head. Because he had left the hatchet in the shed after killing Charles Johnston, the defendant grabbed a long butcher knife out of a dish drainer. He then stabbed Randy multiple times in the neck, chest, abdomen and back in an effort to cut his jugular vein and stab him in the heart. At that point, a struggle ensued. Despite the multiple stabbings, the defendant stated, "[Randy] wouldn't go down. He wouldn't go down." He then described thrusting the knife at an angle far into Randy's abdomen and then "jiggl[ing] it around" his heart that the entire blade of the knife was inside Randy's body. The defendant stated that Randy then attempted to grab the knife, but could only grab his hand because the knife was all the way in him. Randy's grip was so tight that the defendant had to struggle to get his hand off of him. As it relates to his efforts to kill Randy Peacock, the defendant said, "That shit ain't as easy as it sounds, man." When asked if Randy knew he was fighting him, the defendant responded, "I think he was trying to live. . . . I do think he was aware that he needed to live."

Dr. Predrag Bulic, the Chief Medical Examiner, testified at trial that Randy Peacock suffered three (3) or four (4) blunt force injuries to the back of the head. He also testified that the visual center is located in the back of the brain, so the defendant's statement that Randy Peacock appeared to be blind after being struck in the back of the head was consistent with these injuries. Both of Randy Peacock's arms endured extraordinarily painful second and third degree burns to both arms, consistent with coming into contact with an extremely hot liquid. Dr. Bulic also found that Randy had also sustained six (6) stab wounds, one (1) to the right side of the neck, two (2) to the upper abdomen, two (2) to the lower chest, and one (1) to the back. The wounds to Randy Peacock's neck and upper abdomen were not lethal. Dr. Bulic concluded that the lower chest stab wounds, which went between the ribs and struck the liver, were potentially survivable if Randy Peacock had been taken to the hospital within 30 minutes. Even the most lethal of the stab wounds – the back wound which penetrated all the way through Randy Peacock's right lung, and fractured one of his front ribs – also did not result in an instantaneous death. Importantly though, while Dr. Bulic stated that while Randy Peacock would have initially lost consciousness from the blows to the back of his head, it was his opinion, based on the defendant's statements, that Randy Peacock survived this initial attack and was conscious at the time he was being repeatedly stabbed by the defendant.

Moreover, after regaining consciousness, Dr. Bulic testified that Randy Peacock would have felt the severe pain from the burn wounds to his arms as well as all the stab wounds inflicted by the defendant. The fact that the defendant used more than one type of weapon to inflict numerous injuries to different parts of Randy Peacock's body corroborate the defendant's account that the victim was conscious during the stabbing and aware enough to struggle for his own life.

Dr. Bulic also testified that Charles Johnston suffered four (4) chop injuries to the head. Dr. Bulic opined that with the information from the defendant that Charles Johnston regained consciousness after the initial attack and was trying to get up off the shed floor, Charles Johnston would have been experiencing significant pain prior to the defendant striking the additional fatal blows with the hatchet.

The HAC aggravating factor can apply in cases in which the victim was beaten or stabbed multiple times to death if the victim was alive and conscious when the wounds were inflicted. *Guardado v. State*, 965 So.2d 108, 115-17 (Fla. 2007). Furthermore, the Florida Supreme Court has upheld a trial court's HAC finding where a victim, who initially had been rendered unconscious, regained consciousness prior to being attacked again and murdered. *See Overton v. State*, 801 So.2d 877, 901 (Fla. 2001) (upholding HAC where victim had been knocked unconscious but regained consciousness before the defendant disabled the victim

and then strangled him to death); *Scott v. State*, 494 So.2d 1134 (Fla. 1986) (upholding HAC where victim was beat unconscious, then driven to a deserted area where he regained consciousness before being beat again and run over by a car).

The evidence presented at trial shows that Randy Peacock and Charles Johnston endured torturous deaths at the hands of the defendant, who was utterly indifferent to their suffering. The jury in this case unanimously agreed and found beyond a reasonable doubt that the defendant's murders of both Randy Peacock and Charles Johnston were especially heinous, atrocious or cruel. *Verdict as to Sentence, Count I – First Degree Murder of Randy Peacock (Question A.4)* (R.502); *Verdict at to Sentence, Count II – First Degree Murder of Charles Johnston (Question A.4)* (R.503). The Florida Supreme Court has also recognized this aggravating factor as one of "the most weighty in Florida's sentencing calculus." *Sereci*, 825 So.2d at 887. Based on all the above, the Court should find that this aggravating factor applies and give it GREAT WEIGHT.

5. The first degree murders of Randy Peacock and Charles Johnston were committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. Section 921.141(6)(i), Florida Statutes.

In *Jackson v. State*, 648 So.2d 85, 89 (Fla. 1994), the Florida Supreme Court set forth four elements that the State must satisfy in order the establish the "cold, calculated and premeditated" (CCP) aggravating factor: (1) the killing was the

product of cool and calm reflection and not an act prompted by emotional frenzy, panic or fit of rage ("cold"); (2) the defendant must have 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. The evidence presented at trial proved each of the elements beyond a reasonable doubt.

a. *Cold: The murders were the product of cool and calm reflection.*

First, the State has established that the murders of Randy Peacock and Charles Johnston were the product of cool and calm reflection, rather than an act prompted by emotional frenzy, panic or fit of rage. The evidence in this case clearly shows that the defendant went to the victims' home with the intent to rob and kill them. He told detectives in his interviews that he wanted money to buy more drugs, that he had committed several other robberies in the preceding days, and had concluded that "everything was just over with in my mind." After arriving at the home, the defendant remained there for several hours while a neighbor helped Charles Johnston fix the brakes on his car. During that time, the defendant contemplated how to murder the two men and "get it over with pretty quick." He waited until the neighbor left and Randy Peacock was inside the house, leaving him alone outside with Charles Johnston.

Based on his own statements at the time of his interviews, the defendant was not provoked into a fit of raged or some sort of emotional frenzy or panic. He calmly asked Charles Johnston for a "good size hammer" and a piece of wood to knock out a dent in the door of his vehicle. Charles Johnston gave the defendant a single-blade hatchet, the flat end of which could be used as a hammer, then proceeded into a shed to look for a piece of wood. The defendant coolly and calmly followed him in. When Charles Johnston walked to the back corner of the shed with his back turned to the door, the defendant struck him once with the blade edge of the hatchet. According to the defendant, there was no fight; he completely blindsided Charles Johnston. Upon being struck, Charles Johnston fell into some shelves before landing on the floor of the shed.

After attacking Charles Johnston, the defendant left the shed and walked to the house. Hatchet in hand, he quietly entered the home and crept up behind Randy Peacock, who was standing at the kitchen stove cooking soup. The defendant then struck Randy Peacock once in the back of the head with the hammer end of the hatchet, causing Randy Peacock to fall arms-first into the scalding hot pot of soup. When Randy Peacock did not immediately fall down, the defendant hit him two or three more times with the hatchet. Eventually, Randy Peacock collapsed to the floor.

Like Charles Johnston, Randy Peacock was completely surprised by the defendant's attack.

After striking Randy Peacock several times in the head, the defendant returned to the shed to steal Charles Johnston's watch. When he arrived, he noticed Charles Johnston trying to get up. The defendant later observed that, at that point, Charles Johnston might have lived if he had called for an ambulance. Realizing that Charles Johnston had survived the initial attack, the defendant then struck him three more times in the face with the blade side of the hatchet, chopping through his skull and into his brain. Attesting to his relentless determination to kill Charles Johnson, the defendant told detectives during one of his interviews, "Man, you wouldn't believe how hard it is to kill somebody." The defendant then stole Charles Johnston's wallet from his right rear pants pocket, laid the hatchet on a bucket in the shed, and returned to the house.

When the defendant re-entered the home, he surprisingly found Randy Peacock on his feet, struggling to stand up. Despite noticing that Randy Peacock had been blinded by the initial blows to his head, the defendant then grabbed a large butcher knife and began stabbing Randy Peacock over and over in the neck, chest, abdomen and back. During this subsequent knife attack, Randy Peacock did not die easily and struggled against the defendant before finally succumbing to his

numerous injuries. Like Charles Johnston, the defendant observed the following about his efforts in killing Randy Peacock: "That shit ain't as easy as it sounds, man."

b. *Calculated: The defendant had a careful plan or prearranged design to commit the murders.*

Second, the State has proved beyond a reasonable doubt that the murders of Randy Peacock and Charles Johnston were "calculated," this is, that the defendant had a careful plan or a prearranged design to murder Randy Peacock and Charles Johnston before he did so. The calculated element applies is cases where the defendant plans his actions, has time to coldly and calmly decide to kill, arms himself in advance, and kills execution-style. *Wright v. State*, 19 So.3d 277, 299 (Fla. 2009).

Again, the evidence established that the defendant went to the victims' home with the intent to rob and kill them. He knew the victims, having done work for them in the past. He waited for hours until the opportunity was right and contemplated how to quickly murder the two men. When the neighbor left and Randy Peacock was in the house, the defendant was finally alone with Charles Johnston, his first victim. It is then that the defendant carried out his prearranged plan by asking for his weapon, a hammer, under the guise of needing to knock out a dent in his vehicle. When Charles Johnston entered the shed at the request of the defendant to find a piece of wood, the defendant followed him in and carried out his

plan. Once he believed Charles Johnston was dead, he then turned his sights on Randy Peacock, who was alone inside the house. Once he had ensured that both men were dead, even to the point of returning and attacking them a second time, he stole their wallets and car, completing his plan to rob and kill them.

c. *Premeditation: The defendant exhibited heightened premeditation.*

The State has proven beyond a reasonable doubt that the defendant exhibited heightened premeditation in carrying out the killings of Randy Peacock and Charles Johnston. Heightened premeditation is demonstrated by a substantial period of reflection. Additionally, "this element exists where a defendant has the opportunity to leave the crime scene with the victims alive but, instead, commits the murders." *Wright*, 19 So.3d at 300.

The evidence in this case established that the defendant was at the victims' home for hours before he committed the murders. He waited for the opportune moment before carrying out his plan. In total, he struck Charles Johnston with the hatchet four separate times. He struck him once, and Charles Johnston fell to the shed floor. The defendant then walked to the house, which is some distance from the shed. Once inside the house, he struck Randy Peacock three or four times in the head with the hatchet. He then left the house and returned to the shed where he found Charles Johnston still alive. In that moment, the defendant recognized that

Charles Johnston could have survived if he had stopped and sought medical attention. However, the defendant then struck Charles Johnston in the face three more times with the hatchet, killing him. He then left the hatchet in the shed and returned to the house where he saw Randy Peacock standing up on his feet. The defendant then grabbed a butcher knife and stabbed Randy Peacock six times in the neck, chest, abdomen and back, killing him. This evidence clearly shows a lengthy, methodical and difficult series of events that provided the defendant with an extensive period of time to contemplate committing the murders, designing a plan to effectively carry them out, and then accomplishing that plan despite the difficulties he faced in doing so. There can be no question that the defendant committed the murders of Randy Peacock and Charles Johnston after a substantial period of reflection and thought.

d. *The defendant had no pretense of moral or legal justification.*

Finally, the State has proven beyond a reasonable doubt that the defendant committed these murders without any pretense of moral or legal justification. "[A] pretense of moral or legal justification is any colorable claim based on at least partly on uncontroverted and believable factual evidence or testimony that, but for its incompleteness, would constitute an excuse, justification, or defense to the homicide." *Walls v. State*, 641 So.2d 381, 388 (Fla. 1994). It hardly needs to be

said that there is not one scintilla of evidence that even remotely suggests that the defendant in this case had any pretense of moral or legal justification in killing Randy Peacock and Charles Johnston. The proof is overwhelmingly to the contrary. First, the defendant himself admitted that he went to their house for the specific purpose to commit the illegal act of robbery and murder. Second, the evidence shows that the defendant calmly interacted with both of the victims for hours. No argument ever ensued between them and the victims had no reason to suspect that the defendant was there to kill them.

The jury in this case unanimously found beyond a reasonable doubt that the defendant's murder of Randy Peacock was cold, calculated and premeditated. *Verdict as to Sentence, Count I – First Degree Murder of Randy Peacock (Question A.5)* (R.502); *Verdict at to Sentence, Count II – First Degree Murder of Charles Johnston (Question A.5)* (R.503). The Florida Supreme Court has also classified CCP as one of the most serious aggravating factors set out in the statutory scheme. *Suggs v. State*, 923 So.2d 419, 436 (Fla. 2005) (citing *Larkins v. State*, 739 So.2d 90, 95 (Fla. 1999)). Based on the evidence presented at trial and the jury unanimous finding, the Court should find that this aggravating factor exists and give it GREAT WEIGHT.

MITIGATING CIRCUMSTANCES

Following the presentation of evidence during the penalty phase, the defendant requested, and the Court gave, jury instructions pertaining to the following statutory mitigating circumstances, pursuant to Florida Statutes § 921.141(7)(b) and (f):

1. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

2. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

The defendant also presented evidence and argument that the following non-statutory mitigating circumstances should be considered as "other factors in the defendant's background that [should] mitigate against imposition of the death penalty under Florida Statutes § 921.141(7)(h):

3. The defendant's childhood was chaotic.

4. The defendant and his siblings experienced a lack of supervision after the divorce of his parents.

5. The defendant started huffing from spray cans at the age of 11 years old.

6. The defendant has an early and chronic abuse and dependency on alcohol and drugs.

7. The defendant had a cocaine dependency relapse starting in July 2006 up to and after the crimes at bar.

8. The defendant consistently used a voluminous amount of cocaine from July to October of 2006.

9. The defendant cooperated with law enforcement at the time of his arrest.

10. The defendant admitted to the murders of Randy Peacock and Charles Johnston.

11. The defendant has artistic ability.

12. The defendant was an assistant superintendent for EMJ that built Cobblestone Village in St. Augustine.

The verdict form returned after deliberations indicated that one or more individual jurors found that at least one of these mitigating circumstances had been established by the greater weight of the evidence. However, it did not indicate which or how many mitigating circumstances were found to have been established or the number of jurors that agreed with that finding.

The State asserts that the mitigating circumstances offered by the defendant in this case should not be given great weight. To the extent that the Court finds that mitigation does exist and assigns it some level of weight, the State further argues that such mitigation does not outweigh the aggravating factors that have been proven beyond a reasonable doubt in the murders of Randy Peacock and Charles Johnston. Because some of the mitigating circumstances offered by the defendant are related or are supported by similar evidence, the State will, in those circumstances, combine its response to these claims.

1. **The First Degree Murders were committed while the defendant was under the influence of extreme mental or emotional disturbance.**

2. **The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.**

During the trial, the defense presented the testimony of Dr. Stephen Bloomfield to support its claim to these mitigating circumstances. Dr. Bloomfield testified that numerous psychological tests performed by him and Dr. Eric Mings showed that the defendant did not suffer from any mental illness or any intellectual disability.[1] Dr. Bloomfield testified that it was his opinion that the defendant was under the influence of extreme mental or emotional disturbance and that his ability to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired for one reason, and one reason only: the defendant's drug use prior to or at the time of the murders.

Although there is no proof other that the defendant's own word, the State does not necessarily take issue with the defendant's claim that he was under the influence of drugs at the time he murdered Randy Peacock and Charles Johnston. However, several aspects of the defendant's own statements demonstrate that he was clearly aware that what he was doing was wrong and that he was capable of forming and

[1] This was corroborated by Dr. William Meadows, who also administered psychological testing and found that the defendant did not suffer from any mental illness.

executing a very sophisticated plan to carry out the murders. Again, the defendant remained at the victims' house for hours, waiting for a neighbor to leave. During that time, he contemplated how he was going to quickly kill the victims. He then obtained a weapon and waited to attack each victim individually. After his first attack on Charles Johnston, which resulted in Charles Johnston crashing into shelves and onto the shed floor, the defendant became concerned that a deaf woman who lived on the property could feel the vibrations from the noise. For this reason, the defendant said that he needed to take measures to prevent that from happening again when he killed Randy Peacock. Moreover, his statements to law enforcement in which he recognized the atrocity of the murders and realized, at one point, that one of both of the victims could have survived his initial attack demonstrate that he appreciated the criminality of his conduct and was capable of abandoning his plan at any time.

According to the defendant, he had recently stopped himself from going further in committing a violent crime. In his October 5, 2006 interview, he described the incident in which he had kidnapped Karen Coffey in Alachua County a few days before. This crime was the subject of one of the defendant's prior violent felony convictions. In that interview, the defendant told detectives that he was "fighting inside . . . , wanting to hurt this woman." However, the defendant eventually released

Mrs. Coffey unharmed. Notably, the defendant repeatedly claimed that he had never committed a single crime when he wasn't under the influence of drugs.

By his own statements, the defendant admitted that he was capable of appreciating the criminality of his conduct and conforming his conduct to the requirements of the law *even when he was under the influence of drugs*. However, he, and he alone, decided when he would do so and when he would not. The defendant's victims were simply at his mercy. In light of the above, the Court should find that these mitigating circumstances have not been established by the greater weight of the evidence.

Even if the Court does find that one or both of these mitigating circumstances have been established, it should not assign them any more than MINIMAL WEIGHT. The defendant essentially admitted that any drugs under which the defendant may have been under the influence were *voluntarily* consumed by him. He was not forced to use the drugs any more than he was forced to rob and murder Randy Peacock and Charles Johnston. Moreover, as explained by Dr. Meadows during his testimony at trial, psychological testing of the defendant showed that the defendant was not using drugs to self-medicate any kind of mental illness or mood disorder. Rather, he consumed drugs because it fulfilled his hedonistic, thrill-seeking personality. It is entirely proper to ascribe these mitigators a small amount

of weight because the defendant was the cause of his own emotional distress and substantially impaired capacity. *See Poole v. State*, 151 So.3d 402, 416 (Fla. 2014).

3. The defendant's childhood was chaotic.

4. The defendant and his siblings experienced a lack of adequate supervision after the divorce of his parents.

The basis for these mitigating circumstances was the testimony of Dr. Bloomfield, who characterized the defendant's childhood as "chaotic" and without adequate supervision. Ironically, the defendant himself described his childhood as "great" or "happy" to both Dr. Bloomfield and Dr. Meadows. Both doctors reported that the defendant denied any physical or sexual abuse.

Dr. Bloomfield also testified that, despite any difficulties the defendant faced growing up, he was a resilient individual and did not become psychologically impaired as a result. In fact, Dr. Bloomfield stated that, during his evaluation, he gave the defendant a psychological test called the Trauma Stress Inventory ("TSI"). The TSI measures signs and symptoms of posttraumatic stress and acute stress disorder. Dr. Bloomfield gave this test to the defendant because the defendant described trauma that he experienced as a child. Upon the defendant's completion of the TSI, Dr. Bloomfield reported that the defendant scored the lowest of anyone he had ever tested, meaning that the defendant did not suffer from any anxiety or stress from any alleged trauma.

Notwithstanding the above, the State does not take issue with the claim that the defendant experienced a chaotic childhood or that, following the divorce of his parents, he and his siblings were inadequately supervised. However, the defendant was 42 years of age at time he murdered Randy Peacock and Charles Johnston, not an immature, neglected adolescent. The evidence at trial also showed that he was professionally successful, having worked for a number of years as a supervisor for a construction company that built shopping centers. This demonstrates that, notwithstanding his difficult childhood, the defendant had, like many other individuals, overcome those challenges and proven to others that he had the maturity and intellect to not only govern his own behavior, but also manage and oversee the work of other men. To the extent that the Court finds that these mitigating circumstances have been established, it should be given MINIMAL or SLIGHT WEIGHT.

5. **The defendant started huffing from spray cans at the age of 11 years old.**

6. **The defendant has an early and chronic abuse and dependency on alcohol and drugs.**

7. **The defendant had a cocaine dependency relapse starting in July 2006 up to and after the crimes at bar.**

8. **The defendant consistently used a voluminous amount of cocaine from July to October of 2006.**

As indicated previously, the State does not challenge the defendant's claim that he used drugs as an adolescent or during the time leading up to the murders of Randy Peacock and Charles Johnston. Likewise, the State agrees that the defendant had a dependency on cocaine or other controlled substances.

Following Dr. Bloomfield's testimony, Dr. William Meadows testified at trial that he administered the Millon Clinical Multiaxial Inventory ("MCMI"), which confirmed that the defendant had a significant substance abuse problem. However, in addition to diagnosing a drug problem, the MCMI can also determine the profile of the person in terms of what drives the substance abuse problem. Dr. Meadows explained that there are two main reasons why people develop a dependency on drugs. First, people often use drugs or alcohol to self-medicate a mental illness or mood disorder. The second reason involves individuals who enjoy pleasure and tend to be thrill or sensation seekers. Such individuals use drugs because it makes them feel good or accentuates their personalities. Dr. Meadows concluded that, based on his administration of the MCMI test, the defendant clearly fell into the latter category. To the extent that the Court agrees that the defendant's drug use and dependency constitute mitigating circumstances as outlined above, the State asserts that they should be given MINIMAL WEIGHT.

9. The defendant cooperated with law enforcement at the time of his arrest.

Other than turning over Randy Peacock's wallet to the arresting officer and then eventually confessing to the murders (the latter of which the defense has raised as a separate mitigating circumstance) the State is unaware of any evidence at trial that supports the defendant's claim that he was cooperative with law enforcement at the time of his arrest. Evidence was presented at trial that once efforts were made to locate and take the defendant into custody in Alachua County, he committed several carjackings and then engaged police in a dangerous high speed chase through multiple counties in an effort to avoid capture before finally crashing his car in Citrus County and being arrested. To the extent that the Court finds that that this mitigating circumstance has been established, it should be given MINIMAL WEIGHT.

10. The defendant admitted to the murders of Randy Peacock and Charles Johnston.

During the trial, the State admitted into evidence two interviews, which took place on October 5, 2005 and February 15, 2007. In those interviews, the defendant admitted in gruesome detail to the murders of Randy Peacock and Charles Johnston. The State agrees that this mitigating circumstance was established by a greater weight of the evidence. Out of all the mitigating circumstances asserted by the defense, it is reasonable to conclude that the defendant's confession merits slightly

more weight than any of the others. Accordingly, it should be afforded MODERATE WEIGHT. However, the defendant's admissions are still significantly outweighed by even one of the aggravating factors unanimously found by the jury in this case, much more so when compared to the aggravating factors as a whole.

11. The defendant has artistic ability.

The State does not dispute that the defendant has artistic ability. At trial, several paintings and drawings purportedly created by the defendant were submitted as evidence. The State agrees that these works showed the defendant to be a talented artist. Nevertheless, the defendant's artistic ability should not be given any more than SLIGHT WEIGHT as a mitigating circumstance. In fact, the Florida Supreme Court has, on several occasions, discounted this proposed mitigator and described it in other cases as "minor" and "not compelling." *See Evans v. State*, 808 So.2d 92, 108 (Fla. 2001); *Bogle v. State*, 655 So.2d 1103, 1109 (Fla. 1995); *Freeman v. State*, 563 So.2d 73 (Fla. 1990). It bears further pointing out that the fact that the defendant has such an exceptional talent only demonstrates another opportunity the defendant had to put his skills to good use and be a productive member of society, but chose not to do so. In terms of comparable weight, the defendant's ability to *create* a beautiful *inanimate* object cannot even begin to compare to his actions in *destroying* two *living, breathing* human beings in such a brutal and callous fashion. Any art he

is able to bring into this world for others to appreciate cannot in any way replace the two innocent victims he took from it, to the heartache of all who knew and loved them.

12. The defendant was an assistant superintendent for EMJ that built Cobblestone Village in St. Augustine.

The State does not take issue with the defendant's employment or the projects that he worked on as a mitigating circumstance. However, the State argues that this should be given SLIGHT WEIGHT.

CONCLUSION

In conclusion, the mitigating circumstances that were presented in this case are insubstantial when weighed against any of the five (5) aggravating factors that the jury unanimously found to have been established beyond a reasonable doubt. In a capital case, the death penalty is appropriate even if one aggravating factor is found and outweighs the mitigating circumstances found to have been established. *Foster v. State*, 369 So.2d 928 (Fla. 1979). The aggravating factors in this case should be given great weight. The mitigating circumstances are so insubstantial that even if the State only proved one of the aggravating factors presented, that factor (any one chosen) would substantially outweigh the mitigation presented. The "prior violent felony," HAC, and CCP aggravators are three of the most serious set out in the death penalty statute. The jury unanimously found that the State has proven all three of

these aggravating factors beyond a reasonable doubt, and each of them alone justifies a sentence of death in this case.

The jury in this case returned a unanimous verdict in favor of the death penalty for the deaths of both Randy Peacock and Charles Johnston. The law requires the Court to give the jury's verdict great weight in its determination of a proper, legal penalty for the violent and brutal murders of these victims. Respectfully, the State submits to the Court that the death penalty is an appropriate, lawful and justified sentence and requests this Court to sentence Norman Blake McKenzie to death.

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by mail or e-service delivery to JUNIOR BARRETT, OFFICE OF CRIMINAL CONFLICT, 101 SUNNYTOWN ROAD, SUITE 310, CASSELBERRY, FL 32707, on this 6th day of December, 2019.

Respectfully submitted,

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TAB 10

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO: CF11-01684

STATE OF FLORIDA

VS.

CHRISTOPHER LINUS FRIES,
DEFENDANT.
_____/

STATE'S RESPONSE TO DEFENDANT'S AMENDED MOTION FOR POSTCONVICTION RELIEF

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and pursuant to Rule 3.850, Fla. R. Crim. Pro., hereby files this response to the defendant's Amended Motion for Postconviction Relief. In support thereof, the State asserts the following:

On September 10, 2011, the defendant was arrested on a charge of First Degree Murder. On September 22, 2011, David Barksdale, a privately retained attorney, filed a Notice of Appearance in the case. Mr. Barksdale continued in his representation of the defendant through the discovery and trial phase of the case. On September 27, 2011, the defendant was charged in a one-count Indictment with First Degree Murder with a Firearm. The Indictment and probable cause affidavit alleged that the defendant, with a premeditated intent to kill, shot and killed Paul Crookshank with a handgun.

A jury trial commenced on February 17, 2014, with jury selection taking place on that day and the presentation of evidence between February 24-28, 2014. At trial, the defense argued self-defense as legal justification for the killing of Paul Crookshank. However, the jury nevertheless found the defendant guilty as charged of First Degree Murder. On March 4, 2014, the trial court

adjudicated the defendant guilty of that crime and sentenced him, as required by law, to life in prison without the possibility of parole.

On March 26, 2014, the defendant filed a Notice of Appeal to the Fifth District Court of Appeals. On December 15, 2015, that court affirmed the judgment and sentence of the trial court in a *per curiam* decision. *See Fries v. State*, 185 So.3d 1254 (Fla. 5th DCA 2015) (unpublished decision). A Mandate was issued by the 5th DCA on February 26, 2016. On April 15, 2016, the defendant filed a petition for writ of certiorari with the United States Supreme Court. U.S. Sup. Ct., *https://www.supremecourt.gov/search.aspx?filename=/docketfiles/15-9192.htm* (last updated Oct. 3, 2016). However, that petition was denied on October 3, 2016. *Fries v. Florida*, 137 S.Ct. 53 (2016).

On August 1, 2018, the defendant filed a Motion for Postconviction Relief, which essentially set forth six (6) allegations of ineffective assistance of trial counsel. On August 5, 2018, he filed a Motion for Leave to Amend Motion for Postconviction Relief. The Court granted that motion to amend on August 23, 2018, and gave the defendant until October 3, 2018 to do so. On October 2, 2018, the defendant filed an Amended Motion for Postconviction Relief, which alleged two (2) additional claims for a total eight (8) grounds for relief. On February 6, 2019, the Court issued an Order for State to Respond to Motion for Postconviction Relief within 60 days. On March 25, 2019, the State moved for a 60-day extension of time to respond, which the Court granted on April 4, 2019. Herein, the State responds to each of the claims alleged in the defendant's Amended Motion for Postconviction Relief.

EVIDENTIARY STANDARD

Claims of ineffective assistance of counsel are evaluated using the two-part test announced in *Strickland v. Washington*, 466 U.S. 668 (1984). For such a claim to be meritorious, a claimant

must (1) identify particular acts or omissions of the trial lawyer that fall below the wide range of reasonably competent performance under prevailing professional standards and (2) show that there is a reasonable probability that, but for the clear and substantial deficiency in counsel's performance, the result of the proceeding would have been different.

Under *Strickland*, the defendant, as the moving party, bears the burden of overcoming a strong presumption of counsel's reasonable and effective performance. *State v. Patterson*, 966 So.2d 471, 477 (Fla. 2d DCA 2007) (citing *Cabrera v. State*, 766 So.2d 1131, 1133 (Fla. 2d DCA 2000)). In addition to this presumption, an examination of trial counsel's performance much be considered from trial counsel's perspective under the circumstances at the time of trial, *Patterson*, 966 So.2d at 471, and strategic or tactical decisions by counsel after a thorough investigation are virtually unchallengeable, *Cabrera*, 766 So.2d at 1133.

A defendant asserting a claim of ineffective assistance of counsel is not entitled to a hearing if (1) the motion, files and record in the case conclusively show that the defendant is not entitled to relief, or (2) the motion or particular claim is legally insufficient. *Williamson v. State*, 994 So.2d 1000, 1006 (Fla. 2008) (quoting *Freeman v. State*, 761 So.2d 1055, 1061 (Fla. 2000)). A defendant's post-conviction motion is legally insufficient if the allegations contained therein are conclusory. His motion must allege specific facts that, when considered in the totality of the circumstances, demonstrate a deficiency on the part of counsel that is detrimental to the defendant. *State v. Coney*, 845 So.2d 120, 135 (Fla. 2003). Even when the allegations are sufficiently specific, a court may summarily deny a claim for relief when it is clear that the prejudice component is not satisfied. *Kennedy v. State*, 547 So.2d 912, 914 (Fla. 1989) (citing *Maxwell v. Wainwright*, 490 So.2d 927, 932 (Fla. 1986)).

Ground I: Trial Counsel Failed to Present an Expert Witness and Other Evidence Regarding Mr. Fries' Extensive History of Head and Other Physical Injuries

In his first claim for postconviction relief, the defendant alleges that his trial counsel rendered ineffective assistance of counsel by failing to present an expert witness and other evidence regarding the defendant's history of head and other physical injuries. Such evidence, he asserts, would have shown that the defendant experienced a heightened perception of danger at the time of the shooting, further supporting his self-defense claim at trial. A hearing is necessary to resolve this claim.

Ground II: Trial Counsel Failed to Retain and Present the Testimony of a Crime Scene Expert

In the second claim for relief, the defendant claims entitlement to relief on the grounds that his attorney failed to retain a crime scene expert and present his testimony at trial. He asserts that such an expert could have supported his theory of self-defense, refuted the State's theory of prosecution, and undermined the credibility of law enforcement. The resolution of this allegation also requires a hearing.

Ground III: Trial Counsel Failed to Impeach State Witness Daniel Garrett

In Ground III, the defendant claims that his trial counsel neglected to impeach Daniel Garrett, a partial eyewitness who was called to testify at trial by the State. Specifically, he asserts that counsel failed to challenge Mr. Garrett's testimony with evidence of alleged prior inconsistent statements and prior or pending charges. As with Grounds I and II, an evidentiary hearing is necessary to settle this claim.

Ground IV: Trial Counsel Failed to Present the Testimony of Cpl. Jeff Truncellito Regarding Paul Crookshank's Reputation for Violence

The defendant claims in Ground IV of his motion that his attorney provided deficient representation by failing to call Cpl. Jeff Truncellito of the St. Augustine Police Department to testify about his knowledge of Paul Crookshank's reputation for violence. The trial transcript shows, and the defendant admits in his motion, that his attorney called three witnesses – Danielle Taylor, Miguel Corzo, and Scott Leonardi – who each testified about the victim's reputation for getting into fights or arguments. Tr. Transcr. vol. VII, 1003-18 (Feb. 27, 2014). However, the defendant argues that, because a "jury is inclined to give great weight to [the] opinion" of a law enforcement officer in comparison to lay witnesses, it was prejudicial to omit similar testimony from such an official.

The State takes issue with the argument that the jury in this case would have given more credibility to a police officer than that of a lay witness. First, it is based entirely on speculation on how much weight the jury would have given each piece of evidence, including the testimony of the witnesses. It is impossible to know that with any level of certainty. Second, such a conclusion is legally improper since juries are specifically instructed that testimony from a law enforcement witness is not entitled to any more consideration simply because of the latter's employment status. *See* Fla. Stand. Jury Instr. 3.9 (2013).[1] Moreover, Florida appellate court have consistently held that it is error to deny a party's motion to strike a prospective juror who has indicated that he or she would give more weight to the testimony of a law enforcement officer. *See e.g.*, *Slater v. State*, 910 So.2d 347, 348 (Fla. 4th DCA 2005).

[1] This standard instruction was, as required, given at the conclusion of the trial of this cause. *See* Tr. Transcr. vol. VIII, 1166:14-17 (Feb. 28, 2014).

Nevertheless, the State suggests that this claim be scheduled for hearing since there is no record evidence of the testimony Cpl. Truncellito would have provided if he had been called to testify at trial. The State will reserve any further argument against the merits of this allegation after the parties have had an opportunity to lay a record of the witness's testimony.

Ground V: Trial Counsel Failed to Request a Jury Instruction on the Justifiable Use of Non-Deadly Force

In his fifth ground for postconviction relief, the defendant alleges that his attorney committed prejudicial error by failing to request that the trial court include a jury instruction on the justifiable use of non-deadly force. He argues that the defendant's actions in the case did not constitute deadly force as a matter of law, and that, accordingly, he was legally entitled to jury instructions on both the justifiable use of deadly and non-deadly force. *See DeLuge v. State*, 710 So.2d 83, 84 (Fla. 5th DCA 1998); *Michel v. State*, 989 So.2d 679, 681 (Fla. 4th DCA 2008); *see also*, *Jackson v. State*, 179 So.3d 443, 446 (Fla. 5th DCA 2015) (holding that "the mere display of a gun, or even pointing [it] at another's head or heart without firing it, is not deadly force as a matter of law"). This claim is contrary to the law.

The defendant recognizes in his motion that in the case of *Hosnedl v. State*, 126 So.3d 400 (Fla. 2013), the Fourth District Court of Appeals held that any discharge of a firearm, whether accidental or otherwise, constitutes deadly force as a matter of law. He addressed that decision by arguing that it was wrongly decided. Nevertheless, *Hosnedl* is directly on point and, since there is no contrary decision by the Florida Supreme Court or other district appeals court, it is, therefore, binding on the Court. In fact, in 2016 the Florida Supreme Court approved an amendment to 3.6(f) of the Florida Standard Jury Instructions based explicitly on the *Hosnedl* decision as follows in relevant part:

> *Because there are many ~~defenses~~ statutes applicable to self-defense, give only those parts of the instructions that are required by the evidence. However, unless the evidence establishes the force or threat of force was deadly or non-deadly as a matter of law, but 3.6(f) and 3.6(g) must be given. Mattis v. State, 863 So.2d 464 (Fla. 1st DCA 2004).* ***Only the discharge of a firearm, whether accidental or not, has been deemed to be the use of deadly force as a matter of law. Hosnedl v. State, 126 So.3d 400 (Fla. 4th DCA 2013).***

In re Stand. Jury Instr. in Crim. Cases – Rpt. No. 2014-06, 191 So.3d 411 (Fla. 2016) (emphasis added in bold).

The defendant asserts, contrary to the jury's verdict, that he did not intentionally fire the gun at Paul Crookshank, but rather that it discharged accidentally during a struggle between the two of them over the gun. There was much evidence introduced at trial to dispute this claim, and the jury furthermore rejected it as evidenced by their verdict. Even accepting the defendant's claim as articulated, the law now, and at the time of the defendant's trial, explicitly states that even the accidental discharge of a firearm constitutes deadly force as a matter of law. As such, the defendant was not entitled to the jury instruction on the justifiable use of non-deadly force.

In light of the above, the defendant's attorney was not ineffective for not requesting that instruction. Ground V's claim otherwise is contrary to the law as it was established at the time of trial, and accordingly it should be summarily denied.

Ground VI: Trial Counsel Failed to Object to Erroneous Instructions on Justifiable Use of Deadly Force

In Ground VI, the defendant claims his attorney failed to object to three allegedly erroneous instructions on justifiable use of deadly force. First, he argues that the standard instructions, as given, eliminated the requirement that the State prove beyond a reasonable doubt that the defendant did not act in self-defense. Second, he alleges that they were contradictory on the issue of the duty to retreat. Third, he asserts that the court should not have instructed the jury on whether the

defendant provoked the use of force against himself because there was no evidence to support the standard instruction. All of these claims should be summarily denied.

A. The Jury Instructions on Justifiable Use of Deadly Force Did Not Improperly Eliminate the State's Burden of Proof on the Issue of Self-Defense.

At trial, the court instructed the jury as follows, in relevant part:

> If, in your consideration of the issue of self-defense, you have a reasonable doubt on the question of whether CHRISTOPHER LINUS FRIES was justified in the use of deadly force, you should find CHRISTOPHER LINUS FRIES not guilty.
>
> However, if from the evidence you are convinced that CHRISTOPHER LINUS FRIES was not justified in the use of deadly force, you should find him guilty if all the elements of the charge have been proved.

R279; Jury Instructions, pg. 13-14; Tr. Transcr. vol. VIII, 1163:8-16 (Feb. 28, 2014). At that time, these were a verbatim part of section 3.6(f) of the standard jury instructions, which had been approved by the Florida Supreme Court. *In re Stand. Jury Instr. in Crim. Cases – Rpt. No. 2009-01*, 27 So.3d 640 (Fla. 2010). The defendant claims that the omission of the phrase "reasonable doubt" from the second paragraph of these instructions eliminated the State's burden of disproving the defendant's self-defense claim.

While the Florida Supreme Court did amend these instructions in 2016 to include the phrase "reasonable doubt" in the second paragraph, *see In re Stand. Jury Instr. in Crim. Cases – Rpt. No. 2014-06*, 191 So.3d 411 (Fla. 2016), Florida appellate courts have repeatedly rejected the argument that the pre-2016 instruction was legally incorrect, insufficient or misleading on the issue of the State's burden of proof. In *Jones v. State*, 13 So.3d 139, 140 (Fla. 5th DCA), the Fifth District Court of appeals held that this instruction did not incorrectly shift the burden of proof from the State to the defendant. Similarly, in *Roger v. State*, 670 So.2d 160, 162 (Fla. 4th DCA), the same court concluded that the instruction adequately instructed the jury on the state's burden of proof as it related to the defendant's self-defense claim. In *Mosansky v. State*, 33 So.3d 756, 757-

59 (Fla. 1st DCA 2010), the First District Court of Appeals rejected the defendant's argument that the court erred in refusing to add an instruction that specifically advised the jury that the state had the burden of disproving his self-defense claim. The Fourth District Court of Appeals reached the same conclusion in *Bowen v. State*, 655 So.2d 1208, 1209 (Fla. 4th DCA 1995). In light of these cases, the defendant's claim that his attorney's failure to object to these instructions is contrary to the law.

B. The Jury Instructions on the Justifiable Use of Deadly Force Sufficiently Informed the Jury of the Circumstances in Which the Defendant Would Not Have a Duty to Retreat.

Next, the defendant asserts that the following language in the jury instructions on self-defense contradicted the "stand your ground" law:

> In deciding whether Christopher Linus Fries was justified in the use of deadly force, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing Christopher Linus Fries need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious person under the same circumstances would have believed that *the danger could be avoided only through the use of that force.* Based upon appearances, the defendant must have actually believed that the danger was real.

R279; Jury Instructions, pg. 11-12; Tr. Transcr. vol. VIII, 1161:9-21 (Feb. 28, 2014) (emphasis added). The defendant argues that the italicized language improperly implied a duty to retreat when, according to his theory of defense, he did not have any such obligation. In support of his argument, the defendant relies on *Navarro v. State*, 190 So.3d 212 (Fla. 4th DCA 2016). However, that reliance is misplaced because *Navarro* is factually distinguishable, and significantly so.

In *Navarro*, the trial court refused to give the following instruction requested by the defense:

> If [the defendant] was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force, if he reasonably believed that it was

> necessary to do so to prevent death or great bodily harm to himself or to prevent the commission of a forcible felony.

Id. at 214. This is the explicit standard instruction to be given if the evidence supports a defendant's argument that he did not have a duty to retreat. The Fourth DCA held that the court's refusal to give that instruction was error because (1) it accurately stated the law under Section 776.012, Florida Statutes, regarding a lack of duty to retreat; (2) the evidence produced at trial supported giving the instruction; and (3) the instruction was necessary to resolve the issues in the case because the instruction actually given to the jury did not adequately address the applicable legal standard. *Id.* at 214-15. It reasoned that since the jury had not been instructed on the situations in which there was no duty to retreat, the given instruction implied that there was such a duty. Had the trial court given the "stand your ground" instruction as requested, it would have been consistent with the self-defense theory of the defendant's case. *Id.* at 215.

In this case, the trial court repeatedly charged the jury consistent with the defendant's theory that he had no duty to retreat. First, the court granted a request by defense counsel to modify the instructions that initially define the justifiable use of deadly force as follows:

> The use of deadly force is justifiable *and the defendant does not have a duty to retreat* if the defendant reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself while resisting:
>
> 1. another's attempt to murder him, or
>
> 2. any attempt to commit aggravated battery or felony battery upon him.
>
> A person is justified in using deadly force *and does not have a duty to retreat* if he reasonably believes such force is necessary to prevent
>
> 1. imminent death or great bodily harm to himself or another, or
>
> 2. the imminent commission of aggravated battery or felony battery against himself or another.

R219; Jury Instruction, pg. 10-11; Tr. Transcr. vol. VIII, 1159-60 (Feb. 28, 2014) (modifications in italics).[2]

Second and most significantly, the court here, unlike the one in *Navarro*, gave the relevant standard "stand your ground" instructions immediately after the passage at issue:

> If the defendant was attacked in a place where he had the right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or to prevent the commission of a forcible felony.

R219; Jury Instructions pg. 12; Tr. Transcr. vol. VIII, 1161:22-1162:3 (Feb. 28, 2014). Contrary to the defendant's argument, this instruction was completely consistent with the relevant provisions of Sections 776.012 and 776.013, Florida Statutes. Given the trial court's instructions explaining the circumstances in which the defendant did not have a duty to retreat, the instructions as given were not in error.

C. <u>The Trial Court Did Not Erroneously Instruct the Jury to Determine Whether the Defendant Provoked the Use of Force Against Himself Because Evidence Was Presented at Trial to Support Giving the Instruction.</u>

The defendant's last argument in Ground VI is that the trial court erred in giving the following "*Aggressor*" instruction:

> However, the use of deadly force is not justifiable if you find:
>
> CHRISTOPHER LINUS FRIES initially provoked the use of force against himself, unless:
>
> a. The force asserted against CHRISTOPHER LINUS FRIES was so great that he reasonable believed that he was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the

[2] It could be argued that these modifications of the introductory instructions on the justifiable use of deadly force were inappropriately weighted in the defense's favor because they created the inverse implication that there were no circumstances presented in which the defendant had a duty to retreat. This was inconsistent with the State's theory that the defendant was the initial aggressor. In such a situation, the defendant would have had a duty to retreat from any force used by the victim. As long as the succeeding "stand your ground" instructions were given, which did occur in this case, there was no reason to modify the preliminary instructions as requested. The jury would still have been sufficiently instructed as to the defense's contrasting theory that the defendant did not have a duty to retreat.

danger, other than using deadly force of PAUL GERALD CROOKSHANK.

b. In good faith, CHRISTOPHER LINUS FRIES withdrew from physical contact with PAUL GERALD CROOKSHANK and clearly indicated to PAUL GERALD CROOKSHANK that he wanted to withdraw and stop the use of deadly force, but PAUL GERALD CROOKSHANK continued or resumed the use of force.

R219; Jury Instructions pg. 11; Tr. Transcr. vol, VIII, 1160:7-1161:8. The defendant first argues that this instruction was inappropriate because there was no evidence presented at trial that the defendant provoked the use of force against himself by the victim. The trial record clearly contradicts this assertion. He also contends that the instruction should not have been given because, during closing argument, the State never argued that the defendant provoked an attack by the victim against himself but, instead argued that the victim never used any force against the defendant at all. This assertion is a myopic interpretation of the State's argument at trial.

The claim that the State presented no evidence that the defendant was the initial aggressor is refuted by the trial testimony of Daniel Garrett. Mr. Garrett testified that, at the time of the incident, he was employed at a Little Champ convenience store located next door to the Giggling Gator bar where the shooting took place. He stated that, while taking garbage to the dumpsters located near the property line between the store and the bar, he observed the defendant and victim in a heated argument in the bar parking lot. He then witnessed the defendant suddenly pull out a silver revolver, cock the hammer, put it under the victim's chin, and began pushing the victim back against a fence near the front of the bar. While doing so, the defendant was irately screaming something about the victim having sexual relations with his wife. Mr. Garrett testified that when the defendant put the handgun under the victim's chin, the victim immediately put his hands up in the air and kept saying, "It's not like that. Come on, man. It's not like that. Please. I don't want to have no problems." Mr. Garrett testified that he never saw the victim put his hands down after

that and never saw the victim with any type of weapon. After witnessing the defendant push the victim all the way against the fence at the front of the bar, Mr. Garrett immediately went inside the convenience store and called 911. R273; Tr. Transcr. vol. II, 132:8-153:9 (Feb. 24, 2014). Accordingly, the record is clear that there was evidence that the defendant was the primary aggressor in the altercation.

As for the assertion that the instruction was improper because the State never argued that the victim used any force that was initially provoked by the defendant, this completely ignores the testimony of the defendant, who claimed that the victim did, in fact, use force against him. R278; Tr. Transcr. vol. VII, 951-1003 (Feb. 27, 2014). The question of which party initiated the use of force against the other was the central dispute during the entire trial. Simply because the State chose to argue that the victim never tried to use defensive force against an attack that was initiated by the defendant does not necessarily mean that the jury, based on the defendant's testimony, could not have believed that the victim did, at some point, use force against the defendant but, at the same time, also believed that the defendant was the primary aggressor. In light of that possibility, the significance of the instruction was that the defendant, in those circumstances, then had duty to retreat. As such, the trial court did not err in giving the instruction and defense counsel was not ineffective for failing to object to it.

As set forth in the preceding paragraphs, all of the defendant's claims in Ground VI are either incorrect or inconsistent with the prevailing case law. Therefore, summary denial is appropriate.

Ground VII: Trial Counsel Failed to Object and Move for a Mistrial Based on the State's Improper Closing Argument

In his seventh ground for postconviction relief, the defendant alleges that his attorney failed to object to several arguments made by the State during its closing argument. Specifically, he claims that the prosecutor repeatedly asserted facts that were not in evidence and misstated the law. The record demonstrates that these claims are inaccurate.

A. The Prosecutor's Closing Argument Was Supported by Evidence.

1. *Testimony from several witnesses supported the statement that the defendant was on his hands and knees, crouched over the victim, at the time of the shooting.*

The defendant first complaint within Ground VII is that "there was absolutely no evidence to support" the prosecutor's argument in closing that the defendant was kneeling over the victim or was on top of the victim at the time the firearm was discharged. The record demonstrates that, in fact, the opposite is true.

The clearest record evidence refuting this argument was the testimony of Ofc. Frankie Shipp of the St. Augustine Police Department. He testified during the trial that he was the first officer on scene and that he arrived less than a minute and a half after he was dispatched as a result of Daniel Garrett's 911 call. R273; Tr. Transcr. vol. II, 172:13-175:1 (Feb. 24, 2014). Upon approaching the parking lot of the Giggling Gator, he didn't hear or see anyone at all. Thinking he might be in the wrong place, he radioed to his communications department and asked them to give him a description of the area where the altercation was taking place. R273; Tr. Transcr. vol. II 176:1-11. After he was given the description again, he began walking toward the bar entrance. As he was doing so, he suddenly heard a voice coming from behind a blue car parked in the front of the building say, "I'm going to fucking kill you!" At that point, he saw two sets of legs sticking

out from underneath the blue car. R273; Tr. Transcr. vol. II, 176:14-22. Ofc. Shipp testified that he was about 10-15 feet away from the blue car at the time. Almost immediately after he heard the threat, he heard a gunshot. R273; Tr. Transcr. vol. II, 178:3-6. Ofc. Shipp immediately drew his service weapon and looked around the car. Ofc. Shipp specifically testified that when he did so, he "saw Mr. Fries crouched over on his hands and knees over Mr. Crookshank," who was at that time on the ground, unresponsive and bleeding from the head. R273; Tr. Transcr. vol. II, 178:11-15.

Additionally, Dr. Predrag Bulic, the medical examiner who performed the autopsy in the case, testified that the victim had suffered a single gunshot wound to the head just behind the left ear. He further explained that due to a muzzle imprint on the victim's skin and the presence of soot inside the gunshot wound, he was able to determine that the muzzle of the firearm was actually in contact with the victim's head when it was fired. The bullet exited the victim's body in a straight line through his right jaw. R275; Tr. Transcr. vol. IV, 548:13-553:20; 560:17-561:7.

Finally, Shawn Vollmar, the crime scene technician who processed the scene the night of the shooting also testified that he located the bullet fired by the defendant in the pool of blood underneath the area where the victim's head was resting prior to him being transported from the scene. R274; Tr. Transcr. vol. III, 335:6-336:16. This testimony regarding the nature and trajectory of the gunshot wounds and location of the bullet following the shooting was entirely consistent with the defendant kneeling over the victim, who was on the ground, and shooting him in the back of the head.

2. *The prosecutor's description of the victim as "incapacitated" just prior to being shot was a reasonable conclusion from the evidence.*

The defendant also claims that the prosecutor's brief argument describing the victim as "incapacitated" as he was on the ground with the gun to the back of his head was "absolutely" unsupported by any evidence. This statement was a reasonable inference based on the evidence presented at trial, specifically as offered in the form of several witnesses and photographs.

First, there was virtually no evidence of two grown men rolling around in a coquina-surfaced parking lot fighting over a gun, as claimed by the defendant. Three officers – Ofc. Shipp, Ofc. Michael Linsky, and Ofc. John Niederriter – all testified at trial that, upon their arrival to the scene, they did not observe any injuries to the defendant consistent with a physical altercation. R273; Tr. Transcr. vol. II, 188:14-17; 231:3-18; 246:24-247:2 (Feb. 24, 2014). Officer Shipp, the first of these officers to arrive on scene, testified that the victim was still wearing loose flip flops when he found him immediately following the shooting. R273; Tr. Transcr. vol. II, 187:18-22. Photographs entered into evidence during the trial showed a pair of undamaged sunglasses and several undisturbed potted plants and traffic cones in the area of the victim's body. R274; Tr. Transcr. vol. III, 327:13-328:8; 329:14-15; 330:15-19 (Feb. 25, 2014).

Additionally, Dr. Bulic testified that he observed no significant injuries to the victim's body other than the gunshot wound to his head. R275; Tr. Transcr. vol. IV, 547:1-2; 565:6-570:16 (Feb. 26, 2014). As mentioned previously, he also testified that the victim had suffered a contact gunshot wound to the back of his head just behind his left ear, which exited through his right jaw. R275; Tr. Transcr. vol. IV, 548:13-553:20; 560:17-561:7. Again, evidence was presented that the bullet was found in the location directly underneath the area of the victim's head, indicating that the victim was on the ground, not moving, when the defendant, who was on top of him, shot him

in the back of the head. R274; Tr. Transcr. vol. III, 335:6-336:16. Finally, Dr. Bulic testified that toxicology results from the autopsy showed that the victim's blood alcohol level at the time of death was .287, which is an extremely high level of intoxication. R275; Tr. Transcr. vol. IV, 571:15-573:4.

All of this testimony, considered together, leads to two reasonable conclusions: either (1) the victim was completely passive during the altercation or (2) was incapacitated at the time he was shot. As such, there was ample evidentiary support for the prosecutor's argument.

B. <u>The Prosecutor Did Not Misstate the Law.</u>

Within Ground VII, the defendant's also charges that the prosecutor argued that the defendant could not have been acting in self-defense because he testified that the firearm accidentally discharged and that this was a "gross misstatement of the law." In short, this allegation is a gross mischaracterization of the prosecutor's argument. The records demonstrates, rather, that these statements were simply an argument that the defendant's claim, whether it was based on accidental discharge or self-defense, was not consistent with the evidence. Nowhere in her argument did the prosecutor ever misstate the law as it applied to either of those defenses. Accordingly, the defendant's allegations in Ground VII should be summarily denied.

Ground VIII: The Cumulative Effect of the Errors of Trial Counsel Require That the Defendant be Provided With Postconviction Relief

In his final claim, the defendant claims entitlement to relief based on the cumulative effect of trial counsel's errors. Since Ground VIII is dependent on the merits of the claims requiring a hearing, it should be held in abeyance pending a resolution on the outstanding allegations.

WHEREFORE, the State respectfully requests this Honorable Court to schedule a hearing on Grounds I, II, III, IV and VIII and summarily deny Grounds V, VI and VII for the reasons herein stated.

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by U.S. Mail, electronic or e-service delivery to William Ponall at SunTrust Building, 253 N. Orlando Ave., Suite 201, Maitland, FL 32751 or and Lisabeth Fryer, 250 Park Ave. S., Suite 200, Winter Park, FL 32789, on June 3, 2019.

Respectfully submitted,

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TAB 11

TAB 12