CAPITAL CASE

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

NORMAN BLAKE MCKENZIE,
PETITIONER,

VS.

STATE OF FLORIDA,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO
THE FLORIDA SUPREME COURT

APPENDIX

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APPENDIX A

Appendix A: The unreported order of the Circuit Court in and for St. Johns County, Florida, sentencing petitioner to death.

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

CASE NO.: CF06-1864
DIVISION: 56

STATE OF FLORIDA

vs.

NORMAN BLAKE MCKENZIE,
Defendant.
_____/

SENTENCING ORDER

This matter is before this Court for resentencing on two counts of First Degree Murder. After considering the evidence adduced at the recent penalty phase, the jury's verdicts, the evidence presented at the *Spencer*[1] hearing, the arguments of counsel, the memoranda submitted by the parties, and the applicable law, the Court finds as follows:

I. PROCEDURAL HISTORY

On October 17, 2006, a St. Johns County Grand Jury indicted the Defendant on two counts of First Degree Murder for the October 4, 2006 murders of Randy Peacock (Count I) and Charles Johnston (Count II). [DIN 7][2] At the conclusion of the guilt portion of the trial, on August 21, 2007, a jury found the Defendant guilty

[1] *Spencer v. State*, 615 So.2d 688 (Fla. 1993).
[2] References to the Clerk's docket are identified by Docket Identification Number ("DIN") followed the applicable entry number. *E.g.* [DIN 1].

of both counts of First Degree Murder. [DIN 103,104] The same jury returned for a penalty phase and on August 23, 2007, recommended by a vote of 10 to 2, that the Defendant be sentenced to death for each count. On October 19, 2007, the presiding judge followed the jury's sentencing recommendation and sentenced the Defendant to death for each count of First Degree Murder.

The Florida Supreme Court subsequently affirmed the Defendant's convictions and death sentences. *McKenzie v. State*, 29 So.3d 272 (Fla. 2010), *cert. denied* 562 U.S. 854 (2010). The Defendant subsequently moved for post-conviction relief pursuant to Rules 3.850 and 3.851, Fla. R. Crim. P. [DIN 253], which was denied on March 8, 2012 [DIN 268]. The Florida Supreme Court affirmed the denial of the Defendant's motion for post-conviction relief. *McKenzie v. State*, 153 So.3d 867 (Fla. 2014).

In 2016, the United States Supreme Court held Florida's capital sentencing scheme unconstitutional because the judge, rather than a jury, made the necessary findings of fact regarding the existence of aggravating factors to impose a death sentence. *Hurst v. Florida,* 577 U.S. __, 136 S. Ct. 616, 621 (2016). Thereafter, the Florida Supreme Court held that before a judge may consider imposing a death sentence, the jury "must unamiously and expressly find all the aggravating factors that were proven beyond a reasonable doubt." *Hurst v. State,* 202 So.3d 40, 57 (Fla. 2016). In addition, the Florida Supreme Court determined a jury must

unanimously find the aggravating factors are sufficient to impose a death sentence and outweigh the mitigating circumstances, and a jury's determination that death is the appropriate sentence must be unanimous. *Id.* The Florida Supreme Court subsequently held that the *Hurst* rulings apply retroactively only to those defendants whose death sentences became final after the issuance of the opinion in *Ring v. Arizona*, 536 U.S. 584 (2002). *See Asay v. State*, 210 So.3d 1 (Fla. 2016) *cert. denied* __ U.S. __, 138 S.Ct. 41 (2017); *Mosely v. State*, 209 So.3d 1248, 1283 (Fla. 2016).

The Defendant's 2007 death sentences previously rendered in this case became final after the decision in *Ring*. Therefore, on January 9, 2017, the Defendant filed his First Successive Motion to Vacate Judgment of Conviction and Sentences [DIN 320], based in part on the *Hurst* decisions. Accordingly, on June 19, 2017, this Court entered an order vacating the Defendant's death sentences. [DIN 333] The State did not appeal that order. This case was subsequently scheduled for a new penalty phase for a jury to determine the appropriate sentences for the First Degree Murder convictions.

The new penalty phase was commenced on August 26, 2019. The penalty phase was conducted in accordance with Fla. Stat. §921.141(2019). On August 29, 2019, the jury returned its penalty phase verdicts unanimously finding the

Defendant should be sentenced to death for the First Degree Murders of Randy Peacock and Charles Johnston.

A *Spencer* hearing took place on November 22, 2019. The parties submitted their Sentencing Memoranda to the Court on December 6, 2019. [DIN 525, 526]

Following the *Spencer* hearing and shortly before the imposition of today's sentencing, the Florida Supreme Court rendered its opinion in *State v. Poole*, ____So.3d____, 45 Fla. L. Weekly S41a (Fla. Jan. 23, 2020), in which it partially receded from *Hurst v. State, supra.* In *Poole*, our Supreme Court concluded the United States and Florida Constitutions are not offended by imposition of a death sentence following a non-unanimous jury verdict that death is the appropriate sentence. The Court in *Poole* confirmed that portion of *Hurst v. State,* requiring a unanimous jury finding, beyond a reasonable doubt, of the existence of statutory aggravating factors. Because the jury in the original penalty phase in this case did not expressly and unanimously determine, beyond a reasonable doubt, the existence of all the statutory aggravating factors found by the original trial judge to exist, this resentencing is appropriate.

II. FACTS

The evidence established that on October 5, 2006, Flagler Hospital employees Perry Privette and Julie Aubrey became concerned when Randy Peacock, a respiratory therapist at the hospital, didn't report to work. Privette and

Aubrey drove to the home Peacock shared with Charles Johnston. Upon their arrival, they noticed Peacock's vehicle wasn't there. Privette and Aubrey checked the exterior of the home and eventually entered the home where they found Peacock's body on the kitchen floor in a pool of blood. Privette and Aubrey immediately left the residence and called the St. Johns County Sheriff's Office ("SJSO"). When deputies from SJSO arrived, they secured the scene and subsequently located Charles Johnston's body in a shed on the property. Law enforcement found a bloody hatchet inside the shed where Johnston's body was found. A large knife was found in the sink in the kitchen where Peacock's body was found. Deputies observed a gold SUV in the driveway that was registered to the Defendant and immediately began efforts to locate him.

The Defendant subsequently had an encounter that same day with Citrus County deputies and was taken into custody. Randy Peacock's wallet was recovered from one the Defendant's pockets and Charles Johnston's wallet was located in a vehicle the Defendant operated prior to his capture. The Defendant spoke with SJSO deputies on two separate occasions during which he confessed to the murders of Peacock and Johnston.

The Defendant told deputies he went to the victims' residence on October 4, 2006, looking for money. When he first arrived, only Peacock and his neighbor were present; however, Johnston later arrived at the residence. At some point

Peacock went into the house. The Defendant asked Johnston for a hammer and a piece of wood, telling Johnston he wanted the items so he could knock dents out of his SUV. Johnston was unable to locate a hammer so he gave the Defendant a hatchet to use. The Defendant and Johnston walked to the shed to locate a piece of wood where the Defendant struck Johnston in the head with the blade side of the hatchet. Johnston fell to the floor. The Defendant went back to the residence where Peacock was in the kitchen cooking. The Defendant proceeded to strike Peacock in the head multiple times with the hammer side of the hatchet. Peacock fell to the floor.

The Defendant returned to the shed where he observed Johnston was still alive. The Defendant then struck Johnston again in the head with the blade side of the hatchet. The Defendant took Johnston's wallet and left the hatchet in the shed. The Defendant then returned to the kitchen in the house where he found Peacock was still alive. The Defendant grabbed a large kitchen knife and stabbed Peacock multiple times. The Defendant then put the knife in the kitchen sink, took Peacock's wallet and car keys, and left the area in Peacock's car. The Defendant was captured the following day in Citrus County after fleeing from police.

The autopsy of Randy Peacock revealed the cause of his death was the stab wounds inflicted by the Defendant, with a contributory cause of blunt-force trauma to the head. The autopsy also revealed Peacock suffered multiple burns, consistent

with the Defendant's statement to deputies that after he struck Peacock in the head with the hatchet, Peacock's arms fell into the pot on the stovetop before he fell to the floor. The stab wounds Peacock suffered were consistent with the knife found in the kitchen sink and the blunt-force trauma to Peacock's head was consistent with having been struck with the hammer side of the hatchet, as the Defendant described to deputies. The autopsy of Charles Johnston revealed his cause of death was extensive head trauma due to four "chop" wounds. Johnston's head trauma was consistent with having been struck multiple times with the blade side of the Hatchet, as described by Defendant to deputies.

As explained above, the jury in the first trial found the Defendant guilty of two counts of First Degree Murder, which was affirmed by the Florida Supreme Court. A different jury was empaneled for the recent resentencing penalty phase. At the conclusion of the recent penalty phase, the jury unanimously found the appropriate sentences for Counts I and II is death.

Fla. Stat. §921.141(3)(a)2 provides that "[i]f the jury has recommended a sentence of Death, the Court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death." Thus, the Court will discuss its findings regarding its consideration of each aggravating

factor found by the jury and all mitigating circumstances, as they pertain to Counts I and II, the weight to be assigned to each, and the sentence for each.

III. COUNT I (FIRST DEGREE MURDER OF RANDY PEACOCK)

A. AGGRAVATING FACTORS

At the recent penalty phase, the State relied on five aggravating factors for Count I, for which it had given the defense notice.[3] Pursuant to the directives of the United States Supreme Court in *Hurst v. Florida*, *supra.*, and Fla. Stat. §921.141(2), the jury was instructed that in order to find the existence of an aggravating factor it must unanimously determine the aggravating factor has been proven beyond a reasonable doubt. At the conclusion of the recent penalty phase, the jury unanimously found the State had proven each of the five aggravating factors asserted for Count I beyond a reasonable doubt. The aggravating factors unanimously found by the jury to exist beyond a reasonable doubt have been considered by this Court and are discussed below.

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[3] At the original penalty phase, the State relied on four aggravating factors which the Court found to exist: (1) the Defendant was previously convicted of another capital felony or a felony involving the use or threat of violence to the person; (2) the capital felony was committed while the Defendant was engaged in the commission of, or attempted commission of, a robbery; (3) the capital felony was committed for pecuniary gain; and (4) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. Prior to the recent penalty phase, the State gave notice to the defense that it intended to rely on an additional aggravating factor: that the capital felony was especially heinous, atrocious, or cruel. [DIN 438]. The defense moved to preclude the State from proceeding on this additional aggravating factor. [DIN 448] The Court denied the Defendant's motion and allowed the State to proceed on the five alleged aggravating factors. [DIN 467]

i. The Defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person. Fla. Stat. § 921.141 (6)(b)

Part of the basis for this aggravating factor, as it pertains to Count I, is the Defendant's contemporaneous conviction for the murder of Charles Johnston (Count II). It is well-established that contemporaneous convictions for capital or violent felonies on different victims may be considered. *Bevel v. State*, 983 So.2d 505 (Fla. 2008); *King v. State*, 390 So.2d 315 (Fla. 1980); *Pardo v. State*, 563 So.2d 77 (Fla. 1990); *Stein v. State*, 632 So.2d 1361 (Fla. 1994); *Francis v. State*, 808 So.2d 110 (Fla. 2002).

In addition to the contemporaneous murder conviction, it was also established during the recent penalty phase that the Defendant had previously been convicted of nine prior violent felonies:

State of Florida v. Norman McKenzie, Case No.: 1984-3709CF (Broward County, Florida); November 8, 1984
Kidnapping and Robbery

State of Florida v. Norman McKenzie, Case No.: 1990-19206CF10 (Broward County, Florida); May 28, 1991
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2006-CF005259-A (Alachua County, Florida); May 10, 2007
Attempted Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2006-CF-005261-A (Alachua County, Florida); May 10, 2007
Kidnapping with a Firearm

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-00532-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-000585-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-000586-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 42-2006-CF-004213-A (Marion County, Florida); March 6, 2007
Carjacking while Armed

In addition to the Judgment and Sentences received into evidence from these prior violent felonies, during the recent penalty phase, testimony was received from the victims of many of these prior violent felonies, including Charles McGuire who was the victim from the 1991 Broward County robbery conviction; Clarice Polczynski, Amanda Hughes, Chantel Wilson and Marquette Frederick, who were the victims from the 2007 Alachua County robbery and attempted robbery convictions; Larry Van who was the victim from the 2007 Marion County carjacking conviction; and Ceasar Saldana who was an investigating detective from the 2007 Alachua County kidnapping conviction.

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.1 in the Jury's Verdict As To Sentence On Count I) This Court agrees with the jury's finding regarding this aggravating factor.

The Florida Supreme Court has explained that the "prior violent felony" aggravating factor is one of the "most weighty in Florida's sentencing calculus." *Sireci v. Moore,* 825 So.2d 882, 887 (Fla. 2001). This is particularly the case here, where the Defendant not only killed Randy Peacock, but also murdered Charles Johnston, and had previously been convicted of nine other violent felonies. This Court gives this aggravating factor VERY GREAT WEIGHT.

ii. The capital felony was committed while the defendant was engaged, . . . , in the commission of . . . robbery. Fla. Stat. §921.141(6)(d)

During the recent penalty phase the State introduced the Defendant's two recorded statements made to SJSO detectives. During his initial statement made the day after the murders, the Defendant told detectives he went to the victims' residence in order to steal money from the victims so he could get more drugs. After attacking the victims, the Defendant took their wallets, money and credit cards. The Defendant also took Randy Peacock's SUV. When arrested in Citrus County the day after the murders, the Defendant was found in possession of Randy Peacock's wallet, and Charles Johnston's wallet was found in a vehicle the Defendant had operated that day.

Although the State did not charge the Defendant with robbery, it was proved beyond a reasonable doubt during the recent penalty phase that the murder of Randy Peacock was committed while Defendant was engaged in the commission of a robbery. *See* Fla. Stat. §812.13(1).

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.2 in the Jury's Verdict As To Sentence On Count I) This Court agrees with the jury's finding regarding this aggravating factor. This Court gives this aggravating factor GREAT WEIGHT.

iii. The capital felony was committed for pecuniary gain. Fla. Stat. §921.141(6)(f)

As discussed above, the State proved beyond a reasonable doubt during the recent penalty phase that the Defendant went to the victims' residence to steal money from them. Likewise, as discussed above, the Defendant took the victims' wallets, money and credit cards, as well as Randy Peacock's SUV.

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.3 in the Jury's Verdict As To Sentence On Count I) This Court agrees with the jury's finding regarding this aggravating factor. However, the Court recognizes that this aggravating factor merges with the preceding aggravating factor that the murder was committed while the Defendant was engaged in the commission of a robbery. *See Griffin v. State,* 820 So.2d 906, 915 (Fla. 2002). Accordingly, during the recent penalty phase, the jury was instructed

> Pursuant to Florida law, the aggravating factors of *the murder was committed during the course of a Robbery* and *the murder was committed for financial gain* are considered to merge because they are considered to be a single aspect of the offense. If you unanimously determine that the aggravating factors of *the murder was committed*

> *during the course of a Robbery* and *the murder was committed for financial gain* have both been proven beyond a reasonable doubt, your findings should indicate that both aggravating factors exist, but you must consider them as only one aggravating factor.

Likewise, although this Court finds this aggravating factor was established, because it merges with the aggravating factor that the murder was committed during the commission of a robbery, these two aggravating factors will be considered as one and no added weight is given to this aggravating factor.

iv. The capital felony was especially heinous, atrocious, or cruel. Fla. Stat. §921.141(6)(h)

The Florida Supreme Court has held this aggravating circumstance would apply "only in torturous murders—those that evince extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another." *Chesire v. State*, 568 So.2d 908, 912 (Fla. 1990); *Robertson v. State*, 611 So.2d 1228, 1232 (Fla. 1993); *Rogers v. State,* 783 So.2d 989, 994 (Fla. 2001); *Barnhill v. State*, 834 So.2d 836, 849-50 (Fla. 2002). For this aggravating factor to apply, the crime must be both conscienceless or pitiless and unnecessarily torturous to the victim. *Nelson v. State*, 748 So.2d 237, 245 (Fla. 1999). The Florida Supreme Court has stated this aggravating factor "focuses on the means and manner in which the death was inflicted and the immediate circumstances surrounding the death, where a victim experiences the torturous anxiety and fear of impending death; thus, the trial court

[and jury] considers the victim's perceptions of the circumstances as opposed to those of the perpetrator." *Allred v. State*, 55 So.3d 1267 (Fla. 2010). Together with a prior violent felony conviction, the Florida Supreme Court has expressed the heinous, atrocious, or cruel aggravating factor as "the most weighty in Florida's sentencing calculus." *Sireci, supra.*

According to the Defendant, in his statement to detectives, he came up behind Randy Peacock and struck him in the head with the blunt side of the hatchet. During the recent penalty phase, testimony was received from Dr. Predrag Bulic, chief medical examiner for St. Johns County.[4] Dr. Bulic testified that Mr. Peacock suffered three to four blunt force injuries to the back of his head, consistent with the blunt side of the hatchet. Dr. Bulic testified these blows to Mr. Peacock's head would have been painful if he was conscious. According to the Defendant in his statement to detectives, Mr. Peacock was conscious after these blows, since he struggled with Mr. Peacock when he returned to the residence after attacking Mr. Johnston in the shed.

According to the Defendant, in his statement to detectives, after he struck Mr. Peacock in the head, Mr. Peacock fell into what he was cooking on the stovetop. Dr. Bulic testified that Mr. Peacock's autopsy revealed burns to his

[4] The autopsy of Randy Peacock was performed by Dr. Steiner, who is deceased. Dr. Bulic reviewed the autopsy reports and photographs from Dr. Steiner's autopsy of Mr. Peacock and rendered his opinions regarding Mr. Peacock's injuries.

hands and arms, consistent with the Defendant's statement about Mr. Peacock falling into the pot on the stovetop. Dr. Bulic testified that Mr. Johnston would have been in extraordinary severe pain from those burns.

After the Defendant's initial attack of Mr. Peacock, he left him to go out to the shed to encounter Mr. Johnston again. While gone, Mr. Peacock remained in the kitchen suffering from the blows to his head and burns to his body. The Defendant then returned to the kitchen where, according to the Defendant's statement to detectives, he found Mr. Peacock upright and conscious. Because the Defendant no longer had the hatchet which he had left in the shed, he grabbed a large knife and repeatedly stabbed Mr. Peacock. Dr. Bulic described the six stab wounds to Mr. Peacock. Dr. Bulic explained how the stab wounds would have been very painful to Mr. Peacock, and while not immediately fatal, because he did not receive immediate emergency medical care, Mr. Peacock died shortly thereafter from the stab wounds.

Despite the earlier hatchet attack, according to the Defendant, Mr. Peacock was conscious and alive when the Defendant returned to the residence and inflicted multiple stab wounds to Mr. Peacock. The Defendant described to detectives how Mr. Peacock was fighting for his life while Defendant was stabbing him to death.

At the recent *Spencer* hearing, Defendant testified Mr. Peacock was "not conscious to the world around him," when the Defendant returned to the residence

after the initial blows to Mr. Peacock with the hatchet. The Court finds Defendant's statements to detectives shortly after the murder, explaining how Mr. Peacock was conscious and fighting for his life at that point, more credible than Defendant's recent testimony given 13 years later.

The Florida Supreme Court has found the heinous, atrocious, or cruel (HAC) aggravating factor to apply in numerous circumstances where a victim suffered numerous stab wounds while conscious and alive. *See e.g. Matthews v. State*, 124 So.3d 811 (Fla. 2013); *Aguirre-Jarquin v. State*, 9 So.3d 593 (Fla. 2009); *Simmons v. State*, 934 So.2d 1100 (Fla. 2006); *Schoenwetter v. State*, 931 So.2d 857 (Fla. 2006); *Perez v. State*, 919 So.2d 347 (Fla. 2006); *Cox v. State*, 819 So.2d 705 (Fla. 2002); *Francis v. State*, 808 So.2d 110, 134-35 (Fla. 2002); *Pittman v. State*, 646 So.2d 167, 172-73 (Fla. 1994); *Davis v. State*, 620 So.2d 152, 153 (Fla. 1993).

The murder of Randy Peacock, in which he initially received multiple blunt force blows to his head and burns, but remained alive while the Defendant left to kill Mr. Johnston, only to have the Defendant return and repeatedly stab Mr. Peacock while he was conscious and fighting for his life, was particularly torturous supporting this aggravating factor.

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.4 in the Jury's Verdict As To Sentence On Count

I) This Court agrees with the jury's finding regarding this aggravating factor. Considering the facts and circumstances supporting this aggravating factor, as elicited during the recent penalty phase, this Court gives this aggravating factor GREAT WEIGHT.

v. *The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. Fla. Stat. §921.141(6)(i)*

The Florida Supreme in *Baker v. State*, 71 So. 3d 802 (Fla. 2011) explained the cold, calculated, and premeditated aggravating factor (CCP) as follows:

> Whether the CCP aggravator applies in a given case is subject to a four-part test: (1) The killing must have been the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); and (2) the defendant must have had a careful plan or prearranged design to commit murder before the fatal incident (calculated); and (3) the defendant must have exhibited heightened premeditation (premeditated); and (4) there must have been no pretense of moral or legal justification.

Id. at 818-19 (citing *Lynch v. State,* 841 So.2d 362, 371 (Fla.2003)).

The CCP aggravating factor has been described by the Florida Supreme Court as "one of the weightiest aggravators in Florida's statutory sentencing scheme." *McKenzie,* 29 So. 3d at 287; citing *Morton v. State*, 995 So.2d 233, 243 (Fla. 2008).

In the instant case, the killings were the product of cool and calm reflection, rather than an act prompted by emotional frenzy, panic, or a fit of rage. Shortly after the murders, the Defendant told detectives that he went to the victims'

residence with the intent to rob and kill them. During that interview, the Defendant told detectives he went to the residence to steal money and was telling himself "I don't have to do my parents." He told detectives he wanted to get the killing over quickly which is why he asked Mr. Johnston for a large hammer and a piece of wood under the guise that he was going to use it to repair dents in his vehicle.[5] In response to that request, Mr. Johnston handed Defendant the hatchet that would be used to kill him and attack Mr. Peacock. The Defendant then coolly and calmly followed Mr. Johnston to the shed, where Mr. Johnston was looking for a piece of wood, when the Defendant struck Mr. Johnston in the head with the hatchet. The Defendant told detectives that after he struck Mr. Johnston in the head with the hatchet, Mr. Johnston fell to the ground. Defendant told detectives this concerned him because he was afraid a deaf woman who lived nearby might feel a vibration. The Defendant then coolly and calmly walked to the residence where he came up behind Mr. Peacock and struck him multiple times in the head with the hatchet. The Defendant then calmly returned to the shed where he observed Mr. Johnston still alive and proceeded to strike him again with the blade

[5] Defendant testified at the recent *Spencer* hearing that he didn't go to the victims' residence to steal their money, but he went to get money they owed him for work he previously did on the victims' residence. Additionally, Defendant testified that he asked Mr. Johnston for a hammer with the intent to actually repair the dents in his vehicle. Defendant acknowledged during his recent *Spencer* hearing testimony that he gave a different account of his intentions when he spoke with detectives shortly after the murders. The Court finds the Defendant's statements made to detectives shortly after the murders, regarding his intention to rob and kill the victims, is much more credible than the testimony he gave at the recent *Spencer* hearing 13 years after the murders.

side of the hatchet. The Defendant then calmly returned to the kitchen of the residence where he found Mr. Peacock alive and proceeded to stab him multiple times. Defendant explained to detectives that he stabbed Mr. Peacock in certain parts of his body to assure Mr. Peacock would die from the wounds.[6] Defendant also told detectives that when he returned to the house to stab Mr. Peacock, he was careful to make sure Mr. Peacock was placed on the ground, rather than letting him fall to the ground, so the deaf neighbor wouldn't feel any vibration. After stabbing Mr. Peacock, Defendant rinsed off the knife and placed it in the sink. After killing the victims, the Defendant went through the residence looking for Mr. Peacock's wallet. He stole the victims' wallet, money and credit cards, and took Mr. Peacock's vehicle.

From the time the Defendant first arrived at the residence, when only Mr. Peacock and a neighbor were present, until he killed the victims, a few hours had passed. The Defendant made sure to wait until the neighbor left and Mr. Johnston arrived, before he executed his calculated plan to kill the victims and steal their belongings. Additionally, heightened premeditation was demonstrated by the substantial amount of time the Defendant reflected on his plan while present at the

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[6] Defendant testified at the recent *Spencer* hearing that the reason he stabbed Mr. Peacock upon his return to the residence was because he knew, due to the earlier blows he inflicted with the hatchet, that Mr. Peacock would be rendered a "vegetable" and he didn't want Mr. Peacock to live that way. Defendant never gave this explanation to detectives 13 years earlier when he confessed to the murders.

residence and waiting for the opportune time to execute that plan. Lastly, there clearly was no pretense of moral or legal justification for the killings.

The jury unanimously determined that the State established this aggravating factor beyond a reasonable doubt. (Question A.5 in the Jury's Verdict As To Sentence On Count I) This Court agrees with the jury's finding regarding this aggravating factor. Considering the facts and circumstances supporting this aggravating factor as elicited during the trial in this case, this Court gives this aggravating factor GREAT WEIGHT.

vi. Conclusion – Aggravating Factors

Following the jury's unanimous determination of the existence of the aforementioned aggravating factors beyond a reasonable doubt, the jury was asked whether the aggravating factors are sufficient to warrant a possible sentence of death. The jury unanimously found the aggravating factors are sufficient to warrant a death sentence. (Section B in the Jury's Verdict As To Sentence On Count I) This Court has likewise considered the aggravating factors unanimously found by the jury to exist and agrees with the jury's finding, determining the aggravating factors are sufficient to warrant a death sentence. Thus, the Court will next consider the mitigating circumstances.

B. MITIGATING CIRCUMSTANCES

During the recent penalty phase, the jury considered physical evidence introduced by the defense and heard testimony from Tammy Kimbell, a former friend of the Defendant; Dr. Stephen Bloomfield, a psychologist; and Dr. Susan Skolly-Danzinger, an expert in toxicology and pharmacology. In rebuttal, the State presented the testimony of Dr. William Meadows, a psychologist.[7] The jury was instructed on the mitigating circumstances and that mitigating circumstances need only be established by the greater weight of the evidence. The jury stated in its verdict that one or more of the individual jurors found that one or more mitigating circumstance was established by a greater weight of the evidence.[8] (Section C in the Jury's Verdict As To Sentence On Count I)

Additionally, the Court considered further evidence of mitigating circumstances during the *Spencer* hearing. At the *Spencer* hearing, the Court heard testimony from the Defendant and Dr. Skolly-Danzinger. The Court also received a letter from Claudia Goeke.[9]

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[7] The State also introduced victim impact testimony during the recent penalty phase, and submitted additional victim impact letters at the *Spencer* hearing. The Court is not considering the victim impact evidence in its analysis of the aggravating factors and mitigating circumstances.

[8] The verdict forms for the penalty phase did not require the jurors to list the specific mitigating circumstances found or to provide the jury's vote as to the existence of mitigating circumstances, as set forth by the Florida Supreme Court. *In re: Standard Criminal Jury Instructions in Capital Cases*, 244 So.3d 172 (Fla. 2018).

[9] The Defendant refers to Ms. Goeke as his spouse. In her letter dated January 7, 2019, Ms. Goeke refers to herself as the Defendant's fiancé.

The mitigating circumstances set forth by the Defendant, as instructed by the Court during the recent penalty phase of the trial, as well as those set forth during the *Spencer* hearing and in Defendant's Sentencing Memorandum, are discussed below.

i. The First Degree Murder was committed while Defendant was under the influence of extreme mental or emotional disturbance.

The fact a defendant was intoxicated or under the influence of narcotics can support the establishment of this mitigating circumstance. *Hollsworth v. State*, 522 So.2d 348, 354 (Fla. 1988). During the recent penalty phase Tammy Kimball testified regarding the Defendant's extensive drug use around the time of the murders. Dr. Bloomfield testified regarding the Defendant's long-standing substance abuse and opined that due to the Defendant's extensive drug use at the time of the incident, he believes Defendant was under the influence of extreme mental or emotional disturbance at that time. During the recent penalty phase and *Spencer* hearing, Dr. Skolly-Danzinger likewise testified regarding the Defendant's long-standing drug abuse and its effects on the human body. Dr. Skolly-Danzinger also opined that Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders. The Defendant's statements to detectives shortly after the crime describing his drug addiction and his activities to get money for drugs, including the murders in this case and the string of robberies in the days leading up to the murders, corroborated the opinions of Drs. Bloomfield and

Skolly-Danzinger. The State's rebuttal witness Dr. Meadows opined that he does not believe the Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders.

This Court finds that the greater weight of the evidence established the Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders due to his significant drug use. The Court gives this mitigating circumstance MODERATE WEIGHT.

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

Evidence that a defendant was "strung out" on drugs at the time of a murder can support the establishment of this mitigating circumstance. *Williams v. State*, 37 So.3d 187, 204-05 (Fla. 2010). As discussed above, Ms. Kimball testified regarding the Defendant's excessive drug use around the time of the murders. Drs. Bloomfield and Skolly-Danzinger both further opined that the Defendant's ability to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was substantially impaired due to his drug use. Dr. Skolly-Danzinger opined that particularly with cocaine addiction, of which Defendant suffered, users lose control and seek the drug out regardless of the consequences. The State's rebuttal witness Dr. Meadows opined the Defendant's ability to

appreciate the criminality of his conduct and to conform his conduct to the requirements of law was not substantially impaired.

During the recent *Spencer* hearing, the Court received testimony from the Defendant and Dr. Skolly-Danzinger on how the Defendant's drug use and addiction adversely affected his behavior at the time of the murders. The Defendant testified that prior to the murders he had been on a drug binge for eight to nine days without sleep.

This Court finds that the greater weight of the evidence established the Defendant's ability to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was substantially impaired. However, the Court notes that while the Defendant may have been impaired, he appreciated that killing Randy Peacock and Charles Johnston was wrong, as demonstrated in his statements to detectives and his attempts to avoid capture the day after the murders. The Court gives this mitigating circumstance SLIGHT WEIGHT.

iii. Defendant's childhood was chaotic.

Dr. Bloomfield opined the Defendant had a rather chaotic childhood which included first using marijuana at age five, beginning to use harder drugs at age ten, and his parents divorcing when he was age eight. Dr. Skolly-Danzinger testified regarding the Defendant's early childhood drug use, including inhalants by age 11, and having no boundaries growing up. The State's rebuttal witness Dr. Meadows

rejected the claim that the Defendant had a chaotic childhood. Dr. Meadows indicated the Defendant described to him a happy childhood with great parents and no reports of physical or sexual abuse.

This Court finds the greater weight of the evidence established this mitigating circumstance that the Defendant had a chaotic childhood. The Court gives this mitigating circumstance SLIGHT WEIGHT.

iv. Defendant and his siblings experienced a lack of adequate supervision after the divorce of his parents.

Both Drs. Bloomfield and Skolly-Danzinger testified that Defendant experienced a lack of supervision and a lack of boundaries after the divorce of his parents at age eight. After his parents divorced, Defendant would steal food for his family and became a chronic drug user at a young age. This Court finds that the greater weight of the evidence established this mitigating circumstance that the Defendant and his siblings experienced lack of adequate supervision after the divorce of his parents. The Court gives this mitigating circumstance VERY SLIGHT WEIGHT.

v. Defendant started huffing from spray cans at the age of 11 years old.

Drs. Bloomfield and Skolly-Danzinger testified the Defendant told them he began "huffing" inhalants at the young age of 11. These mitigation experts testified regarding the detrimental effects this has on the human body, including

brain development. This was part of the Defendant's long-standing drug abuse. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

vi. Defendant had an early and chronic abuse and dependency on alcohol and drugs.

Drs. Bloomfield and Skolly-Danzinger testified at the recent penalty phase that the Defendant began using and abusing drugs at a very early age. According to the Defendant's statements to these mitigation experts, he began using marijuana at age five, methamphetamine at age 10, and inhalants or "huffing" at age 11. Defendant told these experts that drug use became a daily thing for him beginning at age 12. The Defendant testified at the recent *Spencer* hearing that his drug use progressed to injecting drugs around age 16. The defense mitigation experts testified regarding the detrimental effects this early and chronic drug use would have on brain development. The State's rebuttal expert testified that he doubted the veracity of the Defendant's very early drug use.

This Court finds that the greater weight of the evidence established this mitigating circumstance that Defendant had early and chronic abuse and dependency on alcohol and drugs. The Court gives this mitigating circumstance SLIGHT WEIGHT.

vii. Defendant had a cocaine dependency relapse starting in July 2006 up to and after the crimes at bar.

According to the Defendant in his statement to detectives, he was addicted to cocaine and had a relapse in 2006. This was corroborated by the Defendant's mitigation experts and the State's rebuttal witness who all testified the Defendant suffered from a substance abuse disorder. Tammy Kimball's testimony likewise corroborates this mitigating circumstance by her testimony regarding the Defendant's cocaine use around the time of the murders. Defendant testified at the recent *Spencer* hearing that his relapse began in July 2006.

This Court finds that the greater weight of the evidence established this mitigating circumstance that Defendant had a cocaine dependency relapse starting in July 2006 up to and after the murders. The Court gives this mitigating circumstance SLIGHT WEIGHT.

viii. Defendant consistently used a voluminous amount of cocaine from July to October of 2006.

As discussed above, according to the Defendant's mitigation experts and Tammy Kimball, the Defendant was consistently using a significant amount of cocaine after his relapse in 2006 up to the time of the murders and his arrest. The Defendant would ingest cocaine in different ways including intravenously. The Defendant testified at the recent *Spencer* hearing that around the time of the murders he was spending approximately $1000 a day to support his drug addiction, and leading up the day of the murders he had been on a drug binge for eight or nine days without sleep.

This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

ix. Defendant cooperated with law enforcement at the time of his arrest.

Hours after he was taken into custody, the Defendant gave a statement to SJSO Detective Tim Rollins and Georgia investigator Jennings. The Defendant freely spoke with these investigators and described the murders of Mr. Peacock and Mr. Johnston. A few months later, the Defendant gave another statement to Detective Rollins and SJSO Detective Timothy Burres. Again, the Defendant freely spoke with these detectives and described the murders. While the Defendant cooperated with these investigators, the Court also notes that the day after the murders, when law enforcement officers sought to capture the Defendant, he led Citrus County deputies on a vehicular pursuit, and after crashing the vehicle he was operating, fled into a nearby body of water before being captured by police.

This Court finds that the greater weight of the evidence established this mitigating circumstance that the Defendant cooperated with law enforcement at the time of his arrest. The Court gives this mitigating circumstance SLIGHT WEIGHT.

x. Defendant admitted to the murders of Randy Peacock and Charles Johnston.

As discussed above, the Defendant freely admitted to detectives, on two occasions, that he murdered Mr. Peacock and Mr. Johnston. The Defendant's admissions to police were instrumental in securing his own convictions. At the recent *Spencer* hearing, the Defendant again admitted committing the murders and expressed remorse for killing Randy Peacock and Charles Johnston. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance MODERATE WEIGHT.

xi. Defendant has artistic ability.

During the recent penalty phase the defense admitted into evidence drawings or paintings created by Defendant since he has been in prison. During closing argument, defense counsel displayed the Defendant's art work to the jury. This Court finds Defendant's art work impressive and he clearly possesses artistic ability. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xii. Defendant was an assistant superintendent for EMJ that built Cobblestone Village in St. Augustine.

During the recent penalty phase, it was established the Defendant worked as a construction assistant superintendent for EMJ prior to committing the murders. The Defendant played a key role in the construction of the Cobblestone Village

shopping center in St. Augustine. At the recent *Spencer* hearing, Defendant testified that he worked in the construction industry since age 15. The Defendant progressed from a construction worker to a project supervisor. In addition to being a project supervisor for EMJ on the Cobblestone Village project, Defendant also worked with Johnson, Graham and Malone Construction, and worked on numerous projects in North Florida. While working in the construction industry, Defendant also volunteered to help build the Able Charter School for special needs children.

The Defendant was obviously good at his occupation; however, his drug abuse and criminal activity caused him to be unable to continue. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xiii. Defendant impacted the life of Claudia Goeke in a positive way while in prison.

During the recent *Spencer* hearing, the Court received a letter from Claudia Goeke, who Defendant refers to as his spouse. Ms. Goeke described her relationship with Defendant and how he helped her overcome physical and mental struggles. Ms. Goeke credits Defendant with saving her life.

The Court finds the greater weight of the evidence supports this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xiv. A prior jury did not unanimously find that Defendant should be sentenced to death

Defendant raised this proposed mitigating circumstance for the first time in his Sentencing Memorandum. As discussed above, in 2007 a jury recommended Defendant be sentenced to death by a vote of 10-2. The death penalties subsequently imposed in 2007 were vacated for the reasons set forth above.

The Florida Supreme Court has repeatedly explained that mitigating circumstances are limited to a defendant's character or record or the circumstances of the crime. *Campbell v. State*, 679 So.2d 720, 725 (Fla. 1996); *Johnson v. State,* 660 So.2d 637, 646 (Fla. 1995). The prior jury's 2007 10-2 death penalty recommendation is not relevant to this Defendant's character or record or circumstances of the murders; therefore, it is not considered a mitigating circumstance and is afforded NO WEIGHT.

C. WEIGHING AGGRAVATING FACTORS AND MITIGATING CIRCUMSTANCES

At the conclusion of the recent penalty phase trial, the jury unanimously found that the aggravating factors that were proven beyond a reasonable doubt outweighed the mitigating circumstances, thus making the Defendant eligible for a death sentence for Count I. (Section D of the Jury's Verdict As To Sentence on Count I)

Following the recent penalty phase trial and *Spencer* hearing, this Court independently considered and weighed the aggravating factors unanimously determined by the jury to exist beyond a reasonable doubt and the mitigating

circumstances established by the greater weight of the evidence. This Court has assigned the weight it feels each of the established aggravating factors and mitigating circumstances is due. This Court finds that the aggravating factors in this case far outweigh the mitigating circumstances; therefore, as the jury determined, the Court likewise determines the Defendant is eligible for a sentence of death for Count I of the Indictment.

D. SENTENCE COUNT I

Fla. Stat. §921.141(3)(a)2 provides that "[i]f the jury has recommended a sentence of Death, the Court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death." This Court recognizes it is not bound by the jury's verdict that death is the appropriate sentence, and may impose a life sentence if it feels that is appropriate. Not every person found guilty of first degree murder should receive a death sentence. A death sentence must be "reserved for only the most aggravated and the least mitigated first degree murders." *Urbin v. State*, 714 So.2d 411,416 (Fla. 1998). This is such a case.

After carefully and independently considering those aggravating factors determined by the jury to exist, and all the mitigating circumstances, this Court agrees with the jury's unanimous finding that the Defendant should be sentenced to

death for Count I. Based on the authority vested in this Court, it is the sentence of this Court on Count I of the Indictment, for the First Degree Murder of Randy Peacock, that the Defendant Norman Blake McKenzie is adjudicated guilty of said offense and sentenced to Death in a manner prescribed by law.

IV. COUNT II (FIRST DEGREE MURDER OF CHARLES JOHNSTON)

This Court has separately considered the evidence presented at the recent penalty phase, the *Spencer* hearing, the arguments of counsel, and the memoranda of the parties, to determine the appropriate sentence for the Defendant's conviction on Count II of the Indictment for the murder of Charles Johnston, as follows.

A. AGGRAVATING FACTORS

At the recent penalty phase, the State likewise relied on five aggravating factors for Count II. At the conclusion of the recent penalty phase, the jury unanimously found the State had proven each of the five aggravating factors asserted for Count II beyond a reasonable doubt. The aggravating factors unanimously found by the jury to exist beyond a reasonable doubt have been considered by the Court and are discussed below.

i. The Defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person. Fla. Stat. § 921.141 (6)(b)

Part of the basis for this aggravating factor, as it pertains to Count II, is the Defendant's contemporaneous conviction for the murder of Randy Peacock (Count

I). As discussed above, contemporaneous convictions for capital or violent felonies on different victims may be considered.

In addition to the contemporaneous conviction for the murder of Randy Peacock, as detailed above, it was also established during the recent penalty phase that Defendant had previously been convicted of nine prior violent felonies:

State of Florida v. Norman McKenzie, Case No.: 1984-3709CF (Broward County, Florida); November 8, 1984
Kidnapping and Robbery

State of Florida v. Norman McKenzie, Case No.: 1990-19206CF10 (Broward County, Florida); May 28, 1991
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2006-CF005259-A (Alachua County, Florida); May 10, 2007
Attempted Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2006-CF-005261-A (Alachua County, Florida); May 10, 2007
Kidnapping with a Firearm

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-00532-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-000585-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-000586-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 42-2006-CF-004213-A (Marion County, Florida); March 6, 2007

Carjacking while Armed

Again, in addition to the Judgment and Sentences received into evidence from these prior violent felonies, during the recent penalty phase, testimony was received from the victims of many of these prior violent felonies and the investigating detective from the 2007 kidnapping conviction.

With regard to Count II, the jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.1 in the Jury's Verdict As To Sentence On Count II) This Court agrees with the jury's finding regarding this aggravating factor.

As discussed above, the Florida Supreme Court has explained that the "prior violent felony" aggravating factor is one of the "most weighty in Florida's sentencing calculus." *Sireci, supra.* This is particularly the case here, where the Defendant not only killed Charles Johnston, but also murdered Randy Peacock, and had previously been convicted of nine other violent felonies. This Court gives this aggravating factor VERY GREAT WEIGHT.

ii. The capital felony was committed while the defendant was engaged, . . . , in the commission of . . . robbery. Fla. Stat. §921.141(6)(d)

Again, during the recent penalty phase the State introduced the Defendant's two recorded statements made to SJSO detectives. During his initial statement made the day after the murders, the Defendant told detectives he went to the victims' residence in order to steal money from the victims so he could get more

drugs. After attacking the victims, the Defendant took their wallets, money, credit cards, and Randy Peacock's SUV. When arrested in Citrus County the day after the murders, the Defendant was found in possession of Randy Peacock's wallet, and Charles Johnston's wallet was found in a vehicle the Defendant had operated that day.

Although the State did not charge the Defendant with robbery, it was proved beyond a reasonable doubt during the recent penalty phase that the murder of Charles Johnston was committed while Defendant was engaged in the commission of a robbery. *See* Fla. Stat. §812.13(1).

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.2 in the Jury's Verdict As To Sentence On Count II) This Court agrees with the jury's finding regarding this aggravating factor. This Court gives this aggravating factor GREAT WEIGHT.

iii. The capital felony was committed for pecuniary gain. Fla. Stat. §921.141(6)(f)

As discussed above, the State proved beyond a reasonable doubt during the recent penalty phase that the Defendant went to the victims' residence to steal money from them. Likewise, as discussed above, the Defendant took the victims' wallets, money and credit cards, as well as Randy Peacock's SUV.

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.3 in the Jury's Verdict As To Sentence On Count

II) This Court agrees with the jury's finding regarding this aggravating factor. However, the Court recognizes that this aggravating factor merges with the preceding aggravating factor that the murder was committed while the Defendant was engaged in the commission of a robbery. *Griffin, supra.*.

Although this Court finds this aggravating factor was established, because it merges with the aggravating factor that the murder was committed during the course of a robbery, these two aggravating factors will be considered as one and no added weight is given to this aggravating factor.

iv. The capital felony was especially heinous, atrocious, or cruel. Fla. Stat. §921.141(6)(h)

As explained above, this aggravating circumstance would apply "only in torturous murders—those that evince extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another." *Chesire, supra.*; *Robertson, supra.*; *Rogers, supra.* For this aggravating factor to apply, the crime must be both conscienceless or pitiless and unnecessarily torturous to the victim. *Nelson, supra.* This aggravating factor "focuses on the means and manner in which the death was inflicted and the immediate circumstances surrounding the death, where a victim experiences the torturous anxiety and fear of impending death; thus, the trial court [and jury] considers the victim's perceptions of the circumstances as opposed to those of the perpetrator." *Allred, supra.* Together with a prior violent felony

conviction, the Florida Supreme Court has expressed the heinous, atrocious, or cruel aggravating factor as "the most weighty in Florida's sentencing calculus." *Sireci, supra.*

According to the Defendant, in his statement to detectives, he asked Charles Johnston for a hammer and piece of wood under the guise that he desired to bang out some dents in his SUV. The Defendant told the detectives he was hoping to get a large hammer to facilitate the killings.[10] Mr. Johnston was not able to locate a hammer to give Defendant, but gave him a hatchet since it had a blunt hammer-like side. The Defendant then followed Mr. Johnston to a shed behind the residence, as Mr. Johnston was trying to find a piece of wood for the Defendant to use. When they got to the shed, the Defendant told detectives he struck Mr. Johnston one or two times with the blade side of the hatchet and Mr. Johnston fell to the ground. According to the Defendant, Mr. Johnston was still alive after the initial hatchet attack in the shed. The Defendant then left the shed, leaving Mr. Johnston alive on the floor, and went to the residence where he attacked Mr. Peacock. After the initial attack of Mr. Peacock, the Defendant returned to the shed with the hatchet to steal Mr. Johnston's watch. The Defendant told detectives when he returned to the shed he noticed Mr. Johnston was still alive and trying to

[10] As discussed above, at the recent *Spencer* hearing, the Defendant testified he sought the hammer with the intent to actually repair the dents to his vehicle. The Court finds the Defendant's statements made to detectives shortly after the murders much more credible than the version provided in his testimony 13 years later.

get up from the floor, so he struck him again with the blade side of the hatchet in the front of his head and took Mr. Johnston's wallet. The Defendant told detectives he believed Mr. Johnston might have survived the hatchet attack had he called an ambulance for him, which he did not do. Defendant then left the hatchet in the shed and returned to the residence where he proceeded to stab Mr. Peacock to death.

During the recent penalty phase, Dr. Predrag Bulic also testified about the injuries and cause of death to Mr. Johnston.[11] Dr. Bulic testified that Mr. Johnston suffered four "chop" wounds to his head, consistent with being attacked by the hatchet recovered by police, which resulted in a fractured and crushed skull and extensive brain hemorrhaging. Dr. Bulic testified that if Mr. Johnston was not immediately knocked out he would have suffered extensive pain. Because the Defendant told detectives that Mr. Johnston was alive after the first attack in the shed, and was trying to get up when Defendant returned to the shed, the evidence has established Mr. Johnston was conscious, and therefore, in significant pain after the initial hatchet attack. Likewise, Mr. Johnston would have experienced great emotional strain, fear and terror after being attacked by Defendant with a hatchet, only to have to confront his attacker again minutes later.

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[11] As with the autopsy of Randy Peacock, Charles Johnston's autopsy was also performed by Dr. Steiner, who is deceased. Dr. Bulic reviewed the autopsy reports and photographs from Dr. Steiner's autopsy of Mr. Johnston and rendered his opinions regarding Mr. Johnston's injuries.

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.4 in the Jury's Verdict As To Sentence On Count II) This Court agrees with the jury's finding regarding this aggravating factor. Considering the facts and circumstances supporting this aggravating factor, as elicited during the recent penalty phase, this Court gives this aggravating factor GREAT WEIGHT.

v. *The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. Fla. Stat. §921.141(6)(i)*

As discussed above, the cold, calculated, and premeditated aggravating factor (CCP) has been explained as follows:

> Whether the CCP aggravator applies in a given case is subject to a four-part test: (1) The killing must have been the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); and (2) the defendant must have had a careful plan or prearranged design to commit murder before the fatal incident (calculated); and (3) the defendant must have exhibited heightened premeditation (premeditated); and (4) there must have been no pretense of moral or legal justification.

Baker, 71 So.3d at 818-19.

The CCP aggravating factor has been described by the Florida Supreme Court as "one of the weightiest aggravators in Florida's statutory sentencing scheme." *McKenzie,* 29 So.3d at 287.

As detailed above, in the instant case, the killings were the product of Defendant's cool and calm reflection, rather than an act prompted by emotional

frenzy, panic, or a fit of rage. After his arrest, the Defendant told detectives that he went to the victims' residence with the intent to rob and kill them. Defendant told detectives he wanted to get the killing over quickly so he asked Mr. Johnston for a large hammer and a piece of wood under the guise that he was going to use it to repair dents in his vehicle. In response to that request, Mr. Johnston handed Defendant the hatchet that would soon be used to kill Mr. Johnston and attack Mr. Peacock. The Defendant then coolly and calmly followed Mr. Johnston to the shed, where Mr. Johnston was looking for a piece of wood, when the Defendant struck Mr. Johnston in the head with the hatchet. The Defendant told detectives that after he struck Mr. Johnston in the head with the hatchet, Mr. Johnston fell to the ground, which concerned him because he was afraid a deaf woman who lived nearby might feel a vibration. The Defendant then coolly and calmly walked to the residence where he came up behind Mr. Peacock and struck him multiple times in the head with the hatchet. The Defendant then calmly returned to the shed where he observed Mr. Johnston still alive and proceeded to strike him again with the blade side of the hatchet. The Defendant then calmly returned to the kitchen of the residence where he found Mr. Peacock alive and proceeded to stab him multiple times. Defendant also told detectives that when he returned to the house to stab Mr. Peacock, he was careful to make sure Mr. Peacock was placed on the ground, rather than letting him fall to the ground, so the deaf neighbor wouldn't

feel any vibration. After stabbing Mr. Peacock, Defendant rinsed off the knife and placed it in the sink. After killing the victims, the Defendant went through the residence looking for Mr. Peacock's wallet. He stole the victims' wallet, money and credit cards, and took Mr. Peacock's vehicle.

From the time the Defendant first arrived at the residence, when only Mr. Peacock and a neighbor were present, until he killed the victims, a few hours had passed. The Defendant made sure to wait until the neighbor left and Mr. Johnston arrived, before he executed his calculated plan to kill the victims and steal their belongings. Additionally, heightened premeditation was demonstrated by the substantial amount of time the Defendant reflected on his plan while present at the residence and waiting for the opportune time to execute his plan. Lastly, there clearly was no pretense of moral or legal justification for the killings.

The jury unanimously determined that the State established this aggravating factor beyond a reasonable doubt. (Question A.5 in the Jury's Verdict As To Sentence On Count II) This Court agrees with the jury's finding regarding this aggravating factor. Considering the facts and circumstances supporting this aggravating factor as elicited during the trial in this case, this Court gives this aggravating factor GREAT WEIGHT.

vi. Conclusion – Aggravating Factors

Following the jury's unanimous determination of the existence of the aforementioned aggravating factors beyond a reasonable doubt, the jury was asked whether the aggravating factors are sufficient to warrant a possible sentence of death on Count II. The jury unanimously found the aggravating factors are sufficient to warrant a death sentence. (Section B in the Jury's Verdict As To Sentence On Count II) This Court has likewise considered the aggravating factors unanimously found by the jury to exist and agrees with the jury's finding, determining the aggravating factors are sufficient to warrant a death sentence on Count II. Thus, the Court will next consider the existence of mitigating circumstances.

B. MITIGATING CIRCUMSTANCES

As discussed above, during the recent penalty phase, the jury considered physical evidence introduced by the defense and heard testimony from Tammy Kimbell, Dr. Bloomfield, and Dr. Skolly-Danzinger. In rebuttal, the State presented the testimony of Dr. Meadows. The jury was instructed on the mitigating circumstances and that mitigating circumstances need only be established by the greater weight of the evidence. The jury stated in its verdict that one or more of the individual jurors found that one or more mitigating circumstance was established by a greater weight of the evidence. (Section C in the Jury's Verdict As To Sentence On Count II)

Additionally, the Court considered further evidence of mitigating circumstances during the recent *Spencer* hearing. At the *Spencer* hearing, the Court heard testimony from the Defendant and Dr. Skolly-Danzinger.

The mitigating circumstances set forth by the Defendant, as instructed by the Court during the recent penalty phase of the trial, as well as those set forth during the *Spencer* hearing and in Defendant's Sentencing Memorandum, are the same as those discussed above as they pertain to Count I; however, because they are also being considered by this Court to determine the appropriate sentence for Count II, they are discussed again below.

i. The First Degree Murder was committed while Defendant was under the influence of extreme mental or emotional disturbance.

As discussed above, during the recent penalty phase Tammy Kimball testified regarding the Defendant's extensive drug use around the time of the murders. Dr. Bloomfield testified regarding the Defendant's long-standing substance abuse and opined that due to the Defendant's extensive drug use at the time of the incident, he believes Defendant was under the influence of extreme mental or emotional disturbance at that time. Dr. Skolly-Danzinger testified at the penalty phase and *Spencer* hearing regarding the Defendant's long-standing drug abuse, its effects on the human body, and that Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders. The Defendant's statements to detectives shortly after the crime, describing his drug

addiction and his activities to get money for drugs, including the murders in this case and the string of robberies in the days leading up to the murders, corroborated the opinions of Drs. Bloomfield and Skolly-Danzinger. The State's rebuttal witness Dr. Meadows opined that he does not believe the Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders.

This Court finds that the greater weight of the evidence established the Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders due to his significant drug use. The Court gives this mitigating circumstance MODERATE WEIGHT.

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

As discussed above, Ms. Kimball testified at the penalty phase trial regarding the Defendant's excessive drug use around the time of the murders. Drs. Bloomfield and Skolly-Danzinger both further opined the Defendant's ability to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was substantially impaired due to his drug use. Dr. Skolly-Danzinger opined that particularly with cocaine addiction, of which Defendant suffered, users lose control and seek the drug out regardless of the consequences. The State's rebuttal witness Dr. Meadows opined the Defendant's ability to appreciate the criminality of his conduct and to conform his conduct to the

requirements of law was not substantially impaired. At the *Spencer* hearing, the Defendant described his drug use, which included a eight to nine day drug binge without sleep immediately prior to the murders.

This Court finds that the greater weight of the evidence established the Defendant's ability to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was substantially impaired. However, the Court notes that while the Defendant may have been impaired, he appreciated that killing Mr. Peacock and Mr. Johnston was wrong, as demonstrated in his statements to detectives and his attempts to avoid capture the day after the murders. The Court gives this mitigating circumstance SLIGHT WEIGHT.

iii. Defendant's childhood was chaotic.

As previously discussed, Dr. Bloomfield opined that Defendant had a rather chaotic childhood, which included first using marijuana at age five, beginning to use harder drugs at age 10, and his parents divorcing when he was age eight. Dr. Skolly-Danzinger testified about the Defendant's early childhood drug use, including inhalants by age 11, and having no boundaries growing up. The State's rebuttal witness Dr. Meadows rejected the claim that the Defendant had a chaotic childhood. Dr. Meadows indicated the Defendant described to him a happy childhood.

This Court finds that the greater weight of the evidence established this mitigating circumstance that the Defendant had a chaotic childhood. The Court gives this mitigating circumstance SLIGHT WEIGHT.

vi. Defendant and his siblings experienced a lack of adequate supervision after the divorce of his parents.

Drs. Bloomfield and Skolly-Danzinger testified that Defendant experienced a lack of supervision and a lack of boundaries after the divorce of his parents at age eight. After his parents divorced, Defendant stole food for his family and became an early chronic user of drugs. This Court finds that the greater weight of the evidence established this mitigating circumstance that the Defendant and his siblings experienced lack of adequate supervision after the divorce of his parents. The Court gives this mitigating circumstance VERY SLIGHT WEIGHT.

v. Defendant started huffing from spray cans at the age of 11 years old.

As discussed above, the Defendant's mitigation experts testified the Defendant told them he began "huffing" inhalants at the young age of 11. These mitigation experts testified regarding the detrimental effects this has on the human body, including brain development. This was part of the Defendant's long-standing drug abuse. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

vi. Defendant had an early and chronic abuse and dependency on alcohol and drugs.

As discussed above, the Defendant's mitigation experts testified at the recent penalty phase the Defendant began using and abusing drugs at a very early age. According to the Defendant's statements to the mitigation experts, he began using marijuana at age five, methamphetamine at age 10, and inhalants at age 11. Defendant told the experts that drug use became a daily thing for him beginning at age 12. Defendant testified at the recent *Spencer* hearing that he began injecting drugs around age 16. The defense experts testified regarding the adverse effects this early and chronic drug use has on brain development. The State's rebuttal expert testified that he doubted the veracity of the Defendant's very early drug use.

This Court finds that the greater weight of the evidence established this mitigating circumstance that Defendant had early and chronic abuse and dependency on alcohol and drugs. The Court gives this mitigating circumstance SLIGHT WEIGHT.

vii. Defendant had a cocaine dependency relapse starting in July 2006 up to and after the crimes at bar.

According to the Defendant in his statement to detectives, he was addicted to cocaine and had a relapse in 2006. The Defendant testified to this as well at the recent *Spencer* hearing. This was corroborated by the Defendant's mitigation experts and the State's rebuttal witness who all testified the Defendant suffered

from a substance abuse disorder. Tammy Kimball's testimony likewise corroborates this mitigating circumstance by her testimony regarding the Defendant's cocaine use around the time of the murders.

This Court finds that the greater weight of the evidence established this mitigating circumstance that Defendant had a cocaine dependency relapse starting in July 2006 up to and after the murders. The Court gives this mitigating circumstance SLIGHT WEIGHT.

viii. Defendant consistently used a voluminous amount of cocaine from July to October of 2006.

As discussed above, according to the Defendant's mitigation experts and Tammy Kimball, the Defendant was consistently using a significant amount of cocaine after his relapse in 2006 up to the time of the murders and his arrest. The Defendant would ingest cocaine in different ways including intravenously. The Defendant testified at the recent *Spencer* hearing that around the time of the murders he was spending approximately $1000 a day to support his drug addiction, and leading up the day of the murders he had been on a drug binge for eight or nine days without sleep.

This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

ix. Defendant cooperated with law enforcement at the time of his arrest.

Hours after his arrest, the Defendant gave a statement to detectives where he freely spoke and described the murders of Mr. Peacock and Mr. Johnston. A few months later, Defendant gave another statement to detectives where he again freely spoke about the murders. While the Defendant cooperated with investigators, the Court also notes that the day after the murders, when law enforcement officers sought to capture the Defendant, he led Citrus County deputies on a vehicular pursuit, and after crashing the vehicle he was operating, fled into a nearby body of water before being captured by police.

This Court finds that the greater weight of the evidence established this mitigating circumstance that the Defendant cooperated with law enforcement at the time of his arrest. The Court gives this mitigating circumstance SLIGHT WEIGHT.

x. Defendant admitted to the murders of Randy Peacock and Charles Johnston.

As discussed above, the Defendant freely admitted to detectives, on two occasions, that he murdered Mr. Peacock and Mr. Johnston. The Defendant's admissions to police were instrumental in securing his own convictions. During the recent *Spencer* hearing, the Defendant again admitted to committing the murders and expressed remorse.

This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance MODERATE WEIGHT.

xi. Defendant has artistic ability.

During the recent penalty phase the defense admitted into evidence and displayed art work created by Defendant since he has been in prison. This Court finds the art work impressive and the Defendant clearly possesses artistic ability.

This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xii. Defendant was an assistant superintendent for EMJ that built Cobblestone Village in St. Augustine.

During the recent penalty phase it was established the Defendant worked as a construction assistant superintendent working for EMJ prior to committing the murders. The Defendant played a key role in the construction of the Cobblestone Village shopping center in St. Augustine. At the recent *Spencer* hearing, Defendant testified that he worked in the construction industry since age 15. The Defendant progressed from a construction worker to a project supervisor. In addition to being a project supervisor for EMJ on the Cobblestone Village project, Defendant also worked with Johnson, Graham and Malone Construction, and worked on numerous projects in North Florida. While working in the construction

industry, Defendant also volunteered to help build the Able Charter School for special needs children. The Defendant was obviously good at his occupation; however, his drug abuse and criminal activity caused him to be unable to continue. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xiii. Defendant impacted the life of Claudia Goeke in a positive way while in prison.

During the recent *Spencer* hearing, the Court received a letter from Claudia Goeke. Ms. Goeke described her relationship with Defendant and how he helped her overcome physical and mental struggles. Ms. Goeke credits Defendant with saving her life.

The Court finds the greater weight of the evidence supports this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xiv. A prior jury did not unanimously find that Defendant should be sentenced to death

Defendant raises this proposed mitigating circumstance for the first time in his Sentencing Memorandum. As discussed above, in 2007 a jury recommended Defendant be sentenced to death by a vote of 10-2. The death penalties subsequently imposed in 2007, were vacated for the reasons set forth above.

Mitigating circumstances are limited to a defendant's character or record or the circumstances of the crime. *Campbell, supra,*; *Johnson, supra.* The prior jury's

2007 10-2 death penalty recommendation is not relevant to this Defendant's character or record or circumstances of the murders; therefore, it is not considered a mitigating circumstance and is afforded NO WEIGHT.

C. WEIGHING AGGRAVATING FACTORS AND MITIGATING CIRCUMSTANCES

At the conclusion of the penalty phase, the jury unanimously found that the aggravating factors that were proven beyond a reasonable doubt outweighed the mitigating circumstances, thus making the Defendant eligible for a death sentence for Count II. (Section D of the Jury's Verdict As To Sentence on Count II)

Following the recent penalty phase and *Spencer* hearing, this Court independently considered and weighed the aggravating factors unanimously determined by the jury to exist beyond a reasonable doubt and the mitigating circumstances established by the greater weight of the evidence. The Court assigned the weight it feels each of the established aggravating factors and mitigating circumstances are due.

The Court finds that the aggravating factors in this case far outweigh the mitigating circumstances; therefore, as the jury determined, the Court likewise determines the Defendant is eligible for a sentence of death for Count II of the Indictment.

D. SENTENCE COUNT II

"If the jury has recommended a sentence of Death, the Court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death." Fla. Stat. §921.141(3)(a)2. This Court recognizes it is not bound by the jury's verdict that death is the appropriate sentence, and may impose a life sentence if it feels that is appropriate. Not every person found guilty of first degree murder should receive a death sentence. A death sentence must be "reserved for only the most aggravated and the least mitigated first degree murders." *Urbin, supra.* This is such a case.

After carefully and independently considering those aggravating factors determined by the jury to exist, and all the mitigating circumstances, this Court agrees with the jury's unanimous finding that the Defendant should be sentenced to death for Count II. Based on the authority vested in this Court, it is the sentence of this Court that on Count II of the Indictment, for the First Degree Murder of Charles Johnston, the Defendant Norman Blake McKenzie is adjudicated guilty of said offense and sentenced to Death in a manner prescribed by law.

V. CONCLUSION

A. The sentences imposed by the Court herein shall run concurrent with each other.

B. All statutory fees and costs are imposed.

C. NORMAN BLAKE MCKENZIE, is hereby committed to the custody of the Florida Department of Corrections where he shall be held until such time he is put to death in accordance with Florida law for Counts I and II.

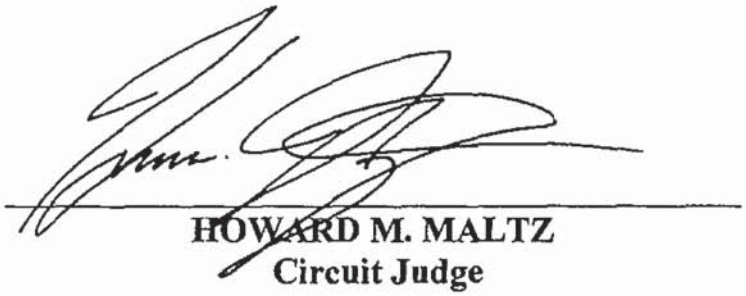
D. The Sheriff of St. Johns County, Florida, is hereby ORDERED to deliver NORMAN BLAKE MCKENZIE to the Florida Department of Corrections at the facility designated by the Florida Department of Corrections, together with a copy of the judgment and sentence, and all other documents specified by Florida law.

E. NORMAN BLAKE MCKENZIE is advised of his right to appeal this sentence to the Florida Supreme Court by filing a Notice of Appeal within 30 days of this date with the Clerk of Court. NORMAN BLAKE MCKENZIE is further advised that he has the right to be represented by counsel on his appeal. The Court appoints the Office of Regional Conflict Counsel for the Fifth District to represent the Defendant on Appeal.

ORDERED and ADJUDGED in open court this 14th day of February, 2020, at the Richard O. Watson Judicial Center, 4010 Lewis Speedway, St. Augustine, St. Johns County, Florida.

I, Howard M. Maltz, Circuit Judge of the Seventh Judicial Circuit of Florida, certify that the original sentencing order has been contemporaneously filed with

the Clerk of the Circuit Court for St. Johns County, Florida, at the time of pronouncement of sentence.



HOWARD M. MALTZ
Circuit Judge

Copies to:

Junior Barrett, Esq. – Defense counsel
Kenneth M. Hamburg, Esq. – Defense counsel
K. Mark Johnson, Assistant State Attorney
Jennifer L. Dunton, Assistant State Attorney
St. Johns County Sheriff's Office

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

NORMAN BLAKE MCKENZIE,
PETITIONER,

VS.

STATE OF FLORIDA,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO
THE FLORIDA SUPREME COURT

APPENDIX B

Appendix B: The opinion of the Florida Supreme Court affirming the denial of the judgment of conviction and death sentence reported at *McKenzie v. State,* 333 So. 3d 1098 (Fla. 2022)

333 So.3d 1098
Supreme Court of Florida.

Norman Blake MCKENZIE, Appellant,
v.
STATE of Florida, Appellee.

No. SC20-243
|
February 10, 2022

Synopsis

Background: After affirmance, 29 So.3d 272, of defendant's convictions for two counts of first-degree murder and defendant's death sentence, and affirmance, 153 So.3d 867, of denial of postconviction relief, defendant's successive motion for postconviction relief was granted, and the Circuit Court, 7th Judicial Circuit, St. Johns County, Howard M. Maltz, J., resentenced defendant to death. Appeal was direct.

Holdings: The Supreme Court held that:

individual facts on which jury relied to find each aggravating factor at capital sentencing need not be proven beyond a reasonable doubt, and

statutory amendment and new rule of criminal procedure, generally requiring State to give notice, within 45 days of arraignment, that it intends to seek death penalty, did not apply to defendant's resentencing.

Affirmed.

Labarga, J., filed an opinion concurring in the result.

West Codenotes

Prior Version Recognized as Unconstitutional
Fla. Stat. Ann. § 782.04(1)(b)

***1099** An Appeal from the Circuit Court in and for St. Johns County, Howard M. Maltz, Judge, Case No. 552006CF001864XXAXMX

Attorneys and Law Firms

Jeffrey D. Deen, Regional Counsel, and Michael P. Reiter, Assistant Regional Counsel, Office of Criminal Conflict and Civil Regional Counsel, Fifth District, Ocala, Florida, for Appellant

Ashley Moody, Attorney General, Tallahassee, Florida, and Doris Meacham, Assistant Attorney General, Daytona Beach, Florida, for Appellee

Opinion

PER CURIAM.

Norman Blake McKenzie was convicted and sentenced to death for the first-degree murders of Randy Wayne Peacock and Charles Frank Johnston in St. Johns County. Originally convicted and sentenced to death in 2007, McKenzie received a new penalty phase in light of *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *receded from in part by State v. Poole*, 297 So. 3d 487 (Fla. 2020). In February 2020, McKenzie was resentenced to death for

both murders. This is the direct appeal of his resentencing. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. We affirm McKenzie's sentences of death.

FACTS AND PROCEDURAL BACKGROUND

Guilt Phase

On direct appeal, this Court set forth the following facts:

> The evidence presented at trial established that on October 5, 2006, two Flagler Hospital employees became concerned when Randy Peacock, a respiratory therapist at the hospital, did not report to work. The two employees drove to the home that Peacock shared with Charles Johnston. Upon their arrival, they noticed that Peacock's vehicle, a green convertible, was not there. When the employees entered the residence, they found Peacock lying face down on the kitchen floor in a pool of blood. When deputies from the St. Johns County Sheriff's Office (SJSO) arrived, they secured the scene and subsequently located the body of Charles Johnston in a shed that was also located on the property. While processing the crime scene, law enforcement *1100 officers located a hatchet inside the shed that appeared to have blood on its blade and handle. A butcher knife was found in the kitchen sink. Deputies observed a gold sport utility vehicle (SUV) in the driveway and determined that it was registered to Norman Blake McKenzie.

The deputies subsequently spoke with a neighbor of the victims. The neighbor stated that on October 4, 2006, he went to the victims' home to assist Johnston with repairs on his vehicle. When the neighbor first arrived, Johnston was not there but Peacock was present and was speaking with a man whom the neighbor later identified in a photo lineup as McKenzie. The neighbor confirmed that he saw Peacock speaking with McKenzie between 4:30 and 7 p.m., and that he also observed a gold SUV in the driveway. The neighbor departed the victims' residence before dark.

McKenzie subsequently had an encounter with a Citrus County sheriff's deputy during which Randy Peacock's wallet was recovered from one of McKenzie's pockets. Further, Charles Johnston's wallet was located in a vehicle that McKenzie had recently operated. McKenzie agreed to speak with SJSO deputies on two separate occasions during which he confessed to the murders of Peacock and Johnston.

McKenzie explained that he went to the victims' residence on October 4, 2006, to borrow money from Johnston because of his drug addiction. When he first arrived, only Peacock and the neighbor were present; however, Johnston returned home around dusk. The neighbor left after briefly speaking with Johnston, and at some point, Peacock went inside the residence. McKenzie then asked Johnston for a hammer and a piece of wood so that he could knock some "dings" out of the door of his SUV. Johnston could not locate a hammer and gave McKenzie a hatchet. While walking into the shed to

locate a piece of wood, McKenzie struck Johnston in the head with the blade side of the hatchet. Johnston fell to the floor and McKenzie struck him again. McKenzie then entered the home, approached Peacock, who was cooking in the kitchen, and struck him with the hammer side of the hatchet approximately two times.

McKenzie returned to the shed, and when he observed that Johnston was still alive, he struck Johnston one or more times with the hatchet. McKenzie removed Johnston's wallet from his pocket, placed the hatchet on top of a bucket inside the shed, and re-entered the residence. McKenzie observed that Peacock was struggling to stand up, so he grabbed a knife and stabbed Peacock multiple times. McKenzie then placed the knife in the sink, took Peacock's wallet and car keys, and departed in Peacock's vehicle.

An autopsy conducted on Randy Peacock revealed that the cause of his death was six stab wounds which caused extensive bleeding, with a contributory cause of blunt-force trauma to the head. The stab wounds suffered by Peacock were consistent with the knife found in the kitchen sink and the blunt-force trauma was consistent with the hammer side of the hatchet that was recovered from the shed. An autopsy conducted on Charles Johnston revealed that the cause of his death was extensive head trauma due to the infliction of four "chop" wounds. The trauma to Johnston's skull was consistent with the blade side of the hatchet that was recovered from the shed.

During a pretrial hearing, McKenzie expressed frustration with his court-appointed counsel because his right to a speedy trial had been waived without ***1101** first consulting with him. When defense counsel sought a continuance on the basis that more time was needed to prepare for trial, McKenzie objected. McKenzie insisted that he was ready and wanted to proceed as expeditiously as possible. As a result, defense counsel moved to withdraw. The trial court, based upon McKenzie's assertion that he was ready to proceed, denied the motion and scheduled a trial date.

During a second pretrial hearing, defense counsel again moved for a continuance, asserting that additional time was necessary to prepare for trial and to investigate mitigation. McKenzie again expressed frustration with his court-appointed counsel, stating that they had requested his medical records even though he had specifically advised them that he did not want this action taken. When the trial court recommended that McKenzie listen to his attorneys' assertion that more time was required to properly prepare for trial, McKenzie responded that he did not need the assistance of counsel. Based upon this statement, the trial court scheduled a *Faretta* [*v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)] inquiry.

During the *Faretta* hearing, when asked by the trial court why he wanted to represent himself, McKenzie replied that he was ready for trial and did not need attorneys to prepare any sort of mitigation on his behalf. McKenzie also expressed the belief that he possessed sufficient intelligence to represent himself. With regard to his desire to proceed to trial as quickly as possible, McKenzie

> stated that he did not wish to subject his mother, his fiancée, or the victims' families to an extended trial, and that he thought a protracted trial would be a waste of taxpayer funds.
>
> When the trial court asked McKenzie why he wanted to discharge his court-appointed counsel, McKenzie replied that they insisted upon taking actions with which he disagreed. Defense counsel agreed that McKenzie's displeasure with them arose from a difference of opinion with regard to trial strategy. After conducting a *Faretta* inquiry, the trial court concluded that McKenzie was competent to waive counsel and that his waiver was knowing, intelligent, and voluntary. The trial court allowed McKenzie to represent himself but appointed standby counsel with McKenzie's approval.
>
> During the guilt phase of the trial, McKenzie admitted that he went to the victims' home on October 4 with the intention of taking their money. McKenzie also admitted that he hit both Johnston and Peacock with the hatchet and stabbed Peacock with a knife. After the State rested its case, McKenzie stated that he would not offer any witness testimony and further declined to testify on his own behalf. On August 21, 2007, the jury found McKenzie guilty of two counts of first-degree murder.

McKenzie v. State, 29 So. 3d 272, 275-77 (Fla. 2010) (footnote omitted).

Initial Penalty Phase

During the initial penalty phase, the jury recommended by votes of ten to two that McKenzie be sentenced to death for both murders. *Id.* at 277. Following a *Spencer*[1] hearing, the trial court sentenced McKenzie to death for the murders.[2]

***1102 Direct Appeal and Postconviction**

This Court affirmed McKenzie's convictions and sentences on direct appeal. *Id.* at 288. On postconviction, this Court affirmed the denial of postconviction relief under Florida Rule of Criminal Procedure 3.851, and it denied habeas relief. *See McKenzie v. State*, 153 So. 3d 867, 885 (Fla. 2014). However, McKenzie filed a successive motion for postconviction relief after this Court's decision in *Hurst v. State*, and the circuit court granted McKenzie a new penalty phase.

Second Penalty Phase

McKenzie's second penalty phase was tried before a new jury in August 2019. The State and the defense each presented evidence, following which the jury unanimously found—as to each murder—that the State established the existence of five proposed aggravating factors beyond a reasonable doubt: (1) McKenzie was previously convicted of a capital felony or a felony involving the use or threat of violence to a person (based on the contemporaneous murders of Johnston and Peacock, and also based on eight prior violent felony convictions); (2) the first-degree murder was committed while McKenzie was engaged

in the commission of a robbery; (3) the first-degree murder was committed for financial gain; (4) the first-degree murder was especially heinous, atrocious, or cruel (HAC); and (5) the first-degree murder was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification (CCP).

The jury also unanimously found that the aggravating factors were sufficient to warrant a sentence of death. One or more jurors found that one or more mitigating circumstances was established by the greater weight of the evidence, and the jury unanimously found that the aggravators outweighed the mitigating circumstances. The jury unanimously found that McKenzie should be sentenced to death for each murder.

The trial court later conducted a *Spencer* hearing and a sentencing hearing. In its sentencing order, the court found that all five aggravating factors were proven beyond a reasonable doubt as to each murder. The court assigned weight to each aggravating factor as follows: (1) McKenzie was previously convicted of a capital felony or a felony involving the use or threat of violence to a person—based on the contemporaneous murders of Johnston and Peacock, and also based on eight prior violent felony convictions (very great weight); (2) the first-degree murder was committed while McKenzie was engaged in the commission of a robbery (great weight); (3) the first-degree murder was committed for financial gain (merged with murder during commission of a robbery; no additional weight); (4) HAC (great weight); and (5) CCP (great weight).

The trial court also found the following statutory mitigating circumstances as to each murder: (1) the murder was committed while McKenzie was under the influence of extreme mental or emotional disturbance ***1103** (moderate weight); and (2) McKenzie's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired (slight weight).

As to nonstatutory mitigating circumstances, the trial court found as follows: (1) McKenzie's childhood was chaotic (slight weight); (2) McKenzie and his siblings were inadequately supervised after their parents' divorce (very slight weight); (3) McKenzie began huffing inhalants at the age of eleven (slight weight); (4) McKenzie had an early and chronic abuse and dependency on alcohol and drugs (slight weight); (5) McKenzie had a cocaine dependency relapse starting in July 2006 that continued up to the time of and after the murders (slight weight); (6) McKenzie consistently used a voluminous amount of cocaine from July to October of 2006 (slight weight); (7) McKenzie cooperated with law enforcement at the time of his arrest (slight weight); (8) McKenzie admitted to the murders (moderate weight); (9) McKenzie has artistic ability (slight weight); (10) McKenzie was a construction assistant superintendent before the murders and had a key role in the construction of a shopping center (slight weight); (11) McKenzie impacted the life of his wife/fiancée in a positive way while in prison (slight weight); and (12) the prior sentencing jury did not unanimously recommend that McKenzie

be sentenced to death (not a mitigating circumstance; no weight).

McKenzie now appeals both sentences of death and raises six issues.

ANALYSIS

I. Interrogatory Penalty Phase Verdict

Before trial, defense counsel filed a motion for an interrogatory penalty phase verdict that would have required the jury to identify the facts on which it relied to find any aggravating factors. In particular, the motion stated:

> A separate provision requiring the jury to state the facts upon which the factor is found allows the trial court and the appellate court to determine whether the jury's recommendation conforms with applicable law. Thus, the verdict form should contain an inquiry asking, for each aggravating circumstance found, the factual basis for that finding, so that the inquiry would read substantially as follows:
>
> > "Our finding that the homicide was committed in an especially heinous, atrocious or cruel manner" is based on the following facts: (specify)—

The trial court denied the motion and instructed the jury using the standard jury instructions.

McKenzie's argument that the jury was required to specify the facts supporting its findings of aggravating factors is without merit. The required jury finding for death eligibility is the unanimous finding of the existence of one or more aggravating factors proven beyond a reasonable doubt, not the individual facts on which the jury relied to find each aggravating factor. *See Poole*, 297 So. 3d at 502. As detailed in the verdict forms, McKenzie's jury unanimously found that each of five aggravating factors was proven beyond a reasonable doubt.

II. Notice of Aggravating Factors

McKenzie also argues that the State should not have been able to amend its notice of aggravating factors in 2019 to include HAC. During the original penalty phase, the State sought to prove four aggravating factors as to each murder: (1) McKenzie was previously convicted of a capital felony or a felony involving the use ***1104** or threat of violence to a person; (2) the murders were committed while McKenzie was engaged in the commission of a robbery; (3) the murders were committed for pecuniary gain; and (4) CCP. *See McKenzie*, 29 So. 3d at 278.

In August 2017, the State filed a notice indicating that it intended to prove the same aggravating factors during the new penalty phase. However, in January 2019, the State filed a motion to amend its notice for the purpose of adding HAC as a fifth aggravating factor. Defense counsel filed a motion to strike the amended notice, and following a hearing, the trial court denied McKenzie's motion to strike and granted the State's motion to amend the notice. The court based its ruling on the grounds that section 782.04(1)(b), Florida Statutes (2016), and rule 3.181 ("Notice to Seek Death Penalty"), did not apply to McKenzie

because he was arraigned in 2011—before the statute and the rule were enacted in 2016. The court did not err in permitting the State to amend the notice to include HAC.

After the United States Supreme Court held Florida's death penalty sentencing scheme unconstitutional in *Hurst v. Florida*, 577 U.S. 92, 102-03, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), the Florida Legislature amended section 782.04(1)(b) as follows (underlining indicates the added language):

> (b) In all cases under this section, the procedure set forth in s. 921.141 shall be followed in order to determine sentence of death or life imprisonment. If the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant and file the notice with the court within 45 days after arraignment. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a showing of good cause.

Ch. 2016-13, § 2, Laws of Fla. The effective date of the statute was March 7, 2016. *See* ch. 2016-13, § 7, Laws of Fla.

Also, in 2016, this Court adopted Florida Rule of Criminal Procedure 3.181, which similarly provides:

> In a prosecution for a capital offense, if the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant of the state's intent to seek the death penalty. The notice must be filed with the court within 45 days of arraignment. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a showing of good cause.

McKenzie maintains that the requirements of section 782.04(1)(b) and rule 3.181 apply to his new penalty phase and that in the absence of a showing of good cause, the trial court erred in permitting the State in 2019 to amend its notice to include HAC. He argues that the State lacked good cause to amend its notice because the facts on which the State relied to prove HAC were available at the time of the original trial in 2007.

We reject McKenzie's argument. Prior to 2016, the State was not required to provide notice of the aggravating factors it intended to prove, and we agree with the State that "[t]he mere fact that the State gave notice of aggravation does not render it bound by the new statute or rule." As we explained in *Bargo v. State*, 331 So.3d 653 (Fla. June 24, 2021): "[N]othing in the 2016 legislation evinces any intent to apply to cases in which a defendant was arraigned—or ***1105** waived arraignment—years before the amendment took effect."

III. Victim Impact Evidence

Before the presentation of penalty phase evidence, the trial court addressed defense motions to exclude the introduction of victim impact evidence, and alternatively, to admit victim impact evidence in the judge's presence alone. The court denied the motions, and the State presented three victim impact statements:

two statements from Peacock's siblings, and a statement from Johnston's daughter. Before each statement was introduced, the trial court instructed the jury that victim impact evidence was not to be used for finding aggravation and was not to be considered as an aggravating factor.

The trial court was not required to exclude victim impact evidence nor to receive it outside of the jury's presence. "Evidence of a family member's grief and suffering due to the loss of the victim is evidence of 'the resultant loss to the community's members by the victim's death' permitted by section 921.141(7), and the admission of such evidence is consistent with the Supreme Court's decision in *Payne v. Tennessee*, 501 U.S. 808, 111 S. Ct. 2597, 115 L.Ed. 2d 720 (1991)." *Victorino v. State*, 127 So. 3d 478, 496 (Fla. 2013).[3] Each of the victim impact statements in this case remained within the scope of proper victim impact evidence, and the trial court did not err in permitting their introduction.

IV. Sufficiency of Aggravating Factors

McKenzie argues that his death sentence is invalid because the jury did not find beyond a reasonable doubt that the aggravating factors were sufficient to impose the death penalty. He contends that for a death sentence to be valid, the jury must find beyond a reasonable doubt that the aggravating factors were sufficient to impose the death penalty and that the aggravating factors outweighed the mitigating circumstances. However, these jury determinations are "not subject to the beyond a reasonable doubt standard of proof." *Newberry v. State*, 288 So. 3d 1040, 1047 (Fla. 2019); *see also Craft v. State*, 312 So. 3d 45, 57 (Fla. 2020); *Rogers v. State*, 285 So. 3d 872, 885-86 (Fla. 2019). We decline McKenzie's invitation to revisit what has been settled: only the *existence* of a statutory aggravating factor must be found beyond a reasonable doubt. *See Poole*, 297 So. 3d at 505. *See also McKinney v. Arizona*, —— U.S. ——, 140 S. Ct. 702, 707-08, 206 L.Ed.2d 69 (2020).

McKenzie also argues that the term "sufficient" requires a qualitative, not a numerical definition, and that the failure to define "sufficient" for the jury constituted fundamental error. However, we expressly rejected the qualitative versus numerical argument in *Poole*: "Poole's suggestion that 'sufficient' implies a qualitative assessment of the aggravator—as opposed simply to finding that an aggravator exists—is unpersuasive and contrary to this [Court's] decades-old precedent." *Poole*, 297 So. 3d at 502.

V. *Hurst v. State*

McKenzie contends that this Court's analysis of jury sentencing in *Hurst v. State* established substantive law that required his jury to find certain "elements" beyond a reasonable doubt. This Court has soundly rejected McKenzie's "elements" argument and has explained that *Hurst v. State* jury sentencing determinations are not "elements" that must be found beyond a reasonable doubt. *See Poole*, 297 So. 3d at 505.

Moreover, to the extent that McKenzie argues that the *Hurst v. State* jury sentencing determinations constitute elements ***1106** of a

purported greater offense of capital first-degree murder, we have also rejected this argument:

> As we explained in *Foster*, there is no independent crime of "capital first-degree murder"; the crime of first-degree murder is, by definition, a capital crime, and *Hurst v. State* did not change the elements of that crime. *Id.* at 1251-52 (holding that when a jury makes *Hurst* determinations, "it only does so *after* a jury has unanimously convicted the defendant of the capital crime of first-degree murder").

Wright v. State, 312 So. 3d 59, 60 (Fla. 2021) (quoting *Foster v. State*, 258 So. 3d 1248, 1251 (Fla. 2018)).

VI. Constitutionality of the Prior Violent Felony Aggravating Factor

McKenzie challenges the constitutionality of the prior violent felony aggravating factor, as set forth in section 921.141(6)(b), Florida Statutes. As the State argues and McKenzie concedes, this Court has repeatedly rejected this claim. *See Gonzalez v. State*, 136 So. 3d 1125, 1169 (Fla. 2014) ("[W]e have rejected claims that the prior violent felony and HAC aggravators are vague and overbroad."); *Farina v. State*, 937 So. 2d 612, 618 n.5 (Fla. 2006) (rejecting as meritless a claim that counsel was ineffective for failing to challenge the prior violent felony aggravating factor on vagueness and overbreadth grounds).

CONCLUSION

For these reasons, we affirm McKenzie's sentences 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

333 So.3d 1098, 47 Fla. L. Weekly S41

Footnotes

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

2 The trial court sentenced McKenzie to death, having found the following aggravating factors:

> (1) McKenzie had previously been convicted of another capital felony or of a felony involving the use or threat of violence to the person, *see* § 921.141(5)(b), Fla. Stat. (2006) (eight prior convictions and the contemporaneous murder of the other victim) (great weight); (2) the murders were committed while McKenzie was engaged in the commission of a robbery, *see* § 921.141(5)(d) (significant weight); (3) the murders were committed for pecuniary gain, *see* § 921.141(5)

(f) (merged with robbery aggravator—no additional weight given); and (4) the murders were cold, calculated, and premeditated (CCP), *see* § 921.141(5)(i) (great weight).

29 So. 3d at 278. The trial court found no statutory mitigating circumstances but found seven nonstatutory mitigating circumstances. *Id.*

3 Victim impact evidence is now provided for in section 921.141(8), Florida Statutes (2020).

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