IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS BEVEL,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

APPENDIX	DOCUMENT
A	Opinion of the Florida Supreme Court Case No. SC2022-0210 376 So. 3d 587 (Fla. Oct. 26, 2023)
B	Order of the Florida Supreme Court Denying Motion for Rehearing Rendered December 15, 2023
C	Sentencing Order of the Circuit Court for the Fourth Judicial Circuit, Duval County Rendered February 11, 2022

APPENDIX A

376 So.3d 587
Supreme Court of Florida.

Thomas BEVEL, Appellant,
v.
STATE of Florida, Appellee.

No. SC2022-0210
|
October 26, 2023

Synopsis

Background: Defendant moved for postconviction relief after his capital murder convictions and death sentences were affirmed, 983 So.2d 505. The Circuit Court, 4th Judicial Circuit, Duval County, John Bradford Stetson, J., denied motion. Defendant appealed. The Supreme Court, 221 So.3d 1168, vacated and remanded for resentencing. The Circuit Court, Adrian G. Soud, J., sentenced defendant to death. Defendant appealed.

Holdings: The Supreme Court held that:

evidence supported trial court's rejection of death penalty mitigator of extreme mental or emotional disturbance;

sentencing order did not improperly focus on causation for the extreme mental or emotional disturbance mitigator;

any error in trial court's rejection of the extreme mental or emotional disturbance mitigator was harmless;

trial court acted within its discretion in denying requested special instructions on mercy in favor of standard "mercy" instruction; and

proportionality of possible death sentence was not a permissible subject of defense argument to jury.

Affirmed.

Labarga, J., filed opinion concurring in result.

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

***589** An Appeal from the Circuit Court in and for Duval County, Adrian G. Soud, Judge, Case No. 162004CF004525AXXXMA

Attorneys and Law Firms

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

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

Opinion

PER CURIAM.

Thomas Bevel appeals his two death sentences, which were imposed by the trial court for the second time following this Court's grant of postconviction relief and remand for a new penalty phase. *See Bevel v. State*, 221 So. 3d 1168, 1185 (Fla. 2017). We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. For the reasons we explain, we affirm Bevel's death sentences.

I. BACKGROUND

Bevel was convicted in 2005 of the first-degree murders of his friend and roommate, Garrick Stringfield, and Stringfield's thirteen-year-old son, Phillip Sims, and the attempted murder of Feletta Smith, whom Bevel and Stringfield knew from childhood. *Bevel v. State*, 983 So. 2d 505, 513 (Fla. 2008). This Court summarized the facts of Bevel's crimes in the original direct appeal as follows:

> Thomas Bevel, who was twenty-two years old at the time of the crime[s], resided with Garrick Stringfield, who was thirty. The two were close friends, such that Stringfield referred to Bevel as "nephew" or "Tom Tom" and Bevel referred to Stringfield as "Unc." On February 28, 2004, both men were at a street parade in Jacksonville where they ran into Feletta Smith, whom they both knew from their childhood. Smith exchanged telephone numbers with Stringfield and made plans to meet later that evening.
>
> After leaving the parade, Bevel and Stringfield purchased a bottle of gin and went back to Stringfield's house later in the evening. Because Stringfield was going out, he asked Bevel to wait for his thirteen-year-old son, Phillip Sims, who was being dropped off by his mother, Sojourner Parker.

Although Parker noticed that Stringfield's car was not in the ***590** driveway when she arrived at the house, she was unconcerned because Bevel, a person she considered Stringfield's roommate, answered the door and let her son inside.

Around 9 p.m., Stringfield met Smith at a Walgreens store and she followed him back to his house. When they arrived at Stringfield's house, Bevel and Sims were playing video games in the living room where Smith and Stringfield joined them. Although no illegal drugs were being consumed, Smith stated that Bevel and Stringfield were drinking gin out of the bottle and she had a half cup of gin and grapefruit juice. At some point, Smith and Stringfield went into his bedroom to watch television. Stringfield showed Smith an AK-47 rifle that he kept under his bed and, because Smith was scared of it, he handed the gun to Bevel who removed it from the room. Stringfield and Smith remained in the bedroom with the door closed. Smith said that she last saw Sims playing video games in the living room.

Bevel then drove Stringfield's car to a BP gas station to meet his girlfriend, Rohnicka Dumas, took her to a bar where he purchased another bottle of gin, and brought her back to the house. When they returned, Stringfield and Bevel went into the backyard, Dumas went inside, Smith remained in Stringfield's bedroom, and Sims continued to play video games in the living room. Stringfield and Bevel then came back into the house and each had a gun in his possession; Stringfield was carrying a smaller handgun and Bevel had the AK-47 rifle that Stringfield had handed to him earlier in the evening. Bevel and Dumas went into the other bedroom, located across the hall from Stringfield's room, and talked.

Bevel then left the bedroom with the AK-47 rifle in his hand. He went to Stringfield's bedroom, where Smith and Stringfield were lying in bed nearly asleep, knocked on the door and said, "Unc, open the door." Stringfield got up from the bed, unarmed, and opened the door in his pajamas. Bevel immediately shot Stringfield in the head and he instantly fell to the floor in the doorway. Smith began screaming and Bevel yelled, "Bitch, shut up" while he shot her several times as she lay in the bed. Smith became quiet and pretended to be dead. She testified that there was "no doubt in [her] mind" that Bevel was the shooter. Rohnicka Dumas corroborated Smith's testimony. She observed Bevel pick up the rifle, go out into the hallway, knock on Stringfield's bedroom door and say, "Unc, look here." She testified that multiple shots were fired, during which she heard both the woman in the other room screaming and Bevel yell, "Bitch, shut up."

Bevel then went into the living room where Sims was still sitting on the sofa with the television remote in his hand and shot him twice, once grazing his arm and chest and once in the face. Subsequently, Bevel returned to the bedroom where Dumas had been and they walked out the front door. Bevel locked the burglar bar door, a barred security gate located on the outside of the front door to the house, and drove away in Stringfield's car with Dumas sitting in the passenger seat. While driving to Dumas's house, Bevel held the AK-47 rifle under his chin and stated that he did not mean to kill the boy (Sims), but had to because he was going to be a witness. Bevel abandoned Stringfield's car near Dumas's house.

Smith was eventually able to reach 911 by using Stringfield's cell phone. Because Smith was unable to give the police an exact address, it took some time for the police and rescue to find the house. Ultimately, rescuers were able to transport her to the hospital where she ***591** stayed for almost a month while undergoing multiple surgeries for various gunshot wounds to her pelvis and upper legs.

After hiding for almost a month, Bevel was finally found by officers from the Jacksonville Sheriff's Office on March 27, 2004. Bevel was informed of his constitutional rights and indicated his understanding of each right by signing the rights form. The police questioned Bevel on two occasions over the course of twenty-four hours. During these two interviews, Bevel gave four different versions of the story but ultimately confessed to the murders.

Although Bevel confessed to murdering Stringfield and Sims, his version of events was contrary to the testimony of both Smith and Dumas. Bevel stated that he and Stringfield had been fighting recently about money that Stringfield believed he was owed and that Bevel feared that Stringfield was going to try and kill him. He said that when he brought Dumas back to the house that night, Stringfield began to get angry, saying that he should have killed Bevel a long time ago. While Dumas and Smith were in opposite bedrooms, the fight escalated until Stringfield was pointing the handgun at Bevel and Bevel had picked up the AK-47 rifle. Then, Stringfield went into his bedroom and, when Bevel heard a clicking noise that sounded like a magazine being loaded into the handgun, Bevel moved towards the room and shot Stringfield when he reached the door. Bevel

said the gun went off several times but he did not mean to shoot Smith.

Id. at 510-11 (second alteration in original).

In 2017, on appeal from the denial of his motion for postconviction relief, this Court reversed and remanded for a new penalty phase after concluding that counsel was ineffective during the penalty phase and that Bevel was entitled to relief under *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *receded from in part by State v. Poole*, 297 So. 3d 487 (Fla. 2020), for the death sentence imposed for Stringfield's murder. *Bevel*, 221 So. 3d at 1172, 1177, 1185.

Both Bevel and the State presented witnesses at the second penalty phase. Particularly relevant to this appeal, Bevel presented testimony from three expert witnesses: Steven Gold, Ph.D., a psychologist specializing in trauma; Robert Ouaou, Ph.D., a psychologist with a specialization in neuropsychology; and Geoffrey Negin, M.D., a diagnostic radiologist. After hearing the evidence, the jury unanimously found that the proposed aggravators—prior violent felony (based on a prior attempted robbery conviction and the contemporaneous murder and attempted murder) as to both murders and that the murder was committed for the purpose of avoiding arrest as to Sims's murder—were proven beyond a reasonable doubt and unanimously voted to sentence Bevel to death for each murder. None of the jurors found that any of the mitigating circumstances were established by the greater weight of the evidence. The trial court ultimately agreed with the jury that the aggravators were proven beyond a reasonable doubt and afforded each very great weight. As to the statutory mitigating circumstances, the trial court agreed with the jury that Bevel had not established that he committed the murders while under the influence of extreme mental or emotional disturbance [1] and that ***592** Bevel's age of twenty-two at the time of the offenses was not mitigating. As to the proposed other factors in Bevel's background that would mitigate against imposition of the death penalty under section 921.141(7)(h), Florida Statutes (2021), the trial court found as follows: IQ of seventy-one (little weight); Bevel's childhood was impacted by the trauma of his mother's death at age twelve (little weight); Bevel's father did not actively participate in his life and subsequently died due to heroin use (no weight); Bevel's childhood and teenage years were plagued by witnessing repeated acts of violence and substance abuse within his family (no weight); Bevel was essentially raised by his grandmother, who attempted to raise multiple grandchildren with very little financial or emotional resources (no weight); Bevel grew up in the eastern part of downtown Jacksonville, where drug selling, gunshots, violence, and substance abuse were common (no weight); Bevel was brought into the criminal lifestyle at a young age by his then criminal role models (no weight); Bevel was heavily influenced by the much older Garrick Stringfield (no weight); Bevel was shot multiple times in 2001 in front of his grandmother's house (no weight); Bevel, in spite of his traumatic childhood, has repeatedly shown the capacity for love and kindness (no weight); Bevel has exhibited good jail conduct as well as appropriate courtroom behavior (no weight); Bevel responds well in structured environments (no weight); Bevel confessed to his crimes and has shown immediate and repeated remorse (not established/no weight); Bevel continues to impact the lives of his family members and has developed a nurturing, caring relationship with his daughter (no weight); Bevel suffers from brain damage which affects his decision making (little weight); Bevel was raised in a strong religious faith (no weight).

In sentencing Bevel to death, the court gave great weight to the jury's death recommendation and "wholly agree[d] with the jury's verdicts based on an assessment of the aggravating factors and mitigating circumstances presented and their respective weights." The court concluded that "the aggravating factors heavily outweigh[ed] the mitigating circumstances[ ] and that death is the only proper penalty for the murders." This appeal followed.

II. ANALYSIS

Bevel raises five issues. First, Bevel argues that the trial court abused its discretion in disregarding the "unrefuted" expert testimony that he was under extreme mental and emotional disturbance at the time of the murders. In other words, he believes that the trial court erred in failing to find that he established the applicability of the statutory mitigating circumstance that "[t]he capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance," section 921.141(7)(b), Florida Statutes, based on his diagnoses of post-traumatic stress disorder (PTSD) and depression. Bevel also asserts that the trial court's sentencing order improperly focused on causation and dismissed Bevel's personal and medical history as "self-reported" without acknowledging corroboration in the record.

Dr. Gold, a psychologist specializing in trauma, met with Bevel in 2014 and reviewed educational, medical,

and legal records. Dr. Gold testified that Bevel suffered from depression and PTSD. During cross-examination, the following exchange occurred ***593** between the prosecutor and Dr. Gold:

> Q So the bottom line is you did not interview [Bevel] or ask him what happened regarding both of these murders and attempted murder, correct?
>
> A No, I did not.
>
> ....
>
> Q [S]ince you didn't focus on interviewing the defendant regarding what happened, what I am trying to ask and making sure the record is clear is that you are not stating -- your opinion is not that he was under the influence of extreme mental or emotional disturbance, correct?
>
> A He was under the influence of extreme mental or emotional disturbance. He had PTSD. He had depression.
>
> Q So you believe he -- at the time he committed these murders he was under the influence of extreme or emotional -- extreme mental or emotional disturbance?
>
> A I believe that throughout his life he was under the influence of extreme mental or emotional disturbance. That would include the time of the murders.
>
> Q So how can you make that assessment if you don't even ask him about the murders?
>
> A If someone is diagnosed with cancer and you were to ask me did the person have cancer when they committed the murders my answer would be, yes, cancer doesn't come and go. PTSD doesn't come and go. The type of major depression that Mr. Bevel has had since he was a child did not come and go. He -- he had these diagnoses at the time of the murders. What I am not saying is the diagnoses made him do it.
>
> ....
>
> Q So you are saying that when he shot this 13-year-old young boy he shot him because he was under the influence of extreme mental or emotional disturbance, correct?
>
> A You keep restating what I am telling you what I am not stating. I am not saying he committed these offenses because he had these diagnoses. Did these diagnos[e]s impair his functioning, yes. Am I saying we can explain away the offense based on these diagnoses? I am not. He was impaired at the time, yes. There is a difference.
>
> Q Why do you say he was impaired at the time he committed both murders and the attempted murder?
>
> A Because you asked me was he impaired at that time. He was impaired through most of his life from childhood.
>
> Q So he is impaired as he sits here today?
>
> A Yes.
>
> Q Okay. So at any time there can be an outburst you are saying?
>
> A I am saying that any time somebody has cancer, if it hasn't resolved they have cancer. Mr. Bevel -- Mr. Bevel's PTSD is very unlikely to have resolved without treatment. His major depression is very unlikely to have resolved without treatment. Within a reasonable degree of certainty as a professional I can say as he sits here he is impaired by PTSD and major depression.

The trial court's analysis and rejection of this mitigator spanned nearly four pages of the sentencing order and included a summary of the relevant law, a summary of the relevant testimony of the three experts on whom Bevel relied in his attempt to establish this mitigator, a recounting of Dr. Gold's diagnoses, and the numerous traumatic events in Bevel's life that he reported to Dr. Gold.

In ultimately rejecting the mitigator, the court concluded that "[a]though Dr. Gold opined that Defendant suffers from PTSD, ***594** no evidence exists that Defendant suffered from PTSD at the time of the murders or that the PTSD caused Defendant to commit the offenses while at that time suffering extreme mental or emotional distress [sic]." The trial court noted that Dr. Gold did not discuss the murders with Bevel, and that his evaluation of Bevel occurred approximately nine years after the murders. The trial court also noted that Bevel engaged in purposeful, thoughtful, and deliberate conduct at the time of the murders, admitting that he killed Sims to eliminate him as a witness and securing the burglar bar on the door of the house after the murders in the hope of delaying discovery of the bodies.

We find no abuse of discretion in the trial court's rejection of this mitigator. We have previously upheld the rejection of the extreme mental or emotional disturbance mitigator in cases where there was expert testimony, even uncontroverted

expert testimony, of its existence. For example, in *Foster v. State*, 679 So. 2d 747, 755 (Fla. 1996), Foster presented expert testimony that he was under the influence of extreme mental or emotional disturbance and argued on appeal that since this expert testimony was uncontroverted, the trial court should have found the statutory mitigator established. In upholding the rejection of this mitigator, this Court wrote:

> The decision as to whether a mitigating circumstance has been established is within the trial court's discretion. *Preston v. State*, 607 So. 2d 404 (Fla. 1992), *cert. denied*, 507 U.S. 999, 113 S.Ct. 1619, 123 L.Ed.2d 178 (1993). Moreover, expert testimony alone does not require a finding of extreme mental or emotional disturbance. *See Provenzano v. State*, 497 So. 2d 1177 (Fla. 1986), *cert. denied*, 481 U.S. 1024, 107 S.Ct. 1912, 95 L.Ed.2d 518 (1987). Even uncontroverted opinion testimony can be rejected, especially when it is hard to reconcile with the other evidence presented in the case. *See Wuornos v. State*, 644 So. 2d 1000, 1010 (Fla. 1994), *cert. denied*, 514 U.S. 1069, 115 S.Ct. 1705, 131 L.Ed.2d 566 (1995). As long as the court considered all of the evidence, the trial judge's determination of lack of mitigation will stand absent a palpable abuse of discretion. *Provenzano*, 497 So. 2d at 1184.

679 So. 2d at 755. This Court found no error in *Foster* despite uncontroverted evidence of extreme mental or emotional disturbance because "the trial court considered all of the evidence presented, and it was not a palpable abuse of discretion for the trial court to refuse to find the statutory mitigator of extreme emotional disturbance." *Id.* at 756.

Here, the trial court also thoroughly considered the evidence presented. The only evidence that Bevel might have been under the influence of extreme mental or emotional disturbance at the time of the murders was Dr. Gold's testimony that because Bevel had begun suffering with depression and PTSD many years before the murders and because those conditions do not "come and go," he was, in Dr. Gold's opinion, "throughout his life ... under the influence of extreme mental or emotional disturbance," "includ[ing at] the time of the murders." But Dr. Gold did not explain why depression or PTSD might have caused "extreme mental or emotional disturbance" at the time of the murders. When asked what could have triggered a manifestation of PTSD at the time of the murders, Dr. Gold responded that he did not know because he did not assess Bevel about that. In sum, Dr. Gold's opinion that Bevel qualified for the extreme mental or emotional disturbance mitigator was based on the fact that he had diagnoses of depression and PTSD based on events that happened in his childhood and, as a result, he is "impaired" every moment of his life. Under Dr. Gold's theory, any capital defendant who had ever been diagnosed with ***595** depression or PTSD would qualify for this mitigator.

In *Nelson v. State*, 850 So. 2d 514, 529-30 (Fla. 2003), this Court discussed the rejection of uncontroverted expert testimony regarding the extreme mental or emotional disturbance mitigator:

> This Court has defined the circumstances under which a trial court may reject a mitigator:
>
> > Whenever a reasonable quantum of competent, uncontroverted evidence of mitigation has been presented, the trial court must find that the mitigating circumstance has been proved. A trial court may reject a defendant's claim that a mitigating circumstance has been proved if the record contains competent substantial evidence to support the trial court's rejection of the mitigating circumstance.
>
> *Spencer v. State*, 645 So. 2d 377, 385 (Fla. 1994) (citation omitted).
>
> We considered the issue of expert opinion testimony in *Walls v. State*, 641 So. 2d 381 (Fla. 1994), stating:
>
> > Walls contends that the trial court improperly rejected expert opinion testimony that he was suffering extreme emotional disturbance and that his capacity to conform his conduct to the law's requirements was substantially impaired. In Florida as in many states, a distinction exists between factual evidence or testimony, and opinion testimony ....
> >
> > ... Certain kinds of opinion testimony clearly are admissible—and especially qualified expert opinion

> testimony—but they are not necessarily binding even if uncontroverted. Opinion testimony gains its greatest force to the degree it is supported by the facts at hand, and its weight diminishes to the degree such support is lacking. A debatable link between fact and opinion relevant to a mitigating factor usually means, at most, that a question exists for judge and jury to resolve.
>
> *Id.* at 390-91 (citations omitted). Thus, the trial court was entitled to evaluate and disregard Dr. Dee's opinion if the trial court felt that the opinion was unsupported by facts. The testimony that Nelson was "seeing things" on the day of the murder, that he suffered from hallucinations, and that he suffered from depression for many years provided perhaps the most relevant evidence to support this mitigator. However, the record reflects that the source of this evidence was largely Nelson's self-reports to Dr. Dee, and that the trial court basically rejected Dr. Dee's uncontroverted expert opinion.

Nelson, 850 So. 2d at 529-30. Based on the witnesses' testimony that Nelson was acting normally before and after the murder, this Court concluded that "there was competent, substantial evidence refuting the allegation that Nelson was under extreme mental or emotional disturbance" and upheld the trial court's rejection of the mitigator. *Id.* at 530.

In *Nelson*, the evidence offered to support the extreme mental or emotional disturbance mitigator was that Nelson suffered from depression for many years and he told his mental health expert that he was "seeing things" on the day of the murder and that he suffered from hallucinations. *Id.* And this evidence was controverted by witnesses who testified that Nelson was acting normally before and after the murders. *Id.*

Here, Dr. Gold's opinion that Bevel qualified for the extreme mental or emotional disturbance mitigator was based solely on Bevel's longstanding diagnoses of depression and PTSD, but Dr. Gold's opinion is difficult to reconcile with the fact that he did not discuss the murders with Bevel or assess his mental or emotional ***596** state at the time of the murders, and that Bevel—as described in his confession—engaged in purposeful conduct at the time of the murders, including killing Sims to eliminate him as a witness and securing the burglar bar on the door of Stringfield's house after the murders. Further, although Dr. Gold did testify when asked directly that Bevel was under the influence of extreme mental or emotional disturbance at the time of the murders, Dr. Gold also testified several times that Bevel was simply "impaired" at all times, including the time of the murders, by his depression and PTSD. But mere "impairment" cannot be equated with the "extreme disturbance" required to establish the mitigator; thus, Dr. Gold's opinion as to the extent that the depression and PTSD affected Bevel's baseline mental or emotional state and therefore his mental or emotional state at the time of the murders is not entirely clear.

Under the circumstances before us, there is competent, substantial evidence in the record to support the rejection of this mitigator. Moreover, the trial court did consider all of the evidence, and its determination—which reflected the same conclusion reached by the jury—that the extreme mental or emotional disturbance mitigator was not established by the greater weight of the evidence will "stand absent a palpable abuse of discretion," *Foster*, 679 So. 2d at 755 (quoting *Provenzano*, 497 So. 2d at 1184), which is simply not present here.

As to Bevel's complaint that the resentencing order improperly focused on causation, we disagree. The trial court simply accurately noted that "Dr. Gold emphasized during his testimony that Defendant's PTSD did not cause him to commit the offenses but increased the likelihood Defendant would engage in criminal behavior." And as to his complaint that the trial court dismissed Bevel's personal and medical history as "self-reported" without acknowledging corroboration in the record, even assuming that the trial court did overlook corroboration in the record, any corroboration of Bevel's personal and medical history would not have undermined the trial court's conclusion that this mitigator was not established by the greater weight of the evidence that Bevel was under extreme mental or emotional disturbance at the time of the murders. Dr. Gold did not testify that he reviewed any records pertaining to Bevel's mental state at the time of the murders.

Finally, even if we were to conclude that the trial court erred in rejecting this mitigator, we would find any error harmless. In light of the fact that the mitigation that was established was not extensive or weighty, even if the trial court had found this mitigator established and afforded it greater weight than any other mitigator, the additional mitigation that this circumstance would have provided would not have tipped the scale such that the mitigation would have outweighed the aggravation, requiring the imposition of life sentences for the murders.

Bevel next argues that the trial court erred in denying his requests that the jury be instructed that regardless of its findings regarding the aggravators and mitigators, it may

always consider mercy in determining whether Bevel should be sentenced to death. The trial court denied these requests for special instructions and instead read Florida Standard Jury Instruction (Criminal) 7.11, informing jurors that "[r]egardless of the results of each juror's individual weighing process—even if you find that the sufficient aggravators outweigh the mitigators—the law neither compels nor requires you to determine that the defendant should be sentenced to death."

"A trial court's denial of special jury instructions is reviewed for abuse of ***597** discretion." *Snelgrove v. State*, 107 So. 3d 242, 255 (Fla. 2012). Here, the trial court did not abuse its discretion in denying Bevel's requested special instructions. We have repeatedly determined that Standard Jury Instruction 7.11 adequately informs jurors of the applicable legal standard. *E.g.*, *Woodbury v. State*, 320 So. 3d 631, 656 (Fla. 2021), *cert. denied*, —— U.S. ——, 142 S. Ct. 1135, 212 L.Ed.2d 22 (2022); *Bush v. State*, 295 So. 3d 179, 210 (Fla. 2020). We have even referred to the relevant provision in this instruction as the "mercy instruction." *See Woodbury*, 320 So. 3d at 656 (quoting *Reynolds v. State*, 251 So. 3d 811, 816 n.5 (Fla. 2018)). "Thus, the court *did* read an instruction on mercy, and although [the defendant] might have preferred the wording of his proposed instruction, Standard Jury Instruction 7.11 is not ambiguous when it comes to addressing the jurors' options." *Id.* Bevel is not entitled to relief on this claim.

Bevel also argues that the trial court erred in precluding any argument to the jury about the proportionality of his possible sentence. The trial court did not err in its ruling. "The jury's responsibility in the process is to make recommendations based on the circumstances of the offense and the character and background of the defendant." *Herring v. State*, 446 So. 2d 1049, 1056 (Fla. 1984), *receded from on other grounds by Rogers v. State*, 511 So. 2d 526, 533 (Fla. 1987). It is not to compare the facts of the case before it to the facts of other cases or to compare the aggravation and mitigation applicable to the defendant before it to the aggravation and mitigation applicable to other defendants.

Bevel's remaining arguments are similarly without merit. Bevel acknowledges that his argument that the jury's determination regarding the sufficiency and weight of aggravating factors should be subject to proof beyond a reasonable doubt is contrary to precedent from this Court and states that this issue is being raised only to preserve it for federal review. Bevel is correct that we have repeatedly reaffirmed our conclusion that determinations regarding the sufficiency and relative weight of the proven aggravators are not subject to proof beyond a reasonable doubt. *E.g.*, *McKenzie v. State*, 333 So. 3d 1098, 1105 (Fla.), *cert. denied*, —— U.S. ——, 143 S. Ct. 230, 214 L.Ed.2d 95 (2022); *Joseph v. State*, 336 So. 3d 218, 227 (Fla.), *cert. denied*, —— U.S. ——, 143 S. Ct. 183, 214 L.Ed.2d 65 (2022); *Davidson v. State*, 323 So. 3d 1241, 1247-48 (Fla. 2021), *cert. denied*, —— U.S. ——, 142 S. Ct. 1152, 212 L.Ed.2d 32 (2022). As to his argument that Florida's capital sentencing scheme is unconstitutional because it does not limit the class of persons eligible for the death penalty and violates the Eighth Amendment due to the elimination of comparative proportionality review in *Lawrence v. State*, 308 So. 3d 544, 549 (Fla. 2020), and an overprovision of aggravating factors, we have consistently rejected similar arguments, *e.g.*, *Joseph*, 336 So. 3d at 227 n.5 (declining to address claim that Florida's death penalty statute is unconstitutional because it does not sufficiently narrow the class of individuals eligible to receive the death penalty on the ground that this Court has repeatedly rejected the same argument); *Covington v. State*, 348 So. 3d 456, 480 (Fla. 2022) (rejecting claim that elimination of proportionality review in *Lawrence* rendered Florida's capital sentencing scheme unconstitutional); *Colley v. State*, 310 So. 3d 2, 15-16 (Fla. 2020) (rejecting claim that Florida's capital sentencing scheme is unconstitutional because the number of aggravating factors does not sufficiently narrow the class of individuals who are eligible to receive the death penalty), and Bevel makes no novel ***598** or compelling argument that would warrant reconsideration of the numerous recent decisions of this Court.

III. CONCLUSION

Having concluded that none of Bevel's claims warrant relief from his death sentences, we affirm.

It is so ordered.

MUÑIZ, C.J., and CANADY, COURIEL, GROSSHANS, and FRANCIS, JJ., concur.

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

SASSO, J., did not participate.

LABARGA, J., concurring in result.

Because I continue to adhere to my dissent in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), wherein this Court abandoned this Court's decades-long practice of comparative proportionality review in the direct appeals of sentences of death, I can only concur in the result.

All Citations

376 So.3d 587, 48 Fla. L. Weekly S207

Footnotes

1 Although the trial court in its sentencing order and the parties in their briefing refer to this mitigator as being under the influence of extreme mental or emotional *distress*, the statute actually refers to extreme mental or emotional *disturbance*. This Court believes this to be an inadvertent scrivener's error and will use only the term “disturbance” in discussion of this mitigator.

Supreme Court of Florida

FRIDAY, DECEMBER 15, 2023

Thomas Bevel,
Appellant(s)
v.

State of Florida,
Appellee(s)

SC2022-0210
Lower Tribunal No(s).:
162004CF004525AXXXMA

Appellant's Motion for Rehearing is hereby denied.

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

A True Copy
Test:

SC2022-0210 12/15/2023
John A. Tomasino
Clerk, Supreme Court
SC2022-0210 12/15/2023

KC

Served:

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BERNARDO ENRIQUE DE LA RIONDA

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

CASE NO.: 16-2004-CF-004525-AXXX

DIVISION: CR-A

STATE OF FLORIDA

v.

THOMAS EUGENE BEVEL,
Defendant.
_____/

SENTENCING ORDER

On April 8, 2004, the Duval County Grand Jury indicted Thomas Eugene Bevel for two counts of First-Degree Murder, Attempted First-Degree Murder, and Possession of a Firearm by a Convicted Felon.[1] On August 26, 2005, a jury found Defendant guilty of the First-Degree Murder of Garrick Stringfield (Count One), the First-Degree Murder of Phillip Sims (Count Two), and the Attempted First-Degree Murder of Feletta Smith (Count Three).[2]

On December 8-10, 2021, and December 13-14, 2021, this Court conducted the penalty phase during which the State and Defendant presented evidence. The State presented the testimony of:

1. Sojourner Sims Parker
2. Feletta Smith

[1] The State nolle prossed the charge of Possession of a Firearm by a Convicted Felon.
[2] Defendant was originally sentenced to death for Count One by a jury vote of eight to four and for Count Two by a jury vote of twelve to zero. Bevel v. State, 983 So. 2d 505, 513 (Fla. 2008). The Florida Supreme Court affirmed Defendant's convictions and sentences on direct appeal. Id. at 526. Defendant filed a postconviction motion pursuant to Florida Rule of Criminal Procedure 3.851, which was denied by this Court. In Bevel v. State, 221 So. 3d 1168 (Fla. 2017), the Florida Supreme Court reversed this Court's denial of postconviction relief and remanded for a new penalty phase proceeding on Counts One and Two.

3. Sergeant Frederick Fillingham, Jacksonville Sherriff's Office (JSO)
4. Dr. David Crumbie, M.D.
5. Dr. Jesse Giles, M.D., Medical Examiner
6. Dr. Aurelian Nicolaescu, M.D., Medical Examiner
7. Rohnika Dumas (Prior Testimony)
8. Detective Mark Doyle, JSO
9. Thomas Pulley, Florida Department of Law Enforcement (FDLE) Firearms Analyst
10. Detective David Coarsey, JSO
11. Detective Mitchell Chizik, JSO
12. Detective Larry Kuczkowski, JSO

The State presented victim impact testimony from Garrick Stringfield's mother, Priscilla Frink; Phillip Sims's brother, Antonio Parker; and Phillip Sims's mother, Sojourner Sims Parker. Phillip Sims's grandmother, Florence Sims, was unavailable to read her impact statement; however, Sojourner Sims Parker read her statement to this Court.

Defendant presented the testimony of:

1. Antorio McCray (Prior Testimony)
2. William Jerome Randall
3. Donella McCray (Prior Testimony)
4. Carl Burden (Prior Testimony)
5. Laurel French Wilson, Esq.
6. Maria Sardinas (Prior Testimony)
7. Dr. Steven Gold, Ph.D.

8. Ronald McAndrew

9. Dr. Robert Ouaou, Ph.D.

10. Dr. Geoffrey Negin, M.D.

11. Tommisha Bevel

Following the testimony and other evidence presented during the penalty phase, on December 14, 2021, the jury unanimously determined it appropriate to sentence Defendant to death for each of Counts One and Two. The State and Defendant filed memoranda in support of and in opposition to Defendant being sentenced to death.

This Court held a Spencer[3] hearing on January 7, 2022, where Defendant presented transcripts of prior testimony from Theondra Bevel, Defendant's sister, and Barbara Fisher, Defendant's maternal aunt. Further, this Court and counsel have received and reviewed the Presentence Investigation Report (PSI Report) prepared by the Florida Department of Corrections.

FACTS

On direct appeal, the Florida Supreme Court previously detailed the facts leading to Defendant's death sentences:

> Thomas Bevel was charged with the February 2004 first-degree murders of Garrick Stringfield and his son Phillip Sims and attempted first-degree murder of Feletta Smith.
>
> The key events of February 28, 2004, which ended in two murders and one attempted murder, established the following. Thomas Bevel, who was twenty-two years old at the time of the crime, resided with Garrick Stringfield, who was thirty. The two were close friends, such that Stringfield referred to Bevel as "nephew" or "Tom" and Bevel referred to Stringfield as "Unc." On February 28, 2004, both men were at a street parade in Jacksonville where they ran into Feletta Smith, whom they both knew from their childhood. Smith exchanged telephone numbers with Stringfield and made plans to meet later that evening.

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

After leaving the parade, Bevel and Stringfield purchased a bottle of gin and went back to Stringfield's house later in the evening. Because Stringfield was going out, he asked Bevel to wait for his thirteen-year-old son, Phillip Sims, who was being dropped off by his mother, Sojourner Parker. Although Parker noticed that Stringfield's car was not in the driveway when she arrived at the house, she was unconcerned because Bevel, a person she considered Stringfield's roommate, answered the door and let her son inside.

Around 9 p.m., Stringfield met Smith at a Walgreens store and she followed him back to his house. When they arrived at Stringfield's house, Bevel and Sims were playing video games in the living room where Smith and Stringfield joined them. Although no illegal drugs were being consumed, Smith stated that Bevel and Stringfield were drinking gin out of the bottle and she had a half cup of gin and grapefruit juice. At some point, Smith and Stringfield went into his bedroom to watch television. Stringfield showed Smith an AK–47 rifle that he kept under his bed and, because Smith was scared of it, he handed the gun to Bevel who removed it from the room. Stringfield and Smith remained in the bedroom with the door closed. Smith said that she last saw Sims playing video games in the living room.

Bevel then drove Stringfield's car to a BP gas station to meet his girlfriend, Rohnicka Dumas, took her to a bar where he purchased another bottle of gin, and brought her back to the house. When they returned, Stringfield and Bevel went into the backyard, Dumas went inside, Smith remained in Stringfield's bedroom, and Sims continued to play video games in the living room. Stringfield and Bevel then came back into the house and each had a gun in his possession; Stringfield was carrying a smaller handgun and Bevel had the AK–47 rifle that Stringfield had handed to him earlier in the evening. Bevel and Dumas went into the other bedroom, located across the hall from Stringfield's room, and talked.

Bevel then left the bedroom with the AK–47 rifle in his hand. He went to Stringfield's bedroom, where Smith and Stringfield were lying in bed nearly asleep, knocked on the door and said, "Unc, open the door." Stringfield got up from the bed, unarmed, and opened the door in his pajamas. Bevel immediately shot Stringfield in the head and he instantly fell to the floor in the doorway. Smith began screaming and Bevel yelled, "Bitch, shut up" while he shot her several times as she lay in the bed. Smith became quiet and pretended to be dead. She testified that there was "no doubt in [her] mind" that Bevel was the shooter. Rohnicka Dumas corroborated Smith's testimony. She observed Bevel pick up the rifle, go out into the hallway, knock on Stringfield's bedroom door and say, "Unc, look here." She testified that multiple shots were fired, during which she

heard both the woman in the other room screaming and Bevel yell, "Bitch, shut up."

Bevel then went into the living room where Sims was still sitting on the sofa with the television remote in his hand and shot him twice, once grazing his arm and chest and once in the face. Subsequently, Bevel returned to the bedroom where Dumas had been and they walked out the front door. Bevel locked the burglar bar door, a barred security gate located on the outside of the front door to the house, and drove away in Stringfield's car with Dumas sitting in the passenger seat. While driving to Dumas's house, Bevel held the AK–47 rifle under his chin and stated that he did not mean to kill the boy (Sims), but had to because he was going to be a witness. Bevel abandoned Stringfield's car near Dumas's house.

Smith was eventually able to reach 911 by using Stringfield's cell phone. Because Smith was unable to give the police an exact address, it took some time for the police and rescue to find the house. Ultimately, rescuers were able to transport her to the hospital where she stayed for almost a month while undergoing multiple surgeries for various gunshot wounds to her pelvis and upper legs.

After hiding for almost a month, Bevel was finally found by officers from the Jacksonville Sheriff's Office on March 27, 2004. Bevel was informed of his constitutional rights and indicated his understanding of each right by signing the rights form. The police questioned Bevel on two occasions over the course of twenty-four hours. During these two interviews, Bevel gave four different versions of the story but ultimately confessed to the murders.

Although Bevel confessed to murdering Stringfield and Sims, his version of events was contrary to the testimony of both Smith and Dumas. Bevel stated that he and Stringfield had been fighting recently about money that Stringfield believed he was owed and that Bevel feared that Stringfield was going to try and kill him. He said that when he brought Dumas back to the house that night, Stringfield began to get angry, saying that he should have killed Bevel a long time ago. While Dumas and Smith were in opposite bedrooms, the fight escalated until Stringfield was pointing the handgun at Bevel and Bevel had picked up the AK–47 rifle. Then, Stringfield went into his bedroom and, when Bevel heard a clicking noise that sounded like a magazine being loaded into the handgun, Bevel moved towards the room and shot Stringfield when he reached the door. Bevel said the gun went off several times but he did not mean to shoot Smith.

At trial, the State presented the testimony of several forensic and medical experts, who testified regarding the causes of death of Stringfield and Sims and the extensive injuries suffered by Smith. Dr. Jesse Giles, who performed the autopsy of Sims, testified that Sims received a gunshot

> wound that grazed his chest and exited his arm but that he died as a result of massive trauma due to a gunshot wound to the head. Dr. Aurelian Nicolaescu, who performed the autopsy of Stringfield, testified that he died as a result of a gunshot wound to the head. Both doctors testified that each victim had stippling injuries, which is indicative of being shot at close to intermediate range. The State also presented evidence technicians and crime-scene analysts who discussed bullet fragments, casings, and fingerprints lifted from the scene. In addition, the State introduced the two videotaped interviews with Bevel and letters that Bevel wrote to Dumas from prison, in which he attempted to convince her to change her testimony and lie at trial to save his life.
>
> In his defense, Bevel presented testimony to contradict Smith's version of events. Officer Kenneth Bowen, one of the first officers to arrive at the crime scene, stated that Smith told him that two black males with ski masks committed the crimes. Francis Smith, Smith's mother, stated that she overheard her daughter tell Bevel's brother and his friend in the hospital that the man who committed the murder had on a mask. Finally, Ketrina Bronner, a neighbor of Stringfield, stated that she had a conversation with Smith at a federal courthouse in which Smith said that she did not see who committed the murder.
>
> After the guilt-phase portion of the trial, the jury found Bevel guilty of first-degree murder of Stringfield by discharging a firearm, first-degree murder of Sims by discharging a firearm, and attempted first-degree murder of Smith by discharging a firearm.

Bevel, 983 So. 2d at 510-12.

AGGRAVATING FACTORS

The burden is on the State "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); Hernandez-Alberto v. State, 889 So. 2d 721, 733-34 (Fla. 2004); Williams v. State, 386 So. 2d 538, 542 (Fla. 1980); State v. Dixon, 283 So. 2d 1, 9 (Fla. 1973). A court will consider only those aggravating circumstances set out in the statute. See § 921.141(6), Fla. Stat. (2021); Zack v. State, 911 So. 2d 1190, 1208 (Fla. 2005).

Here, the State argues two aggravating factors pursuant to the statute: (1) Defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person; and (2) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody. The jury unanimously found the State proved both aggravating factors beyond a reasonable doubt – and rightly so.

1. Defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person. § 921.141(6)(b), Fla. Stat. (2021).

The prior violent felony conviction aggravating factor is one of "the most weighty in Florida's sentencing calculus." Sireci v. Moore, 825 So. 2d 882, 887 (Fla. 2002). Indeed, the imposition of the death penalty is appropriate and has been upheld when this is the only aggravating factor that has been proven beyond a reasonable doubt. Ferrell v. State, 680 So. 2d 390 (Fla. 1996); see also Duncan v. State, 619 So. 2d 279 (Fla. 1993).

A trial court has discretion during the penalty phase to admit evidence of a defendant's previous conviction for a felony involving the use or threat of violence. Miller v. State, 42 So. 3d 204, 225 (Fla. 2010). The State can use this evidence as an aggravating factor in support of the imposition of the death penalty. Id. Moreover, documentary evidence is sufficient to prove prior violent felonies. Mills v. State, 476 So. 2d 172, 178 (Fla. 1985).

The prior violent felony aggravator is not limited to prior convictions, but also encompasses any contemporaneous violent felonies committed by the defendant. "Where a defendant is convicted of multiple murders, arising from the same criminal episode, the contemporaneous conviction as to one victim may support the finding of

the prior violent felony aggravator as to the murder of another victim." Francis v. State, 808 So. 2d 110, 136 (Fla. 2001).

In the instant case, the State sought the prior violent felony aggravator on Counts One and Two. The State presented evidence that Defendant qualified for this aggravator based on a violent felony committed in 2002 and the contemporaneous nature of the First-Degree Murder of Garrick Stringfield, the First-Degree Murder of Phillip Sims, and the Attempted First-Degree Murder of Feletta Smith.

Attempted Robbery

The State argues Defendant's conviction for Attempted Unarmed Robbery in 2002 proves the prior violent felony aggravator beyond a reasonable doubt. Detective Larry Kuczkowski with the Jacksonville Sheriff's Office testified he was dispatched to investigate a robbery on October 20, 2002. A male with a handgun had confronted Samuel Glover in the yard of a house owned by Tracy Jones. The male held a gun to Glover's head. He ordered Glover to remove his clothing and "to assume the position." The male told Glover to comply with his demands or he would shoot Glover in the head. Inside the house, Jones saw the incident and called law enforcement. Detective Kuczkowski testified law enforcement found Defendant in the backyard of the house that was surrounded by a chain link fence. Defendant had puncture wounds on his right hand consistent with an attempt to climb a chain link fence. A .38 caliber revolver was recovered on top of a shed in the backyard. Defendant ultimately pled guilty to Attempted Unarmed Robbery, a lesser included offense, and was sentenced to twelve months in the Duval County Jail.

The certified Judgment and Sentence admitted as evidence in this case, paired with the testimony of Detective Kuczkowski about Defendant's use of a handgun during

the incident and his threats to Glover, proves beyond a reasonable doubt Defendant has a prior conviction involving the threat of violence to a person.

First-Degree Murders and Attempted First-Degree Murder

The State also argues that the contemporaneous nature of the murders and attempted murder in the instant case prove the prior violent felony aggravator beyond a reasonable doubt. On August 26, 2005, a jury convicted Defendant of the First-Degree Murder of Garrick Stringfield, the First-Degree Murder of Phillip Sims, and the Attempted First-Degree Murder of Feletta Smith.

The first-degree murders of Garrick Stringfield and Phillip Sims constitute capital felonies. See § 782.04(1)(a), Fla. Stat. (2021). Garrick Stringfield sustained one gunshot wound to his head. At the penalty phase, the medical examiner, Dr. Aurelian Nicolaescu, testified Garrick Stringfield's cause of death was a gunshot wound to the head. The wound had stippling indicating Defendant had fired the fatal shot at close range.

Phillip Sims sustained two gunshot wounds: one wound to the head and one wound that grazed his chest and entered and exited his right arm. Dr. Jesse Giles, the medical examiner, determined Phillip Sims's cause of death was massive head trauma due to a high velocity perforating gunshot wound. Dr. Giles noted Defendant shot Phillip Sims in the head at close range because the wound had stippling. Dr. Giles testified Phillip Sims likely was alive when he received both wounds. Ultimately, the gunshot wound to Phillip Sims's head was fatal.

Defendant also shot Feletta Smith multiple times. At approximately 3:00 a.m. on February 29, 2004, Feletta Smith and Garrick Stringfield were in his bedroom located inside the house that he shared with Defendant. Feletta Smith heard a knock on the bedroom door. Defendant asked Garrick Stringfield to open the door. Garrick Stringfield

got up from the bed and complied with Defendant's request. Feletta Smith then heard gunfire and saw Garrick Stringfield slump to the floor. Feletta Smith, who was lying on the bed, began to scream. Defendant yelled, "Bitch, shut up," and shot her multiple times. She pretended to be dead, and Defendant left the room. Feletta Smith identified Defendant as the individual who shot her.

Dr. David Crumbie, an orthopedic surgeon, treated Feletta Smith after paramedics transported her to the hospital. Dr. Crumbie testified Feletta Smith sustained thirteen separate gunshot wounds to her body: two gunshot wounds to her back and multiple wounds to her legs. Feletta Smith required blood and saline transfusions because she lost a significant amount of blood. She also underwent multiple surgeries. Dr. Crumbie testified Feletta Smith's injuries could have been fatal if she had not received medical treatment quickly.

Both murders and the attempted murder involve the use of extreme violence. All these offenses arising from the same criminal episode and for which Defendant received convictions support the prior violent felony aggravator. See Francis, 808 So. 2d at 136. Based on Defendant's prior conviction for Attempted Robbery and the contemporaneous nature of the instant offenses, this Court finds the State has proven the existence of the prior violent felony aggravator beyond a reasonable doubt as to Counts One and Two. This Court gives this aggravating factor very great weight in determining the appropriate sentence to impose.

2. The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody. § 921.141(6)(e), Fla. Stat. (2021).

"To establish the avoid arrest aggravating factor where the victim is not a law enforcement officer, the State must show beyond a reasonable doubt that the sole or

dominant motive for the murder was the elimination of a witness." Connor v. State, 803 So. 2d 598, 610 (Fla. 2001). Proof of intent to avoid arrest must be very strong in such cases. Hernandez v. State, 4 So. 3d 642, 667 (Fla. 2009). Courts consider the following factors to determine whether the avoid arrest aggravator has been established: whether the victim knew and could identify the killer; whether the defendant used gloves, mask, or made incriminating statements about witness elimination; whether the victim offered any resistance; and whether the victim was confined or in a position to pose a threat to the defendant. Farina v. State, 801 So. 2d 44, 54 (Fla. 2001). Moreover, "a defendant's statements to the police, in part, support a finding of the avoid-arrest aggravator." Buzia v. State, 926 So. 2d 1203, 1211 (Fla. 2006).

Here, the State sought the avoid arrest aggravator for Count Two. Sojourner Sims Parker testified she drove her thirteen-year-old son, Phillip Sims, to visit his father, Garrick Stringfield, and to spend the night at Garrick Stringfield's house on February 28, 2004. Sojourner Sims Parker had seen Garrick Stringfield and Defendant together on multiple occasions before the murders. She considered Defendant to be Garrick Stringfield's roommate. Garrick Stringfield told Sojourner Sims Parker that if he was not at the house when she arrived with Phillip Sims, Defendant would be at the house to meet her. When she and Phillip Sims arrived at the house, Defendant came out of the residence and waved to them. Phillip Sims exited the vehicle and entered the house.

Detective Mitchell Chizik with the Jacksonville Sheriff's Office testified Defendant ultimately confessed to committing the murders after law enforcement apprehended him on March 26, 2004. The State introduced a video of Detective Chizik's interview with Defendant as evidence. In the video, Defendant stated he let Phillip Sims into the house on February 28. While they waited for Garrick Stringfield to return home,

Defendant and Phillip Sims played video games on the living room couch. Later that evening, Defendant shot Feletta Smith and Garrick Stringfield in the latter's bedroom. Defendant thought he had killed both Feletta Smith and Garrick Stringfield. When Defendant left Garrick Stringfield's bedroom and entered the living room, Phillip Sims was still sitting on the couch. Phillip Sims asked Defendant what had happened. Defendant stated Phillip Sims knew him, and he thought Phillip Sims would tell someone about the shooting. Defendant, therefore, shot Phillip Sims.

Feletta Smith's testimony corroborated Defendant's statement of his motive for killing Phillip Sims. Feletta Smith testified Defendant left the bedroom after he shot her and Garrick Stringfield. She heard Phillip Sims say, "What did you do to my daddy?" Defendant responded, "I didn't do shit to your daddy." She then heard Defendant fire two shots.

Importantly, the State also presented the former testimony of Rohnika Dumas, Defendant's girlfriend at the time of the murders. Dumas was in the house when Defendant shot the three victims. Dumas testified after Defendant shot Phillip Sims, he told her to leave with him. Defendant secured the burglar bar door before they left the house. Defendant then drove away with Dumas in her vehicle. Defendant had an AK-47. While he drove, he asked Dumas to take the steering wheel. Defendant pointed the AK-47 under his chin and threatened to kill himself. Defendant told her that he did not want to kill Phillip Sims; however, Defendant had to kill him because he was a witness.

Sergeant Frederick Fillingham with the Jacksonville Sheriff's Office responded to the shooting on February 29, 2004. Sergeant Fillingham testified he and other law enforcement officers could not immediately enter the house because the burglar bar door was secured. Jacksonville Fire and Rescue ultimately had to remove the burglar

bar door. When Sergeant Fillingham entered the living room, he saw a young male later identified as Phillip Sims clutching a television remote on the couch. Another law enforcement officer determined Phillip Sims was unresponsive.

The evidence demonstrates beyond a reasonable doubt that Defendant murdered Phillip Sims to avoid arrest by eliminating a witness. Defendant told law enforcement and his girlfriend that he killed Phillip Sims because he believed Phillip Sims would tell someone about the shooting. If Phillip Sims had survived, he undoubtedly could have identified Defendant as the shooter as demonstrated by Sojourner Sims Parker's testimony. Phillip Sims also posed no threat to Defendant besides his ability to identify Defendant as the shooter. Notably, when Sergeant Fillingham found Phillip Sims, he was still on the couch with a remote control in his hand. Defendant's decision to secure the burglar bar door after he left the house only further demonstrates his intent to avoid arrest. Given such evidence, this Court finds the State has proven the existence of the avoid arrest aggravator beyond a reasonable doubt as to Count Two. See Trease v. State, 768 So. 2d 1050, 1055-56 (Fla. 2000) (finding the avoid arrest aggravator was supported by witness testimony that defendant stated the victim had to be killed because the victim could identify him and by evidence that the victim and defendant were acquaintances so the victim could identify defendant). This Court gives this aggravating factor very great weight in determining the appropriate sentence to impose.

SUFFICIENCY OF THE AGGRAVATING FACTORS

This Court finds the prior violent felony aggravator, unanimously found by the jury as to both Counts One and Two, and the avoid arrest aggravator, unanimously found by the jury as to Count Two, have been proven to exist beyond a reasonable doubt. This Court assigns very great weight to these aggravators and finds them sufficient –

individually and collectively – to warrant a sentence of death. As such, Defendant is eligible for a sentence of death, and this Court now considers those circumstances argued by Defendant as mitigating circumstances. See § 921.141(2)(b)2, Fla. Stat. (2021).

MITIGATING CIRCUMSTANCES

Defendant alleges two statutory mitigating circumstances and sixteen nonstatutory 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, 768 So. 2d at 1055. "The trial court, during the penalty phase of a capital trial, is required to expressly find, consider and weigh . . . mitigating evidence urged by the defendant, both statutory and nonstatutory, which appears anywhere in the record." Donaldson v. State, 722 So. 2d 177, 188 (Fla. 1998).

> In considering allegedly mitigating evidence the court must decide if the facts alleged in mitigation are supported by the evidence, if those established facts are capable of mitigating the defendant's punishment, i.e., . . . may be considered as extenuating or reducing the degree of moral culpability for the crime committed, and if they are of sufficient weight to counterbalance the aggravating factors. The decision as to whether a mitigating circumstance has been established is within the trial court's discretion.

Hall v. State, 614 So. 2d 473, 478-79 (Fla. 1993) (quotations omitted).

Unlike the State's burden to prove aggravating factors beyond a reasonable doubt, the defendant need only establish mitigating circumstances by the greater weight of the evidence. Ford v. State, 802 So. 2d 1121, 1133 (Fla. 2001). Here, the jury unanimously found Defendant failed to establish by the greater weight of the evidence

any of the proposed mitigating circumstances. This Court, however, will consider these mitigating circumstances in light of the evidence presented to determine whether to confirm the jury's recommendation for death.

1. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. § 921.141(7)(b), Fla. Stat. (2021).

Extreme mental or emotional disturbance is "less than insanity but more than the emotions of an average man, however inflamed." Dixon, 283 So. 2d at 10. Expert testimony alone does not require a finding of extreme mental or emotional disturbance. Foster v. State, 679 So. 2d 747, 755 (Fla. 1996); see Provenzano v. State, 497 So. 2d 1177, 1184 (Fla. 1986) (approving trial court's finding testimony of various psychiatrists was not enough to establish defendant suffered from extreme mental or emotional disturbance). A court may even reject uncontroverted opinion testimony, "especially when it is hard to reconcile with the other evidence presented in the case." Id. A trial court does not abuse its discretion when it considers all the evidence. Hoskins v. State, 965 So. 2d 1, 17 (Fla. 2007). In rejecting an expert's opinion, the court may consider whether the source of the opinion stems from a defendant's self-reports. Nelson v. State, 850 So. 2d 514, 530 (Fla. 2003). When the expert testimony does not establish the defendant was under the influence of any mental or emotional disturbance *at the time of the murder*, this mitigating evidence is not established. Hoskins, 965 So. 2d at 17 (emphasis added). Further, evidence that a defendant engaged in purposeful conduct, such as taking actions to conceal the crime, provides support for the rejection of this statutory mitigator. Sparre v. State, 164 So. 3d 1183, 1192-93 (Fla. 2015.)

Defendant alleges he was under the influence of extreme mental or emotional disturbance at the time of the murders. To support his allegation, Defendant relies on the expert opinions of Drs. Steven Gold, Robert Ouaou, and Geoffrey Negin.

Dr. Gold diagnosed Defendant with Post-Traumatic Stress Disorder (PTSD) and major depression. Dr. Gold arrived at these diagnoses after evaluating Defendant for approximately five hours in 2013. Defendant reported feeling depressed throughout his life. When Defendant was twelve years old, his mother died in a car accident. This incident exacerbated Defendant's depression, but he never received grief counseling.

Dr. Gold testified Defendant suffers from PTSD due to numerous traumatic events that occurred during his childhood. In addition to obtaining a personal history from Defendant, Dr. Gold employed the Adverse Childhood Experiences (ACE) study. The ACE study identifies ten factors in children that increase the likelihood an individual will manifest psychological or mental disorders as an adult. Dr. Gold determined Defendant had approximately seven or eight of the factors. Defendant reported numerous traumatic events during his life: his mother died in a car accident when he was twelve years old; he was sexually and physically abused as a child; he was shot multiple times at the age of twenty; and he grew up in a violent neighborhood. Dr. Gold opined that Defendant likely developed PTSD as a child and that PTSD places an individual in a heightened state of alert and elevated stress. Dr. Gold emphasized during his testimony that Defendant's PTSD did not cause him to commit the offenses but increased the likelihood Defendant would engage in criminal behavior.

The testimony of Dr. Ouaou and Dr. Negin attempted to establish Defendant had brain damage that affected his ability to control his emotions and impulsivity. Dr. Ouaou, a licensed psychologist who specializes in neuropsychology, testified he met with

Defendant in 2013 for several hours. Dr. Ouaou administered a battery of neurological tests during that meeting. Seven of the eight neurological tests indicated Defendant had significant impairment. Based on Defendant's performance, Dr. Ouaou determined Defendant likely had frontal lobe damage. Dr. Ouaou would expect to see physical deficits on the frontal lobe in a scan of Defendant's brain. Dr. Ouaou testified frontal lobe damage could affect Defendant's conduct because the frontal lobe moderates other parts of the brain related to impulse control, reasoning, and "fight or flight" responses. In novel or emotional situations, Defendant could make inappropriate decisions or become impulsive.

Dr. Ouaou testified Defendant reported multiple head injuries that could result in frontal lobe damage: his mother's boyfriend hit him in the head with a crystal ash tray; he participated in a street football league without helmets or pads and hit his head; and he was in a motorcycle accident during which he lost consciousness when his head hit the road.

Dr. Negin, a neuroradiologist, reviewed magnetic resonance imaging (MRI) and positron emission tomography (PET) scans of Defendant's brain from July 24, 2018. Dr. Negin testified the MRI indicated Defendant had damage to his frontal lobe likely caused by physical trauma. Dr. Negin noted the MRI indicated less nerve functioning in the frontal lobe than in other parts of Defendant's brain. He testified the frontal lobe affects emotion and impulsivity. The results of the PET scan were consistent with the results of the MRI.

This Court finds Defendant has not established this mitigating circumstance by the greater weight of the evidence. Although Dr. Gold opined that Defendant suffers from PTSD, no evidence exists that Defendant suffered from PTSD at the time of the

murders or that the PTSD caused Defendant to commit the offenses while at that time suffering extreme mental or emotional distress. Dr. Ouaou also determined Defendant had frontal lobe impairment; however, no evidence exists that such impairment caused Defendant to have extreme mental or emotional distress at the time of the murders. On cross-examination, Dr. Ouaou admitted he could not assess how frontal lobe damage would specifically affect Defendant's behavior. Further, Defendant self-reported his personal and medical history when he met with both witnesses. Neither Dr. Gold nor Dr. Ouaou discussed the murders with Defendant, and their evaluations of Defendant occurred approximately nine years after the murders.

Moreover, evidence exists that Defendant engaged in purposeful conduct at the time of the murders. During his interview with Detective Mitchell Chizik, Defendant admitted he thought he had killed both Feletta Smith and Garrick Stringfield, so he decided to kill Phillip Sims because he thought he would tell someone about the shooting. Defendant also secured the burglar bar door after he shot Garrick Stringfield and Phillip Sims.

The jury did not find Defendant committed the murders while he was under the influence of extreme mental or emotional distress. This Court also finds Defendant has failed to establish this mitigating circumstance.

2. The age of the defendant at the time of the crime. § 921.141(7)(g), Fla. Stat. (2021).

"For a court to give a non-minor defendant's age significant weight as a mitigating circumstance, the defendant's age must be linked with some other characteristic of the defendant or the crime, such as significant emotional immaturity or

mental problems." Hurst v. State, 819 So. 2d 689, 698 (Fla. 2002); Mahn v. State, 714 So. 2d 391, 400 (Fla. 1998).

Dr. Robert Ouaou testified the frontal lobe does not fully develop until an individual is in their early to mid-twenties. Dr. Ouaou administered multiple neurological tests to Defendant. The results indicated Defendant had significant frontal lobe impairment that could affect his ability to make decisions in novel or high stress situations. However, Dr. Ouaou could not assess how frontal lobe damage would specifically affect Defendant's behavior. Dr. Geoffrey Negin reviewed MRI and PET scans of Defendant's brain. The scans indicated damage to Defendant's frontal lobe consistent with Dr. Ouaou's conclusions.

The tests administered by Dr. Ouaou also indicated Defendant had an I.Q. of 71. Dr. Ouaou testified such a score was in the impaired range. Further, Defendant's brother, Antorio McCray, described Defendant as "slow," and noted Defendant took special education classes. He testified other people easily influenced Defendant. Defendant did poorly in school and ultimately left school early because other children bullied him. Dr. Gold confirmed Defendant stopped attending school in the 10th grade.

This Court finds the above evidence does not link Defendant's age with frontal lobe impairment or any significant emotional immaturity or mental problems that could impede Defendant's decision making and impulse control. Dr. Ouaou's only statement linking age to the frontal lobe was made generally when he described at what age the frontal lobe fully develops. Moreover, Dr. Ouaou could not assess how frontal lobe damage would specifically affect Defendant's behavior.

Further, Defendant was twenty-two years old when he murdered Garrick Stringfield and Phillip Sims. Mr. McCray and William Jerome Randall, Defendant's

childhood friend, testified Defendant sold drugs throughout his young adulthood. Randall noted the older drug dealers, with whom Defendant aligned, even chose Defendant to take over their trade. Accordingly, this Court finds Defendant has not established a linkage between his age and immaturity or neurological impairments by the greater weight of the evidence. The jury did not find Defendant's age at the time of the murder to be a mitigating circumstance. This Court also finds Defendant has failed to establish this mitigating circumstance.

3. The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty. § 921.141(7)(h), Fla. Stat. (2021).

This "catch all" statutory mitigating circumstance affords the defense the opportunity to establish additional mitigating factors not contemplated by the statute but that apply to the individual defendant. The Florida Legislature considers these mitigating factors as "any factor that could reasonably bear on the sentence." Consalvo v. State, 697 So. 2d 805, 818 (Fla. 1996). Because these mitigating factors are largely undefined, a defendant must identify the specific factors he or she relies upon. Lucas v. State, 568 So. 2d 18, 24 (Fla. 1990). Moreover, this evidence "must still meet a threshold of relevance." Geralds v. State, 111 So. 3d 778, 808 (Fla. 2010). That threshold is evidence that "logically [proves] or disprove[s] some fact or circumstance which a fact-finder could reasonably deem to have mitigating value." Id.

A. Defendant has an I.Q. of 71.

Dr. Robert Ouaou testified to administering a battery of neurological tests when he met with Defendant in 2013. Dr. Ouaou specifically administered the Weschler Intelligence Scale, a measure of I.Q. Defendant scored 71. Dr. Ouaou testified Defendant's I.Q. placed him in the impaired range, and Defendant's I.Q. was in the 3rd

percentile relative to his peers' I.Q.s. Dr. Ouaou also administered the Test of Premorbid Functioning, which allowed him to determine at what percentile Defendant's I.Q. should be. He testified Defendant should have an I.Q. that places him in the 15th percentile. Although the jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance, this Court finds the greater weight of the evidence does establish this mitigating circumstance but gives it little weight.

B. Defendant's childhood was impacted by the trauma of his mother's death at age 12.

Dr. Steven Gold testified Defendant reported his mother died in a car accident when he was twelve years old. Dr. Gold opined her death constituted a traumatic event for Defendant, and likely exacerbated Defendant's depression. Antorio McCray, Defendant's brother; William Jerome Randall, Defendant's childhood friend; Donella McCray, Defendant's grandmother; and Carl Burden, a family friend, testified Defendant lost his mother at a young age, and her death negatively impacted Defendant. Antorio McCray specifically testified Defendant appeared depressed after her death. Although the jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance, this Court finds the greater weight of the evidence does establish this mitigating circumstance but affords it little weight.

C. Defendant's father did not actively participate in his life, and subsequently died due to heroin use.

Carl Burden and Antorio McCray testified Defendant's father had a heroin addiction. According to Mr. McCray's testimony, Defendant's father and mother separated when Defendant was approximately six or seven years old. His father ultimately died of AIDS due to heroin use. Defendant reported to Dr. Steven Gold that his father did not spend much time with him. The jury unanimously found the greater

weight of the evidence did not establish this mitigating circumstance. The Court finds that while this fact may have been established by the greater weight of the evidence, this circumstance is not mitigating in nature – that is, it is not considered as extenuating or reducing the degree of Defendant's moral culpability for the crimes committed. See Hall, 614 So. 2d at 478-79. As such, the Court gives it no weight in determining the appropriate sentence in this case.[4]

D. Defendant's childhood and teenage years were plagued by witnessing repeated acts of violence and substance abuse within his family.

Dr. Steven Gold testified Defendant reported violence and substance abuse within his family. His mother's boyfriend physically abused him at a young age for approximately one to two years. A family member sexually abused Defendant and his sister when Defendant was six years old. Defendant's mother abused alcohol, and Defendant's father was addicted to heroin. Carl Burden and Antorio McCray testified Defendant's parents would abuse substances in the presence of Defendant. The jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance. The Court finds that while this fact may have been established by the greater weight of the evidence, this circumstance is not mitigating in nature – that is, it is not considered as extenuating or reducing the degree of Defendant's moral culpability for the crimes committed. See id. As such, the Court gives it no weight in determining the appropriate sentence in this case.[5]

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[4] Even assuming arguendo this circumstance was later determined to be mitigating in nature, this Court would assign it very slight weight.

[5] Even assuming arguendo this circumstance was later determined to be mitigating in nature, this Court would assign it very slight weight.

E. Defendant was essentially raised by his grandmother, Donella McCray, who attempted to raise multiple grandchildren with very little financial or emotional resources.

Carl Burden and Antorio McCray testified Defendant began to live with his grandmother, Donella McCray, after his mother died in a car accident when Defendant was approximately twelve years old. Donella McCray also testified to this fact. All three witnesses testified multiple grandchildren lived with her. Carl Burden and Antorio McCray stated Donella McCray did not work and likely relied on Social Security benefits to financially provide for herself and her grandchildren. Carl Burden believed Donella McCray loved her grandchildren, but she could not provide a structured environment for them because of her age and the significant violence in the neighborhood. The jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance. The Court finds that while this fact may have been established by the greater weight of the evidence, this circumstance is not mitigating in nature – that is, it is not considered as extenuating or reducing the degree of Defendant's moral culpability for the crimes committed. See id. As such, the Court gives it no weight in determining the appropriate sentence in this case.[6]

F. Defendant grew up in the Eastern part of downtown Jacksonville, where drug selling, shots fired, violence, and substance abuse were a common occurrence.

William Jerome Randall, Defendant's childhood friend, grew up in the same area as Defendant, the Eastern part of downtown Jacksonville, and has known Defendant for approximately twenty years. Randall testified many people identified the area around Defendant's grandmother's house as the "terror dome" during the early 1990s because

[6] Even assuming arguendo this circumstance was later determined to be mitigating in nature, this Court would assign it very slight weight.

of the significant amount of violence, drugs, and crime. Many people in the neighborhood were poor. Children would become involved in the drug business to financially support their families. Older men often enlisted children to help them deal drugs because law enforcement would not suspect children of carrying drugs. Randall testified the amount of violence in the area increased when the "older guys" began killing the "younger guys" to maintain control of the drug trade. Randall testified almost everyone in the neighborhood carried guns.

Antorio McCray's testimony corroborated Randall's testimony. Mr. McCray testified to extreme violence in the Eastern part of downtown Jacksonville. Mr. McCray noted he would often hear gun shots in the middle of the night, and he knew not to travel at night because of the violence. He testified drugs and guns were easily obtained in the neighborhood. The jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance. The Court finds that while this fact may have been established by the greater weight of the evidence, this circumstance is not mitigating in nature – that is, it is not considered as extenuating or reducing the degree of Defendant's moral culpability for the crimes committed. See id. As such, the Court gives it no weight in determining the appropriate sentence in this case.[7]

G. Defendant was brought into the criminal lifestyle at a young age by his then criminal role models.

Antorio McCray testified Defendant "took to the streets" at ten years old with Kenneth Glover who was approximately twenty-four years old. Defendant would deal drugs for Glover. Defendant and Glover's relationship ended when Glover went to prison for dealing drugs. Laurel French Wilson, Defendant's juvenile attorney, testified

[7] Even assuming arguendo this circumstance was later determined to be mitigating in nature, this Court would assign it very slight weight.

she represented Defendant when he was twelve years old for vandalism and possession of cocaine with intent to distribute. The jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance. The Court finds that while this fact may have been established by the greater weight of the evidence, this circumstance is not mitigating in nature – that is, it is not considered as extenuating or reducing the degree of Defendant's moral culpability for the crimes committed. See id. As such, the Court gives it no weight in determining the appropriate sentence in this case.[8]

H. Defendant was heavily influenced by the much older, Garrick Stringfield.

Antorio McCray testified that Garrick Stringfield and Defendant began to spend time with one another when Defendant was eighteen years old. Defendant "looked up to" Garrick Stringfield because Garrick Stringfield was older than Defendant. Garrick Stringfield sold drugs and had a reputation for violence Defendant would sell drugs for Garrick Stringfield, but Defendant only received some money in return. Garrick Stringfield would often threaten and hit Defendant. The jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance. This Court similarly finds that although the defense has demonstrated Stringfield and Defendant had a relationship, Defendant has not demonstrated by the greater weight of the evidence that Defendant was heavily influenced by Stringfield. As such, this Court gives no weight to this argued circumstance in determining the appropriate sentence in this case.

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[8] Even assuming arguendo this circumstance was later determined to be mitigating in nature, this Court would assign it very slight weight.

I. Defendant was shot multiple times in 2001, in front of his grandmother's house.

Antorio McCray testified Defendant was shot three times: two times in the chest and one time in the leg. According to Mr. McCray, the shooting resulted from a dispute over video games, and Defendant still has a bullet from the shooting lodged behind his heart. William Jerome Randall stated Defendant was shot when he was twenty years old in a drug-related dispute. The jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance. The Court finds that while this fact may have been established by the greater weight of the evidence, this circumstance is not mitigating in nature – that is, it is not considered as extenuating or reducing the degree of Defendant's moral culpability for the crimes committed. See id. As such, the Court gives it no weight in determining the appropriate sentence in this case.[9]

J. Defendant, in spite of his traumatic childhood, has repeatedly shown the capacity for love and kindness.

William Jerome Randall, Defendant's childhood friend, testified Defendant had a close relationship with his sister, who ultimately died of AIDS. When Defendant was ten years old, he began coming to the corner of a neighborhood street to sell drugs and earn money for his family. He would bring his six-year-old sister with him and would take care of her.

Maria Sardinas, Defendant's former foster mother, and Tommisha Bevel, Defendant's daughter, testified to Defendant's capacity for kindness and love. Sardinas testified a fourteen-year-old Defendant displayed good behavior when he stayed with her. He was not violent with the other children and enjoyed caring for the farm animals.

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[9] Even assuming arguendo this circumstance was later determined to be mitigating in nature, this Court would assign it very slight weight.

Tommisha Bevel testified to having a strong relationship with her father. Defendant talks to Tommisha Bevel on a regular basis and advises her to remain in school. The jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance. The Court finds that while this fact may have been established by the greater weight of the evidence, this circumstance is not mitigating in nature – that is, it is not considered as extenuating or reducing the degree of Defendant's moral culpability for the crimes committed. See id. As such, the Court gives it no weight in determining the appropriate sentence in this case.[10]

K. Defendant has exhibited good jail conduct as well as appropriate courtroom behavior.

Ronald McAndrew, a prison and jail consultant, interviewed Defendant and reviewed his disciplinary reports. McAndrew testified Defendant has only received three disciplinary reports since his incarceration began in 2005. Two disciplinary reports from the Duval County Jail involved minor infractions: Defendant was not prepared for an inspection; and Defendant was ordered to stop running in the basketball area, but he continued to run for two more laps. Defendant received one disciplinary report from the Department of Corrections for failing to follow a verbal or written command. McAndrew noted Defendant had not engaged in any reported violence.

Defendant also contends he has displayed appropriate courtroom behavior. This Court had the opportunity to observe Defendant's demeanor. Defendant has largely conducted himself with the appropriate level of decorum warranted by the instant proceedings. Defendant displayed inappropriate courtroom behavior when he, without authority or decorum, made an unprompted statement to the victim's mother as she

[10] Even assuming arguendo this circumstance was later determined to be mitigating in nature, this Court would assign it very slight weight.

walked away from the witness stand. The jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance. The Court finds that while this fact may have been established by the greater weight of the evidence, this circumstance is not mitigating in nature – that is, it is not considered as extenuating or reducing the degree of Defendant's moral culpability for the crimes committed. See id. As such, the Court gives it no weight in determining the appropriate sentence in this case.[11]

L. Defendant responds well in structured environments.

Defendant contends he responds well in structured environments. In support of this contention, Defendant presented the former testimony of Maria Sardinas. Defendant stayed with the Sardinas family as a foster child for a short period of time when he was approximately fourteen years old. Maria Sardinas ensured Defendant went to school every day, as well as completed his homework and chores. Sardinas testified Defendant displayed good behavior. Defendant did not fight with the other foster children. He did not skip school and finished his homework. Defendant always completed his chores, including preparing meals, raking leaves, and caring for the farm animals.

Ronald McAndrew testified Defendant has received only three disciplinary reports since his incarceration began in 2005. Defendant has been a "model inmate and compliant prisoner." This Court finds the Sardinas household and the prison to be structured environments in which Defendant demonstrated good behavior. The jury unanimously found the greater weight of the evidence did not establish this mitigating

[11] Even assuming arguendo this circumstance was later determined to be mitigating in nature, this Court would assign it very slight weight.

circumstance. The Court finds that while this fact may have been established by the greater weight of the evidence, this circumstance is not mitigating in nature – that is, it is not considered as extenuating or reducing the degree of Defendant's moral culpability for the crimes committed. See id. As such, the Court gives it no weight in determining the appropriate sentence in this case.[12]

M. Defendant confessed to his crimes and has shown immediate and repeated remorse.

Detective Mitchell Chizik testified Defendant confessed to shooting Feletta Smith, Garrick Stringfield, and Phillip Sims, during an interview with law enforcement on March 28, 2004. However, Defendant only confessed to the shooting after he avoided law enforcement for approximately thirty days. Defendant also gave two false statements about the shooting to law enforcement before ultimately admitting guilt. Therefore, while this Court finds Defendant confessed to his crimes, he did not show remorse immediately or repeatedly. The jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance. Likewise, this Court finds the evidence does not establish this mitigating circumstance. As such, the Court gives it no weight in determining the appropriate sentence in this case.

N. Defendant continues to impact the lives of his family members, and he has developed a nurturing, caring relationship with his daughter.

Defendant presented the testimony of his seventeen-year-old daughter, Tommisha Bevel, in support of the instant mitigating circumstance. Tommisha Bevel testified to maintaining a relationship with Defendant. Defendant contacts her approximately every other week, and he tells her to stay in school. Tommisha Bevel

[12] Even assuming arguendo this circumstance was later determined to be mitigating in nature, this Court would assign it very slight weight.

indicated she would visit Defendant in prison when she became eighteen years old. The jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance. The Court finds that while this fact may have been established by the greater weight of the evidence, this circumstance is not mitigating in nature – that is, it is not considered as extenuating or reducing the degree of Defendant's moral culpability for the crimes committed. See Hall, 614 So. 2d at 478-79 (Fla. 1993). As such, the Court gives it no weight in determining the appropriate sentence in this case.[13]

O. Defendant suffers from brain damage which affects decision making.

The testimony of Dr. Robert Ouaou and Dr. Geoffrey Negin establish Defendant sustained brain damage that affects his decision making. Dr. Ouaou administered a battery of neurological tests to Defendant in 2013. Seven of the eight neurological tests indicated Defendant had significant impairment. Based on Defendant's performance, Dr. Ouaou determined Defendant likely had frontal lobe damage. Dr. Ouaou testified frontal lobe damage could affect Defendant's conduct because the frontal lobe moderates other parts of the brain related to impulse control and reasoning. As a result, Defendant could make inappropriate decisions in novel or emotional situations.

Dr. Negin, a neuroradiologist, reviewed MRI and PET scans of Defendant's brain from July 24, 2018. Dr. Negin testified the scans indicated Defendant had an injury to his frontal lobe likely caused by physical trauma. He stated the frontal lobe affects emotion and impulsivity. Although the jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance, this Court finds the greater

[13] Even assuming arguendo this circumstance was later determined to be mitigating in nature, this Court would assign it very slight weight.

weight of the evidence does establish this mitigating circumstance and affords it little weight.

P. Defendant was raised in a strong religious faith.

Defendant alleges he was raised in a strong religious faith. In support of his contention, Defendant presented the former testimony of his grandmother, Donella McCray, who raised Defendant beginning when he was twelve years old. Ms. McCray was a pastor for six years at the Rose of Sharon Church. Ms. McCray took Defendant to church regularly during that time. Defendant was baptized as a teenager and worked as an usher at the church. However, no evidence was presented that Defendant being raised in a strong religious faith positively impacted him. The jury unanimously found the greater weight of the evidence did not establish this mitigating circumstance. The Court finds that while this fact may have been established by the greater weight of the evidence, this circumstance is not mitigating in nature – that is, it is not considered as extenuating or reducing the degree of Defendant's moral culpability for the crimes committed. See id. As such, the Court gives it no weight in determining the appropriate sentence in this case.[14]

CONCLUSION

This Court has given great weight to the jury's determination to impose the death penalty, and this Court wholly agrees with the jury's verdicts based on an assessment of the aggravating factors and mitigating circumstances presented and their respective weights. This Court finds the aggravating factors heavily outweigh the mitigating

[14] Even assuming arguendo this circumstance was later determined to be mitigating in nature, this Court would assign it very slight weight.

circumstances, and that death is the only proper penalty for the murders of Garrick Stringfield and Phillip Sims as charged in Counts One and Two of the Indictment.

Accordingly, it is **ORDERED AND ADJUDGED** that:

AS TO COUNT ONE: For the death of Garrick Stringfield - that you, Thomas Eugene Bevel, 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.

AS TO COUNT TWO: For the death of Phillip Sims - that you, Thomas Eugene Bevel, 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, Florida Statutes (2021), you have thirty (30) days from the date of issuance of a mandate pursuant to a decision of the

Supreme Court of Florida affirming the sentence of death to elect death by electrocution by the procedures required by that law.

DONE AND ORDERED in Jacksonville, Duval County, Florida this 11th day of February, 2022, *nunc pro tunc* to oral pronouncement in Open Court on February 4, 2022.

ADRIAN G. SOUD
Circuit Court Judge

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