

The horror that Helen Googe suffered at the hand of the defendant and his utter indifference to that torture cannot be fathomed. What is known is that her murder, at the hands of the defendant, was, without any reasonable doubt heinous, atrocious or cruel. This factor, without question, should be given great weight.

MITIGATING CIRCUMSTANCES

At the outset, it should be noted that the jury in this case, after considering all of the evidence, found that no mitigating circumstances were established by a greater weight of the evidence. The State concedes that, in determining the appropriate sentence, the Court may consider offered mitigation if it is independently convinced that it has been established. However, findings by the jury, who is the ultimate fact-finder in the case, should be given great weight. If the Court decides that some mitigating circumstances were established by the greater weight of the evidence, then the State argues that they do not outweigh the aggravating factors that the jury found to have been established beyond a reasonable doubt. The State will discuss each of the mitigating circumstances offered by the defendant in the order in which they appeared on the jury instructions.

- 1. The defendant's co-defendant, Doni Ray Brown, entered a plea to the First-Degree Murder of Helen Googe and was sentenced to life without the possibility of parole.**

The State does not dispute the facts supporting this proposed mitigating circumstance. This factor was considered by Judge Wendy Berger in her original sentencing order, and she determined that it deserved great weight. Nevertheless, Judge Berger also made additional factual findings that convinced her that Brown's guilty plea and life sentence did not outweigh the aggravating

factors proven beyond a reasonable doubt. The penalty phase retrial showed that the facts supporting Judge Berger's findings did not change.

During closing argument, the defense emphasized the defendant's self-serving denial that he killed Helen Googe, blaming it entirely on Doni Brown. The purpose of this argument was to convince the jury that the Doni Brown was the more culpable perpetrator and that it would be unfair for the defendant to receive a more significant sentence than Brown. However, the jury was not persuaded. The evidence presented at trial demonstrate that they got it right.

First, the defendant's claim in his interview that Doni Brown alone murdered Helen Googe and he did not participate in any way changed when the interviewing detective informed the defendant: (a) that Doni Brown was talking, (b) that Doni Brown advised that it was the defendant who killed Helen Googe, (c) that the defendant was the one with scratches all over his body, not Doni Brown, (d) that the medical examiner found skin under Helen Googe's fingernails, and (e) that if the victim scratched anyone during a struggle, their DNA would be there. Only at that point did the defendant then claim that his DNA should not be under Googe's fingernails because all he did was hold her down one time. This story continued to evolve as the defendant was confronted with more inconsistent details.

Despite the inconsistencies, the defendant maintained that he did not kill Helen Googe. The evidence shows otherwise.

The defendant admitted during his interview with detectives that he was the architect of the entire criminal episode that began with the escape from the Putnam County Jail and culminated in the home invasion robbery and murder of Helen Googe. The defendant stole the jack from the jail's transportation van and smuggled it into the jail. In fact, he stole the actual jack on one

occasion and the rod to crank it on another. He bragged that he was the only one who "had the balls" to do it. He was also the only one who knew the victim, Helen Googe. Doni Brown did not know her and had never been to her home. The defendant was the only one who possessed special knowledge regarding her financial circumstances. Although he may have had discussions with Doni Brown about robbing Helen Googe prior to escaping from the jail, it was the defendant, not Doni Brown, who hatched the plan to break into her home and rob her. It was the defendant, not Doni Brown, who knew about the firewood door used to stealthily enter the home. It was the defendant, not Doni Brown, who knew about the safe, and believed Helen Googe had a large amount of money stored inside it. It was the defendant, not Doni Brown, who took Helen Googe's keys and drove off in her Lincoln Town Car. It was the defendant, not Doni Brown, who hated Helen Googe. This attitude became crystal clear when Det. Schwall referred to Helen Googe as the defendant's grandmother and the defendant responded, "She ain't my grandma, she's a bitch." In the end, the evidence showed that it was the defendant, not Doni Brown, who struggled with Helen Googe as she fought with all her might. Though her voice has been quieted, it is none other than Helen Googe who tells us who perpetrated this savage act. It was the defendant, not Doni Brown, who had scratches all over him. And, it should come as no surprise, that it was the defendant's DNA under Helen Googe's fingernails. It was the defendant who killed her.

The jury's verdict rejecting Doni Brown's plea and sentence and a mitigating factor shows that they were convinced that the defendant was the actual perpetrator of Helen Googe's murder. The fact that the defendant was proven to be the actual murderer justifies the jury's verdict that the defendant should be treated differently. While the Court may choose to give the plea and

sentence some weight, that circumstance does not outweigh the substantial aggravating factors that the jury found had been proven beyond a reasonable doubt.

2. The first-degree murder was committed while Timothy Wayne Fletcher was under the influence of extreme mental or emotional disturbance.

To establish that the murder of Helen Googe was committed while the defendant was under the influence of extreme mental or emotional disturbance, the defense relied on the testimony of two expert witnesses. First, Dr. Jennifer Rohrer, a psychologist, testified that the defendant suffered from post-traumatic stress disorder ("PTSD"). Her diagnosis was based on reports by the defendant regarding a number of traumatic events that he experienced, including verbal and physical abuse by his father, among other things. Second, Dr. Daniel Buffington, a pharmacologist, testified that the defendant was under the influence of methamphetamine in addition to being sleep-deprived at the time.

An essential element in the proof of this mitigator is the requirement that the defense show that the defendant was under the influence from an extreme mental and 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 a 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.2ds 919, 935-37 (Fla. 2002). Moreover, with regard to the issue of expert psychological evaluations of a defendant's mental health, the Florida Supreme Court has held 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)).

With regard to both Dr. Rohrer and Dr. Buffington, both testified that either PTSD, bipolar disorder, and/or drug use caused the defendant to under the influence of an extreme mental or emotional disturbance at the time the defendant murdered Helen Googe. However, neither of them talked to the defendant about the crimes, nor what he was thinking or feeling at the time. As for Dr. Rohrer, she conceded that the Trauma Symptom Inventory test, which she said measure the impact of trauma on the subject, only asks about experiences over the last six months. However, the murder of Helen Googe occurred 12 years prior to her evaluation of the defendant.

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 time reviewing the records in the case. These records included police reports and the defendant's interview, which Dr. Prichard emphasized was critically important to review to determine whether PTSD, bipolar, or another disturbance, if legitimately present, had any influence over the defendant at the time of the murder.

Dr. Prichard testified that, while he agreed that the defendant had experienced some traumatic events in his life, 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, it had absolutely no influence whatsoever on the defendant's action in murdering Helen Googe.

As for the claim that the defendant suffered from bipolar disorder, Dr. Prichard completely rejected that diagnosis. He asserted that such a diagnosis requires marked differences in behavior from a person's usual baseline. These differences manifest themselves as extended manic behavior

at one end of the spectrum and severe depression at the other end. However, none of the defendant's extended mental health records accounted for any such behavior. Dr. Rohrer herself admitted that she saw no notations about such symptoms in the records neither did she observe any in her evaluation of the defendant.

As for the defendant's claim that he was using methamphetamines prior to escaping from the Putnam County Jail, Dr. Prichard pointed out from his review of all the reports and interviews that Doni Brown denied any such drug use. Even if there was, two things must be kept in mind when deciding this issue. First, any drug use was completely voluntary on the defendant's part. He readily admitted that no one forced him to take any drugs. Second, any claim that the drug use caused an emotional disturbance in the defendant that led to the murder of Helen Googe cannot be reconciled with the evidence that her murder followed a coherent and well-thought-out plan.

The defendant concocted a plan to smuggle a jack into the jail and use it to escape. He also developed the plan to travel to Helen Googe's house and rob her of money he believed she kept in a safe in order to finance his flight from custody. These circumstances clearly show that the defendant was methodical and clear-headed as he carried out his plan. They show that he was not under the influence of any mental or emotional disturbance at the time of the murder.

The jury rejected the argument that the defendant suffered from such a disturbance. It is not difficult to understand why. The State urges the Court to reach the same conclusion and find that this mitigating circumstance was not proven by a greater weight of the evidence. If it chooses to find that it was established, the State alternatively argues that it should be given very little weight.

3. The capacity of Timothy Wayne Fletcher to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired.

Again, to establish this mitigating factor, the defense relied on the testimony of Dr. Rohrer and Dr. Buffington. However, their testimony on this issue was conclusory and did not effectively explain exactly how PTSD, bipolar disorder or the defendant's drug use impaired the defendant's capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of the law. Nevertheless, the defendant's conduct in waiting until nighttime to effectuate his escape, timing his escape efforts between the corrections officer's rounds, making his way to Helen Googe's house under cover of darkness, and then putting a mask over his face so she would not recognize him shows clearly that he did, in fact, fully appreciate the criminality of his conduct. Likewise, it also demonstrates that he was fully able to conform his conduct to the requirements of the law.

The jury rejected the defense's argument on this issue as establishing a mitigating factor. This Court should as well.

4. Timothy Wayne Fletcher's age at the time of the crime.

It was established at trial that the defendant was 23 years of age at the time he murdered Helen Googe. 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 the 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 the 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) (same involving a 20-year-old defendant); *Mills v. State*, 476 So.2d 172, 179 (same involving 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). “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 several witnesses to testify about the defendant’s past drug use, childhood trauma, and diagnoses with PTSD and bipolar disorder, it offered no evidence that he suffered from any intellectual disability or was otherwise psychologically immature.

In contrast, the defendant’s own interview described himself as the person who hatched the sophisticated plan to escape from the Putnam County Jail, rob his step-grandmother, and flee to Kentucky where he had relatives who he believed would assist him. His descriptions cast himself as a leader who was fearless and always in control. He boasted that he was the only one in the jail who “had the balls” to smuggle the jack into the jail and use it to escape. He also bragged several times about his intelligence relative to the corrections officers, remarking that “sometimes you have to be smarter than what you’re dealing with.” He further commented that he probably would

have continued to evade capture if Doni Brown had not called his brother when they returned to Putnam County.

While the defense may describe the defendant as young, the criminal plans he concocted and the success he realized in carrying them out prove that he was also an intelligent, sophisticated, mature and street-wise man. The evidence shows that the defendant clearly operated as assertive leader who was mature beyond his years. It is not enough that he simply happened to be 22 years old at the time he murdered Helen Googe. The jury rejected the defendant's age as a mitigating factor, and the Court should as well. If it does decide to consider it as mitigation, the State argues that it should be given very little weight.

5. **Timothy Wayne Fletcher suffered extreme emotional abandonment.**
6. **Timothy Wayne Fletcher suffered extreme physical abandonment.**
7. **Timothy Wayne Fletcher was unable to form lasting safe relationships.**
8. **Timothy Wayne Fletcher was terrified of his abusive father.**
9. **Timothy Wayne Fletcher had no role models during his early childhood development.**
10. **Timothy Wayne Fletcher's mother failed to protect him.**
11. **Timothy Wayne Fletcher's mother was an alcoholic.**
12. **Timothy Wayne Fletcher's father was an alcoholic.**
13. **Timothy Wayne Fletcher has been diagnosed with ADHD.**
14. **Timothy Wayne Fletcher has been diagnosed with Alcohol Dependency.**
15. **Timothy Wayne Fletcher has been diagnosed with substance use disorder involving cocaine, methamphetamine, and opioids.**

The State does not necessarily dispute the evidence that was presented at trial supporting the mitigating circumstances listed above. However, it argues that none of these, either individually or collectively, outweigh the aggravating factors established in this case.

16. Timothy Wayne Fletcher has Post-Traumatic Stress Disorder.

As discussed previously, this mitigating circumstance was offered through the testimony of Dr. Jennifer Rohrer. As discussed there, the State argues that, based on the testimony of Dr. Prichard, this mitigating circumstance was not established and should be rejected as the jury did by virtue of its verdict.

17. Timothy Wayne Fletcher has experienced extreme environmental trauma – homelessness.

18. Timothy Wayne Fletcher has experienced extreme environmental trauma – domestic instability.

19. Timothy Wayne Fletcher has experienced extreme domestic violence as a child.

20. Timothy Wayne Fletcher has experienced extreme environmental trauma – witnessed father physically abuse his mother.

21. Timothy Wayne Fletcher has experienced environmental trauma – witnessed his parents use alcohol to excess.

22. Timothy Wayne Fletcher's maternal grandfather encouraged Timothy Wayne Fletcher to steal for him.

23. Timothy Wayne Fletcher received little to no medical attention for the years of physical abuse.

24. Timothy Wayne Fletcher never received any emotional support for the years of trauma.

25. Timothy Wayne Fletcher never received any mental health counseling for the years of abandonment.

26. **Timothy Wayne Fletcher attempted to self-medicate and cure himself with alcohol.**
27. **Timothy Wayne Fletcher has made several suicide attempts.**
28. **Timothy Wayne Fletcher was always treated as an outsider.**

The State does not necessarily dispute the evidence offered to support mitigating factors 17-28. However, it argues that they do not outweigh the aggravating facts proven.

29. **Timothy Wayne Fletcher has low self-esteem.**
30. **Timothy Wayne Fletcher has no self-confidence.**

The State does dispute the argument that the defendant has low self-esteem and no self-confidence. This is refuted conclusively by the defendant's recorded interview in which he consistently brags about being smarter than other people, takes credit for the plan to escape from the jail and rob Helen Googe, and boasts about being completely in charge of the plan. There are no proposed mitigating circumstances that could be further from the truth than these claims.

31. **Timothy Wayne Fletcher experienced long-term extreme emotional trauma during his early childhood development.**
32. **Timothy Wayne Fletcher suffered from depression for years before being diagnosed.**
33. **Timothy Wayne Fletcher was never treated from his continuous PTSD.**
34. **Timothy Wayne Fletcher's father may suffer from mental illness.**
35. **Timothy Wayne Fletcher has no well-defined social skills.**
36. **Timothy Wayne Fletcher is a product of his environment and has always been at risk for failure to achieve.**
37. **Timothy Wayne Fletcher was failed by his parents from a young age.**

38. **Timothy Wayne Fletcher has been failed by a system that should have protected him from his abusive and impoverished environmental conditions.**
39. **Timothy Wayne Fletcher suffers from anxiety and inability to control stressors.**
40. **Timothy Wayne Fletcher was conceived out of wedlock.**
41. **Timothy Wayne Fletcher was bullied unmercifully by his father.**
42. **Timothy Wayne Fletcher has impaired problem-solving skills.**
43. **Timothy Wayne Fletcher has adaptive deficits.**

With regard to proposed mitigating circumstances 31-43, the State argues that many of these are duplicative of other proposed mitigating circumstances or were not developed at trial beyond a brief comment by the defense experts. The State does not necessarily take issue with many of these. However, they again do not outweigh the aggravating factors proven at trial.

44. **Timothy Wayne Fletcher is diagnosed with bipolar disorder.**

As outlined previously, Dr. Gregory Prichard testified at trial that there was no evidence, either from his personal evaluation of the defendant or in his extensive mental health records, that supported any diagnosis of bipolar disorder. Therefore, the State argues that it was not established by the greater weight of the evidence. Therefore, this mitigating factor should be rejected.

45. **Timothy Wayne Fletcher was the victim of sexual abuse.**
46. **Timothy Wayne Fletcher has learning disabilities.**

Like other mitigating factors proposed, the State argues that these were not well-developed at trial or were only mentioned during testimony in passing. The State has no reason to dispute these claims. However, it again argues that these circumstances do not outweigh the aggravating factor proven.

47. **Timothy Wayne Fletcher had been consuming methamphetamine up until the time of the jail escape and homicide.**
48. **Timothy Wayne Fletcher had been sleep-deprived prior to the escape and homicide due to chronic methamphetamine use.**

The only evidence that the defendant consumed methamphetamines and had been sleep-deprived prior to the escape and murder of Helen Googe came from the defendant himself. As mentioned previously, there is reason to doubt the truthfulness of these self-serving statements. Even if true, however, it is hard to image how voluntarily consuming an illegal substance can mitigate against a brutal murder by strangulation. The jury rejected this claim as a mitigating circumstance, and the Court should as well.

CONCLUSION

In conclusion, the mitigating circumstances that were presented in this case are weak when weighed against any of the four aggravating factors that were proved beyond a reasonable doubt. In a capital case, the death penalty is appropriate if one aggravator is found and outweighs the mitigation found to have been established. *Foster v. State*, 369 So.2d 928 (Fla. 1979). The aggravating factors in this case should all be given great weight. In contrast, the mitigation in this case is so weak that even if the State only proved one of the aggravating factors presented, that factor (any one you choose) would outweigh the mitigation. The HAC aggravator is one of the most serious and weighty aggravating factors set out in the death penalty statute. The State has proven this aggravator beyond a reasonable doubt, and that alone justifies a death sentence in this case.

The jury in this case unanimously found that the State had proven all four proposed aggravating factors beyond a reasonable doubt. Likewise, it unanimously found that those

aggravators were sufficient to justify imposition of the death penalty and that they outweighed the mitigating factors. Finally, the jury unanimously agreed that the defendant should be sentenced to death. The jury's verdict should be given great weight in its determination of a proper, legal penalty for the violent and vicious murder of Helen Googe. In consideration of that verdict, the State respectfully submits that the death penalty is the appropriate, lawful and justified punishment and, therefore, requests the Court to sentence Timothy Wayne Fletcher to death.

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by mail/delivery to GARRY L. WOOD, 417 St. Johns Ave., Palatka, FL 32177 and CLYDE M. TAYLOR JR, 2303 N. Ponce De Leon Blvd., Suite L, St. Augustine, FL

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**IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA**

CASE NO: 21-00023-CFFA

STATE OF FLORIDA

VS.

**MARCUS AVERY CHAMBLIN,
DEFENDANT.**

**STATE'S RESPONSE TO DEFENDANT'S MOTION
TO SUPPRESS ILLEGALLY SEIZED EVIDENCE**

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and files this response to the defendant's Motion to Suppress Illegally Seized Evidence. In support thereof, the State sets forth the following:

On February 19, 2024, the defendant filed a Motion to Suppress Illegally Seized Evidence. The only evidence he seeks to have excluded is a light gray hooded jacket and a pair of camouflage pants that were found in the trunk of his co-defendant's car. The defendant's sole argument asserts that because these items were found as a result of his illegal detention, they cannot be used as evidence during the trial of this cause. This claim is without merit.

FACTUAL BACKGROUND¹

At approximately 3:34 a.m. on October 12, 2019, an individual wearing a hoodie and dark-colored pants stepped from behind a Circle K gas station located at 1500 Palm Coast Parkway and fired 16 shots into a car in which Deon Jenkins was a passenger. Jenkins died as a result shortly thereafter. The shooter fled from the scene but was captured on several video cameras in the area. One camera,

¹ The facts described in the Factual Background pertaining to the detention of the defendant and search of the co-defendant's vehicle are set forth in, and supported by, deposition transcripts of Det. Clinton Redmond and Dep. Michael Edmondson of the Clay Co. Sheriff's Office and their reports. Those items are attached hereto as Exhibits for the Court's review.

which recorded in color, showed that the fleeing shooter was wearing a gray hooded jacket and a pair of camouflage pants.

Immediately following the shooting, detectives with the Flagler Co. Sheriff's Office reviewed video footage from the Circle K. Approximately, 30 minutes before the shooting, the camera captured Derrius Bauer, the co-defendant in this case, briefly speaking to Jenkins outside the gas station's front door. The camera also recorded Bauer talking on a cell phone after Jenkins went inside the store. Phone records later revealed that the call was with the defendant. Shortly after, Bauer left the Circle K in a silver Chrysler 200. Because of his interaction with the victim so close in time to the shooting, detectives sought to speak to Bauer. However, they quickly learned that Bauer had left Flagler Co. the same day. As a result, the Flagler Co. Sheriff's Office issued a state-wide law enforcement bulletin that identified Bauer as a person being sought for questioning in the homicide of Deon Jenkins.

On the morning of November 16, 2019, an officer with the Jacksonville Sheriff's Office contacted the Flagler Co. Sheriff's Office and reported that he had come across a silver Chrysler 200 that was registered to Derrius Bauer. He advised that the vehicle was located at 575 Oakleaf Plantation Parkway in Orange Park. During that time, it was also determined that Bauer had an active arrest warrant that had been issued out of Clay Co. At approximately 10:00 a.m., FCSO detectives contacted the Clay Co. Sheriff's Office and asked if one of their officers could respond to the Orange Park location, conduct surveillance of the vehicle and apprehend Bauer if he returned to his vehicle.

Det. Clinton Redmon with the Clay Co. Sheriff's Office responded to 575 Oakleaf Plantation Parkway and upon locating Bauer's vehicle, set up some distance away and began surveilling it. At the time, Det. Redmond was also attached to the U.S. Marshal's Service Fugitive Task Force. Prior to responding to the area, Det. Redmond was aware of Bauer's open arrest warrant and had reviewed information that would allow him to recognize Bauer if he appeared.

At approximately 11:15 a.m., Det. Redmond saw Bauer and the defendant approach the silver Chrysler 200. He observed Bauer enter the driver's seat of the vehicle and the defendant get into the front passenger seat. He then saw Bauer exit the driver's seat and then open the rear driver's side door, lean into the rear passenger compartment and begin manipulating items within that area. Bauer then returned to the driver's seat and closed the door.

Believing that he was about to leave the area, Det. Redmond approached and parked in front of Bauer's car. He then ordered both Bauer and the defendant to place their hands on the steering wheel or dash where he could see them until backup units responded. Shortly thereafter, Dep. Matthew Edmondson with the Clay Co. Sheriff's Office arrived. Dep. Edmondson removed the defendant and then Bauer from the vehicle and placed them into custody. While removing Bauer from the vehicle, Dep. Edmondson observed a green leafy substance that appeared to be loose cannabis on the driver's floorboard near Bauer's feet and smelled the odor of fresh cannabis coming from the interior of the car.

Bauer and the defendant were placed in separate patrol vehicles. Their identities were then confirmed via their Florida driver's license and identification card. During this time, the defendant's information was entered into NCIC/FCIC through which it was discovered that he also had a warrant for his arrest out of St. Johns Co.

Det. Redmond then advised Derrius Bauer of his Miranda rights and inquired about the suspected cannabis that had been seen at his feet in the vehicle. Bauer admitted post-Miranda that the substance was in fact cannabis and not hemp or synthetic cannabis.

It was only after all of this had transpired that Det. Redmond and Dep. Edmondson began a search of Bauer's vehicle for the presence of drugs. In addition to the cannabis found in the driver's floorboard,

they located in the glove box two small bags with a white rock-like substance and a black Glock pistol with the phrase "Bone Collector" printed in large white block letters on the barrel.²

While searching the back seat area where Det. Redmond had earlier seen Bauer manipulating items, Dep. Edmondson noticed that the top of the back seat was not completely latched at the top. Realizing that the car enabled access to the trunk through the back seat, he then pulled the back seat down and looked into the trunk area. There, he saw a light gray sweatshirt and a pair of camouflage pants tied together with what appeared to be a dark-colored shoelace.

Det. Redmond then contacted detectives with the Flagler Co. Sheriff's Office and advised them of what he had found. Detectives then requested that Det. Redmond stop his search of the vehicle in order for them to obtain a search warrant. This discovery of the clothing during a drug search at that point gave FCSO detectives probable cause to believe that the car contained evidence related to the murder of Deon Jenkins. A search warrant authorizing a continued search of the car on that basis was then obtained from a judge with Clay Co. jurisdiction. Bauer's car was then transported to a Clay Co. Sheriff's Office substation in Orange Park where a crime scene technician processed it and collected additional evidence therein.

ARGUMENT

The sole ground on which the defendant bases his motion to suppress is the claim that his detention was unlawful. This claim is unsupported by the facts and the law.

First, the defendant was only detained as a result of being the passenger of a car being driven by Bauer, who had an active warrant for his arrest. Det. Redmond stopped the car at a point when he believed it was about to leave the area where he had located it. Prior to the stop, he was aware that Bauer

² The State concedes that the rock-like substance which field-tested positive for cocaine is not relevant to the instant case. It does assert that the firearm found in the glove box is relevant for reasons that the State will set forth more clearly at the hearing on this and the other motions the defendant has filed in this case.

had an open arrest warrant and confirmed that Bauer was in fact the person he saw in the driver's seat of the car. As a result, Det. Redmond was authorized not only to detain Bauer, but also to arrest him.

Second, the Clay Co. officers were authorized to detain Bauer's vehicle and search it for the presence of cannabis. Upon approaching Bauer, Dep. Edmondson saw a green leafy substance on the driver's floorboard at Bauer's feet and smelled the odor of suspected cannabis coming from the interior of the car. The smell of cannabis coming from a vehicle gives rise to probable cause to search the entire vehicle, including the trunk, for the presence of the substance. *Betz v. State*, 815 So.2d 627 (Fla. 2002). *See also, Baxter v. State*, 2023 WL 7096645 (Fla. 5th DCA 2023) (holding that the legalization of hemp does not abrogate the "plain smell" doctrine).

Third, they were also authorized to briefly detain the defendant under the circumstances described above. In *Presley v. State*, 227 So.3d 95, 107-08 (Fla. 2017), the Florida Supreme Court held that an officer may, as a matter of course, detain a passenger of a vehicle during a lawful traffic stop. The Court held that, for officer safety reasons, the temporary seizure of the driver and passengers for the duration of the stop is reasonable. *See also, Aguiar v. State*, 199 So.3d 920 (Fla. 5th DCA 2016).

Last, immediately after the detention of the defendant, Det. Redmond confirmed his identity and discovered that he, too, had a warrant for his arrest out of St. Johns Co. All of this occurred before the officers began their search of Derrius Bauer's vehicle.

Since the detention of Bauer and the defendant was legal, the defendant has no other grounds upon which to argue for suppression of any of the car's contents. The car was registered to Derrius Bauer, and the defendant, as a mere passenger, had neither a property nor a proprietary interest in the car. Thus, he had no legitimate expectation of privacy in any part of Bauer's vehicle. *Rakas v. Illinois*, 439 U.S. 128 (1979); *State v. K.N.*, 66 So.3d 380 (Fla. 5th DCA 2011). Even if he did, Det. Redmond and Dep. Edmondson had probable cause to search the vehicle for controlled substances upon observing

cannabis in plain view and smelling the odor of fresh cannabis emanating from the interior of the vehicle. Upon coming across the gray hoodie and camouflage pants, which were recognized as likely related to the murder of Deon Jenkins, Det. Redmond's action in pausing the search to seek a warrant to authorize a search specifically for evidence related to the homicide was appropriate.

As set forth above, the detention of the defendant was not unlawful, nor was the search of the vehicle both with and without a warrant. Thus, the defendant's motion to suppress the clothing located within the co-defendant's car should be denied.

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by e-service delivery to TERENCE LENAMON, 6224 NW 82ND AVENUE, PARKLAND, FL 33067, on March 18, 2024.

Respectfully submitted,

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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.**

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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 First Degree Murder of Randy Wayne Peacock and 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 followed the jury's recommendation and sentenced the defendant to death.

Following the Florida Supreme Court's decisions in *Hurst v. State*, 202 So.3d 40, 57 (Fla. 2016); *Moseley 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 warrants sentences of death for each victim.

AGGRAVATING FACTORS

At the penalty phase trial, the State asserted five (5) aggravating factors for 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 unanimously found by the jury to exist beyond a reasonable doubt are outlined and discussed below.

- 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 conviction for the contemporaneous murders of Charles Johnston (as it relates to the defendant's conviction for the murder of Randy Peacock in Court 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	<i>State v. Norman B. McKenzie</i> , Case No. 1984-3907-CF, Broward Co., FL, Nov. 8, 1984
Robbery	<i>State v. Norman B. McKenzie</i> , Case No. 1990-19206-CF, Broward Co., FL, May 28, 1991

Robbery	<i>State v. Norman B. McKenzie</i> , Case No. 2007-586-CF, Alachua Co., FL, May 17, 2007
Robbery	<i>State v. Norman B. McKenzie</i> , Case No. 2007-532-CF, Alachua Co., FL, May 17, 2007
Robbery	<i>State v. Norman B. McKenzie</i> , Case No. 2007-585-CF, Alachua Co., FL, May 17, 2007
Attempted Robbery	<i>State v. Norman B. McKenzie</i> , Case No. 2006-5259-CF, Alachua Co., FL, May 17, 2007
Kidnapping with a Firearm	<i>State v. Norman B. McKenzie</i> , Case No. 2006-CF-005261, Alachua Co., FL, May 17, 2007
Carjacking with a Firearm	<i>State v. Norman B. McKenzie</i> , 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 Charles Johnston and Randy Peacock, 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. 20020); *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 had been proven beyond a reasonable doubt. *Verdict as to Sentence, Count I – First Degree Murder of Randy Peacock (Question A.1)* (R.502). 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 capital felony was 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 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.

In his interview on February 15, 2007, the defendant told Det. Timothy Burrell 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 while he was engaged in the commission of a robbery. *Verdict as to Sentence, Count 1 – First Degree Murder of Randy Peacock (Question A.2)* (R.502). The Court should give this aggravating factor GREAT WEIGHT.

**3. The capital felony was 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). 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 capital felony was 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." *Cheshire 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, which were admitted at trial, the defendant described in explicit detail his murder of Charles Johnston and Randy Peacock. After waiting for several hours for a neighbor, 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 knife out of a dish drainer. He then stabbed Randy multiple times in the neck, chest, abdomen and back in 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 so far into Randy's abdomen and then "jigggl[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 Charles Johnston regained consciousness after the initial blow 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 murder of Randy Peacock was especially heinous, atrocious or cruel. 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 capital felony was a homicide and was 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 to 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; (2) the defendant must have had a careful plan or prearranged design to commit murder before the killing; (3) the defendant exhibited heightened

premeditation; and (4) the defendant had no pretense of moral or legal justification. The evidence presented at trial proved each of the elements beyond a reasonable doubt.

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

First, the State has established that the killing of Randy Peacock and Charles Johnston was 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 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 stand 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 kitchen 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 Johnson, the defendant observed the following about his efforts in killing Randy Peacock: “That shit ain’t as easy as it sounds, man.”

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

Second, the State has proved beyond a reasonable doubt that the defendant had a careful plan or a prearranged design to murder Randy Peacock and Charles

Johnston before he did so. 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 his 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 accomplished his plan, he stole the victim's wallets and car.

c. *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. 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 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. 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 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 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 rob and kill them. 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. 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 State asserts that none of mitigating circumstances offered by the defendant in this case should 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 this mitigating circumstance. 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.

- 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.**
- 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.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by mail/delivery to JUNIOR BARRETT, OFFICE OF CRIMINAL CONFLICT, 101 SUNNYTOWN ROAD, SUITE 310, CASSELBERRY, FL 32707, on November 25, 2019.

2022 BLDG A

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