IN THE
SUPREME COURT OF THE UNITED STATES

JOHN F. MOSLEY JR.,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

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

APPENDIX	DOCUMENT
A	Opinion of the Florida Supreme Court Case No. SC20-195 Rendered on September 15, 2022
B	Order of the Florida Supreme Court Denying Motion for Rehearing Rendered on October 11, 2022
C	Sentencing Order of the Fourth Judicial Circuit, Duval County Case No. 16-2004-CF-6675 Rendered on February 11, 2020
D	Excerpt of Penalty Phase Trial Testimony

APPENDIX A

349 So.3d 861
Supreme Court of Florida.

John F. MOSLEY, Appellant,
v.
STATE of Florida, Appellee.

No. SC20-195
|
September 15, 2022

Synopsis

Background: After affirmance, 46 So.3d 510, of defendant's convictions for two counts of first-degree murder and defendant's death sentence for one conviction, and grant of habeas relief with respect to sentencing, 209 So.3d 1248, the Circuit Court, 4th Judicial Circuit, Duval County, Michael R. Weatherby, Senior Judge, resentenced defendant to death after a penalty-phase jury trial. Defendant appealed.

Holdings: The Supreme Court, Couriel, J., held that:

defendant's unequivocal but untimely demand for self-representation required *Faretta* inquiry, to determine whether defendant was making competent and intelligent choice of self-representation for *Spencer* hearing, 615 So. 2d 688, at which trial court could hear argument and additional evidence after penalty-phase jury retrial, and

limitation of scope of cross-examination of non-accomplice prosecution witness, regarding witness's bias, was not an abuse of discretion.

Vacated and remanded.

Muñiz, J., filed an opinion concurring in part and dissenting from the judgment.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion; Sentencing or Penalty Phase Motion or Objection.

***862** An Appeal from the Circuit Court in and for Duval County, Michael R. Weatherby, Judge, Case No. 162004CF006675AXXXMA

Attorneys and Law Firms

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

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Opinion

COURIEL, J.

***863** This is the appeal of the circuit court's final order resentencing John F. Mosley to death for the murder of his ten-month-old son, Jay-Quan Mosley. The circuit court entered the order after Mosley's second penalty phase trial; we vacated Mosley's original sentence of death pursuant to *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). *Mosley v. State*, 209 So. 3d 1248, 1284 (Fla. 2016).

We have jurisdiction. Art. V, § 3(b)(1), Fla. Const. We find that, because the trial court failed to address Mosley's unequivocal motion to represent himself at his *Spencer*[1] hearing, he is entitled to a new *Spencer* hearing and sentencing hearing. We do not, however, find that he is entitled to a third penalty phase trial.

I

Twice before we have recounted the murders that bring Mosley to this Court. *Mosley v. State*, 46 So. 3d 510, 514-15 (Fla. 2009); *Mosley*, 209 So. 3d at 1254-55. A jury convicted him of two counts of first-degree murder after he strangled his girlfriend, Lynda Wilkes; asphyxiated their son, Jay-Quan, in a garbage bag; and disposed of both their bodies, hers by immolation, his in a dumpster. At the conclusion of his first trial, in 2005, the jury unanimously recommended a life sentence for the murder of Wilkes and, by a vote of eight to four, recommended a death sentence for the murder of Jay-Quan. The trial court imposed the recommended sentences.

This Court affirmed the convictions and sentence of death on direct appeal. *Mosley*, 46 So. 3d at 529. Mosley moved for postconviction relief under rule 3.851 of the Florida Rules of Criminal Procedure. *Mosley*, 209 So. 3d at 1257-58. After

an evidentiary hearing, the postconviction court denied the motion. *Id.* This Court affirmed that decision as to Mosley's guilt phase claims but decided that a new penalty phase [2] was required under *Hurst v. Florida*, 577 U.S. 92, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016). [3] 209 So. 3d at 1284.

Prior to his second penalty phase proceeding for Jay-Quan's murder, Mosley moved to represent himself in arguing a ***864** motion for an evidentiary hearing based on newly discovered evidence. On March 20, 2018, after a *Faretta* [4] inquiry, the trial court initially granted his motion, appointing standby counsel and a mitigation specialist. [5] But the trial court reversed itself when it found that Mosley did not understand what giving up his right to counsel entailed. At the end of the hearing, the trial court took Mosley's motion to proceed pro se under advisement.

With a new judge presiding, [6] Mosley again moved to represent himself pro se. At a hearing on the motion, however, Mosley stated that he did not want to represent himself nor to be represented by his attorney at the time. The trial court denied Mosley's request for another attorney, and Mosley withdrew his outstanding motion to represent himself.

On November 20, 2019, the trial court held its final conference before the penalty phase. Mosley again moved to represent himself. After another *Faretta* inquiry, the trial court granted Mosley's motion to proceed pro se and appointed standby counsel. Mosley requested an eighteen-month continuance to prepare for trial, which the trial court denied.

On December 2, 2019, the trial court proceeded with Mosley's penalty phase. ***865** The State called Bernard Griffin, a key cooperating witness, who testified about the murders. On cross-examination, Mosley noted that Griffin was "back on the stand for the state" and asked him, "[A]fter this hearing is done you going to get to go free again or they going to cut your time in half?" The trial court interjected and instructed the jury that "Mr. Griffin is under a 20-year sentence," and "[t]here is no legal avenue for that sentence to be changed at all except perhaps by his death in custody." Mosley protested the judge's intervention. He insisted the "state can send letter recommendations" to the court, "[a]sking to reduce [Griffin's] time." After Mosley's repeated attempts to "establish [Griffin's] motive," the judge responded, "There is absolutely no evidence of that at all and the Court has no authority whatsoever to change a sentence once the period of expiration has occurred, so I don't care who writes the letter. He ain't going anywhere." On redirect, the prosecutor asked Griffin whether he'd been offered anything in exchange for his testimony. Griffin responded, "No, not at all."

Later in the penalty phase, Mosley called his mother to testify. She testified that her son was a good son; that Mosley's father was physically abusive; that Mosley attended high school, college, and a few police academies; that he had worked as an emergency technician; and that he had served in the Navy. After her initial testimony, she was excused, and several other witnesses testified. The next day, before the first witness was called, Mosley advised the trial court that he wished to recall his mother for further questioning. The State objected, arguing that any additional testimony would be cumulative. Because the trial court had allowed Mosley's mother to attend the proceedings, including the testimony of other witnesses after she testified, and because of the risk of cumulative testimony, the trial court required Mosley first to proffer her testimony outside the presence of the jury. During the proffer, Mosley asked his mother whether his father had sexually abused his sisters. Additionally, he asked whether his father had physically abused him and whether he had in fact been raised by his grandmother. The trial court allowed Mosley to elicit before the jury his mother's testimony regarding his physical abuse and being raised by his grandmother. But, explaining that the credibility of Mosley's father was not at issue, the trial court did not permit Mosley to ask questions about his father's sexual abuse of Mosley's sisters.

At the conclusion of the penalty phase, the jury unanimously found that the State had proven four aggravating factors: (1) the murder was especially heinous, atrocious, or cruel; (2) the murder was committed in a cold, calculated, and premeditated manner; (3) the victim was less than twelve years of age; and (4) Mosley was previously convicted of another capital felony —that is, Wilkes's murder. The jury unanimously found that the aggravating factors were sufficient to impose the death penalty and found no mitigating circumstances. And the jury unanimously found that the aggravating factors outweighed the mitigating circumstances.

Once the trial judge dismissed the jury, he offered Mosley counsel for his *Spencer* hearing. Mosley accepted, and the judge set the hearing for January 30, 2020. But on January 23, 2020, seven days before the *Spencer* hearing, Mosley filed a motion titled, "Unequivocal Demand to Immediately Represent Myself Pro Se."

When the *Spencer* hearing began, the prosecutor acknowledged to the trial court that defense "counsel has provided me a pleading that was filed on January 23rd, 2020 ... and this was a pro se pleading ***866** filed by Mr. Mosley, so I believe prior to addressing the pleadings that have been filed by [defense counsel] we need to address that request." The trial court responded, "Sure. That's fine. And I intend to do so." But then it directed its questions toward the "written motion [for a new penalty phase trial] alleging some 10 or 12 errors." Mosley's counsel asked for clarification:

> Counsel: "Your Honor, do you want me to go ahead with the Motion For New Penalty Phase argument?
>
> The Court: "Yes."
>
> Counsel: "Or do you want to address the pro se motion?"
>
> The Court: "No, no, no."

After hearing argument, the trial court denied the motion for a new penalty phase, then asked the parties, "Any reason why sentence should not now be imposed?" Mosley's counsel answered with argument in mitigation, noting testimony from Mosley's mother about the family's history of abuse. Mosley's counsel inquired whether the court required written sentencing memoranda. The court responded, "I think it was capably argued." The court then asked again, "So is there any reason the sentence should not now be imposed?" Mosley's counsel responded, "There is none, sir, unless you require the sentencing memorandums." The court again declined the memoranda.

The trial court ruled, "Having gone through all of this, the motion for new penalty phase hearing is denied. Mr. Mosley ... I hereby sentence you to death and remand you to the custody of the Sheriff .... Mr. Mosley, now let me address with you a written -- written document which I received this morning called unequivocal demand to immediately represent myself pro se. Do you intend to represent yourself on appeal?" Mosley responded, "That was supposed to be before this *Spencer* hearing." The trial court responded:

> If you had intended it to be -- happen beforehand there's no provision for you representing yourself under the present circumstances. I don't think there would have been any provision at this time anyway because we've gone through everything, but given the fact that I gave you the opportunity to represent yourself during the course of the trial and then you asked me to reappoint your attorneys which I've done I am not now going to reappoint you to handle the matter today.

The trial court again asked Mosley if he wanted to represent himself, and Mosley again responded, "I respectfully say I wanted to handle my *Spencer* hearing myself." When Mosley continued speaking, the court cut him off, saying, "No, no, no. We're past that, Mr. Mosley. Do you want me to appoint the Public Defender in Tallahassee or whomever to handle your appeal on this particular matter or do you want to handle your appeal yourself?" Mosley responded, "I have no control over it. [You've] already denied me the right to a *Faretta* so I have no comment on that because I wasn't allowed to represent myself and I wanted to and it was extremely important for me to represent myself to give the arguments that I wanted to give." The court moved on and appointed a public defender as Mosley's appellate counsel. Mosley's counsel then filed this appeal.

II

Of the issues Mosley raises on appeal, we find that one constitutes reversible error: the trial court's failure to address Mosley's motion to represent himself at his *Spencer* hearing. We take up that issue first, then explain why the other issues raised on appeal do not entitle Mosley to a new penalty phase.

*867 A

Under the Sixth Amendment to the U.S. Constitution, an accused has the "constitutional right to conduct his own defense." *Faretta*, 422 U.S. at 836, 95 S.Ct. 2525. We have said that a defendant's choice to invoke this right "must be honored out of 'that respect for the individual which is the lifeblood of the law.' " *Tennis v. State*, 997 So. 2d 375, 377-78 (Fla. 2008) (quoting *Faretta*, 422 U.S. at 834, 95 S.Ct. 2525).

Just as a defendant may waive the right to counsel, he or she may waive the right to go it alone. In both *Faretta* and *Tennis*, the defendant invoked his right to conduct his

own defense well in advance of trial. *Faretta*, 422 U.S. at 807, 95 S.Ct. 2525; *Tennis*, 997 So. 2d at 377. Relying on those precedents, the federal courts, this Court, and several Florida District Courts of Appeal have found that a request to represent oneself at trial can, in the trial court's exercise of sound discretion, be denied when it is untimely. *See United States v. Dunlap*, 577 F.2d 867, 869 (4th Cir. 1978) ("[O]nce trial has begun, it is within the trial court's discretion whether to allow the defendant to dismiss counsel and proceed pro se."); *McCray v. State*, 71 So. 3d 848, 870 (Fla. 2011) ("As other courts have recognized, a trial court's decisions on a defendant's belated request for self-representation after the trial begins is reviewed for an abuse of discretion."); *Davis v. State*, 162 So. 3d 326, 327 (Fla. 3d DCA 2015); *Thomas v. State*, 958 So. 2d 995, 996 (Fla. 5th DCA 2007). What counts as "untimely" is less settled. Certainly a motion made well in advance of trial is timely. One made on its eve, or certainly after trial has begun, makes it difficult for a trial court, without granting a continuance, to explain to the defendant the significant responsibilities that attend self-representation, and to provide the defendant adequate time to shoulder those responsibilities. A motion for self-representation that comes late is, in that sense, disruptive of orderly proceedings and may result in delay that is unfair to the State, victims, witnesses, and other parties having business before the court. A court may, in its discretion, give weight to those considerations in denying as untimely a motion for self-representation.

Subject to these considerations, and except in limited circumstances to which we will come shortly, once a defendant makes an unequivocal demand to represent himself, the trial court must conduct a *Faretta* inquiry to determine whether the defendant is knowingly and intelligently waiving his right to counsel. We have said that a trial court's failure to do so is per se reversible error. *McCray*, 71 So. 3d at 864; *Hardwick v. State*, 521 So. 2d 1071, 1074 (Fla. 1988) (explaining that once a defendant exercises his right to self-representation, it is "incumbent upon the court to determine whether the accused is knowingly and intelligently waiving his right to court-appointed counsel, and the court commits reversible error if it fails to do so"), *superseded on other grounds by Hooks v. State*, 286 So. 3d 163, 169 (Fla. 2019); *Tennis*, 997 So. 2d at 379 ("Under our clear precedent, and that of the district courts of appeal, the trial court's failure to hold a *Faretta* hearing in this case to determine whether Tennis could represent himself is per se reversible error."); *see State v. Young*, 626 So. 2d 655, 657 (Fla. 1993) (concluding that *Faretta* and Florida Rule of Criminal Procedure 3.111(d) [7] require reversal if the lower ***868** court does not conduct a proper *Faretta* inquiry); *Jones v. State*, 449 So. 2d 253, 258 (Fla. 1984) (instructing that "the trial court should forthwith proceed to a *Faretta* inquiry" once a defendant exercises his right to self-representation).

A court may deny a defendant's demand for self-representation without a *Faretta* inquiry if the demand is not made unequivocally. *See Hardwick*, 521 So. 2d at 1074 ("We note that the courts have long required that a request for self-representation be stated unequivocally."); *Chapman v. United States*, 553 F.2d 886, 892 (5th Cir. 1977) (requiring an unequivocal demand "because a decision to defend pro se may jeopardize a defendant's chances of receiving an effective defense, and because a pro se defendant cannot complain on appeal that his own defense amounted to a denial of effective assistance of counsel"). And a court may deny an unequivocal demand without a *Faretta* inquiry if, but only if, it finds (with or without regard to timeliness) the demand is designed to delay or disrupt proceedings. *See Young*, 626 So. 2d at 657 ("[A] trial judge is not compelled to allow a defendant to delay and continually frustrate his trial."); *Jones*, 449 So. 2d at 257 ("[N]either the exercise of the right to self-representation nor to appointed counsel may be used as a device to abuse the dignity of the court or to frustrate orderly proceedings.").

Here, the State is correct that Mosley's "Unequivocal Demand to Immediately Represent Myself Pro Se" was untimely, in that it was filed not just after trial had begun, but after it had concluded. It came a week before his *Spencer* hearing and sentencing. But notwithstanding the tumult that had characterized his prior relationship with his counsel and Mosley's vacillation in wanting to represent himself at other times during the proceedings, there was, as to the *Spencer* hearing, no basis in the record to doubt that Mosley wanted to represent himself. He never withdrew or equivocated about his motion, which the trial court had ample time to consider.

True, the determination we must make requires us to "consider[ ] the entire scope of the defendant's request, instead of focusing on one isolated statement," *Mosley*, 209 So. 3d at 1272, but Mosley's request about the *Spencer* hearing came at a time that allowed ample consideration by the trial court. It can be sorted from Mosley's other halting assertions of a desire to represent himself during the course of his case.

At the beginning of the *Spencer* hearing, Mosley's counsel and the State brought the motion to the trial court's attention. Given Mosley's unequivocal written request filed a week

before the hearing, we look to the record for the trial court's assessment of whether the motion ought to be denied as untimely. But the trial court made no such assessment. Nobody contends that consideration of the motion at that time would have disrupted the proceedings or required any delay in excess of the time it would have taken to hear argument on the motion, or to simply have explained that such argument was untimely. Giving no reason for its decision to do so, the court deferred consideration of the motion to a time when it would be moot. On those facts, we have no basis upon which to assess the trial court's exercise of discretion —to which we of course accord substantial deference where, unlike here, the trial court's reasoning is amenable to review. *See Grindstaff v. Coleman*, 681 F.2d 740, 742 (11th Cir. 1982) (declining to ***869** review a trial court's decision for abuse of discretion because "[t]he trial court in this case did not exercise discretion").

As we said in *Tennis*:

> We understand that in criminal cases, and especially in a death penalty case where the stakes could not be higher, judges may become frustrated over what they perceive to be efforts on the part of a defendant to frustrate or delay the proceedings. We also recognize that presiding over death penalty cases is a difficult and challenging responsibility for a trial judge. However, our cases make clear that when there is an unequivocal request for self-representation, a trial court is obligated to hold a *Faretta* hearing to determine if the request for self-representation is knowing and intelligent.

997 So. 2d at 380. That did not happen here. Under the circumstances presented in this case, this is error requiring reversal. *Hardwick*, 521 So. 2d at 1074; *Tennis*, 997 So. 2d at 379; *Young*, 626 So. 2d at 657. [8]

Mosley raises other issues with the way in which his *Spencer* hearing was conducted. But we do not reach those, as we find it is necessary to remand for a new hearing on this basis alone.

B

We do, however, address Mosley's allegations of error at his penalty phase and find that none requires reversal.

Mosley first argues the trial court abused its discretion by preventing cross-examination of Griffin about his motivations to testify at the penalty phase trial, [9] and by telling the jury there was no possible way Griffin could have his sentence reduced for testifying against Mosley. Mosley argues that the trial court's decision curtailed his Sixth Amendment right to confront the witnesses against him. *See Rodriguez v. State*, 753 So. 2d 29, 43 (Fla. 2000) (explaining that it is an "uncontroverted proposition that the Sixth Amendment right of confrontation applies to all three phases of the capital trial").

We find that the trial court permissibly exercised its discretion in determining the scope of Griffin's cross-examination. *See Patrick v. State*, 104 So. 3d 1046, 1057 (Fla. 2012) (reviewing a trial court's decision to limit cross-examination for abuse of discretion). While "[b]ias on the part of a prosecution witness is a valid point of inquiry in cross-examination ... the prospect of bias does not open the door to every question that might possibly develop the subject." *Breedlove v. State*, 580 So. 2d 605, 609 (Fla. 1991) (quoting *Hernandez v. State*, 360 So. 2d 39, 41 (Fla. 3d DCA 1978)); *see also Patrick*, 104 So. 3d at 1058 (concluding that the trial court's choice to limit questioning on an informant's motivations for testifying was not an abuse of discretion, even though the trial court knew the informant would potentially benefit from testifying). It is settled that "trial judges retain wide latitude ... to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, ***870** prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Moore v. State*, 701 So. 2d 545, 549 (Fla. 1997) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

Here, the trial court permissibly limited the scope of cross-examination on the basis of its determination that Griffin would not qualify for a reduction or suspension of his sentence on account of his penalty phase testimony, as such reduction or suspension requires substantial assistance in the "identification, arrest, or conviction" of an accomplice—none of which would be a result of his penalty phase testimony. § 921.186, Fla. Stat. (2019).

Second, we reject Mosley's argument that the trial court improperly excluded his mother's proffered testimony that his father had sexually abused two of his sisters. We review that decision for abuse of discretion. *Glover v. State*, 226 So. 3d 795, 806 (Fla. 2017); *Frances v. State*, 970 So. 2d 806, 813 (Fla. 2007). We find no such abuse, because the trial court reasonably concluded that Mosley's mother's proffered testimony did not establish that she had personal knowledge of the sexual abuse or how it affected Mosley.

Third, Mosley claims the trial court committed fundamental error by failing to instruct the jury that it must find beyond a reasonable doubt that the aggravating factors were sufficient to justify death and that the aggravating factors outweighed the mitigating factors. But that is not the law. The sufficiency and weight of aggravating factors in a capital case are not elements that must be determined by the jury beyond a reasonable doubt. *Rogers v. State*, 285 So. 3d 872, 885-86 (Fla. 2019).

Finally, Mosley contends that the trial court erred in refusing to consider his motion for an evidentiary hearing based on newly discovered evidence. But the trial court correctly denied the motion because Mosley was not authorized to file it himself while represented by counsel. *See Puglisi v. State*, 112 So. 3d 1196, 1206 n.14 (Fla. 2013) ("We have previously said that '[t]here is no constitutional right for hybrid representation at trial.' " (quoting *Mora v. State*, 814 So. 2d 322, 328 (Fla. 2002))); *Sheppard v. State*, 17 So. 3d 275, 279 (Fla. 2009) ("[A] defendant has no Sixth Amendment right to simultaneously proceed pro se and with legal representation."); *see also* Fla. R. Crim. P. 3.851(b)(6) ("A defendant who has been sentenced to death may not represent himself or herself in a capital postconviction proceeding in state court.").

III

We vacate Mosley's sentence of death and remand solely for a new hearing pursuant to *Spencer v. State*, 615 So. 2d 688 (Fla. 1993), and a new sentencing hearing.

It is so ordered.

CANADY, POLSTON, LABARGA, and GROSSHANS, JJ., concur.

MUÑIZ, C.J., concurs in part and dissents from the judgment with an opinion.

FRANCIS, J., did not participate.

MUÑIZ, C.J., concurring in part and dissenting from the judgment.

I agree with the majority that Mr. Mosley is not entitled to a new penalty phase trial. But I respectfully disagree with the majority's decision to vacate Mosley's death sentence and to remand for a new sentencing hearing. As the State argues, and as the majority itself acknowledges, Mosley's mid-stream request for self-representation at his *Spencer* hearing was ***871** untimely. Neither first principles nor our case law supports the conclusion that the trial court abused its discretion by denying that request. [10]

To begin, the majority and I proceed from a shared understanding that "the right to self-representation is not absolute." *Martinez v. Court of Appeal*, 528 U.S. 152, 161, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000). Relevant here, "a defendant may forfeit his self-representation right if he does not assert it 'in a timely manner.' " *Hill v. Curtin*, 792 F.3d 670, 677 (6th Cir. 2015) (quoting *Martinez*, 528 U.S. at 162, 120 S.Ct. 684). It follows that, when a trial court denies a self-representation request as untimely, there is no need for a *Faretta* hearing. After all, the purpose of such a hearing is to explain the pitfalls of proceeding without counsel and to ensure that the defendant's decision is voluntary and informed. That "concern is obviated if self-representation is denied for some other reason, such as untimeliness." *Hill*, 792 F.3d at 677.

The majority and I also agree that Mosley's request to represent himself at his *Spencer* hearing was untimely. While there are debates on the margins about how far in advance of trial a defendant must invoke self-representation, a request made after the commencement of meaningful trial proceedings is undisputedly untimely. *See* Wayne R. LaFave et al., *Criminal Procedure* § 11.5(d) (5th ed. 2009); *Wood v. Quarterman*, 491 F.3d 196, 202 (5th Cir. 2007) (pro se motion made after jury's guilty verdict but before sentencing was untimely). Here, Mosley's penalty phase do-over was well underway—indeed, almost complete—when he made the self-representation request at issue. A *Spencer* hearing is a distinct aspect of the penalty phase, but it is not an independent proceeding for purposes of determining whether a self-representation request is timely. The majority acknowledges this.

My common ground with the majority continues even to the next step in the analysis—we agree that the abuse of discretion standard applies to our review of a trial court's denial of an untimely request for self-representation. *See Horton v. Dugger*, 895 F.2d 714, 717 (11th Cir. 1990) ("Appellate courts routinely uphold the discretion of trial courts to deny as untimely requests made after 'meaningful trial proceedings' have begun." (quoting *United States v. Smith*, 780 F.2d 810, 811 (9th Cir. 1986))); *United States v. Lawrence*, 605 F.2d 1321, 1325 (4th Cir. 1979) ("[I]t is reasonable, and entirely compatible with the defendant's constitutional rights, to require that the right to self-representation be asserted at some time 'before meaningful trial proceedings have commenced,' and that thereafter its exercise rests within the sound discretion of the trial court." (quoting *Chapman v. United States*, 553 F.2d 886, 895 (5th Cir. 1977))); *accord United States v. Betancourt-Arretuche*, 933 F.2d 89, 96 (1st Cir. 1991) (same); *United States v. Oakey*, 853 F.2d 551, 553 (7th Cir. 1988) (same); *United States v. Cunningham*, 564 F. App'x 190, 194 (6th Cir. 2014) (same); *United States v. Estrada*, 25 F. App'x 814, 819-21 (10th Cir. 2002) (reviewing the district court's decision concerning an untimely request for self-representation for an abuse of discretion). *Cf. United States v. Bankoff*, 613 F.3d 358, 373 (3d Cir. 2010) ("[D]istrict courts have discretion to deny an untimely ***872** request to proceed pro se after weighing the 'prejudice to the legitimate interests of the defendant against the potential disruption of proceedings already in progress.' " (quoting *Buhl v. Cooksey*, 233 F. 3d 783, 797 n.16 (3d Cir. 2000))); *United States v. Stevens*, 83 F.3d 60, 66-67 (2d Cir. 1996) (same); *Moreno v. Estelle*, 717 F.2d 171, 176 (5th Cir. 1983) (same) (quoting *Fulford v. Maggio*, 692 F.2d 354, 362 (5th Cir. 1982), *rev'd on other grounds*, 462 U.S. 111, 103 S.Ct. 2261, 76 L.Ed.2d 794 (1983)); *United States v. Harlan*, 960 F.3d 1089, 1093-94 (8th Cir. 2020) (same) (quoting *United States v. Wesley*, 798 F.2d 1155, 1155-56 (8th Cir. 1986)).

Where the majority and I part company is in our application of the abuse of discretion standard in this case. The majority suggests that the trial court reversibly erred by failing explicitly to declare Mosley's self-representation request untimely. Majority op. at 868 ("Nobody contends that consideration of the motion at that time would have disrupted the proceedings or required any delay in excess of the time it would have taken to hear argument on the motion, or to simply have explained that such argument was untimely."). In my view, this fails to consider the entire record and misapplies the abuse of discretion standard.

It bears emphasis that "the U.S. Supreme Court has never held that a court must inquire into the basis of a defendant's request before denying it as untimely." *Hill*, 792 F.3d at 678. In other words, a trial court can deny an untimely self-representation request without first engaging in a colloquy comparable to a *Faretta* hearing. The Fifth District Court of Appeal has even said, albeit in dicta, that "a defendant's request for self-representation may be summarily denied if not timely asserted." *Laramee v. State*, 90 So. 3d 341, 345 (Fla. 5th DCA 2012).

Because the trial court here was not obligated to follow any set process before ruling on Mosley's untimely self-representation request, we can find an abuse of discretion only "if no reasonable person would arrive at the same conclusion as that of the trial court." *Calloway v. State*, 210 So. 3d 1160, 1178 (Fla. 2017). In light of the entire record, I believe the trial court's decision to deny Mosley's untimely request was eminently reasonable and far from an abuse of discretion.

Before his penalty phase proceeding, during jury selection, and again on the first day of the penalty phase trial, Mosley vacillated between wanting appointed counsel and choosing to represent himself. This required the trial court repeatedly to appoint and unappoint counsel for Mosley. Undoubtedly, the counsel appointed to represent Mosley at his *Spencer* hearing spent time preparing for that hearing, only to have Mosley change his mind yet again. It was in this context that the trial court explained to Mosley: "[G]iven the fact that I gave you the opportunity to represent yourself during the course of the trial and then you asked me to reappoint your attorneys which I've done I am not now going to reappoint you to handle the matter today." I am unaware of any precedent that would have *required* the trial court here to ignore the disorder inherent in Mosley's untimely request and the accompanying waste of public resources. While the majority faults the trial court for waiting until the end of the *Spencer* hearing to explain its decision to address Mosley's self-representation request, I fail to see how the timing of the trial court's explanation matters.

Finally, I have been unable to locate any authority that supports, much less dictates, the majority's decision. The three cases that the majority cites to bolster its conclusion are inapposite. In ***873** *State v. Young*, 626 So. 2d 655 (Fla. 1993), our Court reversed a conviction because the trial court did not conduct an adequate *Faretta* hearing before requiring

the defendant to represent himself. In *Hardwick v. State*, 521 So. 2d 1071 (Fla. 1988), we took up the adequacy of a *Faretta* hearing in a case that included no mention of timeliness or a trial court's discretion over untimely self-representation requests. Similarly, the issue of timeliness did not come up in *Tennis v. State*, 997 So. 2d 375 (Fla. 2008).

The majority's decision improves our Court's case law to the extent it clarifies that trial courts have the discretion to deny untimely self-representation requests at the threshold, without first conducting a *Faretta* hearing. That said, I believe that the majority undermines that progress by misapplying the abuse of discretion standard here. I would affirm Mosley's death sentence.

All Citations

349 So.3d 861, 47 Fla. L. Weekly S241

Footnotes

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

2 "Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment .... The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable." § 921.141(1), Fla. Stat. (2004); *see also Engle v. State*, 438 So. 2d 803, 813 (Fla. 1983) (identifying the "three phases of a capital case in the trial court" as "1) The trial in which the guilt or innocence of the defendant is determined; 2) the penalty phase before the jury; and 3) the final sentencing process by the judge").

3 "Any fact '[exposing] the defendant to a greater punishment than that authorized by the jury's guilty verdict' ... must be submitted to a jury." *Hurst v. Florida*, 577 U.S. 92, 97, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016) (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 494, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000)). We initially interpreted *Hurst v. Florida* to mean that in order for a court to impose a death sentence, the jury must unanimously find "the existence of each aggravating factor," "that the aggravating factors are sufficient," and "that the aggravating factors outweigh the mitigating circumstances." *Hurst*, 202 So. 3d at 44. Since the trial judge imposed Mosley's death sentence after "independently weighing the aggravating factors and mitigating circumstances," we vacated Mosley's initial death sentence and remanded for a new penalty phase. *Mosley*, 209 So. 3d at 1284. But later, we receded from our holding that entitled Mosley to a new penalty phase. *State v. Poole*, 297 So. 3d 487, 503-04 (Fla. 2020) (holding that the question whether aggravating factors outweigh the mitigating circumstances "need not be submitted to a jury" because it is "not an element"); *see also Mosley*, 209 So. 3d at 1285 (Canady, J., concurring in part and dissenting in part) ("Based on the jury's verdict establishing the existence of an aggravator, I would conclude that there was no [*Hurst*] violation.... *Hurst v. Florida* ... only requires that the jury find the existence of an aggravator that renders a defendant eligible to be considered for death.").

4 *Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), established that the Sixth Amendment to the U.S. Constitution guarantees a defendant the right to conduct his own defense so long as he knowingly and intelligently chooses to do so. Once an accused makes an unequivocal demand to proceed pro se, the court must conduct an inquiry to determine whether the accused is making a competent and intelligent choice, with knowledge of the "dangers and disadvantages of self-representation." *Id.* As the Court said in *Faretta*:

> It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts. But where the defendant will not voluntarily accept representation

> by counsel, the potential advantage of a lawyer's training and experience can be realized, if at all, only imperfectly. To force a lawyer on a defendant can only lead him to believe that the law contrives against him.

Id. at 834, 95 S.Ct. 2525.

5 The American Bar Association (ABA) Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases explains the function of a mitigation specialist in its commentary to Guideline 4.1: "A mitigation specialist is also an indispensable member of the defense team throughout all capital proceedings. Mitigation specialists possess clinical and information-gathering skills and training that most lawyers simply do not have. They have the time and the ability to elicit sensitive, embarrassing and often humiliating evidence (*e.g.*, family sexual abuse) that the defendant may have never disclosed." *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (rev. ed. 2003) (footnote omitted).

6 While Mosley's motion was pending, his counsel moved to disqualify the judge, Judge McCallum, on the grounds that her husband had worked on the case as an investigator. Judge McCallum granted the motion, and Judge Weatherby took over the case.

7 Fla. R. Crim. P. 3.111(d)(2) ("A defendant shall not be considered to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry has been made into both the accused's comprehension of that offer and the accused's capacity to make a knowing and intelligent waiver.").

8 The dissent says that the trial court's denial of Mosley's request "was eminently reasonable and far from an abuse of discretion." Opinion concurring in part and dissenting from the judgment at 872. To be clear, our decision today does not mean that a trial court could not have reasonably considered and denied Mosley's request, but rather, that the court in this case abused its discretion when it declined to consider the request until after it had become moot—and for no good, or even apparent, reason.

9 For purposes of this appeal, we consider Griffin's testimony only at the penalty phase.

10 Mosley also raises an unpreserved claim challenging the trial court's failure to recess the *Spencer* hearing before orally imposing sentence. Mosley does not allege that the trial court's procedure violated any constitutional or statutory requirement, nor does he argue that the trial court committed fundamental error. This claim is therefore also without merit.

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APPENDIX B

2022 WL 6673276
Only the Westlaw citation is currently available.
Supreme Court of Florida.

John F. MOSLEY, Appellant(s)
v.
STATE of Florida, Appellee(s)

CASE NO.: SC20-195
|
OCTOBER 11, 2022

Lower Tribunal No(s).: 162004CF006675AXXXMA

Opinion

***1** Appellant's Motion for Rehearing is hereby denied.

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

FRANCIS, J., did not participate.

All Citations

Not Reported in So. Rptr., 2022 WL 6673276

End of Document

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.

CASE NO.: 16-2004-CF-06675-AXXX

DIVISION: CR-B

STATE OF FLORIDA

v.

JOHN FRANKLIN MOSLEY, JR.,
Defendant.
_____/

SENTENCING ORDER

On November 18, 2005, a jury found Defendant guilty of two counts of first degree murder for the deaths of Lynda Wilkes and her and Defendant's son, Jay-Quan Mosley. The jury recommended a life sentence for Wilkes's murder and by a vote of 8 to 4, the jury recommended the Court impose a death sentence for Jay-Quan's murder. On August 6, 2009, the Florida Supreme Court affirmed Defendant's convictions for first degree murder and his death sentence for the murder of Jay-Quan Mosley.

On January 14, 2014, the Court denied Defendant's postconviction motion. The Florida Supreme Court affirmed this Court's denial of Defendant's guilt phase claims and granted Defendant a new penalty phase based on the United States Supreme Court's decision in Hurst v. Florida, 136 S. Ct. 616 (2016), and its own decision in Hurst v. State, 202 So. 3d 40 (Fla. 2016).

On December 2-9, 2019, the Court conducted a new penalty phase at which the State and Defendant presented evidence. Assistant State Attorneys Mark Caliel and Lara

Mattina represented the State. Defendant represented himself with James Hernandez, Esq. and Patrick Korody, Esq. as stand-by counsel. The State presented the testimony of:

- Lieutenant Mark Romano, Jacksonville Sheriff's Office Lead Detective on Defendant's case;
- Bernard Griffin, witness and co-defendant;
- Lieutenant Craig Waldrup, Jacksonville Sheriff's Office Detective on Defendant's case;
- Wesley Owens, attorney who worked on Department of Revenue cases, including Lynda Wilkes's 2004 child support and paternity case relating to Jay-Quan Mosley;
- Dr. Margarita Arruza, Chief Medical Examiner on Defendant's case (testimony read from initial trial);
- Dr. Randell Alexander, Division Chief for the Division of Child Protection and Forensic Pediatrics;
- Marquita Wilkes, victim's daughter; and
- Nakita Wilkes, victim's daughter.

Defendant presented the testimony of:

- Barbara McKinney Mosley, Defendant's mother;
- Carolyn Mosley, Defendant's wife;
- Amber Mosley, Defendant's daughter;
- Lieutenant Mark Romano, Jacksonville Sheriff's Office Lead Detective on Defendant's case;
- Alexis Mosley, Defendant's daughter;

- Joel Jackson, Defendant's friend;
- Marven Baker, Defendant's friend;
- Jeff Pace, Defendant's Naval Reserves recruiter and friend
- Eric Roper, Commander Naval Reserves;
- Dr. Stephen Bloomfield, forensic psychologist; and
- Dr. Steven Gold, psychologist.

Following the testimony and other evidence presented during the proceedings, the jury returned a unanimous recommendation that the Court sentence Defendant to death for Jay-Quan Mosley's death. Neither party presented witnesses at a Spencer[1] hearing on January 30, 2020.

The facts of the case are set forth here. This summary is excerpted from the opinion of the Florida Supreme Court issued on Defendant's direct appeal.

> The murders of the two victims occurred on April 22, 2004, in Jacksonville, Florida. Although Mosley was married, he had a number of romantic relationships with other women in the Jacksonville area, including Lynda Wilkes. Because Wilkes was receiving Medicaid benefits for their son, Jay-Quan, she was required to participate in a proceeding to establish paternity. After Mosley failed to answer the petition to determine paternity, a default judgment was entered against him, and he was ordered to pay $35 a week in child support, with an additional $5 a week for retroactive child support. On March 12, 2004, Mosley filed a motion to have the final judgment set aside. A hearing on this motion was set for May 3, 2004.
>
> Around this time period, Mosley, who was thirty-nine, met Bernard Griffin, who was fifteen, and asked Griffin if he would be willing to kill a baby. During his attempts to convince Griffin to kill the child, Mosley pointed out Wilkes's house and gave him a sketch of the house's layout, but Griffin refused.
>
> On April 21, 2004, Mosley went to see Wilkes at her house in Jacksonville and asked Wilkes to meet him the next day at J.C. Penney so he could take

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

Jay-Quan shopping. On April 22, 2004, Wilkes took her other children to school. That afternoon, she and Jay-Quan met Mosley at J.C. Penney, and together they left in Mosley's vehicle, a burgundy Suburban. Mosley picked up Griffin, and eventually drove to a deserted dirt road in another part of Jacksonville. Mosley asked Wilkes to get out and pretended to look for something in the seat. He then turned and strangled Wilkes, who futilely attempted to defend herself. After she stopped moving, Mosley took a plastic shopping bag from the back of the vehicle, put it over Wilkes's head, and put her body in the back of the Suburban. Mosley put a crying Jay-Quan in another garbage bag, tied it, and also placed it in the back of his vehicle. He used a blue tarp to cover Wilkes's body and the bag with the baby in it. Initially, Griffin heard the baby crying, but after a while, the baby stopped. Mosley dropped Griffin off and went to work.

Later that evening, while he was still at work, another of Mosley's girlfriends, Jamila Jones, called and asked him for some gas money. [Jones knew Mosley as Jay and thought he lived alone.] He agreed that he would give her some money before she needed to leave for work the next day. That evening, Mosley clocked out of work at 11:01, and sometime after that picked up Griffin again in his Suburban. Griffin noticed that the vehicle smelled bad. Mosley drove out of Jacksonville towards Waldo, which was approximately sixty miles from Jacksonville. A few miles south of Waldo, Mosley turned and went down a number of dirt roads, eventually finding a suitable spot to dispose of Wilkes's body. After Griffin refused to participate, Mosley pulled Wilkes to a clearing by himself, poured lighter fluid over her body, and then tossed a burning rag on her body. As the body began to burn, Mosley and Griffin ran to the vehicle and left. Mosley then drove approximately forty miles further south to Ocala and dumped the trash bag with the baby in a dumpster behind a Winn-Dixie store. He also threw his shoes and gloves into the dumpster. On the way back to Jacksonville, Mosley gave Griffin $100.

Once they arrived in Jacksonville, it was daylight. After asking Griffin to give him back $20, Mosley stopped by Jones's apartment at approximately six that morning and gave her $20. Jones asked Mosley why he did not answer his cell phone when she tried to call him the previous evening, and Mosley replied that he was "doing something for his mom." Although Mosley was supposed to be back at work at six that same morning, he called in and said that he would be late because he did not get any sleep that night. He finally arrived at work at 12:49 p.m. on April 23.

The victim's family knew something was wrong when Wilkes failed to pick up her children from school on the afternoon of April 22. The family called the police, reported Wilkes as missing, and began a search for her and Jay-Quan immediately. During the evening hours of April 22, they found her car abandoned at the J.C. Penney's parking lot.

On the morning after her disappearance (April 23), one of Wilkes's daughters (Naquita) and a family friend saw Mosley driving his vehicle and caught up to him while he was stopped at a traffic light. They told Mosley that Wilkes was missing. Initially, Mosley denied seeing her. After Naquita asked Mosley whether he failed to show up at J.C. Penney the previous day, Mosley admitted that he saw Wilkes the day before but claimed that he had dropped her off at her car. They asked Mosley if he could pull over, but he refused and drove away.

On Saturday, April 24, Mosley changed all four tires on the Suburban, despite the fact that the tires could be driven for a few more thousand miles. Mosley was adamant that the mechanic load his old tires into his vehicle.

During the investigation into Wilkes's disappearance, the police attempted to contact Mosley numerous times, trying to arrange for an in-person interview. Mosley never met with any police officer until after he was taken into custody, but he did talk to numerous officers over the phone. He claimed that he and Wilkes met at the J.C. Penney's parking lot on April 22 and left to see some nearby houses that Wilkes was considering renting. He further claimed that he dropped her off back at her car around one that afternoon.

Days after the murder, after seeing news reports about the missing woman and baby, Griffin told his mother that he knew something about the case. He then talked to the police and eventually led police to the locations where Mosley killed Wilkes, where he burned her remains, and where he dumped the baby. Griffin was subsequently convicted of two counts of being an accessory after the fact for his involvement in the murders.

Based on Griffin's assistance, the police were able to recover Wilkes's remains, which were badly burned. Wilkes's watch, which was found with the burned body, stopped at 2:29. [There is no indication whether this was a.m. or p.m.] Mosley's cellular phone records established that at 2:24 a.m., on April 23, an outgoing call was made from Mosley's cellular phone, and the cellular antenna used for this call was close to where Wilkes's body was found. Despite a diligent search for the baby's body, the baby's body was never recovered.

Wilkes's DNA was found on a carpet sample from the Suburban. The medical examiner testified that after a person was strangled to death, the body could exude pinkish blood from the nose and mouth.

After Mosley was arrested, he wrote Jones a letter, asking her to tell the police that he was alone when he came to her house on April 23 at 6:08

> a.m. He also told her, "It is legal and okay to change your statement in court if you let the jury know the police pressured and coerced you to say something before they took the statement and during the statement." Mosley also talked to his wife, Carolyn Mosley, asking her to "remember" that his mother stayed over that night and that he came home from work that night at 11:30. He told his wife that he needed her, their daughters, and his mother to write notarized statements that he arrived home that night at 11:30 and was there all night.
>
> During his defense at trial, Mosley presented evidence through his wife and daughters that he was at home the night that Griffin claimed they disposed of the bodies. Mosley's doctor also testified that he was treating Mosley for some injuries sustained in a car accident. While the doctor discussed Mosley's injuries in depth, he also admitted that the injuries would not have made it impossible for Mosley to lift a body. The jury ultimately found Mosley guilty of two counts of first-degree murder.

Mosley v. State, 46 So. 3d 510, 514-16 (Fla. 2009).

AGGRAVATING FACTORS

It is the State's burden "in the sentencing portion of a capital felony trial to prove every aggravating circumstance beyond a reasonable doubt." Clark v. State, 443 So. 2d 973, 976 (Fla. 1983); see Johnson v. State, 969 So. 3d 938, 956-57 (Fla. 2007); State v. Dixon, 283 So. 2d 1, 9 (Fla. 1973). A court will consider only those aggravating factors set out in the statute. See § 921.141(6), Fla. Stat. (2019); Zack v. State, 911 So. 2d 1190, 1208 (Fla. 2005). "The jury must determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor . . . ." § 921.141(2)(a), Fla. Stat. (2019).

The State argued five aggravating factors pursuant to the statute: (1) Defendant was previously convicted of another capital felony; (2) Defendant murdered Jay-Quan Mosley for financial gain; (3) Defendant murdered Jay-Quan Mosley in an especially heinous, atrocious, or cruel manner; (4) Defendant murdered Jay-Quan Mosley in a cold,

calculated, and premeditated manner, without any pretense of moral or legal justification; and (5) Jay-Quan Mosley was a person less than twelve years of age.

The jury unanimously found the State proved four of the aggravating factors beyond a reasonable doubt. The jury, however, rejected one proposed aggravating factor by not finding Defendant committed the murder for financial gain.

Defendant was previously convicted of another capital felony.

On November 18, 2005, following the guilt phase of Defendant's trial, the jury returned a verdict of first degree murder for the death of Lynda Wilkes. A prior violent felony offense is a strong aggravating factor; one of the "most weighty." Bolin v. State, 117 So. 3d 728, 742 (Fla. 2013). The State proved this factor beyond a reasonable doubt. The Court agrees with the jury's conclusion and gives this aggravating factor great weight in determining the appropriate sentence to impose.

Defendant murdered Jay-Quan Mosley in an especially heinous, atrocious, or cruel manner.

Bernard Griffin testified at the new penalty phase proceeding that he was there when Defendant murdered Jay-Quan. According to Griffin, Defendant killed Lynda Wilkes then placed Jay-Quan in a black garbage bag. Griffin recalled Jay-Quan was alive and crying when Defendant put Jay-Quan in the garbage bag. Griffin stated Defendant tied the bag closed and placed it in the back of the SUV. Griffin testified that as he and Defendant drove from the scene, Jay-Quan fell silent and stopped moving inside the bag.

Dr. Randell Alexander, a child abuse pediatrician, testified at the penalty phase. Dr. Alexander's involvement with the case was limited to reviewing transcripts of witnesses in previous court proceedings. Based on his experience and knowledge of the case, Dr. Alexander testified that based on Griffin's testimony Jay-Quan was struggling

to escape the bag. According to the doctor, a ten-month-old child would not have the strength or dexterity to untie or rip through the bag and would experience pain and fear while suffocating to death.

The heinous, atrocious, or cruel aggravator is appropriate when the murder is "conscienceless or pitiless and unnecessarily torturous to the victim." Hartley v. State, 686 So. 2d 1316, 1323 (Fla. 1996). The State proved this aggravating factor beyond a reasonable doubt with the testimony from Griffin and Dr. Alexander. Putting ten-month-old Jay-Quan in a garbage bag while Jay Quan was alive, then tying the bag closed so Jay-Quan would suffocate to death was especially heinous, atrocious, or cruel. The Court agrees with the jury's conclusion and gives this aggravating factor great weight in determining the appropriate sentence to impose.

Defendant murdered Jay-Quan Mosley in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification.

Griffin testified that approximately two to three weeks before Jay-Quan's murder, Defendant approached Griffin about killing a baby. According to Griffin, Defendant offered Griffin money to kill the baby and showed Griffin directions to Wilkes's home as well as a diagram of Wilkes's home. Griffin stated that on the day of the murder, Defendant drove to a secluded place with Wilkes, Jay-Quan, and Griffin in the SUV. Griffin testified Defendant stopped the car and had Wilkes get out of the SUV while Defendant feigned looking for something under the front passenger seat where Wilkes had been sitting. Defendant then attacked Wilkes who dropped Jay-Quan to the ground.

To prove this aggravating factor, the State must show:

> (1) the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); (2) that the defendant had a careful plan or pre-arranged design to commit murder

> before the fatal incident (calculated); (3) that the defendant exhibited heightened premeditation (premeditated) and (4) that the defendant had no pretense of moral or legal justification.

Hall v. State, 107 So. 3d 262, 277 (Fla. 2012) (quotations omitted).

The evidence indeed showed Defendant was cool and calm when he murdered Jay-Quan. Defendant had a careful plan or pre-arranged design when weeks before the murders, he offered Griffin money to kill Jay-Quan. Moreover, the map to and the diagram of Wilkes's home illustrates a prearranged design. This evidence also shows Defendant had a heightened premeditation to kill Jay-Quan. Finally, Defendant offered no justification for killing Jay-Quan. The Court agrees with the jury's conclusion and assigns great weight to this aggravating factor in determining the appropriate sentence to impose.

Jay-Quan Mosley was a person less than twelve years of age.

At the penalty phase, the State presented Jay-Quan's birth certificate (State's Exhibit 78) to show Jay-Quan was approximately ten months old when Defendant murdered him. The Court agrees with the jury's conclusion and assigns great weight to this aggravating factor in determining the appropriate sentence to impose.

SUFFICIENCY OF THE AGGRAVATING FACTORS

A jury must unanimously find sufficient aggravating factors exist to impose a death sentence. § 921.141(2)(b)2a, Fla. Stat. (2019). Here, the jury unanimously found the aggravating factors were sufficient to warrant sentencing Defendant to death.

MITIGATING CIRCUMSTANCES

A mitigating circumstance is "any aspect of a defendant's character or record and any of the circumstances of the offense that reasonably may serve as a basis for imposing

a sentence less than death." Campbell v. State, 571 So. 2d 415, 419 n.4 (Fla. 1990) receded from on other grounds, Trease v State, 768 So. 2d 1050 (Fla. 2000). Unlike the state's burden to prove aggravating circumstances beyond a reasonable doubt, the defendant need only establish mitigating circumstances by the greater weight of the evidence. Ford v. State, 802 So. 2d 1121, 1133 (Fla. 2001) (citation omitted).

Defendant presented evidence of mitigation pursuant to only section 941.121(7)(h), Florida Statutes (2019), which includes factors in the defendant's background that would mitigate against a death sentence. This "catch all" statutory mitigating circumstance affords the defense the opportunity to establish additional mitigating circumstances not contemplated by the statute but that apply to the individual defendant. In an abundance of fairness, the Court has reviewed each remaining statutory mitigating circumstance and finds there is no evidence to support mitigation in these.

Defendant was emotionally neglected as a child by his caregiver.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Defendant presented multiple witnesses who testified Defendant's grandmother raised him, his mother was absent, and his father did not play an active role in his life other than to physically and emotionally abuse him. Dr. Gold, a trauma expert, testified he and Defendant talked about the ways Defendant's grandmother abused him. Defendant has established this mitigating circumstance, and the Court gives it moderate weight in determining Defendant's sentence.

Defendant was abandoned by his father.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds multiple witnesses testified Defendant's father

abandoned Defendant. Defendant has established this mitigating circumstance, and the Court gives it slight weight in determining Defendant's sentence.

Defendant was physically abused as a child by his father.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Defendant's mother and childhood friends testified Defendant's father was physically abusive. Defendant has established this mitigating circumstance, and the Court gives it moderate weight in determining Defendant's sentence.

Defendant grew up in a dysfunctional family environment.

The jury did not find evidence to support this mitigating circumstance. The Court has already addressed this circumstance in discussing previous mitigating circumstances and finding Defendant's grandmother and father were abusive while his mother was absent. The Court gives no weight to this mitigating circumstance in determining Defendant's sentence.

Defendant honorably served his country as a member of the United States Naval Reserve.

Two members of the jury found this mitigating circumstance exists, ten did not. After reviewing the record, the Court finds Defendant has proven this mitigating circumstance through the testimony of his recruiter, his wife, and daughters. The Court gives it slight weight in determining Defendant's sentence.

Defendant has great love and concern for his daughters.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Defendant's two daughters testified Defendant is a loving and active participant in their lives who continues to advise them. Defendant has

established this mitigating circumstance, and the Court gives this circumstance slight weight in determining Defendant's sentence.

Defendant graduated from high school.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Defendant presented witnesses who testified Defendant graduated from high school. The Court gives this circumstance minimal weight in determining Defendant's sentence.

Defendant was affected by seeing physical and/or mental abuse at an early age.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Defendant has not provided evidence to support this mitigating circumstance insofar as it pertains to others. The Court has addressed this issue in its discussion of a previous mitigating circumstance that Defendant's father and grandmother physically and emotionally abused Defendant and assigns it no weight in determining Defendant's sentence.

Defendant has the love and support of his family members.

One member of the jury found there was evidence to support this mitigating circumstance, eleven did not. As stated in the Court's review of other mitigating circumstances, Defendant has established this mitigating circumstance and gives it slight weight in determining Defendant's sentence.

Defendant was a good parent to his daughters Amber and Alexis.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Defendant presented evidence that he was a good parent to his daughters. Amber testified she had a great childhood and had a close

relationship with Defendant. According to Amber, Defendant participated in her life through his involvement in the parent-teacher association (PTA) at her elementary school and attendance at her school field trips. She also testified he influenced her goals and gives her advice. Alexis testified Defendant is a great father who is supportive and protective. She, too, said she had a good childhood, and Defendant has had a positive influence on her life including on her decision to join the Naval Reserves, which Defendant has been a member of. Defendant has established this mitigating circumstance and gives it slight weight in determining Defendant's sentence.

Defendant was a good and respectful son to his mother, grandmother, and other family members.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Defendant presented evidence showing he was respectful to his mother, daughters, and wife. He did not present evidence to show he was respectful to his grandmother. Consequently, Defendant established this mitigating circumstance only in part and gives this circumstance slight weight in determining Defendant's sentence.

Defendant was a good friend to many.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Defendant presented three witnesses who consider themselves to be Defendant's friends. Joel Jackson testified he and Defendant were childhood friends, and Defendant is loving, kind, and motivational.[2] Jackson stated Defendant had a major impact on his life. Marven Baker grew up in the same neighborhood as Defendant. According to Baker, Defendant is kindhearted and a good

[2] There was also testimony that Jackson is Defendant's brother.

friend. Jeff Pace stated he recruited Defendant for the Naval Reserves, and they became friends. Pace testified Defendant was a groomsmen at Pace's wedding. He recounted that when he and his wife moved to a new apartment, Defendant helped Pace load up the moving truck. Defendant established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant was never disciplined or reprimanded for performing his duties in the Naval Reserve.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds no evidence showing Defendant was ever disciplined or reprimanded while in the Naval Reserve. Defendant established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant successfully completed an extended program provided by the Florida Junior College and graduated with an Emergency Medical Care (EMC) certificate of completion.

The jury did not find evidence to support this mitigating circumstance. The record shows Defendant never worked as an emergency medical technician (EMT); however, Defendant's mother testified Defendant was certified as an EMT. Defendant established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant maintained steady employment throughout his adult life.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds no evidence to show Defendant maintained steady employment throughout his adult life. Defendant has not established this mitigating circumstance, and the Court assigns it no weight in determining Defendant's sentence.

Defendant was vice-president of programs for the PTA at Twin Lakes Elementary School and participated in PTA activities on the local and state level.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds evidence Defendant served on the PTA at his daughter Amber's elementary school. Defendant did not present evidence that he participated in PTA activities at the state level. The Court finds Defendant established this mitigating circumstance in part and gives this circumstance slight weight in determining Defendant's sentence.

Defendant volunteered as a Recreational Coordinator for the Tenant Advisory Council.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Carolyn Mosley confirmed Defendant did volunteer work for the Tenant Advisory Council. Defendant established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant successfully completed an extensive program and received a diploma certificate from the Division of State Fire Marshal (Volunteer Basic Course).

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Carolyn Mosley confirmed Defendant received a certificate of competency from the State Fire Marshall, which the Court will construe as a "diploma." Defendant established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant was a volunteer fireman.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Carolyn Mosley testified Defendant volunteered as

a firefighter. Defendant established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant successfully completed the Certified Nursing Assistant Program, Department of Health, State of Florida.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Defendant has not established this mitigating circumstance, and the Court assigns it no weight in determining Defendant's sentence.

Defendant was a mentor to Derrale Lee and took an interest in his well-being.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Defendant presented evidence showing he took an interest in keeping Derrale Lee out of trouble. Lee lived in a high crime area and spent time at Defendant's home. According to Carolyn Mosley, Lee's mother appreciated Defendant being a father figure to her son. Defendant's daughter Alexis testified she considers Lee to be a brother. Defendant established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant's psychological profile indicates he has the potential to be a productive inmate.

One member of the jury found there was evidence to support this mitigating circumstance, eleven did not. After reviewing the record, the Court finds Dr. Bloomfield evaluated Defendant for this proceeding and determined Defendant could have a positive impact on other inmates if the Court imposes a life sentence. Defendant established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant successfully completed law enforcement training.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Defendant presented evidence that he attended the Jacksonville, Tampa, and Lake City police academies. Carolyn testified she attended Defendant's graduation from the Lake City Police Academy. Defendant has established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant coached neighborhood youth in sports and recreation.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Amber Mosley testified she vaguely remembered Defendant coached Pop Warner football. Defendant established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant encouraged others to remain in school and complete their education.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Amber and Alexis Mosley testified Defendant encouraged them academically. According to Amber, Defendant was an influence on her as she achieved multiple college degrees. Alexis testified Defendant was instrumental in her achieving two college degrees. Defendant established this mitigating circumstance, and the Court gives it slight weight in determining Defendant's sentence.

Defendant helped his daughters with their school work while growing up. Defendant's daughters were in the gifted program in high school.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Carolyn Mosley testified Defendant helped their daughters with their schoolwork. Amber Mosley testified she was a "gifted student" in

high school. There was no evidence that Alexis Mosley was in a gifted program in high school. Defendant established this mitigating circumstance in part, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant still gives "life advice and counsel" to his wife and two daughters even though he is in prison.

Two members of the jury found there was evidence to support this mitigating circumstance, ten did not. After reviewing the record, the Court finds Amber Mosley and Alexis Mosley testified Defendant gives them advice while he is incarcerated. Carolyn Mosley testified she and Defendant continue to have a relationship, and he is an asset to her life. Defendant established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant's daughter Alexis went into the U.S. Naval Reserves upon the advice of her father.

The jury did not find evidence to support this mitigating circumstance. After reviewing the record, the Court finds Carolyn Mosley testified Defendant inspired Alexis Mosley to join the Naval Reserves. Defendant established this mitigating circumstance, and the Court assigns it slight weight in determining Defendant's sentence.

Defendant's daughter Amber became a registered nurse.

The jury did not find evidence to support this mitigating circumstance. The Court finds this is not a mitigating circumstance and assigns no weight to it.

Defendant, at age ten, experienced the trauma of knowing his maternal grandmother was killed by his maternal step-grandfather.

Two members of the jury found there was evidence to support this mitigating circumstance, ten did not. After reviewing the record, the Court finds Defendant's mother, Barbara McKinney Mosley, testified Defendant's step-grandfather murdered

Defendant's grandmother. Defendant established this mitigating circumstance, and the Court assigns it moderate weight in determining Defendant's sentence.

WHETHER THE AGGRAVATING FACTORS OUTWEIGH THE MITIGATING CIRCUMSTANCES

A jury must unanimously find the proven aggravating factors outweigh the mitigating circumstances found to exist. § 921.141, Fla. Stat. (2019); see Hurst v. State, 202 So. 3d 40, 57 (Fla. 2016). Here, the jury unanimously found the aggravating factors outweighed the mitigating circumstances. Although the Court through its own review of the record has found certain mitigating circumstances exist that the jury did not find to exist, the Court concludes that the aggravating factors that exist outweigh the mitigating circumstances that exist.

CONCLUSION

The Court has considered the aggravating factors and mitigating circumstances in this case. Understanding that this is not a quantitative comparison, but one which requires qualitative analysis, the Court has assigned an appropriate weight to each aggravating and mitigating circumstance. The Court finds the jury's recommendation consistent with its verdict and based on the evidence presented at the penalty phase, was well-reasoned. In determining the appropriate sentence, the Court cannot focus solely on the consequences of Defendant's action, Jay-Quan Mosley's murder. The Court must also consider Defendant's intent as to each action he took during the crime.

Defendant set out to murder Jay-Quan. He solicited Bernard Griffin to kill Jay-Quan and provided Griffin with a map to and diagram of Lynda Wilkes's home. When Griffin refused to murder a baby, Defendant killed Jay-Quan.

The Court gives great weight to the jury's recommendation to impose the death penalty and wholly agrees with the jury's recommendation based on an assessment of the aggravating factors and mitigating circumstances presented. The Court finds the aggravating factors heavily outweigh the mitigating circumstances, and death is the proper penalty for the murder of Jay-Quan Mosley.

John Franklin Mosley, Jr., you have not only forfeited your right to live among us, but under the laws of the State of Florida, you have forfeited your right to live at all.

ORDERED AND ADJUDGED that for the death of Jay-Quan Mosley, you, John Franklin Mosley, Jr., remain in the custody of the Duval County Sheriff, and by him delivered into the custody of the Florida Department of Corrections at the Florida State Prison, where you shall be confined until a date certain selected by the Governor of the State of Florida and on that date you shall be executed in a manner or by a method provided by Florida law.

You are hereby notified this sentence is subject to automatic review by the Supreme Court of Florida. Counsel will be appointed by separate Order to represent you for that purpose. Further, pursuant to section 922.105(2), Florida Statutes (2019), you have thirty (30) days from the date of issuance of a mandate pursuant to a decision of the Supreme Court of Florida affirming the sentence of death to elect death by electrocution by the procedures required by that law.

John Franklin Mosley, Jr., may God have mercy on your soul.

DONE at Jacksonville, Duval County, Florida, on February 11, 2020.

MICHAEL R. WEATHERBY
SENIOR CIRCUIT JUDGE

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CERTIFICATE OF SERVICE

I certify a copy of this Order has been furnished to Defendant by U.S. mail on FEBRUARY 18TH, 2020.

John Eversole

Deputy Clerk

Case No.: 16-2004-CF-06675-AXXX
/cfb

THE COURT: All right. We did discuss that. Ladies and gentlemen, I'm going to ask you to step back in the jury room.

(Jury excused for recess.)

10:04AM THE COURT: The jury left the courtroom. Ask Mrs. Mosley to come in, please. Ms. Mosley, if you'll please resume your seat in the witness stand, please. Mrs. Mosley, I'll remind you you're still under oath in this matter, okay?

10:05AM THE WITNESS: Okay.

BARBARA MCKINNEY MOSLEY,

having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

THE COURT: Mr. Mosley.

10:05AM EXAMINATION

BY MR. MOSLEY:

Q Good morning.

A Good morning.

Q This is a difficult subject. Please be

10:06AM forthcoming. Who was I raised by?

A Repeat that, please.

Q Who was I raised by?

A Most of the time your great-grandmother -- I mean your grandmother, your dad's mother.

10:06AM Q Was my dad very mentally and physically

abusive to me?

A Yes.

Q Would he often spank me in retaliation for you not being with him?

10:06AM A It went past spanking but he did spank but it was worse than spanking.

Q Was my grandmother's mother very abusive?

A Yes. Very, very -- mostly she was verbally abusive.

10:07AM Q How many of my sisters did my dad sexually assault?

A That we're aware of?

Q Yes.

A Two.

10:07AM Q And what are their names?

A Marilyn Mosley and Maria Mosley.

Q Do you recall the time that -- do you recall the time where my sister, Maria, was at my house with me and my wife and kids and what happened? What did we

10:07AM have to do with Maria when my dad came over there?

A We would have to hide her.

Q Your mother, your biological mother, my grandmother, how did she die?

A She was murdered by my stepfather.

10:08AM Q When was her birthday?

A The same as your birthday, August 24th.

Q Would you say that's a blessed coincidence to be born the same day as your grandmother?

A During that time it was a blessing because you were born on her birthday and you were the first grandson in the family.

Q How old was I when she was murdered?

A Ten.

THE DEFENDANT: Thank you. I appreciate it.

10:08AM THE COURT: Mr. Caliel -- right now I can tell you, Mr. Mosley, you're not going to be able -- your father's credibility is not an issue in this matter so I will not permit you to ask questions about his sexual abuse of anybody. I'm inclined to

10:09AM allow the remainder to come in. Mr. Caliel.

MR. CALIEL: Your Honor, I -- I would agree with the Court. My only objection is that whether or not the step -- or the father had sexually abused the other individuals -- had he sexually

10:09AM abused this defendant it may be relevant but other siblings it's not relevant. I think the victimization of his grandmother I think can be relevant mitigation to present.

THE COURT: Yeah. I agree.

10:09AM THE DEFENDANT: May I briefly address that,

Your Honor? It's -- it's mental mitigation because --

THE COURT: Okay. She's already testified that you were beaten and abused and it was a terrible relationship. The only thing I'm not going to allow you to ask is about his abuse of your sisters or whoever else. As Mr. Caliel just pointed out if the allegation is that he sexually abused you that's clearly relevant, but that's not what your mom is testifying to so -- but the other matters I will let you --

THE DEFENDANT: Yes, sir. If you will be patient with me. It's within the jury instruction where it stated -- if I may elaborate a little bit?

THE COURT: Mr. Mosley, you may not ask questions about your father's sexual abuse of anybody other than you. End of argument. I will permit you to ask the other questions and I, you know, freely do that. They are definitely relevant. The other matter is not.

THE DEFENDANT: May I please --

THE COURT: No.

THE DEFENDANT: That affected me more than what he did to me when he took --

THE COURT: I am sorry, sir, but the -- but

that is completely irrelevant. His acts to somebody else are irrelevant to this proceeding. You may not, you may not, you may not ask questions of your mother about that. If you -- and if you do you I'll simply have her leave the courtroom and instruct the jury to disregard everything that you've said.

10:10AM

MR. CALIEL: And, Your Honor, if I may interject one thing. I don't believe this witness can have testimony. If he was himself and there is a testimony witness that he observed his father molesting his sisters that can be relevant testimony.

10:11AM

The other thing I just pose to the Court is this witness has just stated that she was not involved with his life and allowed his grandmother to raise him. I'm not sure how she has firsthand knowledge of any of this.

10:11AM

THE COURT: Well, and that may well be something for cross examination, her credibility on that issue, but --

10:11AM

THE DEFENDANT: For the record she did state that I lived with her some time back and forth.

THE COURT: Yeah. But it -- but it was de minimis. I mean that's what's before the jury.

10:11AM

You know, you certainly have the right to place that out, but the bottom line is no questions about sexual abuse unless you're talking about something that actually happened to you or which you were involved, okay?

10:11AM

THE DEFENDANT: Yes, sir.

THE COURT: All right. May we bring out the jury then?

THE BAILIFF: Yes, Your Honor.

10:11AM (Jury in at 10:11 a.m.)

THE COURT: Did you hear what I said about what not to talk about?

THE WITNESS: I was just going to ask may I clarify something that I said?

10:12AM THE COURT: No. The jury is back in. All right. The jury has returned. Be seated, ladies and gentlemen. Mrs. Mosley, the mother, is on the stand. As you see I have already admonished her that she is still under oath in this proceeding.

10:13AM Mr. Mosley, go ahead.

DIRECT EXAMINATION

BY MR. MOSLEY:

Q Was my father an active part of my life?

A No.

10:13AM Q Throughout the years of my childhood to your

knowledge did he mentally, physically abuse me?

A Yes.

Q How would you describe the physical abuse?

A Beatings. He would beat you a lot physically with belts or whatever else he could get his hands on.

10:13AM

Q Well, would you say from your observation that affected me extremely emotionally, mentally as a child?

A It did because I know the beatings were bad but I think what really, really affected you more than the beating was the verbal. He would talk down to you. He would talk about me and the relationship that you and I had whenever he would talk about me, belittle me. I found out later in life that that really affected you a lot. He would call me all kind of names and call you all kind of names, not good names, bad names. He never said anything good to you or good about you or me. May I have a minute?

10:14AM

10:14AM

THE COURT: Sure. There's some Kleenex there and a water pitcher, also.

10:15AM

THE WITNESS: Thank you.

THE COURT: All right. Mr. Mosley, proceed.

BY MR. MOSLEY:

Q My grandmother, your biological mother, how did she die?

10:16AM

A My stepfather murdered her. I mean -- yeah. My stepfather.

Q How old was I when she was murdered?

A Ten.

10:16AM Q Would you say her and I were very close?

A Will you repeat that, please?

Q Would you say her and I were very close?

A Yes.

Q Did that extremely affect me mentally?

10:16AM A Yes.

Q And what is your mother's birthday?

A August 24th.

Q And what is my birthday?

A August 24th.

10:16AM Q So would you say that's a rare blessing your mother and your son born on the same day?

A Yes?

THE DEFENDANT: Thank you. No further questions.

10:16AM THE COURT: Mr. Caliel or Ms. Mattina.

CROSS EXAMINATION

BY MR. CALIEL:

Q So your mother was murdered by her stepfather?

10:17AM A Yes, sir.