IN THE
SUPREME COURT OF THE UNITED STATES

DONALD HUGH DAVIDSON JR.,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES
STATE OF FLORIDA

APPENDIX	**DOCUMENT**
A	Opinion of the Florida Supreme Court Rendered on July 8, 2021
B	Order of the Florida Supreme Court Denying Motion for Rehearing Rendered on September 13, 2021
C	Sentencing Order of the Fourth Judicial Circuit, Clay County Rendered on September 18, 2019

323 So.3d 1241
Supreme Court of Florida.

Donald H. DAVIDSON Jr., Appellant,
v.
STATE of Florida, Appellee.

No. SC19-1851
|
July 8, 2021

Synopsis

Background: Defendant was convicted, pursuant to guilty plea, in the Circuit Court, 4th Judicial Circuit, Clay County, Don H. Lester, J., of first-degree murder. Defendant waived a penalty-phase jury and, after a hearing, was sentenced to death. Defendant appealed.

Holdings: The Supreme Court held that:

defendant took logical steps to conceal his actions from others and thus substantial evidence supported trial court's rejection of substantial-impairment mitigator;

trial court's rejection of statutory substantial-impairment mitigator was not inconsistent with court's acceptance of seven nonstatutory mitigating circumstances concerning defendant's mental health;

trial court did not abuse its discretion in assigning little weight to nonstatutory mitigating circumstances involving defendant's abandonment by his father and defendant's abusive childhood experiences;

trial court did not abuse its discretion in assigning little weight to nonstatutory mitigating circumstances involving defendant's mental-health mitigation; and

defendant's guilty plea was voluntarily and knowingly given.

Affirmed.

Labarga, J., concurred in result with opinion.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection; Plea Challenge or Motion.

***1242** An Appeal from the Circuit Court in and for Clay County, Don H. Lester, Judge – 102014CF001904000AMX

Attorneys and Law Firms

Jessica Yeary, Public Defender, and Barbara J. Busharis, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida, for Appellant

Ashley Moody, Attorney General, and William David Chappell, Assistant Attorney General, Tallahassee, Florida, for Appellee

Opinion

PER CURIAM.

***1243** Donald H. Davidson Jr. appeals his judgment of conviction of first-degree murder and sentence of death. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. For the reasons explained below, we affirm in all respects.

BACKGROUND

In September 2014, Davidson was conditionally released from prison, meaning that he was still subject to the Department of Corrections' (DOC) supervision even though he no longer resided in prison. As a condition of his supervised release, Davidson was required to wear a GPS monitor on his ankle.

On the morning of December 1, 2014, Davidson left his job early, complaining to his employer that he felt ill. Davidson called James Earls, his stepbrother, asking to be picked up from a restaurant near Davidson's work. As requested, Earls picked Davidson up and dropped him off at the home of Roseann Welsh and Michael Scott, longtime friends of Davidson. Welsh was home, but Scott and their two children—R.S. and M.S.—were not.

Welsh invited Davidson into the home. After being in the home for some time, Davidson requested to be shown a video game in Welsh's bedroom, and Welsh

agreed. While in the bedroom, Davidson put Welsh in a chokehold, forced her face-first into the bed, pulled her dress over her head, and began trying to rape her.

While Davidson was attempting to rape Welsh, 10-year-old M.S. arrived home from school. Hearing the arrival of the school bus, Welsh broke away from Davidson and ran into the adjoining bathroom, but Davidson followed her there. In the bathroom, he located a shoe and removed the lace from it. He then used that lace to strangle Welsh in the shower until she lost consciousness. He "lean[ed]" her down to the floor. Realizing that she was still breathing, Davidson stabbed her in the throat three times with a buck knife.

After killing Welsh, Davidson emerged from the bedroom, encountering M.S. in the kitchen. He grabbed her by the neck, threw her against the couch, and started to sexually assault her. Davidson told her to remove her clothing and suck his penis. She complied.

While the assault was ongoing, M.S.'s thirteen-year-old brother, R.S., returned home from school. Davidson turned his focus to R.S., whom he met at the front door. He told R.S. that his sister and mother were not at home. Though somewhat skeptical of Davidson's statement, R.S. left the home in search of his sister and mother.

After R.S. left, Davidson removed his GPS ankle monitor, forced M.S. into the family's minivan, and drove away. As he was driving, Davidson threw out his cell phone through an open window and directed M.S. to duck down when they passed by other vehicles. While in the minivan, Davidson again sexually assaulted M.S. by fondling her vagina, placing his penis in her mouth, and placing his penis in or around her anus and vagina. Eventually, he returned to a location near M.S.'s home, allowed her to exit the minivan, and then began driving to Georgia.

Meanwhile, after failing to locate his sister and mother, R.S. returned home. ***1244** While looking through the home, R.S. found his deceased mother in her bedroom. He then called 911 and reported that his mother was dead, stating: "[S]he's bleeding in her mouth and eyes."

Police responded to the home and began an investigation, which included searching the home for physical evidence, speaking with Scott, and interviewing R.S. Based in part on the information learned from Scott and R.S., police issued a BOLO [1] for the stolen minivan.

Moments later, while still at the scene, police officers observed M.S. approaching the home. Officers took her to a police station where Detective Ryan Ellis interviewed her. Among other things, M.S. told him that she heard her mother yell something about calling 911 as she was arriving home from school. According to M.S., Davidson physically and sexually assaulted her in her home, kidnapped her, stole the minivan, and sexually assaulted her again in the stolen minivan.

After her interview with Detective Ellis, M.S. was interviewed and examined by a child protective investigator (CPI). M.S. again recounted the details of Davidson's sexual assaults against her. Additionally, M.S. stated that her buttocks and neck were hurting from the assaults.

In the early morning hours of December 2, police officers located and stopped the stolen minivan. Inside the vehicle, police officers found and apprehended Davidson. After Davidson was taken to a police station interview room, Detective Wes Smith advised him of his *Miranda* [2] rights, which he acknowledged and waived. Then Detectives Smith and Dwayne Singletary interviewed Davidson.

During the interview, Davidson confessed to committing several crimes. He acknowledged attempting to rape Welsh, murdering Welsh by strangling and stabbing her, sexually assaulting M.S. both in her home and in the minivan, and kidnapping her. He also told the detectives that he ingested cocaine a short time before arriving at Welsh's home.

Ultimately, the State charged Davidson with nine crimes, including first-degree premeditated murder, kidnapping, and multiple counts of sexual battery upon a child twelve years of age or younger. Based on the charge of first-degree murder, the State filed a notice of intent to seek the death penalty.

Davidson filed numerous motions, including one that challenged the constitutionality of the prior-violent-felony aggravator.[3] He argued that this aggravator was overbroad and vague—both facially and as applied—rendering the entire death-penalty statute constitutionally infirm. Following a hearing, the trial court rejected Davidson's argument.

At a subsequent hearing, Davidson expressed his intent to plead guilty to first-degree murder (and the other charged crimes) and waive a penalty-phase jury. After a lengthy colloquy with Davidson and the presentation of a detailed factual basis by the prosecutor, the court accepted the guilty plea—finding it to be "knowingly, freely, voluntarily, and intelligently given."

At the ensuing penalty-phase hearing, the State introduced numerous exhibits, including: (1) the judgment and sentence for Davidson's aggravated-battery conviction for assaulting a pregnant female in ***1245** 2010, (2) Davidson's police interview, (3) M.S.'s interview with Detective Ellis, (4) R.S.'s 911 call, (5) a stipulation that Davidson was declared a sexual predator in 2005, and (6) a stipulation that Davidson was on conditional release at the time of the murder.

In addition, the State called eight witnesses. One such witness was Dr. Valerie Rao, the medical examiner who performed the autopsy of Welsh. According to Dr. Rao, Welsh died from asphyxiation—due to strangulation—and the stab wounds to her neck. Detectives Ellis and Smith also testified, discussing their involvement in the investigation and relaying facts gleaned from the interviews.

The victim of Davidson's 2010 aggravated battery provided details about Davidson's attack against her. According to the victim, Davidson entered her home under false pretenses, grabbed her neck, lifted her off the floor, and squeezed her neck so tightly that she blacked out. After she lost consciousness, Davidson began removing her clothing. She regained consciousness and ran from Davidson. Though he pursued her, she was able to escape.

After the State rested, the defense presented mitigating evidence. This evidence included the testimony of three experts: Dr. Erin Bigler, Dr. Robert Ouaou, and Dr. Steven Gold.

Dr. Bigler is a clinical neuropsychologist and cognitive neuroscientist, who reviewed scans of Davidson's brain. She made two significant findings. One, the "overall white matter volume in Mr. Davidson's brain was on the low end of average ... [which] can have implications for how the brain is functioning." Two, a PET scan showed metabolic differences in the cerebellum and orbitofrontal portions of Davidson's brain. Dr. Bigler declined to comment on the significance of this latter finding.

Dr. Ouaou, a neuropsychologist, reviewed numerous records and administered neuropsychological tests on Davidson. Based on the records, test results, and Dr. Bigler's report, Dr. Ouaou concluded that, at the time of the murder, Davidson was under the influence of a mental or emotional disturbance and that his ability to conform to the law's requirements was substantially impaired due to brain damage and cocaine use.

Dr. Gold, a psychologist, discussed Davidson's adverse childhood experiences (ACEs). He explained that Davidson's background included the following ACEs: "childhood physical abuse, childhood physical neglect, childhood emotional neglect, childhood sexual abuse, parents separated or divorced, mother treated violently, ... a household member going to prison, ... childhood verbal abuse[,] [and a chaotic] household." He opined that the ACEs on their own or in combination with trauma "over-activate [the] part of the brain responsible for emotionality and impulsivity [and cause] ... the part of the brain that cur[bs] emotional expression [and] impulses ... [to be] underdeveloped and underactive." Those changes cannot be altered, Dr. Gold explained, absent significant intervention which was not present in Davidson's background. Ultimately, however, Dr. Gold refrained from offering an opinion as to Davidson's mental or emotional state at the time of the crimes or his ability to comply with the law.

Ten lay witnesses also testified in support of the defense case. In broad terms, their testimony established that Davidson's upbringing was chaotic and difficult. Davidson's father abandoned the family while Davidson was young, leaving the mother (who

was poor) to raise Davidson and Earls without him. Davidson lived in a dirty home, sometimes lacking electricity and running water. He frequently went ***1246** hungry and routinely slept on the floor or couch. Additionally, Davidson lived "from time to time" in the same household as two uncles who had been prosecuted for sexual offenses. In addition, Davidson was sexually abused as a child by an older cousin and later by Earls. Aside from the sexual abuse, some of Davidson's relatives physically or emotionally abused him, at least to some extent. For example, Davidson's great-grandmother occasionally slapped him on the face, hard enough to leave red marks; two of his cousins and one uncle sometimes beat him up; Earls picked on him; and one of his aunts would occasionally "whip" him. As for academics, Davidson did poorly in school, never obtaining a high school diploma. In addition, Davidson suffers from several health issues, experienced hallucinations as an adult, and has been diagnosed with ADHD.

Following the penalty-phase hearing, the parties submitted sentencing memoranda. In arguing for the death penalty, the State relied on five aggravating circumstances, including that Davidson had committed prior violent felonies. For his part, Davidson asked the court to find two statutory mitigating circumstances—he was under the influence of an extreme emotional disturbance at the time of the murder and his ability to conform to the requirements of the law was substantially impaired. As for nonstatutory mitigating circumstances, Davidson contended that he established more than seventy such circumstances.

At the *Spencer*[4] hearing, the defense introduced several exhibits,[5] presented additional argument, and read into the record the proposed mitigators. Additionally, the defense read a written statement prepared by Davidson. In that statement, Davidson expressed remorse and regret for what he did to Welsh, Scott, M.S., and R.S.

Thereafter, the court held a sentencing hearing where it pronounced a sentence of death for the first-degree murder of Welsh. In the sentencing order, the trial court found five aggravating factors to be proven beyond a reasonable doubt, with the noted weight: Davidson committed the murder while under a sentence of imprisonment for a felony (great weight); Davidson committed prior violent felonies consisting of the 2010 aggravated battery, as well as the sexual batteries on and kidnapping of M.S. (great weight); Davidson murdered Welsh after attempting to commit a sexual battery upon her (great weight); the murder was especially heinous, atrocious, or cruel (great weight); and Davidson committed the murder after having been designated a sexual predator (moderate weight).

As for mitigating circumstances, the trial court rejected the substantial-impairment mitigator, relying on Davidson's "own admissions" and his post-murder efforts to conceal his wrongdoing. In so concluding, the court discounted Dr. Ouaou's contrary opinion. Nevertheless, as to the other proposed statutory mitigator, the court found that Davidson committed the murder while under the influence of an extreme emotional disturbance. But the court assigned only some weight, stressing that the disturbance "was exacerbated by his voluntary ingestion of cocaine."

In addition, the court addressed all proposed nonstatutory mitigating circumstances, grouping them into several categories: childhood upbringing; childhood abuse; educational background; mental ***1247** health, drug use, and behavioral issues; remorse; and miscellaneous. Under the headings childhood upbringing and childhood abuse, the court found fifteen mitigating circumstances to which it assigned various weight. These circumstances included the following: Davidson's father abandoned him at a young age (little weight); Davidson was raised by a single mother, and she was very poor (little weight); Davidson lived with two uncles, both of whom were prosecuted for sexual offenses (little weight); Davidson and Earls thought that incestuous relations were normal when they were young (some weight); and Davidson lived with numerous violent relatives who abused him and one another (some weight). The court also recognized as mitigating Davidson's poor scholastic performance and mental-health issues, assigning weight ranging from slight to some.

Ultimately, the court concluded that the aggravating circumstances heavily outweighed the mitigating circumstances, thereby warranting imposition of the death penalty. Davidson now appeals.

ANALYSIS

Davidson raises three issues for our review. First, Davidson asserts that the trial court committed fundamental error by not finding beyond a reasonable doubt that sufficient aggravating circumstances existed and that those aggravating circumstances outweighed the mitigating circumstances. Next, he contends that the trial court erred in rejecting the substantial-impairment mitigator and abused its discretion in assigning too little weight to certain nonstatutory mitigating circumstances. Finally, Davidson argues that the prior-violent-felony aggravator is unconstitutional. [6] Though not raised by Davidson, we must also determine whether Davidson's guilty plea was knowingly, intelligently, and voluntarily entered. [7]

Sufficiency of Findings

For his first argument, Davidson assails as fundamental error the trial court's failure to find beyond a reasonable doubt that sufficient aggravating circumstances existed and that those circumstances outweighed the mitigating circumstances. We disagree. [8]

Davidson's argument rests upon the faulty premise that the sufficiency and weighing determinations of section 921.141 are subject to the beyond-a-reasonable-doubt standard. Our recent case law is inconsistent with that premise. For example, in *Rogers v. State*, 285 So. 3d 872, 885 (Fla. 2019), we rejected the argument "that the trial court erred in failing to instruct the jury that it must determine beyond a reasonable doubt whether the aggravating factors were *sufficient* to justify the death penalty and whether those factors *outweighed* the mitigating circumstances." (Emphasis added.) We explained that "these determinations are not subject to the beyond a reasonable doubt standard of proof." *Id.* at 886. Since *Rogers*, we have ***1248** consistently held the reasonable-doubt standard inapplicable to either the sufficiency or weighing determination. *See, e.g.*, *Craft v. State*, 312 So. 3d 45, 57 (Fla. 2020); *Santiago-Gonzalez v. State*, 301 So. 3d 157, 177 (Fla. 2020); *Bright v. State*, 299 So. 3d 985, 998 (Fla. 2020); *Doty v. State*, 313 So. 3d 573, 577 (Fla. 2020); *Lawrence*, 308 So. 3d at 552 n.8. Davidson has not presented a compelling argument to recede from our precedent.

Mitigation

Davidson presents two challenges to the trial court's handling of mitigating evidence: one directed at the rejection of the substantial-impairment mitigator and the other assailing the weight assignment for certain nonstatutory mitigators. We find no merit in either challenge.

In his first challenge, Davidson argues that the trial court's rejection of the substantial-impairment mitigator lacks evidentiary support. However, we have upheld rejection of the substantial-impairment mitigator where a defendant "took logical steps to conceal his actions from others." *Snelgrove v. State*, 107 So. 3d 242, 260 (Fla. 2012) (quoting *Zommer v. State*, 31 So. 3d 733, 750 (Fla. 2010)). This is so because "[logical] steps constitute 'purposeful actions ... indicative of someone who knew those acts were wrong and who could conform his conduct to the law if he so desired.' " *Id.* (second alteration in original) (quoting *Hoskins v. State*, 965 So. 2d 1, 18 (Fla. 2007)).

Here, Davidson took several logical steps to conceal his murder of Welsh and flee from her home. For example, Davidson lied to R.S. to keep him from entering the home; Davidson cut off his GPS tracking device; Davidson stole the family's minivan to facilitate his escape; and, while in the minivan, Davidson discarded his cell phone to avoid being tracked and directed M.S. to duck down so that others could not see her. This conduct constitutes competent, substantial evidence supporting the trial court's rejection of the substantial-impairment mitigator—notwithstanding the testimony of Davidson's experts. *Cf. Bright*, 299 So. 3d at 1006-07 (upholding the rejection of the substantial-impairment mitigator based on the defendant's purposeful actions, which consisted of fleeing from the scene of the murder and hiding the murder weapon); *Ault v. State*, 53 So. 3d 175, 187 (Fla. 2010) (upholding the trial court's rejection of the same mitigator based on the defendant's purposeful post-murder conduct); *see also Colley v. State*, 310 So. 3d 2, 16 (Fla. 2020) ("Even expert evidence can

be rejected if that evidence cannot be reconciled with other evidence in the case." (citing *Bright*, 299 So. 3d at 1006-07)). [9]

Davidson also argues that rejection of this statutory mitigator is inconsistent with the trial court's acceptance of seven nonstatutory mitigating circumstances concerning his mental health. This argument also lacks merit. Of note, Davidson fails to explain how acceptance of those mitigating circumstances inevitably leads to the conclusion that he was substantially impaired at the time of the murder. As noted by the State, the trial court could properly determine that Davidson suffered from mental-health issues to some extent, but nonetheless had the ability to conform his conduct to the requirements of law.

Finally, Davidson's reliance on *Coday v. State,* 946 So. 2d 988 (Fla. 2006), is misplaced. ***1249** In *Coday*, we found an abuse of discretion in the trial court's rejection of the substantial-impairment mitigator. *Id.* at 1004-05. We noted that six experts testified in support of the mitigator, and the State called no experts to rebut that testimony. *Id.* at 1003-05. Of importance, we stressed, "The evidence offered by the State to counter this mitigation evidence *can be squared* with the expert testimonies." *Id.* at 1005 (emphasis added). Here, in contrast with *Coday*, the State provided evidence that supported rejection of the mitigator, i.e., Davidson's purposeful conduct to conceal his crimes and flee from Welsh's home.

Davidson's second challenge concerns the assignment of little weight to certain nonstatutory mitigating circumstances. According to Davidson, it was arbitrary and unreasonable for the court to assign little weight to his father's abandonment and abusive childhood experiences. Davidson's argument lacks merit.

Here, the trial court found that Davidson's father had indeed abandoned him at a young age, that Davidson (at times) lived with two uncles who were sex offenders—assigning little weight to each circumstance. Davidson did not present evidence establishing a close nexus between this mitigating evidence and his murdering Welsh. *See Bright*, 299 So. 3d at 1008 (finding no abuse of discretion in the trial court's assignment of no weight to the defendant's difficult childhood; stressing that no evidence connected the abuse and neglect with the murders). The mitigating value of the above evidence was less than compelling in other respects. As for living with two sex-offender uncles, there was no evidence that either of them abused Davidson; and the evidence does not disclose the length of time that they actually lived in the same household as Davidson. And, although Davidson's father abandoned him at an early age, Davidson had a good and loving relationship with his mother. Thus, in light of the evidence presented in this case, Davidson has not demonstrated an abuse of discretion. *See Craft*, 312 So. 3d at 53-54.

Davidson points to our decisions in *Morton v. State*, 789 So. 2d 324 (Fla. 2001), and *Douglas v. State*, 878 So. 2d 1246 (Fla. 2004), but they in no way undermine our analysis. In each case, we found no abuse of discretion in the trial court's assigning little weight to the defendant's childhood abuse or parental abandonment. *See Morton*, 789 So. 2d at 332 (child abuse); *Douglas*, 878 So. 2d at 1260 (parental abandonment). Of significance, neither case states or suggests that long-term abuse or permanent parental abandonment warrant a specific weight; nor does either case limit the discretion of the trial court in assigning weight to such evidence. Indeed, both decisions stress that the weight given to such circumstances is entrusted to the sound discretion of the trial court. *Morton*, 789 So. 2d at 332 ("The weight given to this mitigating circumstance is also within the trial court's discretion." (citing *Shellito v. State*, 701 So. 2d 837, 844 (Fla. 1997))); *Douglas*, 878 So. 2d at 1260 ("[T]he weight given to this mitigating circumstance is within the trial court's discretion."). Thus, *Morton* and *Douglas* do not help Davidson. [10]

Davidson also attacks the assignment of little weight to portions of his mental-health mitigation. He contends that it was unreasonable for the court to assign little weight to such circumstances based ***1250** on the fact that it assigned the same weight to his good behavior in court. We reject this argument as inconsistent with our reasoning in *Craft*, 312 So. 3d at 53-54. Specifically, Craft argued, "[T]he weight assigned to the childhood-trauma mitigator was arbitrary and unreasonable because the trial court also assigned the same weight to the mitigating circumstance that Craft exhibited good behavior during trial." *Id.* In rejecting that argument, we observed that the trial

court "independently considered and weighed both mitigating circumstances," the "trial court's findings with respect to both circumstances [we]re supported by competent, substantial evidence," and "the trial court did not simply arbitrarily assign all mitigation the same weight." *Id.* at 54.

Here, as reflected in the sentencing order, the trial court gave individualized consideration to each proposed mitigating circumstance and assigned various weight —ranging from none to some—to the mitigating circumstances found to be established. And Davidson does not claim that the underlying factual findings are not supported by competent, substantial evidence. Thus, *Craft* supports affirmance.

In sum, Davidson has not demonstrated error or an abuse of discretion in the trial court's handling of mitigating circumstances.

Constitutionality of Prior-Violent-Felony Aggravator

As his final argument, Davidson challenges the constitutionality of the prior-violent-felony aggravator. *See* § 921.141(6)(b), Fla. Stat. Specifically, Davidson argues that the prior-violent-felony aggravator is overbroad and impermissibly vague, thereby constituting cruel and unusual punishment under the state and federal constitutions. Our cases have consistently rejected overbreadth and vagueness challenges to this aggravator. *See, e.g.*, *Bush v. State*, 295 So. 3d 179, 214 (Fla. 2020); *Gonzalez v. State*, 136 So. 3d 1125, 1169 (Fla. 2014); *Lowe v. State*, 2 So. 3d 21, 44 (Fla. 2008); *Hudson v. State*, 708 So. 2d 256, 261 & n.4 (Fla. 1998)). And we see no reason to depart from that case law now.

Voluntariness of Guilty Plea

In death-penalty cases, "[t]his Court has a mandatory obligation to independently review the sufficiency of the evidence underlying [a first-degree murder] conviction, and the 'customary review' evaluates whether the conviction is supported by competent, substantial evidence." *Santiago-Gonzalez*, 301 So. 3d at 180 (quoting *Ocha v. State*, 826 So. 2d 956, 965 (Fla. 2002)). "However, where a defendant pleads guilty and waives a jury trial, the relevant inquiry is not whether there was competent, substantial evidence, but whether the defendant knowingly, intelligently, and voluntarily entered the guilty plea." *Id.* (citing *Tanzi v. State*, 964 So. 2d 106, 121 (Fla. 2007)). "Proper review requires this Court to scrutinize the plea to ensure that the defendant was made aware of the consequences of his plea, was apprised of the constitutional rights he was waiving, and ple[aded] guilty voluntarily." *Covington v. State*, 228 So. 3d 49, 67 (Fla. 2017) (alteration in original) (quoting *Ocha*, 826 So. 2d at 965).

Here, as argued by the State, the trial court conducted an extensive inquiry into Davidson's knowledge and understanding of the charges against him, his rights, and the consequences of pleading guilty. Specifically, the trial court apprised Davidson that a guilty plea would mean no guilt-phase trial and the forfeiture of trial-related rights such as requiring the State to prove his guilt beyond a reasonable doubt, the right to have a jury decide his guilt, the right to be represented by a lawyer at the trial, the right to call and confront ***1251** witnesses, and the right to remain silent. The court also apprised Davidson that there were only two sentencing options for the first-degree-murder conviction: life in prison or death. And, after being so advised, Davidson told the trial court that he was making the decision to plead guilty "based on [his] own free[ ] and voluntary will." [11] Finally, the evidence of guilt was overwhelming as detailed in the factual basis given by the prosecutor.

Thus, we conclude that Davidson's guilty plea was voluntarily and knowingly given. *See Craft*, 312 So. 3d at 58; *Santiago-Gonzalez*, 301 So. 3d at 180.

CONCLUSION

For the reasons given above, we affirm Davidson's first-degree-murder conviction and his sentence of death.

It is so ordered.

CANADY, C.J., and POLSTON, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

LABARGA, J., concurs in result with an opinion.

LABARGA, J., concurring in result.
For the reasons expressed in my dissenting opinion in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020) (receding from proportionality review requirement in death penalty direct appeal cases), I can only concur in the result.

All Citations

323 So.3d 1241, 46 Fla. L. Weekly S219

Footnotes

1 BOLO stands for “Be on the Lookout.”
2 *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).
3 *See* § 921.141(6)(b), Fla. Stat. (2019).
4 *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).
5 These exhibits included Davidson's medical and educational records, brain scans, disability records, Dr. Ouaou and Dr. Bigler's demonstrative slides, and childhood photographs of Davidson.
6 The State raises the issue of the comparative proportionality of Davidson's death sentence. However, after the briefing in this case, we decided *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020). In *Lawrence*, we held that the conformity clause in article I, section 17 of the Florida Constitution prohibits us from undertaking comparative proportionality review. *Id.* at 550-52. Thus, in accordance with *Lawrence*, we do not review the comparative proportionality of Davidson's death sentence.
7 *See Altersberger v. State*, 103 So. 3d 122, 128 (Fla. 2012).
8 This issue involves a pure legal matter and is thus subject to de novo review. *See Anderson v. State*, 291 So. 3d 531, 533 (Fla. 2020) (citing *Khianthalat v. State*, 974 So. 2d 359, 360 (Fla. 2008)).
9 We also note that the trial court made a finding that “Dr. Ouaou never questioned the defendant about the crimes in this case, his feelings about the crimes in this case, or what he was feeling leading up to the crimes in this case.” This finding further undermines Davidson's argument that the trial court improperly rejected the mitigator.
10 To the extent Davidson also relies on the evidence of his abusive childhood, such reliance is misplaced. As the State properly notes, the trial court gave more than “little weight” to his childhood abuse.
11 Davidson also signed a written plea form acknowledging the forfeiture of certain trial-related rights and attesting to the voluntary nature of the plea.

Supreme Court of Florida

MONDAY, SEPTEMBER 13, 2021

CASE NO.: SC19-1851
Lower Tribunal No(s).:
102014CF001904000AMX

DONALD H. DAVIDSON JR. vs. STATE OF FLORIDA

Appellant(s) Appellee(s)

Appellant's Motion for Rehearing is hereby denied.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

kc
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HON. JESSICA JOAN YEARY, PUBLIC DEFENDER
WILLIAM D. CHAPPELL
BARBARA J. BUSHARIS
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HON. DON H. LESTER, JUDGE
L E HUTTON
HON. MARK H. MAHON, CHIEF JUDGE

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR CLAY COUNTY, FLORIDA

CASE NO.: 2014-CF-01904

DIVISION: B

STATE OF FLORIDA

v.

DONALD HUGH DAVIDSON, JR.

defendant.

SENTENCING ORDER

On December 17, 2014, the Grand Jurors of the State of Florida and the County of Clay indicted the defendant for Murder in the First Degree, Attempted Sexual Battery, four counts of Sexual Battery, Lewd or Lascivious Molestation, Kidnapping, and Grand Theft Auto. On that same date, the State filed its Notice of Intent to Seek the Death Penalty.

On May 29, 2019, the defendant entered an open plea of guilty to Murder in the First Degree (Count One), Attempted Sexual Battery (Count Two), four counts of Sexual Battery (Counts Three through Six), Lewd or Lascivious Molestation (Count Seven), Kidnapping (Count Eight), and Grand Theft Auto (Count Nine). The Court engaged in an extensive plea colloquy with the defendant and specifically advised him of the rights he was giving up by entering a plea. The defendant acknowledged that he understood. The Court

found that the plea was knowingly, intelligently, and voluntarily entered.

Additionally, the defendant moved to waive his right to a penalty-phase jury. The Court again engaged in another colloquy with the defendant, who stated that he fully discussed the decision with his counsel. However, the Court allowed the defendant another opportunity to further discuss his decision with counsel and set another court date for June 10, 2019.

On June 10, 2019, after further inquiry by the Court with the defendant, the Court granted the defendant's request to waive a penalty-phase jury and the penalty phase proceedings began. The penalty phase proceedings continued on June 25, 2019; June 26, 2019; and July 1, 2019.

On August 9, 2019, as ordered by the Court, the State and the defendant filed memoranda in support of and in opposition to the death penalty, respectively. On August 12, 2019, the Court held a *Spencer*[1] hearing. The parties did not present any further testimony. However, the parties did present supplemental arguments

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[1] "*Spencer v. State*, 615 So. 2d 688 (Fla. 1993), requires that before the final determination of sentence, the judge must hold a hearing, the purposes of which are: (1) to give the parties and counsel an opportunity to be heard; (2) to give the parties an opportunity to present additional evidence; (3) to allow the parties to comment on or rebut information in a PSI or medical report; and (4) to provide the defendant the opportunity to address the court in person." *Robertson v. State*, 187 So. 3d 1207, 1216 (Fla. 2016).

and the defendant formally introduced evidence previously disclosed during the penalty phase proceedings.

SUMMARY OF FACTS[2]

On November 9, 2010, a trial court adjudicated the defendant guilty of two counts of Lewd or Lascivious Molestation and one count of Aggravated Battery Upon a Pregnant Female. The trial court sentenced the defendant to five years of incarceration for each charge and ordered the sentences to run concurrently. On September 20, 2014, the defendant was released from prison and placed on conditional release. On conditional release, the defendant was required to wear a GPS monitor and was being supervised by Jeffrey Hetz ("Hetz").

On December 1, 2014, the defendant's brother James Earls ("Earls") picked up the defendant from his job and dropped him off at the home of Roseann Welsh ("Welsh") just before noon. The defendant had known Welsh, her husband, and family for many years. The defendant told Earls that Welsh was expecting him, though the defendant admitted Welsh had no idea the defendant was coming to her home.

When the defendant arrived, Welsh was at home alone. At some point, the defendant asked Welsh to see a video game she had in her

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[2] The Court compiled the facts from the defendant's admissions, the interviews of [redacted] and [redacted] to law enforcement, and evidence presented during the penalty phase proceedings and *Spencer* hearing.

bedroom. By this time, the defendant was having thoughts of raping Welsh. As Welsh walked in front of him into the bedroom, the defendant grabbed Welsh from behind and placed her in a chokehold. The defendant forced Welsh face-first across the bed and pulled her dress up. Then the defendant attempted to rape Welsh from behind.

While the defendant was attempting to rape Welsh, Welsh heard her ten-year-old daughter, [redacted] who was returning from school, outside the home. Welsh broke away from the defendant and went into the bathroom adjoining the bedroom. The defendant followed Welsh. As Welsh approached the bathroom shower, the defendant removed a shoelace from a tennis shoe located outside the shower and placed the shoelace around Welsh's neck. The defendant began to strangle Welsh. After strangling Welsh to unconsciousness, the defendant realized that she was still breathing. The defendant then stabbed Welsh with a Buck Knife three times in the throat.

The defendant left the bathroom and bedroom, and found [redacted] sitting at the kitchen table working on her homework. Before entering the home and encountering the defendant, [redacted] heard her mother scream and say "call 911 and run down the street." Although [redacted] wondered why her mother yelled this, she thought her mother was arguing with someone. When things turned quiet, [redacted] entered the home and started her homework.

The defendant approached [redacted] and began unzipping his pants while he reached for her. [redacted] slapped his hands away. The defendant then grabbed [redacted] by the neck and threw her against the couch in the living room. [redacted] was so scared she urinated on herself. Thereafter, the defendant began to sexually assault [redacted]

The defendant forced [redacted] to take off her clothes and forced [redacted] to give him oral sex. The sexual assualt against [redacted] continued until it was interrupted at some point by [redacted]'s thirteen-year-old brother, [redacted] who had arrived home from school.

Before [redacted] could enter the home, the defendant met [redacted] at the door and told him that his mother and sister were not home, but at a friend's house. [redacted] left to go look for his mother and sister. Once [redacted] left, the defendant grabbed a knife, cut off his GPS monitor, took the keys to the family's minivan, and kidnapped [redacted]

When the defendant cut off his GPS monitor, his probation officer was alerted. Hetz immediately attempted to determine the defendant's location. Based on Hetz's review of the defendant's GPS data, he responded to Welsh's home and recovered the base station of the GPS monitor, but did not find the defendant. Hetz never went into the home and was unaware that Welsh had been murdered or that [redacted] had been kidnapped.

Over the next several hours the defendant drove [redacted] around in the family's minivan. Further, the defendant continued his sexual assualt on [redacted] including once again forcing her to perform oral sex on him.

When [redacted] was unsuccessful in his search for his mother and sister, he returned to the home. Once inside, [redacted] began to look for his mother and sister again. [redacted] eventually went to his mother's bedroom and then her bathroom. There, [redacted] found his mother's naked body.

After [redacted] found his mother, he immediately called 911. Law enforcement responded and began their investigation. At approximately 7:00 p.m., [redacted] was found walking alone down a dirt road. Later, the defendant was located by law enforcement driving down Blanding Boulevard in the family's minivan. The defendant was stopped and taken into custody.

AGGRAVATING FACTORS

"The only matters that may be considered in aggravation in a capital sentencing proceeding are the circumstances set forth in section 921.141(5), Florida Statutes." *Robertson v. State*, 187 So. 3d 1207, 1217 (Fla. 2016). Here, the State argued five aggravating factors pursuant to the statute: (1) the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on

felony probation; (2) the defendant was previously convicted of another capital felony or 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 was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, a sexual battery; (4) the capital felony was especially heinous, atrocious, or cruel; and (5) the capital felony was committed by a person designated as a sexual predator pursuant to section 775.21, Florida Statutes, or a person previously designated as a sexual predator who had the sexual predator designation removed.[1] The State has the burden of proving each aggravating factor beyond a reasonable doubt. *See, e.g., Johnson v. State*, 969 So. 2d 938, 956 (Fla. 2007) ("Aggravating circumstances require proof beyond a reasonable doubt.").

1. The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.

The State and the defendant entered a stipulation that the defendant was previously convicted of a felony and was on conditional release with the Florida Department of Corrections when he murdered Welsh. The Florida Supreme Court "has held that evidence of a defendant on conditional release at the time of the

[1] The State filed its list of aggravating factors on June 8, 2016.

murder is sufficient to satisfy the 'under sentence of imprisonment' aggravator." *Lawrence v. State*, 831 So. 2d 121, 136 (Fla. 2002) (citing *Haliburton v. State*, 561 So. 2d 248 (Fla. 1990)). The State also introduced into evidence judgments and sentences proving that the defendant was convicted of two counts of Lewd or Lascivious Molestation, first degree felonies, and Aggravated Battery Upon a Pregnant Female, a second degree felony, on November 9, 2010. Hetz testified that at the time of the murder, the defendant was on conditional release for the November 9, 2010 convictions and was required to wear a GPS monitor.

Based on the stipulation, and the evidence and testimony presented, the Court finds that the State has proven this aggravating factor beyond a reasonable doubt. The Court gives this aggravating factor great weight in determining the appropriate sentence to impose.

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

A. Tiffany Lagasse

The State and the defendant entered a stipulation that the defendant was convicted of the crime of Aggravated Battery on a Pregnant Female on November 9, 2010. The State also introduced the judgment and sentence of the Aggravated Battery on a Pregnant Female conviction and the testimony of Tiffany Lagasse, the victim,

regarding the incident. *See Gonzalez v. State*, 136 So. 3d 1125, 1150 (Fla. 2014) ("During a penalty phase proceeding, the trial court has the discretion to admit evidence with regard to the details of a defendant's previous conviction for a felony involving the use or threat of violence.").

Lagasse testified to the following: She met the defendant while he was working on her sister's car on June 22, 2010. The next day, on June 23, 2010, the defendant unexpectedly came to Lagasse's home and inquired about the truck she had for sale. Lagasse allowed the defendant into her home. The defendant began acting strange and told her he had taken a "gram of coke." The defendant asked Lagasse to strip for him and have sex with him. Lagasse asked the defendant to leave her home, but he refused.

The defendant, now claiming not to be feeling well, asked Lagasse for water. As Lagasse went into the kitchen and with her back to the defendant, the defendant wrapped his hands around her neck and lifted her off the floor. Thereafter, Lagasse blacked out. When Lagasse awoke her pants were unbuttoned and the defendant was on top of her. Ultimately, she was able fend off the defendant and escape out the back door of her home. Based on the stipulation, and the evidence and testimony presented, the Court finds the State has proven beyond a reasonable doubt the defendant

has a prior conviction of Aggravated Battery, a crime involving the use of violence.

B. M.S.

The defendant admitted he made [redacted] perform oral sex on him. During her interview with law enforcement, [redacted] also stated the defendant made her put her mouth on his penis. Further, [redacted] stated that the defendant placed his penis upon her anus.[2] Additionally, the DNA results of the vaginal and anal swabs taken from [redacted] revealed the presence of a mixture with the defendant being included as a possible contributor to that mixture.

Based on the defendant's admissions, [redacted]'s statements to law enforcement, and other evidence presented, it is established that the defendant committed sexual battery[3] against [redacted]. Sexual battery is a felony that implicitly involves violence or the threat of violence. *See Hess v. State*, 794 So. 2d 1249, 1264 (Fla. 2001) (finding it was "the Legislature's intent to treat a violation of section 794.011 as implicitly involving violence or the threat of violence.").

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[2] In its memorandum, the State asserts that "the [d]efendant caused tearing to the skin around M.S.'s anus and pinpoint bruising to her vagina." The State did not present any medical evidence to support its assertion. The Court's analysis or decision, however, does not change whether or not the State's assertion is proven.

[3] Sexual battery "means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object." § 794.011(1)(h), Fla. Stat. (2014).

Further, it is established that the defendant kidnapped[4] [redacted] The defendant admitted he grabbed [redacted] and told [redacted] to get into the family's minivan despite the fact she did not want to leave the home. Once the defendant left the home with [redacted] he committed sexual battery against [redacted] including making [redacted] perform oral sex on him. [redacted]s statements to law enforcement corroborates the defendant's admissions.

The defendant pleaded guilty to the offenses against [redacted] Therefore, for purposes of this aggravating factor, the defendant was previously convicted of a felony involving the use or threat of violence to another person. *See* § 921.0021(2), Fla. Stat. (2014)("'Conviction' means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld."); *Buzia v. State*, 926 So. 2d 1203, 1209 (Fla. 2006)(The Florida Supreme Court has long "recognized that a contemporaneous conviction for a violent felony can serve as a basis for the prior violent felony aggravator."). Thus, the Court finds the State has proven beyond a reasonable double the defendant has a prior conviction of Sexual Battery and Kidnapping, crimes involving the use of violence.

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[4] Kidnapping "means forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to: [ ] 2. Commit or facilitate commission of any felony." § 787.01 (1)(a)2., Fla. Stat. (2014).

The Court gives this aggravating circumstance great weight in determining the appropriate sentence to impose.

3. The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, a sexual battery.

The evidence in this case establishes the following: The defendant went to Welsh's home. Once he arrived at the home, he thought about raping Welsh. When Welsh walked into her bedroom and had her back turned to the defendant, the defendant grabbed her and placed her in a chokehold. The defendant then forced Welsh face first on the bed and pulled her dress over her head and attempted to rape her. Indeed, a vaginal swab was collected from Welsh and a partial DNA profile, foreign to Welsh was obtained. The partial DNA profile matched the defendant's DNA profile. Before the defendant was able to complete his task, however, Welsh broke away from the defendant and went into the adjoining bathroom. The defendant followed Welsh into the bathroom. The defendant then strangled and stabbed Welsh in the throat, killing her.

The Court finds that the State has proven this aggravating factor beyond a reasonable doubt. The Court gives this aggravating factor great weight in determining the appropriate sentence to impose.

4. The capital felony was especially heinous, atrocious, or cruel ("HAC").

"For HAC to apply, the crime must be conscienceless or pitiless and unnecessarily torturous to the victim." *Francis v. State*, 808 So. 2d 110, 134 (Fla. 2001).

> HAC focuses on the means and manner in which the death is inflicted and the immediate circumstances surrounding the death, rather than the intent and motivation of a defendant, where a victim experiences the torturous anxiety and fear of impending death. *See Brown v. State*, 721 So. 2d 274, 277 (Fla. 1998). 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. *See id.* Because strangulation of a conscious victim involves foreknowledge and the extreme anxiety of impending death, death by strangulation constitutes prima facie evidence of HAC.

Barnhill v. State, 834 So. 2d 836, 849-50 (Fla. 2002).

Dr. Valerie Rao, the interim chief medical examiner who examined Welsh's body, testified that the cause of the victim's death was a homicide due to strangulation and stab wounds to the neck. The injuries Welsh's sustained included petechia under her left and right eyelids, on her cheeks, and on the membrane inside the brain stem. Welsh also exhibited hemorrhaging around her neck area resulting from the strangulation and fractured bones in her trachea from one of the stab wounds. Dr. Rao stated that these injuries indicated there was sustained pressure of the neck for at

least three to five minutes. As such, Dr. Rao testified that the victim's death was not instantaneous.

The defendant's admissions corroborate Dr. Rao's findings. The defendant admitted to strangling Welsh while she was conscious and stabbing her. Further, the defendant's own words that "she's strong" indicate that Welsh tried to fight against him during her impending death.

The Court finds that the State has proven this aggravating factor beyond a reasonable doubt. The Court gives this aggravating factor great weight in determining the appropriate sentence to impose. *See Carr v. State*, 156 So. 3d 1052, 1071 (Fla. 2015)(finding HAC is one of the weightiest aggravating factors.).

5. The capital felony was committed by a person designated as a sexual predator pursuant to section 775.21, Florida Statutes or a person previously designated as a sexual predator who had the sexual predator designation removed.

The State and the defendant entered a stipulation that the defendant was designated a sexual predator pursuant to section 775.21, Florida Statutes based on his two convictions of Lewd and Lascivious Molestation. The State also introduced the judgments and sentences proving the defendant was convicted of two counts of Lewd or Lascivious Molestation.

Based on the stipulation and the evidence presented, the Court finds that the State has proven beyond a reasonable doubt this

aggravating factor. The Court gives this aggravating factor moderate weight in determining the appropriate sentence to impose.

MITIGATING CIRCUMSTANCES

A mitigating circumstance is "any aspect of a defendant's character or record and any of the circumstances of the offense that reasonably may serve as a basis for imposing a sentence less than death." *Campbell v. State*, 571 So. 2d 415, 419 n.4 (Fla. 1990) *receded from on other grounds, Trease v. State*, 768 So. 2d 1050 (Fla. 2000). Thus, "[t]he trial court, during the penalty phase of a capital trial, is required to expressly find, consider and weigh" all of the statutory and non-statutory mitigation, "which appears anywhere in the record." *Donaldson v. State*, 722 So. 2d 177, 188 (Fla. 1998) (citation omitted).

Unlike the State's burden to prove aggravating factors beyond a reasonable doubt, the defendant need only establish mitigating circumstances by the greater weight of the evidence. *Ford v. State*, 802 So. 2d 1121, 1133 (Fla. 2001) (citation omitted). Here, the defendant argued two statutory mitigating circumstances and seventy-five non-statutory mitigating circumstances.

I. Statutory Mitigating Circumstances

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 or her conduct or to conform his or her conduct to the requirements of the law was substantially impaired.

The Court will evaluate both statutory mitigating circumstances together since the defendant relied upon the same evidence, namely, the testimony of Dr. Erin Bigler, Dr. Steve Gold, and Dr. Robert Ouaou, to establish them.

Dr. Erin Bigler, a clinical neuropsychologist and clinical neuroscientist, reviewed imaging scans of the defendant's brain. Dr. Bigler did not find any physical damage to the defendant's brain. However, Dr. Bigler found some irregularity within the defendant's orbital frontal lobe. Dr. Bigler stated that the orbital frontal lobe oversees impulse control and decision-making. That said, Dr. Bigler did not opine whether the defendant actually suffered from a lack of impulse control or decision-making skills.

Dr. Steve Gold, a psychologist, reviewed numerous documents related to this case, including the defendant's family tree, the defendant's educational history, the defendant's medical records, the defendant's Social Security Administration judgment, the arrest records from all of the defendant's cases, and interviews and depositions of certain witnesses. Dr. Gold determined that the defendant was exposed to numerous traumatic or adverse experiences that could impact his psychological development. Dr. Gold stated, however, that his assessment of the defendant was not meant to

excuse or explain why the defendant committed the crimes in December 2014.

Dr. Robert Ouaou, a neuropsychologist, evaluated the defendant for intellectual disabilities and neurological deficiencies. Dr. Ouaou met with the defendant twice and had the defendant perform multiple neuropsychological tests. Dr. Ouaou also reviewed numerous documents, including the defendant's schools records, the defendant's medical records, the defendant's Social Security Administration records, the arrest records from all of the defendant's cases, video of the defendant's interview with law enforcement related, written statements of various individuals related to this case, certain depositions related to this case, and previous psychological evaluations.

Dr. Ouaou found that the neuropsychological tests revealed the defendant suffers from executive function impairment and memory impairment. Further, Dr. Ouaou testified that the defendant suffers from damage to his frontal lobe and limbic system. Specifically, Dr. Ouaou stated that the defendant likely has an over-developed limbic region and an under-developed frontal lobe that could have been caused by head injuries, trauma and neglect, or the neurotoxic effects of drugs or alcohol. Dr. Ouaou testified that the imbalance between the limbic region and frontal lobe leads

to decreased planned thinking and self-control and increased impulsiveness and risk-taking.

Dr. Ouaou concluded that the defendant suffered from extreme emotional disturbance at the time of the murder. Further, Dr. Ouaou concluded that the defendant's ability to conform his conduct to the requirements of the law was substantially impaired at the time of the murder. Of note, Dr. Ouaou never questioned the defendant about the crimes in this case, his feelings about the crimes in this case, or what he was feeling leading up to the crimes in this case.

Here, there is competent, substantial evidence demonstrating that the defendant was not *substantially* impaired in his ability to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law at the time of the murder. The defendant's own admissions provide that he was well aware of his actions and that his actions were wrong. Indeed, after strangling and stabbing Welsh, the defendant would not allow [redacted] to see her mother and lied to [redacted] to direct him away from the house where his mother lay dead and his sister was being sexually assaulted. Further, the defendant cut of his GPS monitor, threw out his cellphone, and stole a van to evade law enforcement. The defendant made it to Georgia before having a change of heart and returning to Florida to turn himself in. Thus, the Court rejects Dr. Ouaou's

opinion that the defendant's ability to conform his conduct to the requirements of the law was substantially impaired at the time of the murder. *See Allen v. State*, 137 So. 3d 946, 965 (Fla. 2013) ("When expert opinion evidence is presented, it may be rejected if that evidence cannot be reconciled with other evidence in the case."). Further, the Court finds the greater weight of the evidence does not establish that the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired. *See Ault v. State*, 53 So. 3d 175, 189 (Fla. 2010) ("A trial court may properly reject a proposed mitigating circumstance where there is competent, substantial evidence in the record to support its rejection.").

Now, the Court does find that the greater weight of the evidence establishes that the defendant was under the influence of extreme emotional disturbance[5] at the time of the murder. However, the Court finds that the defendant's emotional disturbance was exacerbated by his voluntary ingestion of cocaine. Therefore, the Court gives this mitigating circumstance only some weight in determining the appropriate sentence to impose.

II. Non-Statutory Mitigating Circumstances

[5] Extreme mental or emotional disturbance is "less than insanity but more than the emotions of an average man, however inflamed." *State v. Dixon*, 283 So. 2d 1, 10 (1973).

CHILDHOOD UPBRINGING

1. The defendant's parents were divorced.

There was no evidence presented that the defendant's parents were married or divorced. In fact, Patricia Clevenger testified that the defendant was conceived while she was still married to the defendant's father and soon after, the defendant's father moved from Clay county back to Ohio. There is evidence that the defendant was raised by a single mother and his father was not involved in his life. However, those matters will be addressed in later mitigating circumstances. As such, the Court finds that this mitigating circumstance has not been established by the greater weight of the evidence and gives it no weight in determining the appropriate sentence to impose.

2. The defendant's father abandoned him at an early age.

The testimonies of Patricia Clevenger and Earls establish that from an early age the defendant's father was not involved in his life. Therefore, the Court finds that the greater weight of the evidence establishes this mitigating circumstance and gives it little weight in determining the appropriate sentence to impose.

3. The defendant was raised by a single mother who was very poor.

Based on the testimonies of Earls, Leanna Mashaw, Pastor Kilpatrick, and Richard "Dick" Metheny, the Court finds the greater weight of the evidence establishes this mitigating circumstance.

The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

4. The defendant and his mother lived with numerous relatives and non-relatives during the defendant's childhood.

Based on the testimonies of Earls, Leanna Mashaw, and Angeline Box, the Court finds the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

5. The defendant lived with two uncles, Lee Lowe and Pete Lowe, who were prosecuted for sexual offenses.

Based on Leanna Mashaw's testimony, the Court finds the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

6. The defendant was raised in circumstances of extreme filth.

7. The defendant lived in homes where rats and roaches were commonplace.

Because of the Court finds mitigating circumstances 6 and 7 are closely intertwined, it considers them as a single non-statutory mitigating circumstance. Based on the testimonies of Angeline Box, Patricia Clevenger, Hannelore Watts, Pastor Kilpatrick, and Richard "Dick" Metheny, the Court finds the greater weight of the evidence establishes this mitigating circumstance.

The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

8. The electricity and water in the homes where the defendant resided with his mother were turned off numerous times during the defendant's childhood.

Richard "Dick" Metheny testified that when the defendant was approximately seven years old, he brought a generator to the trailer the defendant's mother had moved into because the trailer did not have electricity. Metheny also testified that on one occasion the defendant's family was without water and he helped them get access to water. Further, Angeline Box testified the home the defendant resided in was without electricity or water several times.

Based on these testimonies, the Court finds the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

9. The defendant slept on the floor.

Based on the testimonies of Hannelore Watts and Angeline Box, the Court finds the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

10. The defendant was always hungry.

Based on Angeline Box's testimony and what can be reasonably inferred from Richard "Dick" Metheny's testimony, the Court finds the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

11. The defendant's mother and stepfather engaged in sexual activity in plain sight of the children and their pastor.

Richard "Dick" Metheny, who testified to being a deacon at the South Middleburg Baptist Church, also testified that he witnessed the defendant's mother having "relations" with her husband in their home when children were around. Thus, the Court finds that the greater weight of the evidence establishes the defendant's mother engaged in sexual activity in plain sight of children and another adult. However, the evidence is not clear that this one time sexual activity was performed in front of the defendant, that this circumstance was a regular occurrence, or that the defendant ever witnessed his mother engaging in sexual activity with her husband. As such, the Court is not persuaded that this circumstance is a mitigating circumstance. To the extent this circumstance may be considered a mitigating circumstance, the Court gives it little weight in determining the appropriate sentence to impose.

12. The defendant didn't develop normal, healthy social boundaries in his family of origin.

In consideration of the testimonies of Earls, Angeline Box, Leanna Mashaw, Pastor Kilpatrick, Michelle Wadsworth, and Richard "Dick" Metheny, the Court finds the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

CHILDHOOD ABUSE

13. The defendant was sexually abused by his maternal first cousin, Becky Lowe, starting at age 6, until he was nine years old (when the cousin died in a car accident).

Based on the defendant's own admission and Earls' testimony, the Court finds the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

14. Becky Lowe also sexually abused the defendant's brother, James Earls.

Neither Earls nor any other witness directly testified to this circumstance. However, the defendant introduced Earls' treatment records from Community Behavioral Services where the progress notes dated November 13, 2000, indicate that Earls expressed confusion and hurt by the abuse of a female cousin. Thus, by reasonable inference, the Court finds the greater weight of the evidence establishes this circumstance. That said, there was no evidence

presented that the defendant participated in the sexual abuse or was aware of the sexual abuse. To the extent this is a mitigating circumstance, the Court gives this mitigating circumstance slight weight in determining the appropriate sentence to impose.

15. Subsequent to Becky Lowe's death, the defendant was sexually abused by his older brother, James Earls, starting at age nine (when James was twelve years old), until he was sixteen years old (when he went to live at a boys' ranch in Tennessee).

Based on Earls' testimony and his treatment records from Community Behavioral Services, the Court finds the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

16. James Earls was subsequently prosecuted for committing a sex offense against another child.

Based on Earls' treatment records from Community Behavioral Services, the Court gave reasonably infer that Earls was prosecuted for committing a sex offense against a child. There was no evidence presented, however, that the prosecution of Earls in any way affected or impacted the defendant. The Court does not find this circumstance as a mitigating circumstance. Therefore, the Court gives no weight to this circumstance in determining the appropriate sentence to impose.

17. The defendant and James Earls thought incestuous sexual relations was "normal" when they were young.

Based on the defendant's admissions and Earls' testimony, the Court finds the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

Combining circumstances 18 through 24 as a single non-statutory mitigating circumstance. The defendant lived with numerous violent relatives who abused him and one another. The defendant was physically and emotionally abused by his great grandmother, "Mean Ma." The defendant was physically abused by his grandmother, Eunice. The defendant was physically abused by his brother James Earls. The defendant was physically abused by his older cousins, Adam Alojado and Quentin Lowe, and his uncle, Chris Thornton. Physical abuse between relatives was "normal" in the homes where the defendant lived as a child. The defendant was treated "hatefully" by his grandmother, uncles, and male cousins.

Based on the testimonies of Leanna Mashaw and Earls, the Court finds the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

EDUCATIONAL BACKGROUND

25. The defendant had a Specific Learning Disability (SLD) and was in special education classes from kindergarten until he went to the boys' ranch in Tennessee.

The defendant's school records establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

26. The defendant received Social Security benefits as a child due to his learning disabilities and psychiatric disturbances.

The defendant introduced Social Security Administration records that revealed an Administrative Law Judge declared the defendant disabled at the age of fourteen because he suffered from severe Attention Deficit Hyperactivity Disorder (ADHD) and a learning disorder. As such, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

27. During his 5th grade school year, the defendant performed poorly on the California Test of Basic Skills. The result placed him in the 15th percentile in reading and 2nd percentile in math.

The Court does not find any evidence to support this circumstance. Therefore, the Court finds that this mitigating circumstance has not be proven by the greater weight of the evidence. The Court gives this mitigating circumstance no weight in determining the appropriate sentence to impose.

28. The defendant was determined to be in the 5th percentile on the Bender Motor Gestalt Test. This test assesses visual-motor functioning, developmental disorders, and neurological impairments.

As part of his school records, the defendant introduced a psycho-educational evaluation taken when the defendant was in the first grade that establishes this mitigating circumstance. The

Court gives this mitigating circumstance slight weight in determining the appropriate sentence to impose.

29. The defendant was determined to be in the 15th percentile on the Beery Visual-Motion Integration Test. This test analyzes hand/eye coordination as it relates specifically to handwriting.

As part of his school records, the defendant introduced a psycho-educational evaluation taken when the defendant was in the first grade that establishes this mitigating circumstance. The Court gives this mitigating circumstance slight weight in determining the appropriate sentence to impose.

30. The defendant never progressed in school past the 8th grade.

Based on the defendant's school records it appears the defendant started the ninth grade before withdrawing from the Clay County public schools. Therefore, the Court finds that the defendant has not proven this mitigating circumstance. However, it is apparent that the defendant did not finish high school and did not received a high school diploma. Therefore, the Court considers this circumstance as a mitigating circumstance for consideration. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

MENTAL HEALTH, DRUG USE, AND BEHAVIORAL ISSUES

31. The defendant was diagnosed with severe Attention Deficit Hyperactivity Disorder (ADHD).

The defendant introduced Social Security Administration records that revealed an Administrative Law Judge declared the defendant disabled at the age of fourteen because he suffered from severe ADHD and a learning disorder. As such, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

32. The defendant received SSDI for severe ADHD at age 14, which is uncommon.

The Court considered this matter under mitigating circumstance number 26. Therefore, the Court does not assign any additional weight to this matter.

33. The defendant was diagnosed with Bipolar Disorder (BPD) when he was 20 years old.

There appears to be no competent evidence presented supporting the claim that the defendant was diagnosed with Bipolar Disorder when he was twenty-years old. Therefore, the Court finds that this mitigating circumstance has not be proven by the greater weight of the evidence. The Court gives this mitigating circumstance no weight in determining the appropriate sentence to impose.

34. The defendant was diagnosed with paranoid schizophrenia during adulthood.

The defendant's Social Security Administration records reveal that in 2009, the defendant received a psychological evaluation and

the psychologist diagnosed the defendant with a bipolar type schizoaffective disorder. There was no evidence presented that the defendant was actually diagnosed with paranoid schizophrenia. However, to the extent the defendant was diagnosed with a bipolar type schizoaffective disorder, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

35. The defendant was suffering from paranoid ideations at the time of the crime (he thought someone was going to kill him so he tied the front door to the backdoor).

Earls and Michelle Wadsworth testified that the defendant feared that someone would come and kill him. Further, Michelle Wadsworth testified that the defendant would tie a rope from the door of his room to the backdoor of the home. Therefore, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. There was no evidence presented however that the defendant's ideations were the impetus to his crime. Therefore, the Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

36. The defendant had visual and auditory hallucinations beginning in childhood and continuing into adulthood.

Earls testified that the defendant talked about hearing voices and seeing ghosts as a child. Further, medical records reveal that at least on one occasion the defendant reported having visual

hallucinations. Therefore, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

37. The defendant was prescribed Ritalin, Lithium, and Depakote as a child.

The defendant presented Social Security Administration and school records that suggest he was prescribed Ritalin and Depakote as a child. There was no evidence presented however that the defendant was prescribed Lithium as a child. Therefore, the Court finds that the greater weight of the evidence establishes only that the defendant was prescribed Ritalin and Depakote as a child. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.[6]

38. The defendant was Baker Acted as a 19-year-old after a police officer saw him behaving erratically and dangerously on a bicycle.

The greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

39. The defendant was Baker Acted again in 2004 when he overdosed on Aderall.

[6] Even if the defendant was prescribed Lithium as a child and the Court considered it with this mitigating circumstance, the weight would not change.

The greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

40. The defendant was Baker Acted in 2005 (at age 25) when he attempted to overdose on Tylenol.

The greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

41. The defendant has a history of suicide attempts beginning at age 18 years of age.

Earls testified that the defendant attempted to commit suicide on a number of occasions, including one occasion when he attempted to shoot himself in front of family members. Further, medical records indicate a history of suicide attempts. It is not evident however that the defendant's suicide attempts began at the age of eighteen. Regardless of when the defendant's suicide attempts began, the Court finds that the greater weight of the evidence establishes the defendant had a history of suicide attempts and considers it a mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

42. The defendant attempted to shoot himself in the presence of family members.

Earls testified that the defendant attempted to shoot himself in front of family members. While the Court finds that this circumstance has been established, the Court has considered it under mitigating circumstance number 41. Therefore, the Court does not assign any additional weight to this mitigating circumstance.

43. The defendant self-medicated with marijuana and cocaine.

44. The defendant abused cocaine as a teenager and young adult.

45. The defendant self-medicated with MDMA (ecstasy) from ages 17-24.

Because the Court finds these mitigating factors closely intertwined, it considers them as a single non-statutory mitigating circumstance. Upon review of the defendant's medical records, the Court finds that the defendant had self-reported that he had a history of cocaine, ecstasy, and marijuana use. There is further evidence that on at least one occasion the defendant tested positive for cocaine in 2010.

The Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

46. After release from prison in 2014, the defendant was treated by Dr. Angela White at The Way Free Medical Clinic in Green Cove Springs.

There was no evidence presented to the Court that establishes this circumstance. Therefore, the Court finds that this mitigating circumstance has not been proven by the greater weight of the evidence and gives it no weight in determining the appropriate sentence to impose.

47. The defendant was prescribed Lithium in 2014 and filled his prescription but he did not to take the Lithium because his brother told him it might make his psychiatric symptoms worse.

Based on Earls' testimony, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

48. In the weeks before the crime, the defendant displayed poor adaptive functioning in the area of: domestic skills (due to depression); work activity (due to physical limitations); verbal skills; social skills; leisure activities and personal finances.

The Court finds that this "general" mitigating circumstance has not be proven by the greater weight of the evidence. Therefore, the Court gives this mitigating circumstance no weight in determining the appropriate sentence to impose.

49. The defendant's specific learning disorder causes problems with new learning for the defendant. His disability was not identified or catered to in his home life. This lack of identification leads to mental illness as an adult.

The Court has already considered the defendant's specific learning disorder in mitigating circumstances under number 25 and 26. The Court finds that the defendant's specific learning

disorder was identified as evidenced by the defendant's school records and the award of disability by the Social Security Administration. Thus, the Court does not find that the greater weight of the evidence establishes the defendant's "disability was not identified or catered to in his home life" or that the "lack of identification leads to mental illness as an adult."

50. The defendant has demonstrable brain abnormalities of the temporal lobe and prefrontal cortex.

Based on the testimonies of Dr. Robert Ouaou and Dr. Erin Bigler, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

51. The defendant's reliance on cocaine exacerbated the defendant's brain damage.

Based on Dr. Robert Ouaou's testimony, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

52. The test of abnormalities in the defendant's brain reflect repeated trauma on the brain. The defendant chronically experienced excessive stress.

The greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

53. The defendant's executive neurological functioning is impaired due to abnormalities in his orbital frontal lobe. He has very poor frontal lobe functionality as demonstrated by his performance on the Delis-Kaplan Executive Function System.

Based on Dr. Robert Ouaou's testimony, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

54. The defendant's white matter volume in his corpus collosum is on the low end average to borderline range. This affects the defendant's executive control and processing speed.

Based on Dr. Erin Bigler's testimony, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

55. The defendant has difficulty regulating his behavior in emotionally stressful situations as a result of brain dysfunction.

The Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

56. The defendant's ability to regulate his behavior is negatively impacted by cocaine.

Based on Dr. Robert Ouaou's testimony, the Court finds that the greater weight of the evidence establishes this mitigating

circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

REMORSE

57. The defendant is genuinely remorseful for his crimes.

The greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

58. The defendant confessed and respectfully cooperated with law enforcement.

The greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

59. The defendant pleaded guilty to the crimes with which he was charged and admitted his factual guilt.

The greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

60. The defendant waived his right to a jury determination of guilt and sentence. This prevented the inevitable trauma and stress a jury would have experienced during and long after the trial.

The greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

61. The defendant waived his right to a jury trial in order to shield the surviving victim, [redacted] and her brother, [redacted] from experiencing the trauma of having to testify.

The greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance some weight in determining the appropriate sentence to impose.

62. The defendant's conduct was appropriate and respectful during these proceedings.

The Court observed that the defendant's conduct was appropriate and respectful. Therefore, the greater weight of the evidence establishes this mitigating circumstance. However, like any other person before the Court, the defendant is expected to exhibit appropriate behavior. The Court gives this mitigating circumstance slight weight in determining the appropriate sentence to impose.

MISCELLANEOUS

63. The defendant has always been a follower.

Earls and Pastor Kilpatrick testified that the defendant was a follower. The Court finds that the greater weight of the evidence establishes this mitigating factor. Therefore, the Court gives this mitigating circumstance slight weight in determining the appropriate sentence to impose.

64. The defendant loves his family despite his disturbing history of incest and intra-familial physical abuse.

The Court finds that this circumstance is not established by the greater weight of the evidence. Therefore, the Court gives this mitigating circumstance no weight in determining the appropriate sentence to impose.

65. The defendant has close relationships with his brother, James Earls, and his aunt, Patsy Lowe.

There was evidence presented to suggest that the defendant at a minimum had some sort of relationship with Earls and Patsy Lowe. For example, the defendant called and relied on Earls to pick him up and take him to Welsh's home on the day he committed his crime. Further, Patsy Lowe was Hetz's point of contact when the defendant set off the alarm to his GPS monitor. Thus, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. Therefore, the Court gives this mitigating circumstance slight weight in determining the appropriate sentence to impose.

66. The defendant did well at the boys' ranch in Tennessee Resiliency.

To the extent that this mitigating circumstance has been proven by the greater weight of the evidence, the Court gives this mitigating circumstance slight weight in determining the appropriate sentence to impose.

67. The defendant thrived in a structured environment in which he was removed from his family yet his mother brought him home

where he was once more immersed in a very unsupportive social environment.

To the extent that this mitigating circumstance has been proven by the greater weight of the evidence, the Court gives this mitigating circumstance slight weight in determining the appropriate sentence to impose.

68. The defendant seemed "better" when he returned home from living in Tennessee for eighteen months.

Based on the testimony of Angeline Box, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance slight weight in determining the appropriate sentence to impose.

69. When the defendant was eighteen years old, he rescued Angel Box and saved her life after she dove into shallow water at a lake in Keystone Heights, struck her head, and lost consciousness.

Based on Angeline Box's testimony, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

70. The defendant was dependent upon his mother for emotional and financial support.

The greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

71. The defendant's mother was described as "simple" and did not always do what was best for the defendant.

To the extent that this mitigating circumstance has been proven by the greater weight of the evidence, the Court gives it little weight in determining the appropriate sentence to impose.

72. The defendant's mother died while he was in prison.

Earls testified that the defendant's mother passed away in 2013 and the defendant was in prison at that time. There can be no dispute that the defendant was in prison in 2013. Therefore, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

73. The defendant was not allowed to attend his mother's funeral and was deeply grieved by her death.

As previously stated, Earls testified that the defendant's mother passed away in 2013 and the defendant was in prison at that time. However, there was no evidence or testimony presented that the defendant sought to attend his mother's funeral or that the defendant "deeply grieved" his mother's death. Nevertheless, it may be reasonably inferred from the evidence presented that the defendant relied on his mother and that his mother tried her best to be a good mother. Thus, losing his mother would have an impact on the defendant.

To the extent the defendant was impacted by his mother's death, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

74. When the defendant was released from prison in 2014, he was unable to live with family. He had never lived alone before and was not functioning well on his own.

Earls testified that the defendant never lived on his own prior to his release from prison in 2014. Earls further testified that the defendant's living arrangements were altered after his release from prison because a school bus stop was put near the "family home" and the terms of the defendant's conditional release would not allow the defendant to stay at the "family home." As a result upon the defendant's release from prison, the defendant rented a room from a home managed by Michelle Wadsworth. Wadsworth testified that she observed unusual and childlike behavior from the defendant. She stated that the defendant was afraid to sleep in the dark and feared that someone was coming to kill him.

Based on these testimonies, the Court finds that the greater weight of the evidence establishes this mitigating circumstance. The Court gives this mitigating circumstance little weight in determining the appropriate sentence to impose.

75. The defendant was socially isolated after his release from prison in 2014.

There was no testimony or evidence that directly provided that the defendant was socially isolated. To the contrary, the evidence suggested that he was socially engaged after his release from prison. In the short period of time the defendant was out of prison, he was able to find employment and he kept in contact with his family. Michelle Wadsworth testified that the defendant's family visited him often until she banned them from visiting the defendant's residence. Further, Michelle Wadsworth testified that she was in contact with the defendant everyday. Thus, the Court is not persuaded that this mitigating circumstance is established by the greater weight of the evidence. The Court gives this mitigating circumstance no weight in determining the appropriate sentence to impose.

CONCLUSION

Pursuant to section 921.141, Florida Statutes, the Court has carefully considered each and every aggravating factor and mitigating circumstance in this case. Understanding that this is not a quantitative comparison, but one which requires qualitative analysis, the Court has assigned an appropriate weight to each aggravating factor and mitigating circumstance. The Court finds that the aggravating factors heavily outweigh the mitigating circumstances, and that death is the proper penalty the Court

should impose for the murder of Roseann Welsh as charged in Count One of the Indictment. Therefore, it is

ORDERED AND ADJUDGED:

AS TO COUNT ONE: For the death of Roseann Welsh - that you, Donald Hugh Davidson, Jr., remain in the custody of the Clay County Sheriff, and by him delivered into the custody of the Florida Department of Corrections at the Florida State Prison, where you shall be confined until a date certain selected by the Governor of the State of Florida and on that date you shall be executed in a manner or by a method provided by Florida law.

AS TO COUNT TWO: For the Attempted Sexual Battery of Roseann Welsh - that you, Donald Hugh Davidson, Jr., be sentenced to fifteen years of incarceration. You shall receive credit for four (4) years, nine (9) months, and fifteen (15) days already served.

AS TO COUNT THREE: For the Sexual Battery of [redacted] a person less than twelve years of age - that you, Donald Hugh Davidson, Jr., be sentenced to life imprisonment without the possibility of parole. You shall receive credit for four (4) years, nine (9) months, and fifteen (15) days already served.

AS TO COUNT FOUR: For the Sexual Battery of [redacted] a person less than twelve years of age - that you, Donald Hugh Davidson, Jr., be sentenced to life imprisonment without the possibility of

parole. You shall receive credit for four (4) years, nine (9) months, and fifteen (15) days already served.

AS TO COUNT FIVE: For the Sexual Battery of [redacted] a person less than twelve years of age - that you, Donald Hugh Davidson, Jr., be sentenced to life imprisonment without the possibility of parole. You shall receive credit for four (4) years, nine (9) months, and fifteen (15) days already served.

AS TO COUNT SIX: For the Sexual Battery of [redacted] a person less than twelve years of age - that you, Donald Hugh Davidson, Jr., be sentenced to life imprisonment without the possibility of parole. You shall receive credit for four (4) years, nine (9) months, and fifteen (15) days already served.

AS TO COUNT SEVEN: For the Lewd and Lascivious Molestation of [redacted] a person less than twelve years of age - that you, Donald Hugh Davidson, Jr., be sentenced to life imprisonment. You shall receive credit for four (4) years, nine (9) months, and fifteen (15) days already served.

AS TO COUNT EIGHT: For the Kidnapping of [redacted] - that you, Donald Hugh Davidson, Jr., be sentenced to life imprisonment. You shall receive credit for four (4) years, nine (9) months, and fifteen (15) days already served.

AS TO COUNT NINE: For Grand Theft Auto - that you, Donald Hugh Davidson, Jr., be sentenced to five years of incarceration. You

shall receive credit for four (4) years, nine (9) months, and fifteen (15) days already served.

The sentences are to run concurrent with each other.

You are hereby notified this sentence is subject to automatic review by the Supreme Court of Florida. Counsel will be appointed by separate Order to represent you for that purpose. Further, pursuant to section 922.105, Florida Statutes (2019), you have thirty (30) days from the date of issuance of a mandate pursuant to a decision of the Supreme Court of Florida affirming the sentence of death to elect death by electrocution by the procedures required by that law.

DONE AND ORDERED in Open Court, at Green Cove Springs, Clay County, Florida, on this 18th day of September, 2019.

DON H. LESTER
Circuit Judge

Copies to:

L.E. Hutton, Esquire
Melissa W. Nelson, Esquire
J. Mark Wright, Esquire