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IN THE
Supreme Court of the United States

WILLIAM FRANCES SILVIA

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

***THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY AUGUST 18, 2026 AT 6:00 P.M.***

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APPENDIX A

FSC Opinion (August 13, 2026)

Supreme Court of Florida

No. SC2026-1162

WILLIAM FRANCES SILVIA,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

August 12, 2026

PER CURIAM.

Seventeen years after William Frances Silvia, was sentenced to death for capital murder, Governor Ron DeSantis signed his death warrant and set his execution date for August 18, 2026. Though he validly waived postconviction proceedings and discharged counsel in 2012, Silvia, through the same counsel that represented him in 2012—Capital Collateral Regional Counsel - Middle Region (CCRC-M)—filed a postconviction motion challenging his warrant. That motion was summarily denied, in part because of his prior waiver. For the reasons that follow, we affirm the postconviction court’s

order and deny Silvia's request for oral argument and motion for stay.^{1, 2}

I.

On September 22, 2006, Silvia murdered his estranged wife, Patricia Silvia, and attempted to murder her mother, Betty Woodard. As we detailed in *Silvia v. State* (*Silvia I*), 60 So. 3d 959, 963-64 (Fla. 2011), Silvia had become homeless and lost his job, while Patricia and her two minor children from a previous marriage moved into the home of her mother and stepfather. On September 22, Silvia went to that home and, after arguing with Patricia, retrieved a shotgun from his vehicle and fired a total of seven shots, shooting both Patricia and her mother, Betty, in the head. Only Betty survived. Silvia also shot at the house and fired two rounds in the air while other people—who were there for a cookout—were around, including Patricia's minor son. Silvia later confessed to law enforcement that he shot Patricia “because she spent all of their money and then started dating her ex-husband.” *Id.* at 964.

1. We have jurisdiction. See art. V, § 3(b)(1), Fla. Const.

2. Silvia also filed a motion for stay of execution in case number SC2009-0220, which we also deny today by separate order.

Following the guilt phase, the jury convicted Silvia of one count of first-degree murder and one count of attempted first-degree murder. *Id.* During the penalty phase, the State proved three aggravating factors, that Silvia: (1) has a prior violent felony; (2) created a great risk of death to many persons; and (3) committed the murder in a cold, calculated, and premeditated manner. The jury voted 11-1 for the death penalty, and the trial court sentenced Silvia to death. *Id.* at 966-67.

We affirmed Silvia's convictions and death sentence on direct appeal. *Id.* at 963.

Silvia's postconviction history is brief. In 2012, based on Silvia's pro se letter to the circuit court—which was treated as a motion to dismiss his postconviction proceedings under Florida Rule of Criminal Procedure 3.851(i)—Silvia waived his right to postconviction proceedings and discharged counsel before counsel could finish discovery and file an initial motion challenging his judgment and sentence under rule 3.851(d). *Silvia v. State (Silvia II)*, 228 So. 3d 1144 (Fla. 2013). Before granting Silvia's request to waive his postconviction proceedings and discharge counsel, the circuit court conducted a detailed colloquy and advised Silvia that

he would be permanently giving up any right to take advantage of any changes that may occur in the law, which Silvia said he understood. He also acknowledged that he still wished to waive postconviction counsel and postconviction proceedings even though his waiver would make him immediately eligible for a warrant. His counsel, CCRC-M, sought review, and this Court upheld the validity of Silvia's waiver and his right to discharge counsel. *Id.* at 1145-46.

Notwithstanding his waiver, several years later, Silvia filed a postconviction motion seeking relief under *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *receded from in part by State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020), based on his nonunanimous penalty phase jury recommendation for death. *See State v. Silvia (Silvia III)*, 235 So. 3d 349 (Fla. 2018). Although the circuit court granted Silvia a new penalty phase, this Court reversed on appeal and reinstated Silvia's death sentence, reasoning that "Silvia's valid postconviction waiver, which included his understanding that 'he was losing permanently his right to take advantage of any changes that may occur in the law,' preclude[d] him from claiming a right to the benefit of *Hurst*." *Id.* at 351-52 (quoting *Silvia v. State*, 123 So. 3d 1148 (Fla. 2013) (table)).

The following year, Silvia filed a demand for additional medical records pursuant to Florida Rule of Criminal Procedure 3.852(i), which the circuit court dismissed as premature. *Silvia v. State (Silvia IV)*, No. SC2019-1778, 2020 WL 901912 (Fla. Feb. 25, 2020) (appeal voluntarily dismissed).

Finally, in 2022, Silvia filed an amended motion to appoint federal habeas counsel pursuant to 18 U.S.C. § 3599(a)(2) in the Tampa Division of the United States District Court for the Middle District of Florida. *Silvia v. Sec’y, Dep’t of Corr.*, No. 8:22-cv-1365 (M.D. Fla. June 15, 2022). The case was later transferred to the Orlando Division where it was dismissed without prejudice to give Silvia “the opportunity to seek the reappointment of postconviction counsel in the state courts and to attempt to litigate exhaustible claims in the state courts.” *Silvia v. Sec’y, Dep’t of Corr.*, Order, at 3, No. 6:22-cv-1125 (M.D. Fla. Mar. 18, 2024).

On May 5, 2022, Silvia became eligible for postconviction counsel despite his 2012 discharge of counsel. See Fla. R. Crim. P. 3.851(i)(11) (“For cases where counsel was discharged before May 5, 2022, collateral counsel eligible under rule 3.112 must be appointed.”); *In re Amends. to Fla. Rule of Crim. Proc. 3.851*, 351 So.

3d 574, 575-76 (Fla. 2022) (“[N]ew subdivision (i)(11) provides that collateral counsel must be appointed in cases for which motions under subdivision (i) were granted prior to the effective date of these amendments, i.e., where counsel was previously discharged.”).

On July 17, 2026, Governor DeSantis signed a warrant scheduling Silvia’s execution for August 18, 2026. CCRC-M was appointed to represent Silvia and proceeded to file demands for public records pursuant to rule 3.852. In his demands, Silvia sought records from the Florida Department of Corrections (FDOC) concerning the lethal injection protocols and, specifically, information on whether FDOC had a shortage of the first drug administered in the protocol, etomidate, and whether its supply of etomidate had expired. He also demanded records from the Executive Office of the Governor, specifically seeking internal communications concerning how he came to be selected as the next warrant candidate given that his counsel was currently representing another active warrant defendant, Dominick Occhicone. The postconviction court denied these requests.³

3. Silvia does not challenge these rulings on appeal.

CCRC-M then filed a successive postconviction motion under rule 3.851(h), raising two claims. First, counsel argued that the timing of Silvia's warrant—while CCRC-M was representing Occhicone in his active death warrant—violated Silvia's Eighth and Fourteenth Amendment rights, his corresponding rights under the Florida Constitution, and his “statutorily created right to counsel during postconviction hearings,” whose assistance he argued must be effective. Second, counsel argued that an alleged shortage of etomidate will violate Silvia's Fourteenth Amendment right to equal protection and to be executed in the same manner as other death row inmates, as well as his right to due process.

Following a *Huff*⁴ hearing on July 29, 2026, the postconviction court summarily denied Silvia's rule 3.851(h) motion, holding first that because Silvia validly waived all postconviction proceedings in 2012, his current motion was procedurally barred. The postconviction court alternatively considered each claim but found them to be legally insufficient or meritless.

Silvia now appeals the summary denial of his two

4. *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

postconviction claims. For the reasons explained below, we affirm the postconviction court's order and deny all other relief.

II.

Our review of an order summarily denying a successive rule 3.851 motion is de novo. *See Rogers v. State*, 409 So. 3d 1257, 1262 (Fla.), *cert. denied*, 145 S. Ct. 2695 (2025). Summary denial is appropriate if “the motion, files, and records in the case conclusively show that the movant is entitled to no relief.” *Id.* (quoting *Zack v. State*, 371 So. 3d 335, 344 (Fla. 2023)). A postconviction court may also summarily dismiss claims that are procedurally barred. *See id.* (citing *Zack*, 371 So. 3d at 344, and Fla. R. Crim. P. 3.851(e)(2)).

A.

We first address Silvia's 2012 waiver. We agree with the postconviction court's conclusion that Silvia was permanently barred from collaterally attacking his judgment and sentence and availing himself of new developments in the law, *see Silvia II*, 228 So. 3d at 1145-46; *Silvia III*, 235 So. 3d at 351-52, including any favorable language in the comments concerning the 2022 amendments to rule 3.851(i), despite the requirement that he now

be given counsel under rule 3.851(i)(11). However, at Silvia's July 29 *Huff* hearing, the State agreed that Silvia could raise certain claims "solely attributing to the execution process." To the extent Silvia's two postconviction claims are limited to the circumstances of the execution process, we address these claims.

B.

Claim 1

Silvia first asserts the postconviction court erred in summarily denying his claim concerning the timing of the warrant and its impact on CCRC-M's ability to effectively assist him while already assisting another defendant under an active death warrant, Occhicone. While Silvia acknowledges on appeal that there is no federal constitutional right to the effective assistance of postconviction counsel, he asserts that he has a state statutory right to effective assistance as evidenced by the requirement in section 27.711(12), Florida Statutes, for "quality representation," and the 2022 comments to the rule 3.851(i) amendment requiring competent counsel under Florida Rule of Criminal Procedure 3.112. He further argues that the deprivation of dedicated, effective counsel violated his Fourteenth Amendment and corresponding

Florida constitutional rights to due process and access to courts.

We rejected a nearly identical claim in *Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023) (“Barwick also alleges that the thirty-day warrant period and the difficult attendant circumstances identified by Barwick made it impossible for postconviction counsel to provide effective assistance, thereby violating what he claims is his ‘statutory right to effective postconviction counsel.’ ”). There, we explained that the reference to “quality representation” in section 27.711(12)⁵ “does not create a right to effective assistance of postconviction counsel” given the other provisions in chapter 27

5. Further, the requirement under section 27.711(12) applies only to private counsel. See § 27.710(2), Fla. Stat. (providing that private counsel seeking to become registry counsel for capital postconviction proceedings “must certify on an application provided by the executive director that he or she satisfies the minimum requirements for private counsel set forth in s. 27.704(2)”; § 27.711, Fla. Stat. (setting out duties and limitations of attorney appointed as registry counsel under subsections (2), (8), (9) and (11); addressing payment of fees to private counsel by the Justice Administrative Commission under subsections (3)-(7) and (13); and, under subsection (12), requiring the court to monitor “the performance of assigned counsel to ensure that the capital defendant is receiving quality representation” and ensure registry counsel has not engaged in fraudulent billing, attempted to solicit further compensation from the defendant, failed to “meet continuing legal education requirements,” etc.).

that “expressly prohibit capital defendants from raising claims of ineffective assistance of postconviction counsel or otherwise challenging the adequacy of their postconviction representation.” *Id.* at 790-91 (citing §§ 27.711(10), .7002(1), (2), Fla. Stat.). We also clarified in *Barwick* that the statutory right to counsel means only that “a defendant be represented by an attorney during postconviction proceedings.” *Id.* at 791 (quoting *Asay v. State*, 210 So. 3d 1, 28 (Fla. 2016)). Thus, we denied Barwick’s claim, concluding that “a claim of ineffective assistance of postconviction counsel does not provide a valid basis for relief.” *Id.*; *see also Jennings v. State*, 422 So. 3d 107, 118 (Fla.), *cert. denied*, 146 S. Ct. 402 (2025).

As to the 2022 amendments and rule 3.112, these sources reflect that postconviction counsel must be *competent*—that is, an attorney meeting minimal requirements to competently handle capital postconviction proceedings. *See In re Amends. to Fla. Rule of Crim. Proc.* 3.851, 351 So. 3d at 575-76 (“[N]ew subdivision (i)(11) provides that collateral counsel must be appointed in cases for which motions under subdivision (i) were granted prior to the effective date of these amendments, i.e., where counsel was

previously discharged. As always, postconviction counsel must meet the minimum requirements set forth in Florida Rule of Criminal Procedure 3.112 (Minimum Standards for Attorneys in Capital Cases)”); Fla. R. Crim. P. 3.112(a) (“The purpose of these rules is to set minimum standards for attorneys in capital cases Counsel in death penalty cases should be required to perform at the level of an attorney reasonably skilled in the specialized practice of capital representation, zealously committed to the capital case, who has had adequate time and resources for preparation.”); Fla. R. Crim. P. 3.112(k) (providing minimum requirements specifically for lead counsel in capital postconviction cases, requiring counsel be a member of a bar in good standing for at least five years, have three years’ experience in postconviction litigation, and have handled a combined total of five capital proceedings with at least two in capital postconviction proceedings).

Here, Silvia’s statutory right to counsel was satisfied by the appointment of CCRC-M. CCRC-M is a statutorily created office established for the very purpose of providing competent capital postconviction counsel. See §§ 27.701, .704(1), Fla. Stat. (creating the three CCRC regional divisions to handle capital postconviction

representation; permitting CCRC to appoint full-time assistant counsel to handle postconviction proceedings so long as counsel meets minimum requirements, including participation in “at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five of such proceedings”).

Thus, Silvia was afforded his statutory right to competent postconviction counsel through the appointment of CCRC-M. And CCRC-M did not cease being competent to handle postconviction proceedings because it was simultaneously representing two defendants under active warrants.

We also rejected a materially similar due process argument to Silvia’s in *Barwick*. There, Barwick’s due process claim also depended on the recognition of a statutory right to effective assistance of postconviction counsel in order to argue that his due process rights were violated based on the compressed thirty-day warrant schedule. 361 So. 3d at 790. We rejected this claim because Barwick was given notice and an opportunity to be heard. *Id.*

We likewise reject Silvia’s due process claim. Silvia was

afforded notice and an opportunity to be heard. And Silvia was appointed competent counsel who accessed the courts on his behalf. *See Zakrzewski v. State*, 415 So. 3d 203, 210 (Fla.) (rejecting claim that death row inmate was deprived access to courts based on thirty-day warrant period overlapping with Fourth of July holiday and pendency of another death row inmate's execution), *cert. denied*, 146 S. Ct. 57 (2025).

And we have repeatedly held that “an expedited warrant litigation schedule does not deprive a defendant of his right to due process.” *Jennings*, 422 So. 3d at 119 (citing *Windom v. State*, 416 So. 3d 1140, 1150 (Fla. 2025)); *see also Zakrzewski*, 415 So. 3d at 211 (rejecting claim that expedited process of warrant litigation deprived defendant of his due process rights).

To the extent Silvia challenges the Governor's absolute discretion on when to sign a warrant, this Court has long rejected similar challenges. *Tanzi v. State*, 407 So. 3d 385, 393 (Fla.) (rejecting challenge to timing of death warrant, noting “[w]e have long recognized the Governor's authority and discretion when signing death warrants”), *cert. denied*, 145 S. Ct. 1914 (2025); *Valle v. State*, 70 So. 3d 530, 551-52 (Fla. 2011) (declining to “second-

guess” Governor’s discretion in when to sign a warrant (citing *Marek v. State*, 14 So. 3d 985, 998 (Fla. 2009))). We continue to reject Silvia’s similar challenge here.

Finally, we find no error in the postconviction court’s rejection of Silvia’s argument that the timing of the warrant violates his Eighth Amendment right to be free from cruel and unusual punishment, or that a manifest injustice will occur based on the timing of his warrant and Florida’s recent executions of the elderly and now of Silvia, who is in a wheelchair. First, these arguments are predicated on Silvia’s meritless claim that he was deprived of the effective assistance of postconviction counsel. Second, Silvia waived any collateral attack on his sentence, agreeing on the record in *Silvia II* that he understood he was immediately warrant eligible. *Cf. James v. State*, 404 So. 3d 317, 328 (Fla.) (denying habeas claim, reasoning that “James’s effort to introduce recent brain scans to challenge his 2003 postconviction waiver is improper where that waiver was upheld in 2008 based on a finding that the waiver was knowingly, voluntarily, and intelligently made”), *cert. denied*, 145 S. Ct. 1351 (2025). We have also rejected similar arguments based on physical infirmities. *Id.* at 325 (“[W]e agree

with the circuit court that even in light of James’s allegations relating to cognitive and physical issues and other hardships, James’s death sentence does not constitute cruel and unusual punishment.”). Finally, we have declined to excuse a procedural bar based on a claim of manifest injustice related to a physical infirmity. *See Bates v. State*, 416 So. 3d 312, 320 (Fla.) (rejecting request to “excuse the procedural bars and grant . . . relief to avoid a manifest injustice” based on a claim that evidence of organic brain damage was inadequately considered during defendant’s second penalty phase; also finding no manifest injustice based on the record and precedent (citing *Owen v. State*, 364 So. 3d 1017, 1026-27 (Fla. 2023); *Dillbeck v. State*, 357 So. 3d 94, 105 (Fla. 2023))), *cert. denied*, 146 S. Ct. 66 (2025).

Accordingly, we affirm the postconviction court’s summary denial of claim one.

Claim 2

On appeal, Silvia focuses on the postconviction court’s refusal to conduct an evidentiary hearing on claim two, arguing that this was error given the “documented” shortage of etomidate which, if true, will violate his Fourteenth Amendment rights to equal

protection and due process and result in a manifest injustice if his execution is carried out. Silvia clarifies on appeal that he is not raising a method-of-execution claim under the Eighth Amendment and has no issue with the lethal injection protocol. He also makes no assertion on appeal that he is a member of a suspect class or is being individually discriminated against for equal protection purposes. Instead, he simply wants to investigate whether FDOC has a sufficient, non-expired supply of etomidate so that he will be executed in the same manner as other death row inmates. But ultimately, he suggests that all executions be paused in Florida to carry out this investigation, and, given the alleged shortage, he suggests that FDOC donate its supply of etomidate—a lifesaving drug—to hospitals or medical facilities.

We affirm the postconviction court’s denial of this claim without an evidentiary hearing. Silvia’s claim based on his fears that his rights might be violated by a possible shortage of, or expired supply of, etomidate by FDOC—based on a pharmaceutical industry report⁶ that does not discuss FDOC or its supply of

6. Though citing many articles and reports on appeal, in his motion below, Silvia primarily cited the following online report that

etomidate—is speculative and does not state a sufficient claim warranting an evidentiary hearing. “[A] postconviction court’s decision whether to grant an evidentiary hearing on a rule 3.851 motion is ultimately based on written materials before the court,” *Jimenez v. State*, 265 So. 3d 462, 474 (Fla. 2018) (quoting *Marek v. State*, 8 So. 3d 1123, 1127 (Fla. 2009)), and “conclusory and speculative allegations are insufficient to warrant an evidentiary hearing,” *id.* (citation modified) (affirming postconviction court’s summary denial of a speculative claim concerning potential harm from use of etomidate).

Moreover, we recently denied a materially similar claim in *Occhicone v. State*, No. SC2026-1042, 2026 WL 2097359, at *4 (Fla. July 21), *cert. denied*, No. 26-5158, 2026 WL 2164217 (U.S. July 28, 2026), based on the “alleged nationwide shortage of etomidate” and Occhicone’s fear that FDOC “will deviate from the protocols . . . and thereby violate his right to equal protection.” In rejecting this

lists which pharmaceutical manufacturers have etomidate and which are short on supply. See American Society of Health-System Pharmacists, *Drug Shortages*, <https://www.ashp.org/drug-shortages/current-shortages/drug-shortage-detail.aspx?id=873&loginreturnUrl=SSOCheckOnly> (last visited Aug. 5, 2026).

claim, we held that Occhicone’s claim was “speculative and foreclosed by this Court’s recent decisions addressing materially similar claims.” *Id.* (citing *Heath v. State*, 426 So. 3d 1253, 1261-63 (Fla.), *cert. denied*, No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026); *Trotter v. State*, 428 So. 3d 68, 72-76 (Fla.), *cert. denied*, 146 S. Ct. 755 (2026); *King v. State*, No. SC2026-0336, 2026 WL 672101, at *4-6 (Fla. Mar. 10), *cert. denied*, 146 S. Ct. 1802 (2026); *Spencer v. State*, No. SC2026-0880, 2026 WL 1757938, at *4-6 (Fla. June 18), *cert. denied*, No. 25-7648, 2026 WL 1827690 (U.S. June 25, 2026)).

Further, “we have repeatedly recognized that [FDOC] is entitled to the presumption that it will comply with the lethal injection protocol.” *Cole v. State*, 392 So. 3d 1054, 1065 (Fla.) (citing *Muhammad v. State*, 132 So. 3d 176, 203 (Fla. 2013)), *cert. denied*, 145 S. Ct. 109 (2024). Silvia fails to overcome this presumption.

As to Silvia’s policy arguments suggesting FDOC should donate its supply of etomidate (notwithstanding his suspicions that it is expired), this Court is neither a policymaker, nor is its role to “micromanage the executive branch in fulfilling its own duties

relating to executions.” *Valle*, 70 So. 3d at 546 n.16 (quoting *Troy v. State*, 57 So. 3d 828, 840 (Fla. 2011)).

For all the foregoing reasons, we affirm the summary denial of claim two.

III.

We affirm the summary denial of Silvia’s motion for postconviction relief, deny his motion for stay filed in this case, and deny his request for oral argument. No motion for rehearing will be entertained by this Court. The mandate shall issue immediately.

It is so ordered.

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

LABARGA, J., concurs in result.

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

TANENBAUM, J., concurring in result.

The defendant waived his right to collaterally attack his judgment and death sentence. That meant both of those orders became absolutely final and beyond further challenge. Under how this court used to treat collateral attacks on judgments, the trial court at that point would have lost procedural jurisdiction to

consider the claims the defendant now, at the last minute, has tried to raise. I would affirm on that basis alone.

Earlier this year, I put the modern post-conviction motion into historical perspective, relying heavily on this court's own words.

See Saffold v. State, 429 So. 3d 424, 435–37 (Fla. 2026)

(Tanenbaum, J., concurring); *Willacy v. State*, 431 So. 3d 254, 266–67 (Fla. 2026) (Tanenbaum, J., concurring in part and dissenting in part). Once an appeal from a judgment and sentence is at an end and those two final orders are affirmed, they become absolutely final, and the trial court loses procedural jurisdiction to modify or vacate the orders. *See Saffold*, 429 So. 3d at 435 (Tanenbaum, J., concurring) (citing decisions from this court). Writs of *habeas corpus ad subjiciendum*, *coram nobis*, and *coram vobis* historically became the only means by which to collaterally attack a criminal judgment and sentence for an error of law or fact. *See id.*; *see also Willacy*, 431 So. 3d at 266–67 (Tanenbaum, J., concurring in part and dissenting in part).

Key here is that these writs, in the context described, were used to attack the legality of the judgment or sentence itself, not

how the sentence was being implemented once it became final.

Take *coram nobis*. We once described it as follows:

The function of a writ of error *coram nobis* is to bring the attention of the court to a specific fact or facts *then existing* but not shown by the record and not known by the court or by the party or counsel at the trial, and being of such a vital nature that if known to the court in time would have prevented the rendition and entry of the judgment assailed.

Lamb v. State, 107 So. 535, 538 (Fla. 1926) (emphasis supplied).

As the highlighted text indicates, to warrant *coram nobis* relief in a criminal case, the defendant had to show by evidence that facts existing *prior* to the judgment—facts that could not have been known by the defendant or counsel despite “the exercise of due diligence”—would have made entry of the judgment legally impossible, had those facts contemporaneously been known. *Id.* (further describing the requisite unknown, pertinent facts as “existing or having occurred *prior* to the judgment” (emphasis supplied)). Simply put, *coram nobis* was not available to attack a judgment based on facts occurring *after* its entry. *Id.* at 539 (noting that the writ has been denied “[w]here the facts or circumstances complained of arose after judgment”); *cf. Cole v. Walker Fertilizer Co., for Use & Benefit of Walker*, 1 So. 2d 864, 867 (Fla. 1941)

(noting, in civil context, that *coram nobis* does not lie based on “facts newly arising after judgment” (quoting 34 C.J. 397)).

We adopted Florida Rules of Criminal Procedure 3.850 and 3.851 to *procedurally* streamline most claims that could be brought under either *habeas* or *coram nobis*. Cf. *Richardson v. State*, 546 So. 2d 1037, 1039 (Fla. 1989); *Wood v. State*, 750 So. 2d 592, 595 (Fla. 1999) (noting similarity between the relief to be obtained under the writ and under rule 3.850); see generally *In re Rule of Crim. Proc. 3.851 (Collateral Relief After Death Sentence Has Been Imposed)*, 626 So. 2d 198, 199 (Fla. 1993) (adopting new rule 3.851 but noting that the “proceedings and grounds for postconviction relief remain as provided under Florida Rule of Criminal Procedure 3.850”).

Those rules did not, and could not, create a new, substantive right of action to hold a state officer to account for how he implements a sentence the trial court imposes. Such an action, pursued in a criminal proceeding, makes no sense anyway—there being no corrections officer named as a defendant and subject to the court’s jurisdiction. Claims under these rules, in turn, ought not go any further than the writs they replaced. That is, a post-

conviction claim *still* must be focused on whether the judgment or sentence is valid and legal based on facts arising *prior* to their entry. Indeed, the text in both rules still references vacating the “judgment and sentence”—and not a civil remedy having nothing to do with the validity of those final orders. Fla. R. Crim. P. 3.850(a); Fla. R. Crim. P. 3.851(d), (e)(1), (2).

In 1990, this court simply ignored its long stretch of decisional history and tradition and “held” that a defendant’s rule 3.850 (a precursor to what became the separate rule for death sentences, rule 3.851) claim based on mistakes in the carrying out of another condemned prisoner’s otherwise constitutional death sentence was not procedurally barred—with a wink and a nod stating that the “claim rests primarily upon facts which occurred only recently.” *Buenoano v. State*, 565 So. 2d 309, 311 (Fla. 1990). In other words, the court, with no analysis, treated new, *post-judgment* facts as newly discovered evidence that could support an otherwise procedurally barred claim under the post-conviction-relief rules.

Doing this, the court, without authority, effectively expanded the rule’s scope to include a new substantive right of action to remedy claimed improper executive function. It is likely no

coincidence that, after *Buenoano*, this court almost exclusively has cited to federal civil rights cases for the supposed constitutional standard to be applied in these method-of-execution claims brought under rule 3.851, especially to *Glossip v. Gross*, 576 U.S. 863 (2015). *See id.* at 867 (noting that review came in connection with civil rights suit filed under title 42, section 1983, of the United States Code); *see also Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (relying on *Glossip* to set out the “condemned prisoner’s” burden of proof, based on *current* facts, to challenge the constitutionality of death sentence implementation under rule 3.851); *see generally Baze v. Rees*, 553 U.S. 35 (2008) (review of state declaratory judgment suit against prison officials regarding implementation of death sentences); *Bucklew v. Precythe*, 587 U.S. 119 (2019) (review of method-of-execution challenge brought via civil rights suit under 42 U.S.C. section 1983); *Nelson v. Campbell*, 541 U.S. 637 (2004) (same).

This approach is based on a false equivalency. There is a substantive difference between a federal civil rights action—a statutory action to remedy post-sentence conduct by state officials who are subject to the court’s jurisdiction—and a post-conviction

proceeding, which exists as a matter of substantive common-law to challenge the judgment and sentence itself, within the same criminal proceeding brought against the defendant, based on facts pre-dating those orders.

Simply put, absent a statute, this court has no authority to expand rule 3.851's reach to allow the equivalent of a section 1983 suit. Moreover, this court consistently has overlooked the significance of the U.S. Supreme Court's observation that "imposition of the death penalty presupposes a means of carrying it out." *Nelson*, 541 U.S. at 644. A challenge to "a particular means of effectuating a sentence of death does not directly call into question the 'fact' or 'validity' of the sentence itself," because a state could "alter[] its method of execution" and "go forward with the sentence"—meaning such a challenge would be beyond the province of a post-conviction motion. *Id.* To properly challenge a death sentence as illegal, in turn, the post-conviction motion would have to challenge the whole way the State carries out its death sentences, *e.g.*, by challenging the entire statutorily established lethal injection regime as cruel and unusual punishment. *Cf. id.* at

644–45 (suggesting this kind of argument “may amount to a challenge to the fact of the sentence itself”).

Of course, lethal injection repeatedly has been held to be an acceptable means of execution, and the defendant does not make such a challenge here. Instead, the defendant’s counsel brings forward frivolous claims that have nothing to do with the validity of the judgment and sentence—which the defendant long ago accepted as final when he waived his post-conviction claims.

Until this court returns to how it historically handled post-conviction claims, as described above, we will continue to receive frivolous claims like what we have here, ostensibly under the false justification that “death is different.” Rule 3.851(h) is useful to expedite what should be the rare, last-minute challenge to the validity of a judgment and sentence. But too many collateral counsel view it instead as an invitation to file something—anything, even if frivolous—just because the Governor has signed a warrant.

The warrant is supposed to mark the end of the road for a defendant on death row, not the beginning of one last attack on how the State implements its otherwise lawful sentences of death. We should not allow “method of execution” claims to be entertained

under rule 3.851 unless the entire sentencing regime is challenged as being cruel and unusual. The defendant did not assert such a claim below (though he also previously waived it anyway), so the summary denial was warranted, there being no jurisdiction to consider the claims asserted.

An Appeal from the Circuit Court in and for Seminole County,
John D. Galluzzo, Judge – Case No. 592006CF004522A000XX

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for Appellant

James Uthmeier, Attorney General, Tallahassee, Florida, Naomi Nichols, Senior Assistant Attorney General, and Doris Meacham, Special Counsel, Assistant Attorney General, Daytona Beach, Florida,

for Appellee

No. _____

IN THE
Supreme Court of the United States

WILLIAM FRANCES SILVIA

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

***THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY AUGUST 18, 2026 AT 6:00 P.M.***

APPENDIX B

Florida Supreme Court Initial Brief on the Merits

IN THE SUPREME COURT OF FLORIDA
CASE NO: SC2026-1162
EXECUTION SCHEDULED FOR AUGUST 18, 2026 at 6:00 PM

WILLIAM FRANCES SILVIA, JR.,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

**ON APPEAL FROM THE CIRCUIT COURT OF THE EIGHTEENTH
JUDICIAL CIRCUIT IN AND FOR SEMINOLE COUNTY, FLORIDA**
Lower Tribunal No. 2006-CF-4522

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REQUEST FOR ORAL ARGUMENT

Undersigned counsels for the Appellant respectfully requests the opportunity to present oral argument pursuant to Fla. R. App. P. 9.320. This is a capital case, which presents novel issues of constitutional significance and the resolution of the issues presented will determine whether William Frances Silvia, Jr. (“Silvia”) will live or die, and a complete understanding of the complex factual, legal and procedural history and the arguments presented are critical to the proper disposition of this appeal.

JURISDICTIONAL STATEMENT

This is a timely appeal from the trial court’s final order denying a successive motion for postconviction relief from a sentence of death. This Court has plenary jurisdiction over death penalty cases. Fla. Const. art. V, § 3(b)(1); *Orange County v. Williams*, 702 So.2d 1245 (Fla. 1997).

PRELIMINARY STATEMENT ABOUT THE RECORD

The postconviction record on appeal for the current successive 3.851 motion consists of one volume and is referenced to as “PCROA” followed by the page number. The Appellant will be referred to as “Silvia” or “Appellant,” interchangeably.

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ASHP, <i>Etomidate Injection</i> (April 7, 2026) https://www.ashp.org/drug-shortages/current-shortages/drug-shortage-detail.aspx?id=873&loginreturnUrl=SSOCheckOnly (Last accessed July 24, 2026)	33, 35-36
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Genni Burkhart, <i>How Middle East Tensions Are Disrupting Medical (and Dental) Supply Chains</i> , (April 22, 2026) https://www.docseducation.com/blog/how-middle-east-tensions-are-disrupting-medical-and-dental-supply-chains (Last accessed, July 31, 2026)	41, 42
Joseph Choi, <i>Pharmaceutical Supply Chains Get Tangled in War with Iran</i> , (March 29, 2026) https://thehill.com/policy/healthcare/5805149-iran-war-pharmaceutical-supply-chain/ (Last accessed July 24, 2026) ..	35-36

LSD Law Legal Dictionary (March 2026) <i>What is manifest injustice? Simple definition & meaning - LSD Law, Available at: https://definitions.lsd.law/manifest-injustice (Last Accessed July 2, 2026)</i>	30, 42
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Nicholas Jacobus, <i>Top Drugs at Risk of Supply Shortages: Report</i> , (April 22, 2026) https://www.pharmexec.com/view/top-drugs-risk-supply-shortages-report (Last accessed July 24, 2026)	33, 35-36
Rachel Tyndale, <i>Etomidate Mechanism of Action, Clinical Uses and Side Effects</i> , (August, 02, 2023) https://www.longdom.org/open-access/etomidate-mechanism-of-action-clinical-uses-and-side-effects-101923.html (Last accessed July 24, 2026)	32-33, 35-36
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SCIENCEINSIGHTS, <i>What is the Standard Etomidate Dose for Intubation?</i> (November 26, 2025) https://scienceinsights.org/what-is-the-standard-etomidate-dose-for-intubation/ (Last accessed July 24, 2026)	34, 35-36
Sofia Quaglia, ‘An urgent public health crisis’: Why so many people are struggling to get medicine (October 22, 2025) https://www.bbc.com/future/article/20251021-why-youre-having	

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Synapse, <i>What is Etomidate Used For?</i> , (June 14, 2024)	
https://synapse.patsnap.com/article/what-is-etomidate-used-for	
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USP, Addressing Strategic Constraints to Strengthen the US	
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JUDGEMENT AND SENTENCE UNDER APPEAL

A. Judgement and Sentence Under Attack

On October 24, 2006, a grand jury in and for Seminole County returned a two-count Indictment for: COUNT 1: First Degree premeditated murder of Patricia Ann Silvia, COUNT 2: Attempted first degree premeditated murder of Betty MacIntyre Woodard. The guilt phase of the jury trial took place from June 2 to 6, 2008. The penalty phase was held July 17-21, 2008. The penalty phase jury recommended death by a vote of 11 to 1. The trial court issued a sentencing order on January 28, 2009. A timely appeal was filed, and the Florida Supreme Court ("FSC") affirmed the judgment and sentences. See *Silvia v. State*, 60 So.3d 959 (Fl. 2011). A Mandate was returned on May 20, 2011 and the Capital Collateral Regional Counsel – Middle Region was appointed on the same date.

A motion to determine counsel and to dismiss the postconviction proceedings was heard on June 26, 2012. Collateral counsel was discharged and filed a timely notice of seeking review of the order dismissing the postconviction proceedings. Discharged counsel filed a brief pursuant to Fla. R. Crim. P. 3.851(i)(8)(B) on November 20, 2012. Relief was denied on March 18, 2013.

The Court found the following Aggravators:

- (1) The court found Silvia's contemporaneous conviction for attempted murder for the shooting of Betty Woodard established the prior violent felony aggravator;
- (2) The court found Silvia created a great risk of death to many persons; and
- (3) The court found the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification ("CCP").

The Court found the following Mitigators:

The trial court did not find any statutory mitigating circumstances, but found the below non-statutory mitigating circumstances and assigned weights to each:

- (1) emotional distress from loss of job and wife (little weight);
- (2) impaired ability to conform conduct due to chronic personality disorder not otherwise specified and chronic alcohol dependence (moderate weight);
- (3) chronic personality disorder not otherwise specified with paranoid, antisocial, and schizoid features and alcohol dependence (moderate weight);
- (4) chronic alcohol dependence (moderate weight);
- (5) diagnosis as a teenager with "schizoid" or "schizophreniform" disorder (little weight); and
- (6) dysfunctional family setting when growing up with domestic violence (little weight).

On direct appeal, Silvia raised claims concerning how the trial court erred in ruling on several matters:

- (1) the trial court erred in finding CCP;
- (2) the trial court erred in finding that Silvia knowingly created a great risk of death to many persons;

- (3) his death sentence is not proportionate;
- (4) the prosecutor's repeated improper and inflammatory elicitation of irrelevant evidence tainted the penalty phase;
- (5) reversible error occurred when the trial court permitted improper victim impact evidence; and
- (6) Florida's death sentencing scheme is unconstitutional under the Sixth Amendment pursuant to *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002).

The judgment and sentence for first degree murder in this case were affirmed on appeal by the Florida Supreme Court on April 7, 2011. *Silvia v. State*, 60 So.3d 959 (Fla. 2011). (See Appendix A – Judgement and Sentence).

B. Previous Postconviction Claims and Disposition

Silvia waived his initial postconviction proceedings on June 26, 2012. Following a successive motion to vacate his sentence, the trial court granted Silvia a new penalty phase proceeding pursuant to *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). However, this Court reversed and denied Silvia's relief after the State appealed. *State v. Silvia*, 235 So. 3d 349 (Fla. 2018). Governor Ron DeSantis signed Silvia's death warrant on Friday July 17, 2026, while undersigned counsel was on the way to visit Dominick Occhicone at the Florida State Prison ("FSP") to discuss Occhicone's death warrant, which was pending before this Court.

C. Warrant Proceedings

Silvia timely filed a demand for additional public records pursuant Rule 3.852(i) to the Florida Department of Corrections (“FDOC”), PCROA 2083-2090, and to the Florida Executive Office of the Governor (“EOG”), PCROA 2091-2153. FDOC filed an objection. PCROA 2165-2184. EOG also filed an objection. PCROA 2156-2164. The lower court conducted a public records hearing on July 22, 2026, at 2:00 p.m., PCROA 2195-2225, and shortly afterward issued an order denying Silvia’s demands. PCROA 2189-2194. Silvia timely filed his Successive Motion to Vacate Judgment and Sentence, PCROA 2226-2332, on July 27, 2026, raising two claims and simultaneously filed a Motion for Stay of Execution. PCROA 2333-2338. The State filed its response to Silvia’s Motion for Stay, PCROA 2339-2346, and Answer to Silvia’s Successive Postconviction Motion, PCROA 2347-2368, on July 29, 2026. The State asserted the claims raised should be summarily denied as untimely, procedurally barred, and/or meritless.

The circuit court conducted a case management conference (“CMC”) on July 29, 2026, and heard argument on Silvia’s Successive Motion to Vacate Judgment and Sentence and his Motion for a Stay

of Execution. PCROA 2553-2552. The circuit court entered its Order Summarily Denying Defendant's Successive Motion to Vacate Death Sentence Following a Signed Death Warrant and Denying Defendants (sic) Motion for a Stay of Execution on July 29, 2026. PCROA 2371-2586. Silvia timely filed a Notice of Appeal on July 30, 2026. PCROA 2586-2587.

STANDARD OF REVIEW

This is an appeal from a Successive Motion under Fla. R. Crim. P. 3.851. The Court reviews the summary denial of a successive Rule 3.851 motion *de novo*. *See Davis v. State*, 417 So. 3d 242, 247 (Fla. 2025). A summary denial will be upheld only “if the motion is legally insufficient or procedurally barred, or if its allegations are conclusively refuted by the record.” *Sparre v. State*, 391 So. 3d 404, 405 (Fla. 2024). If a court determines a claim is conclusively refuted by the record, it must attach the portion(s) of the record, or at least reference those parts of the record, which justify summary disposition. *See* Fla. R. Crim. P. 3.851(f)(5)(F).

Because the circuit court denied postconviction relief without an evidentiary hearing, this Court must accept the factual allegations presented in Occhicone's motion and in this appeal as true to the

extent they are not conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). Further, this Court “review[s] the trial court’s application of the law to the facts *de novo*.” *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008). A postconviction court’s decision whether to grant an evidentiary hearing is likewise subject to de novo review. *Rose v. State*, 985 So. 2d 500, 505 (Fla. 2008).

The evidence upon which Silvia is relying to raise the arguments in these proceedings were unknown to the trial court, counsel, or Appellant at the time of his trial and the facts could not have been discovered through due diligence. See Fla. R. Crim. P. 3.851(d)(2)(A); *Robinson v. State*, 707 So. 2d 688, 691 n.4 (Fla. 1998); *Jones v. State*, 591 So. 2d 911, 914-15 (Fla. 1991); *Hallman v. State*, 371 So. 2d 482, 485 (Fla. 1979). Secondly, the newly discovered evidence would probably yield a less severe sentence. *Long v. State*, 271 So. 3d 938, 942 (Fla. 2019); *Walton v. State*, 246 So. 3d 246, 249 (Fla. 2018) (quoting *Swafford v. State*, 125 So. 3d 760, 767 (Fla. 2013)). The evidence upon which Appellant relies is based on information obtained within the past calendar year.

SUMMARY OF THE ARGUMENT

The circuit court erred when it summarily denied Silvia’s

Rule 3.851 motion. First, the circuit court abused its discretion and erred in denying Silvia's claim regarding the Governor signing his death warrant while his counsel was simultaneously litigating another death warrant at the state and federal appellate stage. The signing of the death warrant violated Silvia's statutorily created right to counsel during postconviction proceedings, as well as his Sixth, Eighth, and Fourteenth Amendment rights, along with his corresponding rights under the Florida Constitution.

Additionally, the circuit court abused its discretion and erred in denying Silvia's claim that the recently revealed shortages of etomidate create a violation of Silvia's Fourteenth Amendment rights under the United States Constitution and the corresponding provisions of the Florida Constitution. Further, the error will result in a manifest injustice should Silvia's execution proceed.

ARGUMENT I

IT WAS A VIOLATION OF SILVIA'S STATUTORILY CREATED RIGHT TO POSTCONVICTION COUNSEL, AS WELL AS HIS SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS, AND HIS CORRESPONDING RIGHTS UNDER THE FLORIDA CONSTITUTION TO SIGN A DEATH WARRANT WHILE SILVIA'S COUNSEL WAS SIMULTANEOUSLY LITIGATING ANOTHER DEATH WARRANT AT THE STATE AND FEDERAL APPELLATE STAGE AND A DENIAL OF RELIEF WOULD

BE A MANIFEST INJUSTICE

Silvia is an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to § 922.105, Fla. Stat. A Death Warrant was signed by Governor Ron DeSantis on Friday, July 17, 2026 and filed with the Department of State at 12:33 p.m. (See Appendix B – Warrant Packet for William Silvia, Jr.). The warrant was provided to undersigned counsel at 1:09 p.m. and was accompanied by a letter dated July 16, 2026, to the Governor from the Attorney General James Uthmeier. Silvia’s execution has been scheduled for Tuesday, August 18, 2026, at 6:00 p.m. (See Appendix C – Email from Office of Executive Clemency).

Previously, on June 26, 2026, a Death Warrant was signed by Governor DeSantis scheduling the execution of Dominck Occhicone on July 26, 2026. It was filed with the Department of State at 3:32 p.m. and was accompanied by a letter dated June 26, 2026, to the Governor from the Attorney General James Uthmeier. (See Appendix D – Warrant Packet for Dominick Occhicone). Occhicone’s warrant was provided to undersigned counsel at 5:51 p.m. from the Office of the Attorney General (See Appendix E - Email from Office of the Attorney General). Prior to the receipt of Occhicone’s warrant,

undersigned counsel received an email at 4:09 p.m. from the Office of Executive Clemency indicating clemency was denied and a warrant had been issued for Occhicone. (See Appendix F – Email from Office of Executive Clemency).

It appears from the above documents, the Office of the Attorney General, who is also a party to this action, is privy to the signing of death warrants along with the EOG, prior to undersigned counsel being noticed. Death warrant litigation is extremely time-consuming and the party seeking to execute Silvia is potentially being given a head start.¹ In addition to adhering to severely truncated scheduling deadlines provided by this Court, this Court has also mandated death warrant litigation must take precedence over all other cases. See Fla.

¹On July 30, 2026, Governor DeSantis signed a death warrant on Harold Gene Lucas, scheduling his execution for September 1, 2026, which was filed with the Department of State at 2:17 p.m., marking the third client of the undersigned counsel subjecting to a death warrant in 34 days. Mr. Lucas' warrant was provided to counsel on July 30, 2026 at 2:35 p.m. and comes less than 48 hours after the execution of Mr. Occhicone and less than 24 hours after the denial of relief for Mr. Silvia by the circuit court where the overlapping warrants for counsel of record were put on the record. The Office of Executive Clemency sent a letter to the undersigned 5:49 p.m. The Office of the Attorney General filed their motion for scheduling order at 3:56 p.m. less than 90 minutes after undersigned counsel was notified, giving the appearance they had prior knowledge of the existence of the warrant.

R. Crim. P. 3.851(h)(2). In *Herard v. State*, 390 So. 3d 610 (Fla. 2024), this Court determined it was reasonable for a trial court to strike a panel of prospective jurors on the second day of voir dire of a capital trial, because a death warrant was signed on a defendant in a different case who was represented by co-counsel. and a death warrant was signed. Considering the importance assigned to death warrant litigation by this Court, it is unconscionable for the EOG to select Silvia for a death warrant while his legal team was actively litigating the Occhicone death warrant. The circuit court compared this manifest injustice to the situation previously raised in *Barwick v. State*, 361 So. 3d 785 (Fla. 2023), PCROA 2387, however, the attorneys in Barwick raised overlapping warrants to the extent there was another individual, who was not represented by Barwick's counsel, on death watch as well as the timing of the warrant around multiple holidays. The situation created here by the State is different in that the undersigned counsel was not raising concerns about visitation, but rather the disadvantages created for Silvia's constitutional right to counsel guaranteed by the Florida Constitution. The prejudice also affects the Sixth, Eighth, and Fourteenth Amendments due to the ongoing litigation which was

occurring in the Occhicone case at the same time, the same counsel, needed to be investigating and preparing arguments for Silvia under the strict and truncated proceedings after the death warrant was signed.

Contrary to the circuit court's finding, PCROA 2386, Silvia is not asking this Court and did not ask the circuit court to go against the separation of powers and second-guess the clemency considerations of the executive branch. Although this Court has recognized the need to proceed carefully in addressing claims regarding separation of powers, See *Valle v. State*, 70 So. 3d 530, 552 (Fla. 2011), a true holding the Governor has "unfettered discretion" in death warrant selection, *Gore v. State*, 91 So. 3d 769, 779 (Fla. 2012), and his actions may never be "second-guessed," See *Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013), would be an abdication of judicial authority. No citizen, including the chief executive of a state, is immune from following the United States Constitution. See *American Federation of State, County, and Municipal Employees Council 79 v. Rick Scott*, 717 F. 3d 851, 875-80 (11th Cir. 2013) (rejecting the Governor's executive order mandating the drug-testing of all state employees, in part on Fourth Amendment grounds); see

also *In re Bush*, 164 Wash. 2d 697, 700 (Wash. 2008) (finding a 14th Amendment non substantive, procedural due process violation when the Washington Governor revoked Bush’s conditional sentence commutation, without providing an opportunity to be heard). Moreover, Article II, Section 5 of the Florida Constitution requires the Governor to support, protect, and defend the Constitution and Government of the United States. No person, not even a president, is above the law. *United States v. Nixon*, 418 U.S. 683 (1974). Considering the degree of deference given to the governor in Florida, at some point the State’s interpretation of process conflicts with the Appellant’s fundamental constitutional rights; this intersection creates a need for judicial intervention in this case.

A. State Created Right to Counsel

Silvia recognizes the federal precedent finding “there is no federal constitutional right to counsel in post[-]conviction proceedings,” *Sweet v. Muniz*, No. 3:22-CV-574-TJC-LLL, 2023 WL 5226624 (M.D. Fla. Aug. 15, 2023); *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *see also Barbour v. Haley*, 471 F.3d 1222, 1227 (11th Cir. 2006). However, Florida has a statutorily created right to postconviction counsel. In 1985, the Florida Legislature established

the Capital Collateral Regional Counsel (“CCRC”) program, with the expressed intent

...to provide for the collateral representation of any person convicted and sentenced to death in this state, so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and **so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice.**

§ 27.7001, Fla. Stat. (Emphasis added). Although the Florida Legislature claimed it was not creating “...any right on behalf of any person, provided counsel pursuant to any provision of this chapter, to challenge in any form or manner the adequacy of the collateral representation provided,” as well as establishing “... the sole method of assuring adequacy of representation provided shall be in accordance with the provisions of s. 27.711(12),” § 27.7002(1) and (2), Fla. Stat., which provides guidance to this Court for monitoring the performance of said counsel. The Florida Legislature further established effectiveness requirements for counsel representing capital defendants in § 27.7045, Fla. Stat., by instructing the courts to prohibit, for five years, any attorney from representing capital defendants at trial or in postconviction proceedings if they have been

found to have provided deficient representation to the extent relief was granted by the court in two instances.

The legislature, along with the circuit court, was aware of the importance of the assistance of counsel, irrespective of Silvia's waivers. Because Silvia wants to pursue litigation in state court, he was entitled to reappointment of postconviction counsel pursuant to Fla. R. Crim. P. 3.851 (i). *See* Fla. R. Crim. P. 3.851 (i) (11) ("For cases where counsel was previously discharged pursuant to this rule, collateral counsel eligible pursuant to rule 3.112 must be appointed within thirty days of May 5, 2022."). Though any reappointment would not reverse Silvia's previous waiver of his state postconviction claims under Fla. R. Crim. P. 3.851 (i), there are certain circumstances where Silvia may raise claims, under the Amendments to Fla. R. Crim. P. 3.851 (i):

The amendments are in response to the Court's decision in *Davis v. State*, 257 So. 3d 100, 107 n.8 (Fla. 2018), recognizing the discrepancy between rule 3.851(i) and the Court's case law. The dismissal of a pending postconviction motion pursuant to subdivision (i) does not preclude the filing of a subsequent postconviction motion raising for the first time claims that could be raised under rule 3.851(d)(2)(A), which allows for claims based on newly discovered evidence, or rule 3.851(d)(2)(B), which allows for claims that are based on a newly established fundamental constitutional right previously held to apply

retroactively, **and claims that are only ripe at the time of issuance of a warrant**, such as competency to be executed and challenges to execution protocols.

See 2022 Comment: In Re: Amendments to Florida Rule of Criminal Procedure 3.851 and Florida Rule of Appellate Procedure 9.142. This change places the individual who previously waived the right to all state postconviction in the same position as any other capital litigant in Florida under a death warrant. This is not a limitation; it is an extension of the right to counsel to individuals, like Silvia, who at the time of the warrant, did not have access to the courts based on prior waivers of postconviction. The State recognized the importance of this right when they asked undersigned counsel to be formally reappointed on the record. (PCROA 2079). The circuit court erred in finding Silvia was barred from raising post-warrant claims due to a prior waiver.

Although the Florida legislature says the mechanism it created was not per se to provide effective assistance of counsel to death row inmates, it must have been to assure the citizens of the State of Florida, and thereby death row inmates as well, the mandated counsel being provided was not meaningless. It is imperative for the taxpayer money being spent by the citizens of the State of Florida on

the CCRC, to not be spent solely for appearance whereby postconviction counsel for capital defendants is reduced to rearranging the deck chairs on a sinking ship.

Following the implementation of the legislature creating capital collateral representation, this Court established standards for an attorney to be eligible to represent capital defendants in Fla. R. Crim. P. 3.112, which includes minimum qualifications for lead counsel at all levels of capital collateral representation. The committee's comments regarding the implementation of Fla. R. Crim. P. 3.112 specifically address the need for competent and effective counsel:

These standards are based on the general premise that the defense of a capital case requires specialized skill and expertise. The Supreme Court has not only the authority, but the constitutional responsibility to ensure that indigent defendants are provided with competent counsel, especially in capital cases where the State seeks to take the life of the indigent defendant. The Supreme Court also has exclusive jurisdiction under Article V section 15 of the Florida Constitution to "[r]egulate the admission of persons to the practice of law and the discipline of persons admitted." Implied in this grant of authority is the power to set the minimum requirements for the admission to practice law, see *In re Florida Board of Bar Examiners*, 353 So. 2d 98 (Fla. 1977), as well as the minimum requirements for certain kinds of specialized legal work.

This Court also recognized courts should consider an attorney's caseload as an indication of whether it "might impair the quality of

legal representation provided to the defendant.” Fla. R. Crim. P. 3.112(j) Although the Florida Legislature claims it did not intend to provide for effective assistance of counsel to capital postconviction counsel, the judiciary has added multiple requirements to ensure capital defendants do receive qualified and effective postconviction representation.

The United States Supreme Court has said the guarantee of counsel “cannot be satisfied by mere formal appointment.” *Evitts v. Lucey*, 469 U.S. 387, 395, 105 S. Ct. 830, 835, 83 L. Ed. 2d 821 (1985)(quoting *Avery v. Alabama*, 308 U.S. 444, 446, 60 S.Ct. 321, 322, 84 L.Ed. 377 (1940)). The Court went on to hold:

When a State opts to act in a field where its action has significant discretionary elements, such as where it establishes a system of appeals as of right although not required to do so, it must nonetheless act in *388 accord with the dictates of the Constitution, and, in particular, in accord with the Due Process Clause.

Id. at 387–88.

The signing of Silvia’s death warrant while his counsel was actively litigating Occhicone’s warrant, which was pending review by this Court and then the United States Supreme Court created a circumstance which directly impacts the quality of representation

available to Silvia pursuant to legislation and judicially imposed rules. The additional signing of another death warrant on undersigned counsel, immediately after the denial of Silvia' motions is another indication.

B. Eighth Amendment

The circuit court erred in finding Appellant's constitutional claims were untimely, procedurally barred, and meritless. PCROA 2371-2396. One clear concern of the Justices in *Furman v. Georgia*, 408 U.S. 238 (1972), was the possible discriminatory application of the death penalty. Justice Douglas concluded the capital statutes before him were "pregnant with discrimination," *Id.* at 257, and thus ran directly counter to "the desire for equality . . . reflected in the ban against 'cruel and unusual punishments' contained in the Eighth Amendment." *Id.* at 255. These observations illuminate the holding of *Furman*, reaffirmed by the Supreme Court of the United States ("SCOTUS") in *Gregg* and subsequent cases, that the death penalty may "not be imposed under sentencing procedures that create [] a substantial risk that it [will] . . . be inflicted in an arbitrary and capricious manner." *Gregg v. Georgia*, 428 U.S. 153, 188 (1976); *Godfrey v. Georgia*, 446 U.S. 420, 428.

There are no articulated limits to the executive discretion, there are no known guidelines for the selection process, and the entire process is cloaked in secrecy, creating an arbitrary and capricious process for determining who lives and who dies. *C.f. Furman v. Georgia*, 408 U.S. 238, 309-10 (1972) (Stewart, J., concurring) (“These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders . . . many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed”).

The United States Supreme Court has repeatedly “held that the Eighth Amendment requires increased reliability of the process by which capital punishment may be imposed.” *Herrera v. Collins*, 506 U.S. 390 (1993); *McKoy v. North Carolina*, 494 U.S. 433 (1990); *Eddings v. Oklahoma*, 455 U.S. 104 (1982); *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality). The imposition of a death sentence *and* the process of carrying out an execution must withstand constitutional scrutiny irrespective of the Governor’s discretion in signing death warrants.

If the Constitution renders the fact *or timing* of his execution contingent upon establishment of a further fact . . . “then that fact must be determined with the high regard for truth that befits a decision affecting the life or death of a human being.”

Herrera, 506 U.S. at 405-06 (quoting *Ford v. Wainwright*, 477 U.S. 399, 411 (1986)). The United States Supreme Court has held the factual determinations related to the constitutionality of a person’s execution are “properly considered in proximity to the execution.” *Id.* at 406 (noting competency to be executed determination is more reliable near time of execution whereas guilt or innocence determination becomes less reliable). In other words, whether the carrying out of a death sentence violates the Eighth Amendment depends on the facts existing after a death warrant is signed and the determination of these facts requires *increased reliability*.

Despite this requirement, Florida vests the governor with unbridled authority not only to sign death warrants but also to set the date of execution, all of which is done under a veil of secrecy without any governing standards as to how the governor should exercise his warrant signing power. This permits the governor to determine how much process, if any, is available to make these

critical factual determinations. The result is the executive branch having unchecked power through the actions of the Office of the Attorney General and the Governor - an absolute veto, in absolute secrecy - over the rights provided by the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution. Silvia does not argue because the Governor has some discretion that the system is *per se* arbitrary and capricious. Silvia does not dispute that if the Governor or other decision-making body had some criteria, the Governor or other body would be free to choose from among any of the defendants who fit the criteria. Silvia argues there must be *some* criteria. The Eighth Amendment requires there a principled way to distinguish between who is executed by a state and who is not, as well as how much time they are afforded to investigate and present their claims under warrant.

Florida has yielded this power entirely to the EOG. § 922.052, Fla. Stat., sets a maximum 180-day warrant period, yet here, the governor afforded Silvia only thirty-one days to litigate his warrant. Silvia alerted the circuit court to his need for the EOG records under the unnecessarily expedited and difficult warrant schedule, which

was denied. Silvia also filed an Emergency Motion to Modify Scheduling Order and an Emergency Motion for Stay of Execution in front of the Florida Supreme Court, and this court did not rule on either until August 3, 2026 at 10:20 a.m. This abdication violates the separation of powers articulated in Article II, Section 3 of the Florida Constitution and, the Eighth and Fourteenth Amendments to the United States Constitution, as applied to Silvia.

Florida has declined to address the Governor's unbridled discretion in determining who shall die and when, noting such an inquiry "triggers separation of powers concerns." *Valle v. State*, 70 So. 3d 530 (Fla. 2011). There must be some form of test where varying factors are determined. It is well past time. The governor's power is not absolute. The United States Constitution still controls. Whether to grant clemency is discretionary. Whether to sign a death warrant is discretionary. Whether to follow the Constitution in carrying out a death sentence is not. The Eighth Amendment still applies, even though the governor sits in a different branch of government.

C. Fourteenth Amendment

Silvia has a due process right as established by the Fourteenth Amendment to the United States Constitution and the corresponding

provision of Florida's Constitution, even in post-warrant litigation. Florida's interest in the timely enforcement of judgments handed down by its courts must be weighed against Silvia's continued interest in his life. See *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) ("[I]t is incorrect . . . to say that a prisoner has been deprived of all interest in his life before his execution.") (O'Connor, J., plurality opinion). "Judicial intervention, might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to grant clemency." *Id.* The constitutional concerns here are worse than flipping a coin, as one could surmise a Florida governor could sign a death warrant on anyone on death row post clemency, for any reason at all, irrespective of the United States Constitution and/or Florida Constitution. Hypothetically, a governor could sign a death warrant every month, on the same attorney's clients, for any reason at all, irrespective of the Constitution. Or, hypothetically, the Florida governor could set 10-12 executions to occur on the same day. Or the Governor could do what actually occurred here and set two executions of the clients of the same attorneys three weeks apart, requiring those attorneys to undergo simultaneous and conflicting

warrant proceedings on two cases.² There should be no question that none of those scenarios could come true because they would be unconstitutional. It is time for this Court to intervene and show the governor's discretion in signing death warrants is not "unfettered," and he is not immune from following the United States Constitution.

Capital defendants have a fundamental right to due process and equal protection of the laws based on the Fourteenth Amendment. When a state draws a distinction between those capital defendants who will receive the benefit of a constitutionally valid due process procedure pursuant to the Eighth Amendment, and those who will not, the state's justification for the distinction must satisfy strict scrutiny. Distinctions in state criminal laws which impinge upon fundamental rights must be strictly scrutinized. *See, e.g., Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964); *Eisenstadt v. Baird*, 405 U.S. 438, 447 (1972). The distinction made by the state courts in Florida cannot meet that standard. *See Dep't of Agriculture v. Moreno*, 413 U.S. 528, 538

²In Silvia's case, the Governor actually signed a third warrant on Harold Gene Lucas, another client of the undersigned attorneys, 34 days after the warrant on Occhicone and 13 days after the warrant on Silvia. See footnote 1 above

(1973).

Regarding the status of a class of one, the United States Supreme Court has stated:

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which is essentially a direction that all persons similarly situated should be treated alike. *Plyler v. Doe*, 457 U.S. 202, 216, 102 S. Ct. 2382, 2394, 72 L.Ed.2d 786 (1982).”

City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). And also:

Our cases have recognized successful equal protection claims brought by a “class of one,” where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336, 109 S. Ct. 633, 102 L.Ed.2d 688 (1989). In so doing, we have explained that “[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” *Sioux City Bridge Co.*, *supra*, at 445, 43 S. Ct. 190 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352, 38 S. Ct. 495, 62 L. Ed. 1154 (1918)).

Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). *See also Clubside, Inc. v. Valentin*, 468 F.3d 144, 159 (2d Cir. 2006) (requiring an “extremely high degree of similarity” between the plaintiff and those similarly situated).

Florida has similarly violated Silvia’s equal protection rights. Silvia is being treated differently than other similarly situated defendants under a death warrant. No other Florida death row inmate in recent memory who has been discriminated against by having his legal team forced to simultaneously litigate another death warrant.³ The unequal treatment Silvia will receive if he is executed without the ability to further litigate his claims at an evidentiary hearing will further violate his rights to equal protection and fundamental fairness.

D. Access to the Courts

The Due Process clause of the Fourteenth Amendment guarantees access to the courts. In fact, it guarantees every state

³See footnotes 1 and 2 above regarding the actuality of a third warrant being signed on the same attorneys less than 48 hours after the execution of Occhicone, thereby concluding his warrant litigation. This legal team has now been appointed to three overlapping death warrants in a row – a situation no other legal team in memory, nor their clients, have been subjected to

prisoner a right of meaningful access to the courts. *Dawson v. Kendrick*, 527 F. Supp. 1252, 1312 (S.D.W. Va. 1981). The courts of this country have “consistently required States to shoulder affirmative obligations to assure all prisoners meaningful access to the courts.” *Bounds v. Smith*, 430 U.S. 817, 824, 97 S. Ct. 1491, 1496, 52 L. Ed. 2d 72 (1977), *abrogated by Lewis v. Casey*, 518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996).⁴ It is the state's burden to provide meaningful access and to demonstrate its chosen method is adequate. *Gluth v. Kangas*, 951 F.2d 1504, 1508 (9th Cir. 1991). The State of Florida has an obligation not only to provide Silvia access to the court, but to provide meaningful access. Furthermore, because Silvia is confined on Death Row, an extreme form of punishment in its permanency, the State also has a higher burden to affirmatively act to assure adequate process.

Capital defendants in Florida do not have the ability to represent themselves in postconviction proceedings.

This Court has also recognized that “since the state of Florida enforces the death penalty, its primary obligation is to ensure that indigents are provided competent,

⁴The *Lewis* case simply specified the right acknowledged by *Bounds* was not a right to a law library or legal assistance but the right of access to the courts.

effective counsel in capital cases,” *White v. Board of County Comm'rs*, 537 So.2d 1376, 1379 (Fla.1989), and that “all capital cases by their very nature can be considered extraordinary and unusual.” *Id.* at 1378. This Court has recognized the crucial role of counsel at all levels of capital proceedings.

Gordon v. State, 75 So. 3d 200, 202 (Fla. 2011)(Emphasis added).

Without counsel, a defendant in Florida like Silvia has no access to the courts. It is clear from *Gordon*, the purpose of that restriction was not to deny access to the courts, but to provide a higher degree of assurance all death sentenced individuals, regardless of indigency, are provided equally competent and effective counsel, so the access to court can be *meaningful*. To accomplish this, Florida has created a right to counsel in capital postconviction cases. This court must allow Silvia meaningful access to the courts in the form of competent and effective counsel. “Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided.” *Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023) (quoting *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016)). “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v.*

Eldridge, 424 U.S. 319, 333 (1976)(quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

In discussing the right to counsel, the United States Supreme Court said:

Judge Cooley refers to the right of a person accused of crime to have counsel as perhaps his most important privilege, and after discussing the development of the English law upon that subject, says: 'With us it is a universal principle of constitutional law, that the prisoner shall be allowed a defense by counsel.' 1 Cooley's Constitutional Limitations (8th Ed.) 700. The same author, as appears from a chapter which he added to his edition of Story on the Constitution, regarded the right of the accused to the presence, advice and assistance of counsel as necessarily included in due process of law. 2 Story on the Constitution (4th Ed.) s 1949, p. 668. The state decisions which refer to the matter, invariably recognize the right to the aid of counsel as fundamental in character. E.g., *People v. Naphaly*, 105 Cal. 641, 644, 39 P. 29; *Cutts v. State*, 54 Fla. 21, 23, 45 So. 491; **65 *Martin v. State*, 51 Ga. 567, 568; *Sheppard v. State*, 165 Ga. 460, 464, 141 S.E. 196; *State v. Moore*, 61 Kan. 732, 734, 60 P. 748; *71 *State v. Ferris*, 16 La. Ann. 414; *State v. Simpson*, 38 La. Ann. 23, 24; *State v. Briggs*, 58 W. Va. 291, 292, 52 S.E. 218.

Powell v. State of Ala., 287 U.S. 45, 70–71, 53 S. Ct. 55, 64–65, 77 L. Ed. 158 (1932).

E. Manifest Injustice

Executing Silvia would result in a manifest injustice which “shocks the conscience,” and demands correction.⁵ Manifest injustice refers to an error in a legal proceeding which is so fundamentally unfair or wrong it shocks the conscience.⁶ In this postconviction context, the inquiry focuses on whether a manifest injustice will occur if the error is not corrected. *State v. Gordon*, No. F08-9192, 2014 WL 8396818, at *3 (Fla .Cir .Ct. Aug. 12, 2014). When manifest injustice has occurred, this Court has the responsibility to correct the injustice if it can. *Id.* (See also, *State v. Owen*, 696 So. 2d 715, 720 (Fla. 1997) “this Court has “the power to reconsider and correct erroneous rulings”).

As argued at the hearing on July 22, 2026, Florida is engaging in a series of escalations with the past several death warrants which shocks the conscience. (PCROA 2214-2215). Dusty Ray Spencer's June 25, 2026 execution set a modern record in Florida as the oldest

⁵LSD Law Legal Dictionary (March 2026) *What is manifest injustice? simple definition & meaning · LSD Law*. Available at: <https://definitions.lsd.law/manifest-injustice> (Last Accessed July 2, 2026)

⁶LSD Law Legal Dictionary (March 2026), *supra*

man to be executed at 74 years of age. Then, Dennis Sochor was executed on July 14, 2026, who was also 74 years old. Followed closely by Dominick Occhicone who was in extremely poor health and almost 81, which shattered the records set by Spencer and Sochor, and was even more egregious as it occurred less than 5 hours after the execution of James Duckett. The current spate of executions in Florida appears targeted at the most vulnerable segments of the population on death row. Now the Governor has signed a death warrant on Silvia while his counsel was litigating the Occhicone warrant. And in the continuing this series of death warrants, the 61-year-old Silvia requires the use of a wheelchair. As a result of this escalation of executions, FDOC is no longer able to abide by its self-imposed rules regarding visitations surrounding an execution. See Appendix G - Visits for Inmates Under a Death Warrant. Because of the accelerated rate of executions, neither Mr. Duckett nor Mr. Occhicone were permitted their final visitations on the day of their executions rather they had to occur the day before the execution due to the double executions not providing sufficient time for these designated visits.

No precedent relied on by the State, nor the circuit court

addresses the troubling and unique aspects of Silvia's case. This court should issue a stay and remand for an evidentiary hearing, so Silvia can create a testimonial record of the actions of the EOG, and the effects their selection is having on Silvia's right to representation and basic fairness under the law. Should an evidentiary hearing reveal the death warrant for Silvia was signed with the knowledge his counsel was in the middle of litigation on the Occhicone warrant, thereby hindering Silvia's meaningful access to the courts and postconviction counsel, the error is even more egregious. Either way it is shocking to the conscience under a manifest injustice analysis and this Court's intervention is paramount at this time.

ARGUMENT II

THE RECENTLY REVEALED SHORTAGES OF ETOMIDATE, CREATES A VIOLATION OF SILVIA'S FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION. A DENIAL OF RELIEF WOULD ALSO BE A MANIFEST INJUSTICE

Etomidate is a short-acting intravenous agent used to induce general anesthesia and for sedation in critically ill patients. It has particular value in emergency medicine and intensive care units due

to its hemodynamic stability and is specifically used for patients at risk of hypotension, it is preferred for use in rapid sequence intubation procedures,⁷ and is a valuable tool for anesthesiologists and critical care physicians.⁸ It is also one of the drugs in Florida's three drug lethal injection protocol.

As of April 7, 2026, less than four months before Governor DeSantis signed the execution warrant for Silvia, the American Society of Health-System Pharmacists reported an ongoing shortage of etomidate.⁹ Pharmaceutical Executive also reported this shortage in its April 2026 issue.¹⁰ The results of pharmaceutical shortages have wide-reaching impacts across society, not just for Silvia. This

⁷Synapse, *What is Etomidate Used For?*, (June 14, 2024) <https://synapse.patsnap.com/article/what-is-etomidate-used-for> (Last accessed July 24, 2026)

⁸Rachel Tyndale, *Etomidate Mechanism of Action, Clinical Uses and Side Effects*, (August, 02, 2023) <https://www.longdom.org/open-access/etomidate-mechanism-of-action-clinical-uses-and-side-effects-101923.html> (Last accessed July 24, 2026)

⁹ASHP, *Etomidate Injection* (April 7, 2026) <https://www.ashp.org/drug-shortages/current-shortages/drug-shortage-detail.aspx?id=873&loginreturnUrl=SSOCheckOnly> (Last accessed July 24, 2026)

¹⁰Nicholas Jacobus, *Top Drugs at Risk of Supply Shortages: Report*, (April 22, 2026) <https://www.pharmexec.com/view/top-drugs-risk-supply-shortages-report> (Last accessed July 24, 2026)

shortage of a critical and beneficial drug creates ethical issues based on overall human rights forcing physicians to allocate resources to the individuals who will benefit most of the use of the available drugs.¹¹ Doctors and pharmaceutical experts have raised growing concerns about the shortages in recent months. As recently as July 1, 2026, the Utah Bureau of Emergency Medical Services also reported on the shortage of this critical medication.¹²

The standard therapeutic dose for etomidate in adult patients is a range of 0.2 to 0.6 milligrams per kilogram of body weight and should be calculated and administered by trained professionals who can properly evaluate adjustments based on specific patient considerations, such as the elderly or individuals with certain medical conditions.¹³ The protocols require the administration of a

¹¹Maya C. Wai, *Drug Shortage and Ethical Issues: Integrating Multidisciplinary Perspectives with a Shared Ethical Framework* (September 2024)

¹²Bureau of Emergency Medical Services; Utah Department of Public Safety, *Utah EMS Medication Shortage Procedure*, (July 1, 2026) <https://ems.utah.gov/utah-ems-education-shortage-information/> (Last accessed July 24, 2026)

¹³SCIENCEINSIGHTS, *What is the Standard Etomidate Dose for Intubation?* (November 26, 2025)<https://scienceinsights.org/what-is-the-standard-etomidate-dose-for-intubation/> (Last accessed July 24, 2026)

200mg dose of etomidate without regard to the weight of the individual involved, which has been referred to as a “massive dose” by this Court in *Long v. State*, 271 So.3d 938, 944 (Fla. 2019). Considering the ongoing shortage, it is unconscionable for FDOC to proceed considering the quantity of the etomidate used for executions and the pace of death warrants in Florida.

A. Factual Dispute as to Shortage

The Circuit Court incorrectly denied Silvia requests for an evidentiary Hearing. (PCROA 2390). Silvia has shown evidence that there is a shortage of etomidate, one of the three drugs necessary for lethal injection in the State of Florida. As proof Silvia offers a plethora of national and international news articles, scientific journals, medical publications, reports from pharmaceutical companies, and government sources, including from the Federal Drug Administration and Department of Defense.¹⁴ FDOC refuses to concede there is a

¹⁴See, Report on the Department of Defense Pharmaceutical Supply Chain Risks, (November 2023), <https://www.warren.senate.gov/wp-content/uploads/media/doc/FY23%20NDAA%20sec%20860%20Risk%20management%20for%20DoD%20Pharmaceuticals1.pdf> (Last accessed July 31, 2026); USP, Addressing Strategic Constraints to Strengthen the US Medicine Supply Chain (Apr. 7, 2026), <https://www.usp.org/sites/default/files/usp/document/public-policy/vulnerable-medicines-list-2025.pdf> (Last accessed July, 24,

shortage of etomidate. FDOC stated at the records hearing on this issue on July 22, 2026:

2026); Joseph Choi, Pharmaceutical Supply Chains Get Tangled in War with Iran, (March 29, 2026) <https://thehill.com/policy/healthcare/5805149-iran-war-pharmaceutical-supply-chain/> (Last accessed July 24, 2026); Synapse, What is Etomidate Used For?, (June 14, 2024) <https://synapse.patsnap.com/article/what-is-etomidate-used-for> (Last accessed July 24, 2026); Rachel Tyndale, Etomidate Mechanism of Action, Clinical Uses and Side Effects, (August, 02, 2023) <https://www.longdom.org/open-access/etomidate-mechanism-of-action-clinical-uses-and-side-effects-101923.html> (Last accessed July 24, 2026); ASHP, Etomidate Injection (April 7, 2026) <https://www.ashp.org/drug-shortages/current-shortages/drug-shortage-detail.aspx?id=873&loginreturnUrl=SSOCheckOnly> (Last accessed July 24, 2026); Nicholas Jacobus, Top Drugs at Risk of Supply Shortages: Report, (April 22, 2026) <https://www.pharmexec.com/view/top-drugs-risk-supply-shortages-report> (Last accessed July 24, 2026); Maya C. Wai, Drug Shortage and Ethical Issues: Integrating Multidisciplinary Perspectives with a Shared Ethical Framework (September 2024); Sofia Quaglia, 'An urgent public health crisis': Why so many people are struggling to get medicine (October 22, 2025) <https://www.bbc.com/future/article/20251021-why-youre-having-trouble-getting-your-meds> (Last accessed July 24, 2026); Bureau of Emergency Medical Services; Utah Department of Public Safety, Utah EMS Medication Shortage Procedure, (July 1, 2026) <https://ems.utah.gov/utah-ems-education-shortage-information/> (Last accessed July 24, 2026); SCIENCEINSIGHTS, What is the Standard Etomidate Dose for Intubation? (November 26, 2025) <https://scienceinsights.org/what-is-the-standard-etomidate-dose-for-intubation/> (Last accessed July 24, 2026); Fresenius Kabi (December 20, 2022) <https://www.fda.gov/media/164122/download> (Last accessed July 24, 2026)

The first thing I just want to clear up is I thought I heard Mr. Shakoor say that DOC has conceded that there's a nationwide shortage of etomidate. *We have not*. All we've done is address allegations that Mr. Shakoor has made.

(PCROA 2206)(*Emphasis added*). FDOC's statements reveal a factual dispute exists as to the existence of this well-documented shortage. The circuit court denied the evidentiary hearing on the following issues:

(1) whether FDOC has a plan in place for the worldwide etomidate shortage; (2) whether FDOC has a policy in place for providing etomidate for those institutions which are experiencing the etomidate shortage to be used for lifesaving purposes with their patients; and (3) whether FDOC can prove that the etomidate being used for the Defendant is not expired.

(PCROA 2390). The court did not address the issue of the factual dispute as to the existence of a shortage for which the evidentiary hearing was originally requested. In doing so, the circuit court erred.

There is a presumption in favor of evidentiary hearings on 3.850 motions asserting claims of newly discovered evidence in capital cases. *Gaskin v. State*, 737 So.2d 509, 517 n. 17 (Fla.1999). This Court has held evidentiary hearings should be required on capital postconviction motions presenting factually based claims. *Amends. to Fla. Rules Crim. Proc. 3.851, 3.852, & 3.993*, 772 So. 2d 488, 492

(Fla.), *amended sub nom. Amends. to Fla. Rules of Crim. Proc. 3.851, 3.852, & 3.993, 772 So. 2d 512 (Fla. 2000), and decision supplemented sub nom. Amends. to Fla. Rules of Crim. Proc. 3.851, 3.852 & 3.993, 772 So. 2d 532 (Fla. 2000)*.¹⁵ In a concurring opinion, Justice Wells wrote:

I write to advocate an amended rule 3.851. I believe the rule should be amended to require that an evidentiary hearing is mandated on initial motions which assert ineffective assistance of counsel, *Brady*, or other newly discovered evidence claims, or other legally cognizable claims which allege an ultimate factual basis. Too much judicial and counsel time and resources have been wasted in determining whether to hold an evidentiary hearing. This has added to the inordinate amount of time prisoners remain on death row.

Id. (Quoting from *Mordenti v. State*, 711 So.2d 30, 33 (Fla.1998)). The purpose of evidentiary hearings on postconviction motions is to avoid delay, not cause it. *Amends. to Fla. Rules Crim. Proc. 3.851, 3.852, & 3.993, 772 So. 2d 488, 491 (Fla.)*, *amended sub nom. Amends. to Fla. Rules of Crim. Proc. 3.851, 3.852, & 3.993, 772 So. 2d 512 (Fla. 2000)*, and *decision supplemented sub nom. Amends. to Fla. Rules of Crim. Proc. 3.851, 3.852 & 3.993, 772 So. 2d 532 (Fla. 2000)*. As long as the movant has made a facially sufficient claim requiring a factual

¹⁵ See footnote 2 of the decision

determination, the Court will presume that an evidentiary hearing is required. *Booker v. State*, 969 So. 2d 186, 195 (Fla. 2007). The circuit court's denial of the evidentiary hearing where there is a clear factual dispute on the record was an error.

On review of a decision of whether or not to grant an evidentiary hearing on a postconviction motion based on written materials before this Court, the question is a pure question of law subject to de novo review. *Booker v. State*, 969 So. 2d 186, 195 (Fla. 2007). In *Booker*, this Court wrote:

when we review the summary denial of claims raised in the motion below, this Court accepts the movant's factual allegations as true, and we will affirm the ruling only if the filings show that the movant has failed to state a facially sufficient claim or that there is no issue of material fact to be determined.

As such, this Honorable Court should accept Silvia's factual allegations as true, overturn the circuit court's denial, and remand for an evidentiary hearing on this matter.

B. The Court's Purview to Make Policy as to Use of Etomidate

The American Medical Association has expressed its concern that drug shortages are an "urgent public health crisis and a threat

to national security.¹⁶ The circuit court ruled it is not in their purview to make policy decisions as to the use of etomidate. (PCROA 2391). However, it would not be the first time a court had stepped in to support the reallocation of critical resources. *Henderson v. Smith-Douglass Co.*, 44 F. Supp. 681, 682 (E.D. Va. 1942) supported the regulation of privately owned and manufactured goods in the face of “a pressing national emergency.” The court in *United States v. Wright*, 48 F. Supp. 687, 688 (D. Del. 1943) found it constitutional to establish priorities and allocate material in order to ensure the “fulfillment of requirements for the defense of the United States.” Similarly, the court in *United States v. Beit Bros.*, 50 F. Supp. 590, 591 (D. Conn. 1943), upheld quotas for the purpose of “allocating scarce materials needed for defense.” (The material in question was meat for the constrained food supply during wartime).

It is important to understand that the Defense Logistics Agency, the Department of Defense’s most significant

¹⁶Sofia Quaglia, 'An urgent public health crisis': Why so many people are struggling to get medicine (October 22, 2025) <https://www.bbc.com/future/article/20251021-why-youre-having-trouble-getting-your-meds> (Last accessed July 24, 2026)

pharmaceutical procurement organization used to fulfill the military healthcare systems material requirements, lists etomidate as being under a drug shortage.¹⁷ The shortage has been aggravated by the War in Iran. Fifty percent of the global supply of etomidate is produced in Jordan.¹⁸ The majority of the generic version of all drugs is made in India.¹⁹ The conflict in Iran has disrupted the supply of etomidate and its generic equivalent to the United States. While as of mid-April of 2026, the Strait of Hormuz was partially opened, and some drugs were trickling in, the overall supply was largely impacted.²⁰ The Strait of Hormuz is the main shipping channel for pharmaceutical shipments between Asia, Europe, and the United States. It is also critical to the supply chain of fuel.²¹ As such, the

¹⁷Report on the Department of Defense Pharmaceutical Supply Chain Risks, (November 2023), <https://www.warren.senate.gov/wp-content/uploads/media/doc/FY23%20NDAA%20sec%20860%20Risk%20management%20for%20DoD%20Pharmaceuticals1.pdf> (Last accessed July 31, 2026)

¹⁸Genni Burkhardt, *How Middle East Tensions Are Disrupting Medical (and Dental) Supply Chains*, (April 22, 2026) <https://www.docseducation.com/blog/how-middle-east-tensions-are-disrupting-medical-and-dental-supply-chains> (Last accessed, July 31, 2026)

¹⁹Genni Burkhardt, *supra* at 12

²⁰Genni Burkhardt, *supra* at 12

²¹Genni Burkhardt, *supra* at 12

logistical constraints of the war with Iran have impacted not only the supply of this critical drug, but also increased the price of shipping and manufacturing, thus increasing the price of what little of the drug is available in the United States.²² So, citing to cases dealing with wartime rationing is not hyperbolic, it is appropriate. It is within this Court's discretion to rule upon such matters.

Considering the ongoing shortage of etomidate, a lack of this Court's intervention would result in a manifest injustice which "shocks the conscience" and demands correction.²³ Florida could pause executions and allow this extremely important medication to be used by those suffering acute and immediate medical concerns who can gain the most benefit from its intended use, until the shortage is over. Rather than using a "massive dose" of the limited amount of etomidate available to end the life of a 61-year-old man in a wheelchair, in the midst of a drug crisis, it could instead be used for life-saving procedures. This perpetuates a manifest injustice upon not just Silvia, but society as a whole and demands correction by this Court.

²²Genni Burkhart, *supra* at 12

²³LSD Law Legal Dictionary, *supra* at 5

C. Alternative Method

The State repainted Silvia's Fourteenth Amendment Due Process and Equal Protection claims as an Eighth Amendment method of execution claim, as is their custom. (PCROA 2364-2365). The circuit court, relying on the State's incorrect reinterpretation, ruled that Silvia's non-existent method of execution claim failed to meet the legal standards of *Glossip v. Gross*, 576 U.S. 863 (2015), because Silvia did not identify a feasible alternative method of execution. (PCROA 2391-2392). Silvia did not propose an alternative method of execution because Silvia did not raise an Eighth Amendment claim in Claim II of his pleading. (PCROA 2242). Silvia does not object to lethal injection as a method of execution, nor does he object to the use of etomidate in the three-drug protocol to be used for his execution. Silvia simply asserts his right to substantive and procedural due process, that the death penalty be administered in a fair, consistent, and reliable manner. *Arbelaez v. Butterworth*, 738 So. 2d 326 (Fla. 1999).

D. Possibility of Expired Drugs

The circuit court erred in its ruling regarding Silvia's fear that the shortage of etomidate may result in the etomidate used in his

execution being expired. (PCROA 2391). The court considered Silvia's argument, that commercial supply constraints of etomidate will result in future protocol deviations, to be speculative. The State insists the existence of an alleged etomidate shortage does not establish in and of itself that FDOC lacks protocol compliant drugs or intends to disregard its protocol. (PCROA 2365). However, the State refuses to simply state on the record that they have viable etomidate for use in Silvia's execution; They remain strangely silent on this matter. (PCROA 2195-2225, 2339-2346, 2347-2368). As usual, the State hides behind the presumption FDOC will comply with the lethal injection protocol. *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024). (PCROA 2365). Silvia recognizes it is his burden to overcome that presumption. *Muhammad v. State*, 132 So. 3d 176, 206 (Fla. 2013).

In *Arthur v. Thomas*, 674 F.3d 1257 (11th Cir. 2012), the Eleventh Circuit Court addressed an equal protection claim by an Alabama death row inmate, and found the petitioner only had to show enough facts to constitute a plausible equal protection claim and had done so by alleging "Alabama has substantially deviated from its execution protocol." *Id.* at 1263. *Arthur* alleged significant

deviations from the established execution protocol and that court found as follows:

In light of Arthur's other allegations regarding the veil of secrecy that surrounds Alabama's execution protocol, it is certainly not speculative and indeed *plausible* that Alabama will disparately treat Arthur because the protocol is not certain and could be unexpectedly changed for his execution. (Footnote omitted.)

Id. (Emphasis added). The Court then remanded the case for further factual development. Similarly, In *Taylor v. Crawford*, No. 05-4173-CV-C-FJG, 2006 WL 1779035, at *4 (W.D. Mo. June 26, 2006), the Missouri Supreme Court suspended the lethal injection protocol when it was discovered that the protocol had been deviated from three times. Their reasoning was “the protocol as it currently exists is not carried out consistently and is subject to change at a moment's notice,” and this would infringe the inmates' constitutional rights. *Id.*

Silvia does not rely on the multitude of *plausible* protocol violations which have already been brought before this court and rejected. (See, *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025), *Heath v. State*, 426 So. 3d 1253, 1262 (Fla. 2026), *cert. denied sub nom. Ronald Palmer Heath v. Fla.*, 223 L. Ed. 2d 587 (Feb. 10, 2026), and *Trotter v. State*, 428 So. 3d 68, 72 (Fla.), *cert. denied*

sub nom. Trotter v. Fla., 146 S. Ct. 755 (2026), among others). Silvia raises further evidence of protocol violations. Fla. Admin. Code Ann. R. 33-601.830, which sets the rules and procedures regarding Death Row, under §(15)(b)(2) provides after a death warrant is signed, “All visits shall be non-contact, except that the inmate may receive a one-hour contact visit on the day of execution.” (See Appendix G -). We know for a certainty this procedure was not adhered to in the two most recent executions, those of James Duckett and Dominick Occhicone. Due to the sudden re-signing of Duckett’s death warrant, on July 14, 2026, FDOC scheduled Duckett’s execution at noon on July 28, 2026 – the same day as that of Occhicone. According to Duckett’s death warrant (Appendix H - Warrant Packet for James Duckett), Governor DeSantis gave FDOC a week, beginning at noon on July 28, 2026 to noon on August 4, 2026 in which to schedule Duckett’s execution. According to the letter signed by Governor DeSantis, it was FDOC’s decision to schedule Duckett’s execution at noon on July 28, 2026, despite Occhicone’s execution already being scheduled at 6:00 PM on the same date. (PCROA 2316). Because FDOC chose to schedule two executions on one day, both Duckett and Occhicone were denied their contact visit on the day of the

execution. Their contact visits were moved to another day, and as a result, Occhicone's family was unable to attend. These are two concrete examples of FDOC not following their death warrant protocols. By not treating Duckett and Occhicone the same as other inmates on Death Watch, the FDOC and the State of Florida violated their rights to Equal Protection under the Fourteenth Amendment. Unfortunately, both Duckett and Occhicone are dead and cannot raise those claims.

The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)(quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). At a minimum, due process requires the deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. *Id.* at 550. It has long been recognized "execution is the most irremediable and unfathomable of penalties; that death is different." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (citing *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976)). This is why this Court's reasoning in consistently denying claims based on protocol violations is flawed at best, and at worst is injustice:

The alleged failure to document the removal of drugs from inventory until one or two days after an execution would not, without more, show a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering during an execution. Nor would the alleged failure to log the removal of etomidate from inventory establish such a risk where the autopsy indicates the drug was, in fact, administered.

Heath v. State, 426 So. 3d 1253, 1262 (Fla. 2026), *cert. denied sub nom. Ronald Palmer Heath v. Fla.*, 223 L. Ed. 2d 587 (Feb. 10, 2026). (Emphasis added). By this Court's own logic, if FDOC did not follow certain protocols, it could only come to light after the Appellant's death, at which time the injury is irreversible and, thus, cannot be litigated.

The shortage of etomidate and FDOC's silence on the matter makes it plausible FDOC does not have viable etomidate to be used in Silvia's execution. A decision to prohibit Silvia from a full investigation into the drugs to be used for his lethal injection violates the Fourteenth Amendment, as all prisoners being executed by the State of Florida are entitled to be treated the same, as well as guaranteed FDOC is following its constitutionally protected protocols, rather than being differentiated between in an arbitrary and capricious manner of the drugs provided, whether there are

differences in the drugs to be injected, the amounts of the drugs injected, or expired drugs being injected. If FDOC violates Silvia's Equal Protection rights, as it violated Duckett and Occhicone's, Silvia's injury could not be discovered until after Silvia's death, in Silvia's autopsy, at which point Silvia will not be able to litigate the matter, depriving him of his right to be heard at a meaningful time and in a meaningful manner.

In addressing a Petition for Writ of Certiorari on the very issue of the use of expired etomidate, Justice Sotomayor pointed out “the State provides no assurances that it has not (and will not) use expired substances in its executions.” *Trotter v. Fla.*, 146 S. Ct. 755, 755 (2026). She went on to say;

If the protocol is in fact being followed, then transparency instills confidence in the protocol for everyone—prisoners, the courts, and the public alike. If it is not, then secrecy is intolerable...

Going forward, I hope that Florida and its courts will recognize the paramount importance of ensuring that it conducts executions consistently with its approved protocol, and assuring all involved that it is preventing any infliction of needless suffering on those being executed in the State. By continuing to shroud its executions in secrecy, Florida undermines both the integrity of its own execution process and, potentially, this Court's ability to ensure the State's compliance with its constitutional obligations.

Id. We beg this court to heed Justice Sotomayor's warning and prevent the likelihood of irreparable injury to Silvia in light of FDOC's repeated deviations.

CONCLUSION AND RELIEF SOUGHT

In light of the facts and legal arguments presented above, Silvia contends his constitutional rights for equal protection and due process under the Fourteenth Amendment of the Constitution of the United States, and the corresponding provisions of the Florida Constitution, have been violated. Silvia respectfully requests his death sentence be vacated, alternatively for this case to be remanded to the circuit court to conduct an evidentiary hearing, as well as for the entry of a stay of his execution, and all future executions, until the worldwide etomidate shortage has been resolved and so all of these issues can be fully litigated.

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 912,.045, we hereby certify that the Initial Brief of the Appellant has been produced in Bookman Old Style14-point font. This brief complies with the requirements of Fla. R. App. P. 9.210(a)(2)(D), as it has less than 75 pages and 10,604 words.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY on August 3, 2026, the foregoing document has been electronically filed with the Clerk of the Circuit Court by using the Florida Courts e-portal filing system which will send a notice of electronic filing to the following: the Honorable Melanie Chase, Chief Circuit Court Judge, Eighteenth Judicial Circuit, 101 Eslinger Way, Sanford, Florida 32773-6707, through jennifer.biron@flcourts18.org; the Honorable John D. Galluzzo, through stephanie.mcneal@flcourts18.org; William Scheiner, State Attorney, and Ana Valentini, Assistant State Attorney, Eighteenth Judicial Circuit, Seminole County Office, 91 Eslinger Way, FL. 3, Sanford, Florida 32773-6707, wscheiner@sa18.org, avalentini@sao18.org; Naomi Nichols, Senior Assistant Attorney General, Doris Meacham, Special Counsel, Assistant Attorney General, Office of the Attorney General, Capital Appeals, 444 Seabreeze Blvd., Suite 500, Daytona Beach, Florida 32118, naomi.nichols@myfloridalegal.com, capapp@myfloridalegal.com. Danielle Kelley, Danielle.Kelley@fdc.myflorida.com, and CO-

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No. _____

IN THE
Supreme Court of the United States

WILLIAM FRANCES SILVIA

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

***THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY AUGUST 18, 2026 AT 6:00 P.M.***

APPENDIX C

Circuit Court Order Denying Relief

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY,
FLORIDA

CASE NO.: 05-2006-CF-004522-AXXX-XX

FLORIDA SUPREME COURT
NO. SC2009-0220

ACTIVE DEATH WARRANT

STATE OF FLORIDA,

Plaintiff,

v.

WILLIAM FRANCES SILVIA, JR.

Defendant.

_____ /

**ORDER SUMMARILY DENYING DEFENDANT'S SUCCESSIVE
MOTION TO VACATE DEATH SENTENCE FOLLOWING A
SIGNED DEATH WARRANT
AND
DENYING DEFENDANTS MOTION FOR A STAY OF EXECUTION**

THIS CAUSE came before the Court on the Defendant's Successive Motion to Vacate Death Sentence, filed herein on July 27, 2026, pursuant to Rule 3.851, Florida Rules of Criminal Procedure. (Doc. 411). The Defendant also filed on July 27, 2026, a Motion for Stay of Execution. (Doc. 413). On July 29, 2026, the State filed a Response to the Defendant's postconviction motion and a Response

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in Opposition to the Defendant's Motion for Stay of Execution. (Doc. 414, 415).

On July 29, 2026, at 11:00 A.M., the Court held a hearing pursuant to Huff v. State, 622 So. 2d 982 (Fla. 1993). Present at the Huff hearing virtually via Zoom were Doris Meacham and Naomi Nichols representing the Attorney General's Office in addition to Assistant State Attorney Anna Valentini of the State Attorney's Office in the Eighteenth Judicial Circuit. The Defendant's counsel, Ali Shakoor, Mayham Syed, and Debra Bell of Capital Collateral Regional Counsel – Middle Region ("CCRC-M") appeared virtually via Zoom. The Defendant chose not to appear virtually for this hearing.

The Court determines that no postconviction evidentiary hearing is legally warranted on the Defendant's Successive Motion to Vacate Death Sentence and the motion is summarily denied as a matter of law because there are no factual disputes relevant to any cognizable, colorable claim. The Defendant is not legally entitled to a postconviction evidentiary hearing to conduct a fishing expedition for records unrelated to a colorable claim for postconviction relief. Willacy v. State, 431 So. 3d 254, 262 (Fla. 2026), cert. denied, 224

L.Ed.2d 524 (2026) (citing Sims v. State, 753 So. 2d 66, 70 (Fla. 2000)). Each claim raised by the Defendant in the subject successive postconviction motion is untimely, procedurally barred, and/or legally insufficient. Having considered the Defendant's "Successive Motion to Vacate Death Sentence," the Defendant's Motion for Stay, the State's Response, the official Court file, legal argument of counsel, and the relevant legal authority, the Court makes the following findings of fact and conclusions of law:

Facts

a. The Supreme Court of Florida summarized the facts of this case:

The victim, Patricia Silvia had been married to the defendant, William Frances Silvia, since 2002, but they separated in July 2006. At the time of the murder, Silvia was forty-one and Patricia was thirty-nine. After their separation, Patricia and two of her minor children from a previous marriage, Rachel and Ross, ages sixteen and thirteen, moved into the Winter Park home of her mother, Betty Woodard, and her stepfather, Patrick Woodard. Robin McIntyre, Patricia's sister, also lived at the home. On several occasions prior to the evening of the murder, Silvia had visited the Woodard home unannounced in the middle of the night to speak to Patricia. Every time, Silvia was turned away.

On the day of the murder, Silvia was fired from his job. He had already become homeless after the

separation, was living in his truck, and at times rented a motel room. That afternoon, after being fired, Silvia purchased a pump action twelve-gauge Mossberg 500 shotgun and ammunition and rented a motel room at the Regency Inn. Later that evening, the Woodards were hosting a cookout in their carport area. Those in attendance included Patricia, her children Ross and Rachel, her sister Robin, her parents, Patrick's brother Jerome Woodard, and several other friends. At around 9:00 p.m., Silvia drove to the Woodard home with the shotgun and ammunition in his truck, apparently hoping to reconcile with Patricia.

When Silvia arrived at the home, he asked to speak with Patricia, who came outside to speak with him. They spoke briefly, after which Patricia went back into the house. As Patricia walked away, Rachel overheard Silvia tell Patricia, "You will be sorry." Silvia walked back to his truck – a distance of approximately one hundred feet – retrieved his shotgun, and fired two shots as he walked back to the Woodard home.

At this point, Patrick's brother, Jerome, who was in the carport at the time, jumped to the ground between two vehicles. After the shooting started, Patricia's sister, Robin, left the carport and entered the home. Rachel, who was also in the carport, heard the gunshots and attempted to go into the house to find her brother, Ross. When Rachel got up to find her brother, Silvia pointed a gun at her from a foot away in the carport. At this point, Patricia and Betty were in the kitchen, adjacent to the carport. As Betty opened the door from the kitchen to the carport, she was shot in the face. Patricia, who was getting iced tea out of the refrigerator, was also shot in the head, causing her to collapse in front of the refrigerator. Ross was standing near Patricia when she was shot. [footnote removed] Patrick Woodard, who was in the bedroom when he first heard gunshots, left the bedroom to check on things and

saw Patricia lying on the floor in front of the refrigerator door. Patrick then looked outside the open door to the carport and saw Betty on the floor bleeding and covering her face. Patrick saw Silvia at the end of the carport holding a twelve-gauge shotgun, pointing the shotgun at Patrick and pumping it.

Silvia fired a total of seven shots at the scene that evening, two shots into the air and the other shots at the Woodard carport and home, and then left in his truck. During the shooting, Silvia shot Patricia and Betty. Patricia died at the scene. Betty, who was shot in the face, was airlifted by the helicopter to Orlando Regional Medical Center in "grim" condition with massive facial and head trauma and blood loss.

According to the medical examiner, Patricia had numerous pellet gunshot entry wounds on her head. There was a pellet gunshot entry wound behind her left ear which entered her skull. A "big pellet" entered through the top of Patricia's left ear, pierced her skull, and stopped in the right front lobe of her brain. There were additional pellet wounds on the back of Patricia's head, resulting in massive trauma. Either the pellets or bone fragments caused exit wounds. The medical examiner concluded that Patricia died as a result of the shotgun pellet wounds to her head.

Police later arrested Silvia in the parking lot of the motel where Silvia had rented a room. While no evidence established that Silvia was intoxicated at the time of the murder on September 22, 2006, during his arrest in the early morning hours of September 23, 2006, Silvia appeared intoxicated or impaired. [footnote removed] During his transport to the Seminole County Sheriff's Office, Silvia confessed to the shooting. He asked the officer transporting him whether the officer was married and indicated that "he was in the situation" because he

was married. Silvia admitted to shooting Patricia because she spent all of their money and then started dating her ex-husband.

Law enforcement officers later obtained a search warrant for Silvia's motel room and truck. In his motel room, they found a pump action twelve-gauge Mossberg 500 shotgun, shotgun shells, weapons manuals, and several empty beer bottles, among other items. The shotgun shells collected from Silvia's motel room were the same brand as those collected at the crime scene. A firearms analyst examined and test-fired the shotgun found in Silvia's motel room and concluded that the shells collected at the crime scene were fired from the same shotgun.

Silvia v. State, 60 So. 3d 959, 963-64 (Fla. 2011).

Procedural Posture

b. On June 6, 2008, after a trial, a jury convicted the Defendant of committing on September 22, 2006, the first-degree premeditated murder of his estranged wife, Patricia Ann Silvia, and the attempted first-degree murder of Patricia's mother, Betty MacIntyre Woodard. (Exhibit "1," Indictment, Jury Verdicts, Judgment); Silvia v. State, 60 So. 3d 959, 964 (Fla. 2011).

c. A penalty phase occurred on July 17-21, 2008, after which the jury recommended death by a vote of eleven to one. (Exhibit "2," Jury Recommendation); Silvia v. State, 60 So. 3d 959, 966 (Fla.

2011). This Court followed the jury's recommendation and on January 28, 2009, imposed a sentence of death for the murder of Patricia, and life imprisonment for the attempted first-degree murder of Betty. This Court found three aggravating circumstances giving each great weight: (1) Silvia's contemporaneous conviction for attempted murder of Betty Woodard established the prior violent felony aggravator; (2) Silvia caused a great risk of death to many persons; and (3) the homicide was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification ("CCP"). Id. at 967. Although this Court did not find any statutory mitigating circumstances, it found several nonstatutory mitigating circumstances: (1) emotional distress from loss of job and wife (little weight); (2) impaired ability to conform conduct due to chronic personality disorder not otherwise specified and chronic alcohol dependence (moderate weight); (3) chronic personality disorder not otherwise specified with paranoid, antisocial, and schizoid features and alcohol dependence (moderate weight); (4) chronic alcohol dependence (moderate weight); (5) diagnosis as a teenager with "schizoid" or "schizophreniform" disorder (little weight);

and (6) dysfunctional family setting when growing up with domestic violence (little weight). Id. (Exhibit "3," Sentencing Order).

d. On direct appeal at the Supreme Court of Florida, the Defendant raised six issues all related to the penalty phase: (1) the trial court erred in finding CCP; (2) the trial court erred in finding that Silvia knowingly created a great risk of death to many persons; (3) his death sentence is not proportionate; (4) the prosecutor's repeated improper and inflammatory elicitation of irrelevant evidence tainted the penalty phase; (5) reversible error occurred when the trial court permitted improper victim impact evidence; and (6) Florida's death sentencing scheme is unconstitutional under the Sixth Amendment pursuant to Ring v. Arizona, 536 U.S. 584 (2002). Silvia v. State, 60 So. 3d 959, 967, n. 5 (Fla. 2011). The Supreme Court of Florida reviewed both the evidence of guilt and the penalty-phase issues raised, and affirmed Silvia's convictions and death sentence on April 7, 2011. Id. at 978. (Exhibit "4," Mandate/opinion). Capital Collateral Regional Counsel – Middle Region ("CCRC-M") was appointed on that same date. (Exhibit "5," order).

e. On June 26, 2012, the Defendant waived his postconviction proceedings and counsel. Silvia v. State, 228 So. 3d 1144 (Fla. 2013). This Court specifically found that there were no reasonable grounds to believe that the Defendant was not mentally competent for purposes of the hearing. Id. at 1145. Moreover, the Court found that Silvia's waiver was knowing, intelligent, and voluntary. This Court discharged Silvia's postconviction counsel and dismissed his postconviction proceedings. Id. On September 11, 2013, the Supreme Court of Florida reviewed this action and concluded that this Court did not abuse its discretion in discharging Silvia's postconviction counsel and dismissing postconviction proceedings in Silvia's case. Silvia v. State, No. SC12-1853, 2013 WL 5035694 *1 (Fla. Sept. 11, 2013), 123 So. 3d 1148 (Table). (Exhibit "6," 6/26/2012 Transcript and Order Dismissing Postconviction Proceedings, Discharging Capital Collateral Regional Counsel and Corrected Order, order).

f. On January 6, 2017, the Defendant filed a successive postconviction motion seeking to vacate his death sentence based on Hurst v. Florida, 577 U.S. 92 (2016) and Hurst v. State, 202 So. 3d 40

(Fla. 2016). At issue was whether Silvia's original, valid waiver of postconviction proceedings and counsel precluded him from claiming a right to relief under Hurst. This Court granted Silvia a new penalty phase applying Hurst. The Supreme Court of Florida reversed this decision and reinstated the Defendant's death sentence, concluding that Silvia's original waiver of postconviction proceedings and counsel precluded Silvia relief under Hurst. (Exhibit "7," motion, order, and opinion). State v. Silvia, 235 So. 3d 349, 351-52 (Fla. 2018). On review of the Defendant's 2012 waiver of postconviction proceedings and counsel, the Supreme Court of Florida made clear:

In addition, Silvia indicated that he understood that by waiving postconviction proceedings early in the process – before a motion was filed – **he was losing permanently his right to take advantage of any changes that may occur in the law**, that he was waiving his right to federal review, and that because his attorneys had not yet completed their discovery, it was unknown what issues could be raised. Silvia acknowledged that he understood everything his attorneys had done to date and that his attorneys could discover information that would be beneficial to him in postconviction. Silvia indicated that he understood that the issues in his case were not fully developed, that his attorneys could not proceed further in their investigation without his cooperation, and that his attorneys could discover information that would be beneficial to him. He nevertheless indicated that he did not wish his attorneys to proceed with any further

discovery and that he was voluntarily waiving his postconviction counsel and proceedings.

Silvia v. State, 228 So. 3d at 1145, 1146 (Emphasis added).

g. On July 17, 2026, the Governor of the State of Florida issued an active death warrant for the Defendant. The Supreme Court of Florida directed that "[t]he proceedings pending in the trial court, if any, shall be completed and orders entered as expeditiously as possible, but no later than 11:00 a.m., Friday, July 31, 2026."

Postconviction Claims for Relief

h. In the subject successive postconviction motion, the Defendant raises two claims for relief. The Court finds that the Defendant originally knowingly and voluntarily waived postconviction proceedings in this case. After being informed by Judge McIntosh that a death warrant could immediately be issued by the Governor and the Defendant could be executed, he chose to waive postconviction and collateral challenges. The Supreme Court of Florida has upheld this waiver. State v. Silvia, 235 So. 3d 349 (Fla. 2018). Consequently, this precludes the Defendant from relief at this juncture in the case. The Defendant's voluntary waiver of

postconviction proceedings is binding and bars any claims challenging his conviction and sentence.

i. Moreover, no prejudice is shown by the alleged deficiencies in Claims One and Two, because the Defendant knew on June 26, 2012, that the Governor could sign a death warrant for his execution at any moment, he permanently waived any objection to that, even if that occurred years in the future. The Defendant also acknowledged under oath that he could never change his mind on this issue. (Exhibit "6," 6/26/2012 Transcript, pgs. 21-25). The Defendant's decision was made after a lengthy discussion on the record with the Court (Judge McIntosh) regarding the future permanent serious implications of his decision-making and choices, which is exactly what he now faces – the issuance and execution of the Defendant's death warrant.

j. Although the current version of Rule 3.851 includes commentary which seems to provide an avenue for defendants who waive postconviction proceedings under subdivision (i) to later raise certain limited claims, notwithstanding a dismissal of their postconviction proceedings, this change in the law does not apply in

the Defendant's case. See In re Amends. to Fla. Rule of Crim. P. 3.851, 351 So. 3d 574, 576 (Fla. 2022). The 2022 amendment to Rule 3.851 does not apply in the Defendant's case because the Defendant's waiver occurred well before the amendment, such amendments generally operate prospectively, and the Florida Supreme Court has not held that the amended Florida Rule of Criminal Procedure 3.851 applies retroactively. James v. State, 404 So. 3d 317, 328 (Fla. 2025), cert. denied, 145 S. Ct. 1351 (2025). Moreover, the Defendant's original waiver included a permanent loss of the "right to take advantage of any changes that may occur in the law," thus, he is barred from claiming the right to any benefit from the 2022 rule amendment. State v. Silvia, 228 So. 3d 1144, 1146 (Fla. 2013); see also State v. Silvia, 235 So. 3d 349, 350-51 (Fla. 2018) (reversing Hurst relief.)

k. However, *assuming arguendo*, the Defendant did not waive postconviction and collateral challenges to the execution of his death warrant in the above-styled case, the Defendant is not legally entitled to the relief he requests based on controlling precedent as set forth in detail below.

**Claim #1: Signing Silvia's Death Warrant while Defendant's
Counsel was Litigating Another Death Warrant**

l. As his first claim for postconviction relief in the subject motion, the Defendant alleges that his Sixth, Eighth, and Fourteenth Amendment constitutional rights were violated and a manifest injustice has occurred because the Governor of Florida signed his death warrant while his defense counsel was litigating another death warrant of another defendant; specifically, Dominick Occhicone.¹

m. The Defendant asserts that his equal protection rights have been violated as he is being treated differently than other similarly situated defendants under a death warrant, because he was disadvantaged by having his legal team simultaneously litigate another death warrant. The Defendant further alleges that the signing of the death warrant while his counsel was actively litigating Occhicone's warrant, which was pending review by the Florida Supreme Court, created a circumstance that directly impacted the quality of representation available to Silvia, and his access to the courts. The Defendant has not shown how the warrant schedule

denied him notice or an opportunity to be heard. Tanzi v. State, 407 So. 3d 385, 390-91 (Fla. 2025). Additionally, the Defendant has not alleged the existence of any conflict of interest and has not alleged that his attorney's workload prevented them from investigating any specific claim. The Defendant just makes a general, conclusory allegation. Overlapping warrant cases are assigned by operation of statute creating CCRC-M to represent all death-sentenced persons in its region. Therefore, CCRC-M Office's internal assignment process, rather than any discriminatory selection by the Governor created the overlap. The rational basis for the office's assignment of the same attorneys to overlapping warrants – continuity, familiarity with a client's case, and the legislative design of the CCRC system – readily survives a rational basis review.

n. The Defendant challenges the pace of executions in Florida, and contends the Governor is targeting the most vulnerable segments of the population on death row, pointing out that the Defendant is a sixty-one-year-old man in a wheelchair. The

¹ Occhicone's capital sentence was carried out at 6:13 P.M. on July 28, 2026. The warrant period of Occhicone's case overlapped Defendant Silvia's warrant case by eleven days.

Defendant does not dispute that he is eligible for a death warrant, rather he asks this Court to second-guess the Governor's executive decision in determining when to sign a warrant and set an execution date.

o. The Supreme Court of Florida has consistently and repeatedly held that the Governor has broad discretion in selecting which death warrants to sign and when to do so, and that these decisions do not violate the United States Constitution or the Florida Constitution. Tanzi v. State, 407 So. 3d 385 (Fla. 2025); Hutchinson v. State, 416 So. 3d 273 (Fla. 2025). There is no constitutional principle that demands a fixed formula, with a more structured, less-discretionary process. Hutchinson v. State, 416 So. 3d 273, 280 (Fla. 2025). These holdings foreclose any claim that the Governor's act of signing a death warrant – regardless of counsel's other professional obligations – constitutes a constitutional violation.

p. No court has recognized a cognizable claim that the Governor's selection of elderly or physically disabled death row inmates for execution constitutes unconstitutional targeting. James v. State, 404 So. 3d 317 (Fla. 2025).

q. The Sixth Amendment claim raised by the Defendant fails for a foundational reason: neither the United States Constitution, nor Florida law affords a defendant the right to effective assistance of postconviction counsel. Barwick v. State, 361 So. 3d 785 (Fla. 2023). Section 27.711(10), Florida Statutes expressly provides that “[a]n action taken by an attorney who represents a capital defendant in postconviction capital collateral proceedings may not be the basis for a claim of ineffective assistance of counsel.” Barwick v. State, 361 So. 3d 785 (Fla. 2023) is the most factually analogous precedent. There, the Florida Supreme Court expressly noted that counsel’s post-warrant litigation was made arduous in part because of “the presence of another inmate on Death Watch,” precisely the circumstance alleged here. The Court nonetheless held that “none of the obstacles identified by Barwick resulted in a denial of due process,” and affirmed the summary denial of the constitutional claims. Further, the United States Supreme Court has “refused to extend a due process requirement for effective collateral counsel to situations where a state, like Florida, has opted to afford collateral

counsel to indigent inmates.” Barwick v. State, 361 So. 3d 785 (Fla. 2023) (quoting Zack v. State, 911 So. 2d 1190, 1203 (Fla. 2005)).

r. In Jennings v. State, 422 So. 3d 107, 118 (Fla. 2025), the Florida Supreme Court reaffirmed that “an expedited warrant litigation schedule does not deprive a defendant of his right to due process.” A generalized assertion that counsel was overburdened by simultaneous capital litigation is legally insufficient.

s. Pursuant to section 27.711(12), Florida Statutes, “The court shall monitor the performance of assigned counsel to ensure that the capital defendant is receiving quality representation.” This Court has extensive experience in the area of criminal law, including as a private attorney handling death penalty matters, as well as a sitting judge presiding over multiple capital cases. This Court witnessed the Defendant’s team of three Capital Collateral representative attorneys during the course of this collateral proceeding and they provided the highest quality representation for the Defendant, which included among other things, meeting all deadlines, filing well-prepared pleadings and argument, and having criminal defense team investigators present. These three attorneys are to be commended

for their skillful representation, professionalism, and work ethic on this case. They have zealously represented the Defendant. The Court is satisfied with the quality of representation provided to the Defendant.

t. The bottom line is the Defendant's claim that because counsel faced the difficult task of representing two defendants whose death warrant period overlapped by eleven days the Defendant may not receive effective representation is a wholly speculative assertion. The Defendant has not presented a colorable, facially sufficient claim upon which relief might be granted. Jennings, 422 So. 3d 107, 119 (Fla. 2025). No manifest injustice has been shown.

**Claim #2: Administration of Florida's Lethal Injection
Protocol and Etomidate Shortages**

u. As his second claim for postconviction relief, the Defendant alleges that shortages of etomidate, the first drug administered under Florida's current lethal injection protocol, create a violation of the Defendant's Fourteenth Amendment rights under the United States Constitution, and the corresponding provisions of the Florida Constitution, as well as a manifest injustice to the Defendant. The Defendant seeks to distinguish his case from the Supreme Court of Florida's recent opinion in Occhicone v. State, SC2026-1042, 2026

WL 2097359 (Fla. July 21, 2026), contending that the Defendant's case is different and focuses on the etomidate shortage which he alleges is negatively affecting the supply for lifesaving facilities. The Defendant requests a postconviction evidentiary hearing to resolve alleged factual disputes regarding: (1) whether FDOC has a plan in place for the worldwide etomidate shortage; (2) whether FDOC has a policy in place for providing etomidate for those institutions which are experiencing the etomidate shortage to be used for lifesaving purposes with their patients; and (3) whether FDOC can prove that the etomidate being used for the Defendant is not expired. The Court finds that no evidentiary hearing is warranted.

v. The Defendant fails to cite any case law, legal authority, or legal principles that a shortage of etomidate allows for relief under Rule 3.851. Claim Two in the subject motion is simply not a colorable claim for postconviction relief. Occhicone v. State, SC2026-1042, 2026 WL 2097359 (Fla. July 21, 2026). The Supreme Court of Florida has held that "it is not a judicial function to determine the appropriate dose or identity of the chemicals used in the lethal injection process." Schwab v. State, 995 So. 2d 992, 932 (Fla. 2008).

The Court reasoned that decisions regarding both the methodology and chemicals in this process should be left to the Department of Corrections. Id. (citing Lightbourne v. State, 969 So. 2d 326, 352 (Fla. 2007) (quoting Sims v. State, 754 So. 2d 657, 670 (Fla. 2000))). Therefore, it is not within this Court's purview to make policy decisions about who etomidate should be allocated to, or how it should be used, especially in the context of Rule 3.851 proceedings.

w. The Defendant speculates that the shortage of etomidate may result in the Defendant's etomidate dosage being expired. "Conclusory and speculative allegations are insufficient to warrant an [e]videntiary [h]earing" under Rule 3.851. Jimenez v. State, 265 So. 3d 462, 474 (Fla. 2018) (quoting Knight v. State, 923 So. 2d 389, 399 (Fla. 2005)).

x. Because the Defendant's argument is based on pure speculation that commercial supply constraints of etomidate will result in future protocol deviations, he failed to meet the legal standard to challenge a method of execution. Glossip v. Gross, 576 U.S. 863 (2015) (quoting Baze v. Rees, 553 U.S. 35, 50 (2008)); Correll v. State, 184 So. 3d 478, 488 (Fla. 2015). Moreover, the Defendant

fails to identify a feasible, readily implemented alternative method of execution instead calling for an immediate pause of all executions.

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

1. The Defendant's Successive Motion to Vacate Death Sentence is **SUMMARILY DENIED.**

2. The Defendant's Motion for Stay of Execution is hereby **DENIED.**

3. The Clerk of Court is directed to promptly serve on each party a copy of this Order with attachments, noting thereon the date of service by an appropriate certificate of service pursuant to Florida Rule of Criminal Procedure 3.851(f)(5)(F).

4. For purposes of compliance with the Supreme Court of Florida's scheduling order, this Order with attachments shall also be transmitted by the Clerk of Court to the Supreme Court of Florida.

5. Pursuant to the Order of the Supreme Court of Florida issued on July 17, 2026, the Defendant will have until 1:00 P.M. on

Friday, July 31, 2026, to file a notice of appeal.

ORDERED in Chambers in Sanford, Seminole County, Florida,
this 29th day of July, 2026 at 2:55 p.m.



JOHN D. GALLUZZO
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing was furnished by
e-mail:

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GRANT MALOY

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and by U.S. Mail to:

WILLIAM FRANCES SILVIA, DOC #512579

Florida State Prison
P.O. Box 800
Raiford, Florida 32083

this _____ day of _____, 2026.

**GRANT MALOY
CLERK OF COURT FOR
SEMINOLE COUNTY**

By:

Deputy Clerk

Exhibit “1”

CASE NUMBER: 06-04522-CFA

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT OF FLORIDA,
SEMINOLE COUNTY

THE STATE OF FLORIDA

VS.

WILLIAM FRANCES SILVIA, JR

INDICTMENT FOR:

COUNT 1: FIRST DEGREE PREMEDITATED MURDER (CF) 782.04(1)(a)
COUNT 2: ATTEMPTED FIRST DEGREE PREMEDITATED MURDER WHILE INFLECTING
GREAT BODILY HARM OR DEATH (F1) 782.04(1)(a)1

FOUND SPRING TERM, A.D. 2006

Kelly Hupton
KELLY HUPTON
VICE FOREPERSON OF THE GRAND JURY

Presented in Open Court and Filed this 24th day of
October, 2006.

MARYANNE MORSE
CLERK

BY: Johnson
DEPUTY CLERK

FILED 10-24-2006
MARYANNE MORSE
Clerk of Circuit Court
Seminole County, Florida
By: 09
Deputy Clerk

WITNESSES: Robert Jaynes
M. Hardesty
C. Craig
Jerome Woodard
Patrick Woodard
Betty Woodard

000004 1035

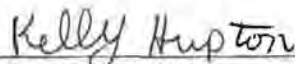
IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

In The Circuit Court Of The Eighteenth Judicial Circuit of the State of Florida for Seminole County, at the Spring Term thereof, in the year of our Lord, two thousand six, the Grand Jurors of the State of Florida, inquiring in and for the body of the County of Seminole, upon their oaths do charge that:

COUNT 1: IN THE COUNTY OF SEMINOLE, STATE OF FLORIDA, on or about September 22, 2006, WILLIAM FRANCES SILVIA, JR did unlawfully kill a human being, Patricia Ann Silvia, by shooting Patricia Ann Silvia with a firearm; and said killing was perpetrated by WILLIAM FRANCES SILVIA, JR from a premeditated design to effect the death of Patricia Ann Silvia, and during the commission of said offense, WILLIAM FRANCES SILVIA, JR actually possessed a firearm as defined in Section 790.001, Florida Statutes, and further, during the commission of said felony, WILLIAM FRANCES SILVIA, JR discharged said firearm, and as a result of the discharge, did inflict death or great bodily harm upon any person, contrary to Section 782.04(1)(a), 775.087(2)(a)1, 775.087(2)(a)2, 775.087(2)(a)3, Florida Statutes,

COUNT 2: IN THE COUNTY OF SEMINOLE, STATE OF FLORIDA, on or about September 22, 2006, WILLIAM FRANCES SILVIA, JR did attempt to commit a capital felony, to wit: FIRST DEGREE PREMEDITATED MURDER, to unlawfully kill a human being, said attempted killing being perpetrated from a premeditated design to effect the death of the human being and toward the commission of said offense, WILLIAM FRANCES SILVIA, JR, did shoot Betty MacIntyre Woodard with a firearm, and during the commission of said offense, WILLIAM FRANCES SILVIA, JR actually possessed a firearm as defined in Section 790.001, Florida Statutes, and further, during the commission of said felony, WILLIAM FRANCES SILVIA, JR discharged said firearm, and as a result of the discharge, did inflict death or great bodily harm upon any person, contrary to Sections 777.04(1), 777.04(4)(b), 782.04(1)(a)1, 775.087(2)(a)1, 775.087(2)(a)2, 775.087(2)(a)3, Florida Statutes,

and against the peace and dignity of the State of Florida.


KELLY HUPTON
VICE FOREPERSON OF THE GRAND JURY

I, **PAT C. WHITAKER**, hereby certify that I have, as authorized and required by law, advised the Grand Jury returning the foregoing indictment.


PAT C. WHITAKER
Designated Assistant State Attorney
Florida Bar Number 0185339

000005

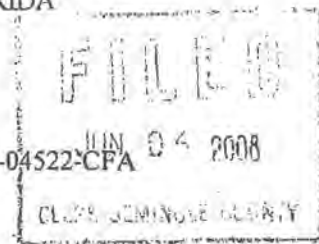
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

WILLIAM FRANCES SILVIA, JR.,
Defendant.

CASE NO.: 06-04522-CFA



VERDICT - COUNT 1

- X WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR.,
GUILTY OF FIRST DEGREE PREMEDITATED MURDER.
- WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR.,
GUILTY OF THE LESSER INCLUDED OFFENSE OF SECOND DEGREE MURDER,
- WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR.,
GUILTY OF THE LESSER INCLUDED OFFENSE OF MANSLAUGHTER.
- WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR.,
GUILTY OF THE LESSER INCLUDED OFFENSE OF AGGRAVATED BATTERY,
- WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR.,
GUILTY OF THE LESSER INCLUDED OFFENSE OF BATTERY.
- WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR., NOT
GUILTY.

SO SAY WE ALL.

Lauren R. Means
FOREPERSON NAME PRINTED

Lauren R. Means
FOREPERSON NAME SIGNED

DATE: 06/06/08

INSTRUCTIONS TO FOREPERSON: PLACE AN "X" AT THE BEGINNING OF THE LINE
REPRESENTING THE VERDICT OF THE JURY AND SIGN YOUR NAME AND ENTER THE DATE.

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO.: 06-04522-CFA

WILLIAM FRANCES SILVIA, JR.,
Defendant.

FURTHER FINDING AS TO COUNT 1

Place an "X" on the line preceding the further finding of the jury if you find said further finding to have been proven beyond a reasonable doubt.

X

We, the jury, find the defendant, during the commission of the crime, discharged a firearm.

SO SAY WE ALL,

Lauren R. Means

Foreperson's Signature

Lauren R. Means

Foreperson's Printed Name

06/06/08

Date of Verdict

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO.: 06-04522-CFA

WILLIAM FRANCES SILVIA, JR.,
Defendant.

VERDICT - COUNT 2

- X WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR.,
GUILTY OF ATTEMPTED PREMEDITATED FIRST DEGREE MURDER.
- WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR.,
GUILTY OF THE LESSER INCLUDED OFFENSE OF ATTEMPTED SECOND
DEGREE MURDER.
- WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR.,
GUILTY OF THE LESSER INCLUDED OFFENSE OF ATTEMPTED VOLUNTARY
MANSLAUGHTER.
- WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR.,
GUILTY OF THE LESSER INCLUDED OFFENSE OF AGGRAVATED BATTERY.
- WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR.,
GUILTY OF THE LESSER INCLUDED OFFENSE OF BATTERY.
- WE, THE JURY, FIND THE DEFENDANT, WILLIAM FRANCES SILVIA, JR., NOT
GUILTY.

SO SAY WE ALL.

Lauren R. Means
FOREPERSON NAME PRINTED

Lauren R. Means
FOREPERSON NAME SIGNED

DATE: 06/06/08

INSTRUCTIONS TO FOREPERSON: PLACE AN "X" AT THE BEGINNING OF THE LINE
REPRESENTING THE VERDICT OF THE JURY AND SIGN YOUR NAME AND ENTER THE DATE.

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO.: 06-04522-CFA

WILLIAM FRANCES SILVIA, JR.,
Defendant.
_____ /

FURTHER FINDING AS TO COUNT 2

Place an "X" on the line preceding the further finding of the jury if you find said further finding to have been proven beyond a reasonable doubt.

 X We, the jury, find the defendant, during the commission of the crime discharged a firearm.

SO SAY WE ALL,



Foreperson's Signature

Lauren R. Means

Foreperson's Printed Name

06/06/08
Date of Verdict

Exhibit “2”

IN OPEN COURT THIS
July 21, 08
JAMES MORSE

Judge Clerk
In County, Florida

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL
CIRCUIT IN AND FOR
SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO. 06-04522-CFA

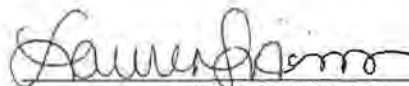
WILLIAM FRANCES SILVIA, JR.
Defendant.

SENTENCING RECOMMENDATION OF THE JURY

X

A MAJORITY OF THE JURY, BY A VOTE OF 11
ADVISE AND RECOMMEND TO THE COURT THAT IT IMPOSE
THE DEATH PENALTY UPON WILLIAM FRANCES SILVIA, JR..

THE JURY ADVISES AND RECOMMENDS TO THE COURT THAT
IT IMPOSE A SENTENCE OF LIFE IMPRISONMENT UPON
WILLIAM FRANCES SILVIA, JR WITHOUT THE POSSIBILITY OF
PAROLE.


FOREPERSON

DATE: 7/21/08

000486
087

Exhibit “3”

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY,
FLORIDA

CASE NO. 06-CF-4522-A

STATE OF FLORIDA,

Plaintiff,

vs.

WILLIAM FRANCES SILVIA, JR.,

Defendant.

FILED IN OPEN COURT THIS
Jan 28, 2009
MARYANNE MORSE
Clerk of Circuit Court
Seminole County, Florida
By: [Signature]
Deputy Clerk

SENTENCING ORDER

The Defendant, William Frances Silvia, Jr., was charged with Count I – Premeditated Murder of Patricia Silvia and Count II – Attempted Premeditated Murder of Betty Woodard. The Defendant was tried by a jury before this court on June 4, 2008, through June 6, 2008. The jury found the Defendant guilty as charged.

The penalty phase of the case was held before the same jury on July 17, 18 and 21, 2008. On July 21, 2008, the same jury recommended by a vote of eleven to one that this court sentence the Defendant to death for the murder of Patricia Silvia. On November 10, 2008, the State and Defendant were permitted to present additional evidence to the court during a *Spencer* hearing¹. Final sentencing was set for today's date, January 28, 2009.

Having heard the evidence presented in both the guilt and penalty phases of the trial, the additional evidence presented at the *Spencer* hearing, the legal arguments of

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

000565 248
[Signature]

counsel, and having reviewed the sentencing memoranda, both in favor of and in opposition to the death penalty, the court now considers and weighs the evidence presented as to the following aggravating and mitigating factors, both statutory and non-statutory, and makes the following findings of fact and conclusions of law:

AGGRAVATING FACTORS

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

In this case the Defendant has been contemporaneously found guilty of Count II- Attempted Premeditated Murder of Betty Woodard, which can be considered as a prior violent felony for purposes of this aggravator.² This aggravating factor was established by the verdict finding the Defendant guilty of attempted murder of Betty Woodard.³

The evidence establishes that Betty Woodard was standing in front of her daughter, Patricia Silvia, at her carport door during a family gathering when the Defendant shot her in the face with a Mossberg Persuader 12 gauge shotgun. As a result, Betty Woodard lost her left eye and the top portion of her nose, and her jaw was shattered. She still has metal fragments in her face and has lost her sense of smell. At the time of trial, she had eight doctors attending to the medical problems she was suffering from her injuries.

There is no evidence that Betty Woodard had done or said anything to the Defendant to aggravate or inflame the Defendant. There is no evidence to mitigate Defendant's attempted murder of Betty Woodard.

² See *Lecroy v. State*, 533 So.2d 750 (Fla. 1988); *Correll v. State*, 523 So.2d 562 (Fla. 1986).

³ *Buzia v. State*, 926 So.2d 1203 (Fla. 2006) (jury's guilty verdict for attempted murder of victim's wife was a "conviction" for purposes of prior violent felony aggravator for murder of husband; adjudication was unnecessary).

This aggravating factor has been proven beyond a reasonable doubt and, because of the appalling injuries to Betty Woodward, is given great weight by the court.

The Defendant knowingly created a great risk of death to many persons.

To support a finding of this aggravator, the State must prove that the Defendant knowingly created a great risk of death to many persons. In *Johnson v. State*, 696 So.2d 326, (Fla. 1997), the Florida Supreme Court established that "many persons" means four or more persons, other than the victim.

On the evening of September 22, 2006, at approximately 9:20 p.m., the Woodard family was having a cookout at their home located at 2536 Zelina Point, Seminole County, Florida. The Woodard home is owned by Patrick and Betty Woodard, Patricia Silvia's step-father and mother. In addition to Patrick and Betty Woodard, Patricia Silvia and her minor children, Ross Shadron and Rachel Shadron, were present at the cookout. Also present at the cookout were Jerome Woodard, Patrick Woodard's brother; Robin McIntyre, Patricia Silvia's sister who suffers from Down Syndrome; and Beth Parker and Doug Caldwell, family friends. Not counting the murder victim, the evidence is sufficient to establish that Betty Woodard, Patrick Woodard, Ross Shadron, Rachel Shadron, Jerome Woodard and Robin McIntyre were knowingly put in great risk of death by the Defendant.

Betty Woodard was in great risk of death when the Defendant shot her in the face. On the evening of the family cookout, Betty Woodard was sitting in her carport and talking with Patricia Silvia, her daughter, Rachel Shadron, her granddaughter, and Jerome Woodard, her brother-in-law. The Defendant showed up that evening and

spoke briefly with Patricia. He then turned around and walked away. Betty Woodard thought he had left. Both she and Patricia then went inside the house.

Betty Woodard told her husband that the Defendant was at their house. She was inside the home when she thought she heard firecrackers. At that time, Patricia Woodard was in the kitchen getting ice tea out of the refrigerator. As Betty walked past Patricia, she asked Patricia if she was okay and if she was coming back outside. Patricia told her mother that she would be back outside in a minute. Betty Woodard opened the door to the carport and saw a flash of light. She fell forward into the carport and woke up lying in a pool of blood. Three shotgun pellets were later removed from her left eye. The Defendant knowingly created a great risk of death to Betty Woodard.

Patrick Woodard was put in great risk of death by the Defendant. On the evening of the cookout, Patrick Woodard was in the master bedroom talking with Beth Parker when his wife came to the master bedroom door and told him the Defendant was at their home. Betty asked him to come outside. Patrick Woodard continued talking with Beth Parker until he heard gunshots. Later it was discovered that one of the shotgun pellets went through the kitchen wall into the master bedroom.

By the time Patrick Woodard entered the kitchen, he saw Patricia Silvia lying on the kitchen floor in front of the refrigerator. Then, looking through the open carport door, he saw his wife lying on the ground in the carport bleeding. While looking into the carport, Patrick Woodard saw the Defendant looking directly at him. He then saw the Defendant pump his shotgun and point the shotgun at him to shoot him in his chest. Patrick Woodard stepped over Patricia Silvia and shut the door to the carport so he would not be shot in the chest.

Patrick Woodard held the carport door closed, waited for the Defendant to leave and then opened the carport door to attend to his wife. After all the shooting, the carport door, which was solid wood, had both buck shot and bird shot in it. The Defendant knowingly created a great risk of death to Patrick Woodard.

Ross Shadron was put in great risk of death by the Defendant. Ross Shadron, Patricia Silvia's son, was twelve years old at the time of the family gathering. He was inside the home watching television when he heard gunshots. He ran towards the carport door. He saw smoke everywhere. He was looking for his sister, Rachel. He saw his mother standing beside him and saw her fall in front of him. Ross Shadron was standing close to his mother when she was shot. The shotgun pellets that hit his Mother and the refrigerator and kitchen cabinets could have killed Ross Shadron. The Defendant knowingly created a great risk of death to Ross Shadron.

Rachel Shadron was put in great risk of death by the Defendant. Rachel Shadron, Patricia Silvia's daughter, was fifteen years old at the time of the family gathering. She was in the carport with her mother, her grandmother, her aunt Robin McIntyre, Jerome Woodard, and Doug Caldwell when the Defendant arrived at the Woodard home.

Betty Woodward was sitting next to Patricia Silvia when the Defendant walked up to the carport. He stood there for a moment, then Rachel asked him what he wanted. The Defendant said that he needed to speak with her mother. Patricia Silvia walked out to the edge of the carport to where the Defendant was standing and spoke with him briefly, then she returned to the carport. As Patricia was walking away from the Defendant, Rachel Shadron heard the Defendant tell her mother that she would be

sorry. The Defendant then walked away from the Woodward's home toward the street. He had parked his truck at the end of the street.

Rachel was talking in the carport and did not notice the Defendant again until she heard gun shots. She looked to see what was happening and saw the Defendant standing at the edge of the carport and pointing his shotgun at her. The shotgun was approximately one foot away from her. Suddenly, she was pushed down from behind and fell onto the carport floor.⁴ She then crawled inside the house to find her brother. As she was crawling through the carport door into the house, and heading for the bathroom, she continued to hear gunshots. As she crawled through the kitchen, she saw her mother on the floor in front of the refrigerator and her grandfather holding the carport door shut. The Defendant knowingly created a great risk of death to Rachel Shadron.

Jerome Woodard was in great risk of death when he was standing at the edge of the Woodard's carport and the Defendant began firing his shotgun. The Woodard's carport is a one car carport. He hit the ground as the Defendant fired his second shot and did not get up because he feared for his life. The crime scene drawing and photos show pellets struck the front of the Ford Contour he had hid behind and the carport column near him. He was lying on the floor of the carport between the front and rear tires of the Ford Contour as the Defendant continued to shoot. Jerome Woodard

⁴ Rachel Shadron thought it was her mother behind her who pushed her down but she did not testify that she actually saw who pushed her to the ground. The evidence in the case establishes that Patricia Silvia was in the kitchen when the Defendant was in the carport shooting. While Patricia Silvia could not have been the person who pushed Rachel to the ground, the court finds that someone in the carport pushed Rachel to the ground when the Defendant pointed his shotgun at her. Obviously, when the Defendant was in the carport shooting, chaos occurred.

heard seven shots in total and saw the Defendant walk away before he got up. The Defendant knowingly created a great risk of death to Jerome Woodard.

Robin McIntyre was in great risk of death as she was also in the carport when the shooting started. After the shooting started but before Patrick Woodard shut the carport door, she entered the home through the carport door. Robin McIntyre suffers from Down Syndrome and did not testify. The Defendant knowingly created a great risk of death to Robin McIntyre.

The physical evidence, photographs and testimony of crime scene technicians establish the Defendant fired seven shots from a 12 gauge shotgun at the Woodard's home on September 22, 2006. The shots impacted areas on the left front quarter panel of the Ford Contour in the driveway, the carport column on the other side of the Ford, the carport door leading into the kitchen, the refrigerator and cabinets in the kitchen, and the master bedroom wall.

This aggravating factor has been proven beyond a reasonable doubt and is given great weight by the court.

The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

To establish this aggravator, the State must prove beyond a reasonable doubt that (1) the murder was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage, (2) the defendant had a careful plan or prearranged design to commit murder before the killing, (3) the defendant exhibited heightened premeditation, and (4) the defendant had no pretense of legal or moral justification. *Jackson v. State*, 704 So.2d 500 (Fla. 1997), *Nelson v. State*, 748 So.2d

237 (Fla. 1999) and *Sereci v. Moore*, 825 So.2d 882 (Fla. 2002). The court incorporates the findings and conclusions from the two prior aggravators into this aggravator.

The evidence is sufficient to establish that the murder of Patricia Silvia was the product of cool and calm reflection by the Defendant and not prompted by emotional frenzy, panic, or a fit of rage. The Defendant and Patricia Silvia were married in 2002. In July of 2006, Patricia Silvia separated from the Defendant and she and her two minor children, Ross and Rachel Shadron, moved in with Betty and Patrick Woodard at their Zelina Point home. From the date of the separation until the evening of September 22, 2006, the Defendant came by the Woodard's home several times and called on the phone to talk to Patricia Silvia, seeking to reconcile with her. Patricia Silvia was not receptive to the Defendant's attempts to reconcile.

On September 22, 2006, at approximately 3:50 p.m., the Defendant purchased a 12 gauge Mossberg Persuader shotgun from Shoot Straight II.⁵ The surveillance video from Shoot Straight II shows the Defendant looking at the guns in the store, speaking with the store clerk, selecting the 12 gauge Mossberg Persuader shotgun, purchasing the shotgun and leaving the store with the shotgun.⁶ This video is important because it shows the Defendant on the day of the murder calmly participating in a routine transaction. The Defendant exhibited no bizarre, agitated, frenzied or panicked behavior. The Defendant was calm the entire time he was at Shoot Straight II. He then went to Al's Army Navy where he purchased four individual boxes of shells, including both bird and buck shot.

⁵ State's Exhibit 101.

⁶ State's Exhibit 100.

The Defendant rented a hotel room at the Regency Inn on Highway 17-92 in Fern Park that same afternoon and purchased a six-pack of beer at the nearby Winn-Dixie at 6:09 p.m.⁷ Approximately five and a half hours after purchasing the shotgun, the Defendant drove to the Woodard's home with the shotgun and ammunition in his truck.

Later that evening the Defendant went to the Woodward's home to give Patricia Silvia one last chance to reconcile with him, and, if she refused, to kill her. When Patricia Silvia walked away from the Defendant after briefly speaking with him, Rachel Shadron heard the Defendant tell her mother, "You will be sorry." The Defendant walked back to his truck, got his shotgun, and, as he walked back to the Woodward's house, commenced shooting. The first shot was fired into the air and the next six shots were fired into the Woodward's carport and house. After firing seven rounds and killing Patricia Silvia, the Defendant walked back to his truck and drove away.

There is no evidence that the Defendant was intoxicated at the time of the murder or at anytime on September 22, 2006. There is no evidence that the murder of Patricia Silvia, or any of Defendant's conduct on September 22, 2006, was prompted by emotional frenzy, panic, or a fit of rage.

The Defendant was arrested in the early morning hours of September 23, 2006. The Defendant asked Sergeant Hardesty, the law enforcement officer driving him to the jail, if he was married. Sergeant Hardesty said, "Yes." The Defendant then stated, "That's the reason I'm in this situation. My wife spent all my money. I placed the

⁷ State's Exhibit 87.

checking account in her name. She started re-dating her ex-husband. That is the reason I shot her."⁸ Sergeant Hardesty described the Defendant as lacking any type of emotion during his arrest and transport to jail. The evidence supports the "cold" element of the CCP aggravator.

The evidence is sufficient to establish that the Defendant had a careful plan or prearranged design to commit murder before the killing. Approximately five and a half hours before killing Patricia Silvia, the Defendant armed himself by purchasing the shotgun and shells used to kill her. He put the shotgun and shells in his truck when he went to the Woodard's house that evening. The Defendant's plan was to give Patricia Silvia one last chance to reconcile with him and, if she refused, to kill her.

When Patricia Silvia walked away from him that evening, Rachel heard the Defendant say to her mother, "You will be sorry." He walked back to his truck. The Defendant could have gotten into his truck and driven away. No one followed the Defendant when he left the Woodard's home. Instead, the Defendant calmly continued to carry out his plan to kill. The Defendant got his shotgun and walked back approximately one hundred feet to the carport, shooting as he walked, until he had a clear shot of Patricia Silvia. Then he shot her in the head.

The Defendant gave the mental health experts in this case different reasons for purchasing the shotgun on September 22, 2006. At first, the Defendant reported that he bought it for his own safety. He was sleeping in his truck and he said he needed the shotgun to protect himself. The Defendant had been homeless for some time prior to September 22, 2006. Then, he said he was afraid of the Woodard family. Yet, the

⁸ The Defendant's statement is not verbatim.

Defendant did not take the shotgun with him the first time he went to the Woodard's home. At some point, he reported he was afraid of Patricia Silvia's ex-husband. Lastly, he told Dr. Buffington that he bought the shotgun to commit suicide.⁹ Neither Dr. Day nor Dr. Danziger found the Defendant suicidal. The court rejects the Defendant's inconsistent statements as to why he purchased the shotgun and finds the Defendant purchased the shotgun to kill Patricia Silvia.

Patricia Silvia's murder was neither spontaneous, nor impulsive. The killing of Patricia Silvia was carried out as a matter of course, consistent with the Defendant's careful plan. The evidence supports the "calculated" element of the CCP aggravator.

The evidence is sufficient to establish that the Defendant exhibited a heightened premeditation. The "heightened premeditation" required by the CCP aggravator is more than what is required to prove first degree, premeditated murder. The Florida Supreme Court has found the heightened premeditation required for this aggravator when a Defendant has the opportunity to leave the crime scene and not commit the murder but, instead, commits the murder. See *Buzia v. State*, 926 So.2d 1203 (Fla. 2006).

The Defendants actions rise to the level of "heightened premeditation" because after speaking with Patricia Silvia, the Defendant had the opportunity to leave the Woodard's house, get into his truck, drive away, and not commit the murder; instead, he used the time to arm himself, return to the Woodard's house, and commit the murder.

⁹ The court questions the purchase of four boxes of shells if the goal is suicide.

Additionally, the time lapse that occurred between the time the Defendant armed himself and the time he shot Patricia Silvia allowed the Defendant to reflect upon his criminal conduct and to change his mind. Each time the Defendant fired his shotgun, he had to pump the shotgun. The Defendant shot at least four times before he shot at Patricia Silvia in the Woodard's kitchen. The Defendant used this time to perfect his plan and ruthlessly get closer to Patricia Silvia so he could kill her.

The Defendant's actions reflect a deliberate and conscious choice to commit murder. The Defendant's actions rise to the level of deliberate ruthlessness and support the "heightened premeditation" element of the CCP aggravator.

The evidence is sufficient to establish that the Defendant had no pretense of any legal or moral justification. No evidence of any moral or legal justification for the murder was presented and none was argued.

The Defendant has been diagnosed by Dr. Danziger with a chronic personality disorder not otherwise specified (NOS), with characteristics that include paranoid, anti-social and schizoid components, and with chronic alcohol dependence. However, the evidence establishes that the Defendant had the ability to engage in cool and calm reflection, make a careful plan to commit the murder and exhibit the required heightened premeditation. Dr. Day testified that the Defendant had the mental capacity to commit the murder in a cold, calculated and premeditated fashion and the court accepts her testimony as being credible. See *Evans v. State*, 800 So.2d 182 (Fla. 2001).

The court finds that each of the elements of the CCP aggravator has been proven beyond a reasonable doubt and the court gives great weight to the CCP aggravator.

MITIGATING CIRCUMSTANCES¹⁰

1. The Defendant suffered from extreme emotional distress at the time of the killing.

The evidence in this case clearly establishes that the Defendant was not suffering from extreme emotional distress at the time of the killing. The defense presented the testimony of Dr. Deborah Day, a licensed psychologist, during the penalty phase. Dr. Day met with the Defendant five times between December of 2006 and the trial for a total of approximately eight hours of interviews, reviewed and performed psychological testing on the Defendant, reviewed records given to her by defense counsel and obtained by her, and interviewed family members.

Dr. Day diagnosed the Defendant with a chronic personality disorder NOS with a combination of anti-social, schizoid and paranoid features. Dr. Day also diagnosed the Defendant with a delusional disorder and substance dependency. Dr. Day opined that the Defendant was not under an extreme mental or emotional disturbance at the time of the murder.

At the *Spencer* hearing, the defense presented the testimony of Dr. Daniel Buffington, a forensic pharmacologist, regarding the Defendant's mental and emotional state leading up to and including the murder. Dr. Buffington saw the Defendant one

¹⁰ The court uses the mitigating circumstances contained in Defendant's Sentencing Memorandum.

time for approximately two hours on October 17, 2008, three months after the penalty phase. Dr. Buffington reviewed the documents provided to him by defense counsel.¹¹

Dr. Buffington testified that the day of the murder was a peak emotional day for the Defendant and opined that the Defendant was suffering from extreme emotional stress at the time of the murder. The defense experts disagree as to the existence of the extreme emotional disturbance mitigator. Based on the court's review of all the evidence, the court accepts the opinion of Dr. Day as credible and finds the Defendant was not suffering from an extreme mental or emotional disturbance leading up to and at the time of the murder.

While it is clear the Defendant was not suffering from extreme emotional disturbance, the Defendant was emotionally disturbed by the fact that he had lost his job on September 22, 2006. He was already homeless and living out of his truck when he was fired from his job.¹² His employer had allowed him to park his truck near his place of employment at night and he was sleeping in his truck. Losing his job meant that he no longer had a place to park his truck in the evenings.

Additionally, the Defendant was disturbed that his marriage was dissolving. He and his wife had been separated since July of 2006, when she left him and moved in with her family at the Zelina Point home. He repeatedly attempted to reconcile the marriage. Patricia Silvia was not receptive to any of the Defendant's attempts to reconcile.

¹¹ Defendant's Exhibit 1, *Spencer* hearing.

¹² The Defendant had entered a plea to a grand theft in Tampa. When he applied for an apartment, the apartment complex management did a background check and discovered the grand theft. He lost the apartment. Later, his employer found out about the grand theft and fired him.

The court finds the Defendant was emotionally distressed by the loss of job and homelessness and the fact that his marriage was dissolving. The court gives this mitigator little weight.

2. The Defendant's ability to conform his behavior to the requirements of the law was substantially impaired at the time of the killing.

The defense expert at the penalty phase, Dr. Day, opined that the Defendant's capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of the law were not "substantially" impaired; although, Dr. Day did testify that they were impaired based on the Defendant's severe personality disorder, his impulsivity, his drinking alcohol and his false beliefs.

The defense expert at the *Spencer* hearing, Dr. Buffington, relied upon the diagnoses made by Dr. Day and Dr. Danziger.¹³ Dr. Buffington testified that the Defendant's symptoms at the time of the murder were consistent with an alcohol related blackout, fragmented in nature. Dr. Day testified that she had no explanation for the Defendant to have had a blackout at the time of the murder. Dr. Danziger did not believe that the Defendant had an alcohol related blackout at the time of the murder. The court rejects Dr. Buffington's testimony that the Defendant experienced an alcohol related blackout at the time of the murder and Dr. Day's testimony that it was a dissociative episode. The court accepts the testimony of Dr. Danziger as credible.

The Defendant told Dr. Buffington that he was having suicidal thoughts on

¹³ Dr. Buffington mischaracterized the diagnosis of Dr. Danziger as being consistent with Dr. Day's diagnosis of the Defendant when, in fact, they were different. Dr. Danziger did not diagnose the Defendant with a delusional disorder.

September 22, 2006, and that is why he bought the shotgun. Neither Dr. Day nor Dr. Danziger found the Defendant suicidal during the time leading up to and including September 22, 2006. The Defendant's IQ of 107 is in the average range. There is no evidence of the Defendant having any brain damage. The court finds the Defendant purchased the shotgun to kill his wife.

The court accepts the opinion of Dr. Day and finds that the Defendant's capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of law were not "substantially" impaired. Based on the Defendant's chronic personality disorder NOS and chronic alcohol dependence as testified to by Dr. Danziger, the court finds the Defendant's ability to conform his behavior to the requirements of law was impaired, though not substantially, and assigns this mitigator moderate weight.

3. The Defendant suffered from significant psychological disorders at the time of the killing, including a personality disorder NOS with paranoid, delusional and anti-social features.

Dr. Day diagnosed the Defendant with a chronic personality disorder not otherwise specified (NOS) with a combination of anti-social, schizoid and paranoid features. Dr. Day also diagnosed the Defendant with a delusional disorder and substance dependency.

Dr. Danziger diagnosed the Defendant with a chronic personality disorder NOS, but he diagnosed the Defendant with anti-social and paranoid features. He opined that a schizoid feature is also possible and did not disagree with Dr. Day's diagnosis as to the schizoid feature. Dr. Danziger disagreed with Dr. Day that the Defendant had a

delusional disorder of any type because the delusional component of his personality was not prominent enough. Dr. Danziger testified that any paranoid thoughts the Defendant may have had could have been the natural result of the Defendant being high on alcohol or marijuana. The court finds Dr. Danziger's diagnosis of the Defendant as credible.

The court does not find this mitigator to have been established by the evidence; however, the court does find that the Defendant had a chronic personality disorder NOS with paranoid, anti-social and schizoid features and alcohol dependence as testified to by Dr. Danziger and assigns this mitigator moderate weight.

4. The Defendant suffered from alcohol dependence at the time of the killing.

The Defendant reported a long history of drinking alcohol and smoking marijuana to all the experts. At some point in time he began to abuse both substances. Both Dr. Day and Dr. Danziger diagnosed the Defendant as alcohol dependent. As discussed above, the court rejects the defense theory that the Defendant experienced an alcoholic related blackout at the time of the murder.¹⁴

All of the doctors who testified in this case agreed that the Defendant was not intoxicated on September 22, 2006.¹⁵ On September 22, 2006, the Defendant purchased the shotgun at approximately 3:50 p.m., purchased a six pack of beer at 6:09 p.m., killed Patricia Silvia at approximately 9:20 p.m., and purchased a six pack of

¹⁴ The court incorporates its findings and conclusions from the second mitigator into this mitigator.

¹⁵ *Mahn v. State*, 714 So.2d 391 (Fla. 1998). (not being under the influence of drugs or alcohol at the time of the offense is not the standard for determining whether long term substance abuse is mitigating).

beer at 10:02 p.m.¹⁶ The Defendant had consumed, at the most, one six pack of beer from 6:09 p.m. until 9:20 p.m., the approximate time of the murder. Dr. Day testified that a six pack of beer was not much alcohol for the Defendant.

While it is uncontroverted the Defendant was not intoxicated at the time of the murder, the Defendant does not have to be intoxicated to be impaired by his chronic alcohol dependence. This mitigator has been established and is given moderate weight by the court.

5. The Defendant had previously been diagnosed with a schizoid or schizophreniform disorder as a teenager while he was hospitalized for mental treatment.

The evidence establishes that the Defendant had been diagnosed with a schizoid or schizophreniform disorder as a teenage while he was hospitalized for mental treatment. Dr. Day diagnosed the Defendant with schizoid features in his personality disorder NOS. Dr. Danziger did not disagree that the Defendant had schizoid features in his personality disorder NOS.

However, neither Dr. Day nor Dr. Danziger ever diagnosed the Defendant with a schizoid disorder or a schizophreniform disorder. In fact, Dr. Danziger, whose diagnosis the court accepts, did not diagnose the Defendant with any psychotic mental illness but only with a personality disorder NOS and alcohol dependence.

While this mitigator has been established, the court assigns this mitigator little weight.

¹⁶ State's Exhibit 87.

6. The Defendant grew up in a dysfunctional family setting where there was domestic violence.

The Defendant grew up in a home where his mother and father verbally and physically fought. The police were called to the home once for domestic violence. No one was ever hospitalized as a result of the fighting. The father began physically abusing the Defendant at age thirteen and this continued for several years. The Defendant said the physical abuse consisted of the father hitting him with a leather belt or with his fist.

As a child the Defendant witnessed domestic violence between his parents and as a teenager was physically abused by his father, which constitutes child abuse. This mitigating circumstance has been established and is given little weight by the court.

CONCLUSION

Having reviewed and weighed all of the aggravating and mitigation circumstances and having considered the nature and quality of each, the court finds that the aggravating circumstances far outweigh the mitigating circumstances for the murder of Patricia Silvia. Accordingly,

IT IS THE JUDGMENT OF THIS COURT:

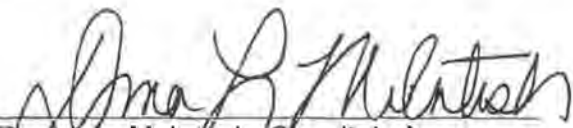
1. For the murder of Patricia Silvia, the Defendant, William Frances Silvia, Jr., is sentenced to be put to death in the manner prescribed by law.
2. For the attempted murder of Betty Woodard, the Defendant, William Frances Silvia, Jr., is sentenced to serve a term of imprisonment in the Department of Corrections for the rest of his natural life.

3. These sentences are to run concurrent with each other and the Defendant is given credit for 858 days time served on each count.

4. The Clerk is directed to assess the statutory costs and enter judgment accordingly.

5. The Defendant is advised that the judgment and sentences in this case will automatically be appealed to the Supreme Court of Florida and the Public Defender of the Seventh Judicial Circuit is appointed for the purpose of representing the Defendant on appeal.

ORDERED in Sanford, Seminole County, Florida, this 28th day of January, 2009.


Donna L. McIntosh, Circuit Judge

Copies furnished to:

State Attorney
Public Defender

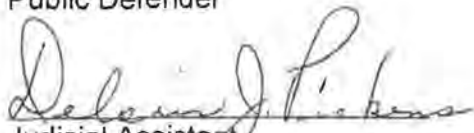

Judicial Assistant

Exhibit “4”

MARSHALL MORSE, CLERK OF CIRCUIT COURT
SEMINOLE COUNTY
BK 07585 Pgs 0402 - 440; (39pgs)
CLERK'S # 2011062470
RECORDED 06/13/2011 02:26:27 PM
RECORDING FEES 0.00
RECORDED BY J Eckenroth(a11)

MANDATE

SUPREME COURT OF FLORIDA

To the Honorable, the Judges of the:

Circuit Court in and for Seminole County, Florida

WHEREAS, in that certain cause filed in this Court styled:

**WILLIAM FRANCES
SILVIA**

vs. STATE OF FLORIDA

Case No.: **SC09-220**

Your Case No.: **2006CF452L
2A**

MARSHALL MORSE
CLERK OF CIRCUIT COURT
SEMINOLE COUNTY, FLA.
2011 MAY 31 PM 4:20

The attached opinion was rendered on: **04/07/2011**

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rule of this Court and the laws of the State of Florida.

WITNESS, The Honorable CHARLES T. CANADY, Chief Justice of the Supreme Court of Florida and the Seal of said Court at Tallahassee, the Capital, on this 20th day of May, 2011

COPY TO JUDGE MS Intosh, P.D. AND S/A
DATE 6/6/11 CLERK'S INITIALS ST



Thomas D. Hall
Clerk of the Supreme Court of Florida

"MANDATE PLACED ON
7/20/11 TRIAL DOCKET
FOR CONTROL PURPOSES"

Supreme Court of Florida

No. SC09-220

WILLIAM FRANCES SILVIA,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[April 7, 2011]

PER CURIAM.

William Frances Silvia was convicted of the September 22, 2006, first-degree murder of his estranged wife, Patricia Silvia, and the attempted first-degree murder of Patricia's mother, Betty Woodard. Silvia seeks review of his conviction and sentence of death for the first-degree murder of Patricia. We have jurisdiction. See art. V, § 3(b)(1), Fla. Const. On appeal, Silvia raises six issues regarding the penalty phase leading to the imposition of the death sentence. However, because this Court has an obligation to review the sufficiency of the evidence in all death penalty cases, we review both the evidence of guilt as well as the penalty-phase issues raised. For the reasons set forth below, we affirm Silvia's convictions and

death sentence.

FACTS AND PROCEDURAL HISTORY

The Guilt Phase

The victim, Patricia Silvia, had been married to the defendant, William Frances Silvia, since 2002, but they separated in July 2006. At the time of the murder, Silvia was forty-one and Patricia was thirty-nine. After their separation, Patricia and two of her minor children from a previous marriage, Rachel and Ross, ages sixteen and thirteen, moved into the Winter Park home of her mother, Betty Woodard, and her stepfather, Patrick Woodard. Robin McIntyre, Patricia's sister, also lived at the home. On several occasions prior to the evening of the murder, Silvia had visited the Woodard home unannounced in the middle of the night to speak to Patricia. Every time, Silvia was turned away.

On the day of the murder, Silvia was fired from his job. He had already become homeless after the separation, was living in his truck, and at times rented a motel room. That afternoon, after being fired, Silvia purchased a pump action twelve-gauge Mossberg 500 shotgun and ammunition and rented a motel room at the Regency Inn. Later that evening, the Woodards were hosting a cookout in their carport area. Those in attendance included Patricia, her children Ross and Rachel, her sister Robin, her parents, Patrick's brother Jerome Woodard, and several other friends. At around 9 p.m., Silvia drove to the Woodard home with the shotgun and

ammunition in his truck, apparently hoping to reconcile with Patricia.

When Silvia arrived at the home, he asked to speak with Patricia, who came outside to speak with him. They spoke briefly, after which Patricia went back into the house. As Patricia walked away, Rachel overheard Silvia tell Patricia, "You will be sorry." Silvia walked back to his truck—a distance of approximately one hundred feet—retrieved his shotgun, and fired two shots as he walked back to the Woodard home.

At this point, Patrick's brother, Jerome, who was in the carport at the time, jumped to the ground between two vehicles. After the shooting started, Patricia's sister, Robin, left the carport and entered the home. Rachel, who was also in the carport, heard the gunshots and attempted to go into the house to find her brother, Ross. When Rachel got up to find her brother, Silvia pointed a gun at her from a foot away in the carport. At this point, Patricia and Betty were in the kitchen, adjacent to the carport. As Betty opened the door from the kitchen to the carport, she was shot in the face. Patricia, who was getting iced tea out of the refrigerator, was also shot in the head, causing her to collapse in front of the refrigerator. Ross was standing near Patricia when she was shot.¹ Patrick Woodard, who was in the bedroom when he first heard gunshots, left the bedroom to check on things and

1. There is conflicting testimony concerning the location of Ross during this incident, but the trial court stated in its sentencing order that Ross was standing close to Patricia when she was shot.

saw Patricia lying on the floor in front of the refrigerator door. Patrick then looked outside the open door to the carport and saw Betty on the floor bleeding and covering her face. Patrick saw Silvia at the end of the carport holding a twelve-gauge shotgun, pointing the shotgun at Patrick and pumping it.

Silvia fired a total of seven shots at the scene that evening, two shots into the air and the other shots at the Woodard carport and home, and then left in his truck. During the shooting, Silvia shot Patricia and Betty. Patricia died at the scene. Betty, who was shot in the face, was airlifted by helicopter to Orlando Regional Medical Center in "grim" condition with massive facial and head trauma and blood loss.

According to the medical examiner, Patricia had numerous pellet gunshot entry wounds on her head. There was a pellet gunshot entry wound behind her left ear which entered her skull. A "big pellet" entered through the top of Patricia's left ear, pierced her skull, and stopped in the right front lobe of her brain. There were additional pellet wounds on the back of Patricia's head, resulting in massive trauma. Either the pellets or bone fragments caused exit wounds. The medical examiner concluded that Patricia died as a result of the shotgun pellet wounds to her head.

Police later arrested Silvia in the parking lot of the motel where Silvia had rented a room. While no evidence established that Silvia was intoxicated at the

time of the murder on September 22, 2006, during his arrest in the early morning hours of September 23, 2006, Silvia appeared intoxicated or impaired.² During his transport to the Seminole County Sheriff's Office, Silvia confessed to the shooting. He asked the officer transporting him whether the officer was married and indicated that "he was in the situation" because he was married. Silvia admitted to shooting Patricia because she spent all of their money and then started dating her ex-husband.

Law enforcement officers later obtained a search warrant for Silvia's motel room and truck. In his motel room, they found a pump action twelve-gauge Mossberg 500 shotgun, shotgun shells, weapons manuals, and several empty beer bottles, among other items. The shotgun shells collected from Silvia's motel room were the same brand as those collected at the crime scene. A firearms analyst examined and test-fired the shotgun found in Silvia's motel room and concluded that the shells collected at the crime scene were fired from the same shotgun.

The jury found Silvia guilty of one count of first-degree murder for the murder of Patricia and one count of attempted first-degree murder for the shooting of Betty.

2. Two receipts were located in Silvia's motel room—each for a purchase of a six pack of beer dated September 22, 2006, at 6:09 p.m., and September 22, 2006, at 10:02 p.m. This indicates that one purchase was before the murder and one purchase was after the murder.

The Penalty Phase

Both the State and Silvia presented evidence at the penalty phase. The State presented two witnesses, Beth Parker and Patrick Woodard, who testified about what they observed on the night Silvia killed Patricia. A victim advocate read victim impact letters written by Patricia's children, Ross, Rachel, Ronny, and Randy, and her coworker, Aura Boyd. Patricia's sister, Pam Wyatt, also testified.

Silvia presented two penalty phase witnesses—his father, William Silvia, Sr. (William), and Dr. Deborah Day, a psychologist. William testified that the relationship between himself and Silvia's mother was very volatile, characterized by both verbal and physical fighting, which Silvia witnessed. As a child, Silvia played little league baseball and was on a swim team, but was quiet and a loner with few friends. Silvia ran away several times as a teenager. During one such incident, Silvia attempted to rob a bank with his brother John, was arrested, and subsequently spent time in the psychiatric unit of the Florida Hospital.

William further testified that Silvia's mother was killed by a drunk driver in 1999 or 2000. Silvia was greatly affected by his mother's death because they worked together in his mother's screen business, and Silvia was therefore unemployed after she died. In 2001, Silvia's brother John died of a drug-induced heart attack. After the death of her mother, Silvia's sister was classified as being bipolar and placed in a psychiatric ward.

Dr. Day, a forensic psychologist, evaluated Silvia at the request of defense counsel. Silvia smoked marijuana and drank alcohol since adolescence and eventually became alcohol dependent. Silvia's father, William, was physically abusive to both Silvia and his mother, and Silvia's family has a history of substance abuse and mental illness. During the time Silvia lived with Patricia, his second wife, he started having paranoid thoughts. However, Silvia showed no gross signs of brain injury or trauma, and he has an IQ of 107, which is considered average. In Dr. Day's opinion, Silvia has "extreme" mental health problems. She found him to be very immature, alienated and impulsive, and suffering from significant levels of anxiety and depression. Dr. Day diagnosed Silvia with delusional disorder and personality disorder not otherwise specified, the latter of which included antisocial, schizoid, and paranoid elements.

Silvia told Dr. Day that on the day of the murder, he went to see Patricia, they talked, and then he went to the truck and got his shotgun. Silvia claimed that he did not remember anything else until he heard gunshots and that he did not remember leaving the residence. He did remember being back in his motel room. He went to talk to Patricia about whether they were going to reconcile or get a divorce. Silvia was suffering from paranoia that his wife was having an affair with her ex-husband and another man and that these people and others were out to get him. Dr. Day opined that it was more likely that Silvia would act out the way that

he did due to his impulsiveness and alcohol abuse. When asked about Silvia's alcohol consumption on the day of the murder, Dr. Day noted that the amount of alcohol Silvia consumed was not excessive for him given Silvia's alcohol dependence. In Dr. Day's opinion, Silvia had the mental capacity to premeditate the murder in a cold, calculated, and premeditated fashion. Although Dr. Day testified that Silvia's ability to appreciate the criminality of his actions or to conform his conduct to the requirements of the law was not "substantially" impaired, she did state that it was "somewhat" impaired in that he has a "severe personality disorder," is "impulsive," was drinking alcohol, and has "false beliefs."

The State called a psychiatrist, Dr. Jeffrey Danziger, as a rebuttal witness. Dr. Danziger conducted an evaluation of Silvia and agreed with Dr. Day that psychological testing was consistent with "severe personality and character pathology." Dr. Danziger described Silvia as:

Someone with a long-standing history of being suspicious of others, blaming others, sort of a hostile, irritable individual, suspicious, resentful, irritable, argumentative, perhaps often obnoxious. Someone who has difficulty with authority. Someone who likely has substance abuse issues. The profile was possibly consistent with someone who may have bizarre thinking and bizarre thoughts. It did not prove that he was psychotic

On the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) test, Silvia scored very high on the psychopathic deviant and paranoia scales.

Dr. Danziger further stated that while Silvia self-reported delusions and

previous blackouts from drinking heavily, and that he drank a six-pack of beer before the murder, Dr. Danziger agreed that at the time of the murder, Silvia was not intoxicated. Moreover, Silvia's jail records did not indicate paranoia, hallucinations, or psychosis. Dr. Danziger noted that when Silvia was in jail, without access to drugs or alcohol, he was not having delusions. However, on one occasion, a guard relayed to a nurse that Silvia was acting strangely and the nurse referred him to the jail psychologist for "hallucination anxiety." The jail psychologist treated Silvia for depression and made a note to "rule out psychosis," but subsequent to that incident, no records indicated that Silvia exhibited any other delusional thoughts.

Dr. Danziger agreed with Dr. Day's diagnosis of personality disorder not otherwise specified, with antisocial and paranoid traits. Dr. Danziger thought it was "possible" that Silvia's personality disorder had schizoid elements, but was not as certain as Dr. Day of this. In Dr. Danziger's opinion, the antisocial characteristic was the prominent one. Dr. Danziger also agreed with Dr. Day that Silvia is alcohol dependent.

After the penalty phase, the jury recommended death by a vote of eleven to one.

The Spencer³ Hearing

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

At the Spencer hearing before the trial court, the defense presented the testimony of Dr. Daniel Buffington, a forensic pharmacologist, and the State again presented the testimony of Dr. Danziger. Dr. Buffington evaluated Silvia after the penalty phase. Dr. Buffington opined that Silvia was both alcohol- and marijuana-dependent. Silvia's substance abuse would worsen or magnify the problems associated with Silvia's personality disorders. Chronic alcoholism causes pathological changes in the brain, and therefore, in Silvia's case, he need not be intoxicated to have impaired mental functioning.

Dr. Buffington testified that prior to the shooting, Silvia lost his wife, his job, and his home. He had a documented history of suicidal ideation at different times of peak stress. Silvia's purpose in visiting with his wife was to reconcile as a foundation to keep on living, and if not, his goal was to commit suicide. Some of Silvia's paranoia was fueled by past visits to the Woodard home, where he was chased away by family members and threatened by his wife's ex-husband and elder son. On the day of the murder, Silvia consumed a six-pack of beer, but Dr. Buffington testified that there were no signs of intoxication at the time of the murder and that this is not an "intoxication" case. Nonetheless, Dr. Buffington opined that Silvia was impaired in his ability to function and he could have been operating under a delusion. After losing his home and his job, the thought of losing his marriage caused an extreme emotional disturbance.

In rebuttal, the State again called Dr. Danziger who testified that Silvia does not have a full-blown delusional disorder or paranoid delusions. Rather, he has paranoid personality characteristics. Dr. Danziger testified that Silvia does not have a mental illness; instead, Dr. Danziger diagnosed him with a personality disorder. Silvia never stated that he purchased the gun to commit suicide and actually denied wanting to commit suicide.

The trial court followed the jury's recommendation and imposed a sentence of death for the murder of Patricia. It imposed a sentence of life imprisonment for the attempted first-degree murder of Betty. The court found three aggravating circumstances—each of which it gave great weight. First, the court found that Silvia's contemporaneous conviction for attempted murder for the shooting of Betty Woodard established the prior violent felony aggravator. Second, the court found that Silvia created a great risk of death to many persons. Third, the court found that the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification ("CCP"). The trial court did not find any statutory mitigating circumstances,⁴ but found several nonstatutory mitigating circumstances: (1)

4. The trial court considered the statutory mitigating circumstances of extreme emotional distress at the time of the killing and substantial impairment of ability to conform behavior to the requirements of the law, but found that they had not been established.

emotional distress from loss of job and wife (little weight); (2) impaired ability to conform conduct due to chronic personality disorder not otherwise specified and chronic alcohol dependence (moderate weight); (3) chronic personality disorder not otherwise specified with paranoid, antisocial, and schizoid features and alcohol dependence (moderate weight); (4) chronic alcohol dependence (moderate weight); (5) diagnosis as a teenager with “schizoid” or “schizophreniform” disorder (little weight); and (6) dysfunctional family setting when growing up with domestic violence (little weight).

ANALYSIS

In this direct appeal, Silvia raises six issues—all of which Silvia alleges relate to the penalty phase.⁵ In addition to the issues raised by Silvia, this Court must consider whether the evidence was sufficient to support Silvia’s first-degree murder conviction. We now address each issue.

Guilt-Phase Issues

Sufficiency of the Evidence

Silvia has not challenged the sufficiency of the evidence, but this Court has a

5. Silvia argues: (1) the trial court erred in finding CCP; (2) the trial court erred in finding that Silvia knowingly created a great risk of death to many persons; (3) his death sentence is not proportionate; (4) the prosecutor’s repeated improper and inflammatory elicitation of irrelevant evidence tainted the penalty phase; (5) reversible error occurred when the trial court permitted improper victim impact evidence; and (6) Florida’s death sentencing scheme is unconstitutional under the Sixth Amendment pursuant to Ring v. Arizona, 536 U.S. 584 (2002).

mandatory obligation to review the sufficiency of the evidence in every case in which a sentence of death has been imposed. See Jones v. State, 963 So. 2d 180, 184 (Fla. 2007); Fla. R. App. P. 9.142(a)(6) (“In death penalty cases, whether or not insufficiency of the evidence or proportionality is an issue presented for review, the court shall review these issues and, if necessary, remand for the appropriate relief.”). “In determining the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt.” Simmons v. State, 934 So. 2d 1100, 1111 (Fla. 2006) (quoting Bradley v. State, 787 So. 2d 732, 738 (Fla. 2001)).

We conclude that the record contains sufficient evidence to support Silvia’s conviction for the first-degree murder of Patricia. The State presented evidence that Silvia confessed to the officer transporting him to jail that he shot Patricia because she spent all of their money and then started dating her ex-husband. This constituted direct evidence of Silvia’s guilt. See Simpson v. State, 3 So. 3d 1135, 1147 (Fla. 2009) (concluding that confession by appellant constituted direct evidence of guilt). Moreover, several witnesses, including Betty Woodard, Patrick Woodard, Jerome Woodard, and two of Patricia’s children, Rachel and Ross, all testified that Silvia was firing a shotgun near the carport of the Woodard home on the night in question, resulting in Patricia’s death. Evidence established that shells

collected at the crime scene were fired from the shotgun found in Silvia's motel room.

Based on a review of the evidence presented in this case, a "rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt." Simmons, 934 So. 2d at 1111. Thus, there was sufficient evidence to support Silvia's conviction for first-degree murder.

Penalty-Phase Issues

The Cold, Calculated, and Premeditated Aggravating Circumstance

Silvia first challenges the CCP aggravator. The trial court found that this aggravating circumstance had been proven beyond a reasonable doubt and gave it great weight. The trial court entered an order describing, in great detail, the basis for its findings:

The evidence is sufficient to establish that the murder of Patricia Silvia was the product of cool and calm reflection by the Defendant and not prompted by emotional frenzy, panic, or a fit of rage. . . . From the date of the separation until the evening of September 22, 2006, the Defendant came by the Woodard's home several times and called on the phone to talk to Patricia Silvia, seeking to reconcile with her. Patricia Silvia was not receptive to the Defendant's attempts to reconcile.

On September 22, 2006, at approximately 3:50 p.m., the Defendant purchased a 12 gauge Mossberg Persuader shotgun from Shoot Straight II. The surveillance video from Shoot Straight II shows the Defendant looking at the guns in the store, speaking with the store clerk, selecting the 12 gauge Mossberg Persuader shotgun, purchasing the shotgun and leaving the store with the shotgun. This video is important because it shows the Defendant on the day of the murder calmly participating in a routine transaction. The Defendant

exhibited no bizarre, agitated, frenzied or panicked behavior. The Defendant was calm the entire time he was at Shoot Straight II. He then went to Al's Army Navy where he purchased four individual boxes of shells, including both bird and buck shot.

The Defendant rented a hotel room at the Regency Inn on Highway 17-92 in Fern Park that same afternoon and purchased a six-pack of beer at the nearby Winn-Dixie at 6:09 p.m. Approximately five and a half hours after purchasing the shotgun, the Defendant drove to the Woodard's home with the shotgun and ammunition in his truck.

Later that evening the Defendant went to the Woodward's home to give Patricia Silvia one last chance to reconcile with him, and, if she refused, to kill her. When Patricia Silvia walked away from the Defendant after briefly speaking with him, Rachel Shadron heard the Defendant tell her mother, "You will be sorry." The Defendant walked back to his truck, got his shotgun, and, as he walked back to the Woodard's house, commenced shooting. The first shot was fired into the air and the next six shots were fired into the Woodard's carport and house. After firing seven rounds and killing Patricia Silvia, the Defendant walked back to his truck and drove away.

There is no evidence that the Defendant was intoxicated at the time of the murder or at anytime on September 22, 2006. There is no evidence that the murder of Patricia Silvia, or any of Defendant's conduct on September 22, 2006, was prompted by emotional frenzy, panic, or a fit of rage.

The Defendant was arrested in the early morning hours of September 23, 2006. The Defendant asked Sergeant Hardesty, the law enforcement officer driving him to the jail, if he was married. Sergeant Hardesty said, "Yes." The Defendant then stated, "That's the reason I'm in this situation. My wife spent all my money. I placed the checking account in her name. She started re-dating her ex-husband. That is the reason I shot her." Sergeant Hardesty described the Defendant as lacking any type of emotion during his arrest and transport to jail. The evidence supports the "cold" element of the CCP aggravator.

The evidence is sufficient to establish that the Defendant had a careful plan or prearranged design to commit murder before the killing. Approximately five and a half hours before killing Patricia Silvia, the Defendant armed himself by purchasing the shotgun and

shells used to kill her. He put the shotgun and shells in his truck when he went to the Woodard's house that evening. The Defendant's plan was to give Patricia Silvia one last chance to reconcile with him and, if she refused, to kill her.

When Patricia Silvia walked away from him that evening, Rachel heard the Defendant say to her mother, "You will be sorry." He walked back to his truck. The Defendant could have gotten into his truck and driven away. No one followed the Defendant when he left the Woodard's home. Instead, the Defendant calmly continued to carry out his plan to kill. The Defendant got his shotgun and walked back approximately one hundred feet to the carport, shooting as he walked, until he had a clear shot of Patricia Silvia. Then he shot her in the head.

The Defendant gave the mental health experts in this case different reasons for purchasing the shotgun on September 22, 2006. At first, the Defendant reported that he bought it for his own safety. He was sleeping in his truck and he said he needed the shotgun to protect himself. The Defendant had been homeless for some time prior to September 22, 2006. Then, he said he was afraid of the Woodard family. Yet, the Defendant did not take the shotgun with him the first time he went to the Woodard's home. At some point, he reported he was afraid of Patricia Silvia's ex-husband. Lastly, he told Dr. Buffington that he bought the shotgun to commit suicide. Neither Dr. Day nor Dr. Danziger found the Defendant suicidal. The court rejects the Defendant's inconsistent statements as to why he purchased the shotgun and finds the Defendant purchased the shotgun to kill Patricia Silvia.

Patricia Silvia's murder was neither spontaneous, nor impulsive. The killing of Patricia Silvia was carried out as a matter of course, consistent with the Defendant's careful plan. The evidence supports the "calculated" element of the CCP aggravator.

(Footnotes omitted.) We conclude that there is competent, substantial evidence to support the trial court's finding of this aggravator. See Barnhill v. State, 834 So. 2d 836, 850-51 (Fla. 2002) ("[T]he trial judge's ruling on an aggravating circumstance will be sustained on review as long as the court applied the right rule

of law and its ruling is supported by competent, substantial evidence . . .”).

In order to establish the CCP aggravator, the evidence must show that (1) “the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold)”; (2) “the defendant had a careful plan or prearranged design to commit murder before the fatal incident (calculated)”; (3) “the defendant exhibited heightened premeditation (premeditated)”; and (4) “the defendant had no pretense of moral or legal justification.” Franklin v. State, 965 So. 2d 79, 98 (Fla. 2007). This can be established “by examining the circumstances of the killing and the conduct of the accused.” Id. “The CCP aggravator can ‘be indicated by circumstances showing such facts as advance procurement of a weapon, lack of resistance or provocation, and the appearance of a killing carried out as a matter of course.’” Id. (quoting Swafford v. State, 533 So. 2d 270, 277 (Fla. 1988)). “ ‘CCP involves a much higher degree of premeditation’ than is required to prove first-degree murder.” Deparvine v. State, 995 So. 2d 351, 381-82 (Fla. 2008) (quoting Foster v. State, 778 So. 2d 906, 921 (Fla. 2000)).

Silvia first asserts that the killings were not the product of heightened premeditation or cool and calm reflection, but rather were actions prompted by his “emotional” and “domestic turmoil.” The trial court rejected this view of the crime, and we conclude that the trial court’s findings are supported by competent,

substantial evidence. As to Silvia's "heightened premeditation" claim, the record indicates that approximately five and a half hours before killing Patricia, Silvia armed himself by purchasing the shotgun and shells he used to kill her. The shotgun and shells were in his truck when he drove to the Woodard home that evening. When Silvia arrived at the home, he was not provoked by Patricia or anyone else. Further, when Patricia walked away from Silvia after speaking with him that evening, Silvia remarked, "You will be sorry," and walked back to his truck—a distance of approximately 100 feet. Rather than getting into his truck and leaving the Woodard home, Silvia calmly chose the criminal option by retrieving the shotgun from his truck and returning to the carport, shooting as he walked—ultimately shooting both Patricia and her mother, Betty. As the trial court concluded, Silvia carried out the murder of Patricia as a matter of course, consistent with his careful plan—all of his actions reflecting a deliberate and conscious choice to commit murder. In light of this evidence, we conclude that the trial court did not err in finding the heightened premeditation needed to establish CCP.

Second, Silvia claims that because he has been diagnosed with a personality and delusional disorder, this diagnosis precludes a finding that he acted in a calm, reflective manner, as required by the CCP aggravator. This argument is likewise unpersuasive. We have held that a "defendant can be emotionally and mentally

disturbed or suffer from a mental illness but still have the ability to experience cool and calm reflection, make a careful plan or prearranged design to commit murder, and exhibit heightened premeditation.” Evans v. State, 800 So. 2d 182, 193 (Fla. 2001); see also Owen v. State, 862 So. 2d 687, 701 (Fla. 2003) (relying on Evans to reject defendant’s claim that his mental illness must negate the CCP aggravator). Although there was certainly evidence of mental mitigation, the trial court rejected the mitigating circumstance that Silvia was under extreme emotional distress at the time of the killing.

Certainly, there have been cases where “we have determined that CCP was erroneously found because the heated passions involved were antithetical to ‘cold’ deliberation.” Spencer v. State, 691 So. 2d 1062, 1065 (Fla. 1996). In this case, however, the trial court’s findings to the contrary are supported by the record. Although Patricia and Silvia had recently separated, and Silvia had visited the Woodard home to speak with Patricia on several occasions, the record lacks evidence showing the type of ongoing, highly emotional dispute needed to refute a finding of cool and calm reflection. See Santos v. State, 591 So. 2d 160, 162-63 (Fla. 1991).

In this case, despite Silvia’s personality disorder and alcohol dependence, his actions do not “suggest a frenzied, spur-of-the-moment attack.” Evans, 800 So. 2d at 193. There is no evidence of impairment or intoxication at the time of the

crimes. The evidence shows that Silvia calmly purchased a shotgun and ammunition. He rented a motel room and prepared for his confrontation with Patricia, even obtaining weapons manuals in addition to the shotgun and ammunition. He drove to the Woodard home and calmly talked to her, but when she said she would not reconcile, he walked back to his truck and got his shotgun. He fired seven shots, pumping the shotgun to reload it each time.

Accordingly, we find that the trial court did not err in finding CCP.

The Great Risk of Death to Many Persons Aggravating Circumstance

Silvia next challenges the trial court's finding of the aggravator that Silvia knowingly created a great risk of death to many persons. The trial court entered an extremely detailed order explaining that Silvia's discharge of the firearm multiple times put several people in the vicinity of the shooting at great risk of death. Silvia argues that there was not competent, substantial evidence to support this aggravator because his gunfire was intended for only one person—Patricia. He also claims that “the mere fact that several people are present during a shooting is not sufficient to support this aggravating factor.” Finally, he contends that for this aggravator to be established in a shooting crime, the evidence must show that many people were “in the line of fire” during the shooting and that this was not the case at the Woodard home on the night in question.

In Johnson v. State, 696 So. 2d 317, 325 (Fla. 1997), this Court explained

what is required to establish the aggravator that a defendant “knowingly created a great risk of death to many persons”:

We have stated that this aggravator cannot be supported in situations where death to many people is merely a possibility. Instead, there must be a likelihood or high probability of death to many people. Further, we have indicated that the word “many” must be read plainly. Therefore, we uphold the application of this aggravating circumstance in scenarios in which four or more persons other than the victim are threatened with a great risk of death.

(Citations omitted.) It is with these guidelines in mind that we address, and reject, Silvia’s claims on this issue.

Silvia first relies on Williams v. State, 574 So. 2d 136, 138 (Fla. 1991), in which this Court concluded:

First, the trial court found the factor of great risk to many persons based on the fact that several other persons were present in the bank at the time of the robbery. We believe this factual situation, without more, is insufficient to support this factor. This factor is properly found only when, beyond any reasonable doubt, the actions of the defendant created an immediate and present risk of death for many persons. While we agree that Williams’ actions created some degree of risk, we cannot say beyond a reasonable doubt that he created an immediate and present risk to the others in the bank. There is no evidence, for instance, of indiscriminate shooting in the direction of bank customers, but only of an intent to kill the bank guard.

Silvia compares this case to Williams because the only intended victim was Patricia Silvia and “[t]he evidence is not clear on the number of people present at the carport when Silvia began shooting.” Silvia also compares this case to Alvin v. State, 548 So. 2d 1112, 1115 (Fla. 1989), in which this Court concluded that this

aggravator was not met where only two other people were in the area but not “in the line of fire”:

“We agree that the evidence does not support the finding that Alvin knowingly created a risk of death to many persons. The judge’s findings indicated that when the shooting took place there were four people in the vicinity, two of whom were Powell and Grimes. There were two women in the area, but they were not in the line of fire. We have previously held that the presence of two persons in the immediate proximity to the victim of a murder by shooting is insufficient to establish this aggravating factor.

Silvia contends that because only Betty and Patrick Woodard were in the line of fire, the four-person threshold required in Johnson is not met. We conclude, however, that both Williams and Alvin are distinguishable from the instant case. Although Silvia may have intended to kill only Patricia, there is competent, substantial evidence to support a finding that Silvia engaged in “indiscriminate shooting” in the direction of at least four persons other than Patricia who were not only put in “an immediate and present risk of death,” Williams, 574 So. 2d at 138, but were also “in the line of fire,” Alvin, 548 So. 2d at 1115.

As concluded by the trial court, “[n]ot counting the murder victim, the evidence is sufficient to establish that Betty Woodard, Patrick Woodard, Ross Shadron, Rachel Shadron, Jerome Woodard and Robin McIntyre were knowingly put in great risk of death by [Silvia].” Silvia concedes that Betty and Patrick Woodard were in the line of fire—Betty herself was shot and Silvia pumped the shotgun and aimed it at Patrick. There is competent, substantial evidence to

support a conclusion that at least four persons in addition to Betty and Patrick were in the line of fire. Ross, Patricia's twelve-year-old son, testified that when the shooting started, he was in the house and ran toward the door near the carport. Everyone was "just running in" through the open door. Ross was standing next to his mother, Patricia, as the others ran inside the house. Silvia shot at the door and Patricia fell directly in front of Ross. Rachel, Patricia's daughter, testified that she was in the carport when she heard gunshots. She stood up to find her brother, Ross. Silvia was standing less than a foot away from Rachel when he pointed the shotgun at her. Additionally, Jerome Woodard, Patrick's brother, was in the carport when he heard shots. He dropped to the ground and hid between two vehicles. There was birdshot found in the car behind which Jerome hid and in a pillar in the carport near where he was located. Finally, there was evidence that Robin McIntyre, Patricia's sister, was in the carport when the shooting started and ran into the house through the open carport door before Patrick closed it.

We therefore conclude there was competent, substantial evidence that Silvia's actions created a great risk of death to many persons. He approached the house while pumping shells into his shotgun. Pellets hit one of the cars in the carport, different locations in the carport, and the door from the carport to the house. Pellets were found inside the house in the kitchen, dining room, and bedroom. There were six unarmed people in the carport and house when Silvia

approached, shooting and pointing the gun at people.

Accordingly, we conclude that the trial court did not err in finding the great risk of death aggravator.

Proportionality of Death Sentence

Silvia next argues that the death penalty is a disproportionate punishment for the murder of Patricia. We deny relief on this claim.

The death penalty is “reserved only for those cases where the most aggravating and least mitigating circumstances exist.” Terry v. State, 668 So. 2d 954, 965 (Fla. 1996). Therefore, in deciding whether death is a proportionate penalty, the Court makes a “comprehensive analysis in order to determine whether the crime falls within the category of both the most aggravated and the least mitigated of murders, thereby assuring uniformity in the application of the sentence.” Anderson v. State, 841 So. 2d 390, 407-08 (Fla. 2003) (citation omitted). Accordingly, the Court considers the totality of the circumstances and compares the case with other similar capital cases. See Duest v. State, 855 So. 2d 33, 47 (Fla. 2003). This analysis “is not a comparison between the number of aggravating and mitigating circumstances.” Porter v. State, 564 So. 2d 1060, 1064 (Fla. 1990). Rather, this entails “a qualitative review by this Court of the underlying basis for each aggravator and mitigator rather than a quantitative analysis.” Urbin v. State, 714 So. 2d 411, 416 (Fla. 1998). In reviewing the

sentence for proportionality, this Court will accept the jury's recommendation and the weight assigned by the trial judge to the aggravating and mitigating factors.

See Bates v. State, 750 So. 2d 6, 12 (Fla. 1999).

In this case, the jury recommended death by a vote of eleven to one for Patricia's murder. The trial court found the following three aggravating circumstances: (1) prior violent felony; (2) CCP; and (3) knowingly creating a great risk of death to many persons. The trial court found no statutory mitigation, but found several nonstatutory mitigating circumstances, including the emotional distress from the loss of Silvia's job and his wife, chronic personality disorder and alcohol dependence, and growing up in a dysfunctional family.

Silvia relies on Santos v. State, 629 So. 2d 838 (Fla. 1994), and White v. State, 616 So. 2d 21 (Fla. 1993), which are both cases with a single aggravator⁶ and statutory mitigation. Silvia also relies on Farinas v. State, 569 So. 2d 425, 431 (Fla. 1990), in which this Court found a death sentence to be disproportionate:

On review of the record, we conclude that there was evidence which tended to establish that the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance. § 921.141(6), Fla. Stat. (1985). During the two-month period after the victim moved out of Farinas' home, he continuously called or came to the home of the victim's parents where she was living and would become very upset when not allowed to speak with the victim. He was obsessed with the idea of having the victim return to live with him and was intensely jealous, suspecting that the victim

6. These cases were single-aggravator cases after this Court struck CCP in both cases.

was becoming romantically involved with another man. See Kampff v. State, 371 So. 2d 1007 (Fla. 1979). We find it significant, also, that the record reflects that the murder was the result of a heated, domestic confrontation. Wilson v. State, 493 So. 2d 1019 (Fla. 1986).

Therefore, although we sustain the conviction for the first-degree murder of Elsidia Landin and recognize that the trial court properly found two aggravating circumstances to be applicable, we conclude that the death sentence is not proportionately warranted in this case.

As explained previously under the CCP analysis, although Silvia was going through a difficult time as a result of a domestic dispute with Patricia, the evidence showed, and Dr. Day opined, that he was not under the influence of an extreme emotional disturbance at the time of the murder. Thus, Farinas is inapposite. In addition, in later cases, we have specifically declined to recognize a “domestic dispute exception.” See Turner v. State, 37 So. 3d 212, 224 (Fla.) (“[T]his Court made it clear in Lynch v. State, 841 So. 2d 362, 377 (Fla. 2003)] that it ‘does not recognize a domestic dispute exception in connection with death penalty analysis.’”), cert. denied, 131 S. Ct. 426 (2010); Carter v. State, 980 So. 2d 473, 485 (Fla. 2008) (“Domestic situations are evaluated in the same manner as other cases.”).

We conclude that the death penalty is a proportionate punishment for the first-degree murder of Patricia Silvia. The CCP aggravator is one of the most serious aggravators set out in the statutory sentencing scheme. Buzia v. State, 926 So. 2d 1203, 1216 (Fla. 2006). Similarly, the prior violent felony aggravator is considered one of the weightiest aggravators. Sireci v. Moore, 825 So. 2d 882, 887

(Fla. 2002). In this case, the prior violent felony was attempted murder. Further, this case is proportionate to other cases with similar aggravating and mitigating circumstances. See Evans v. State, 838 So. 2d 1090, 1097-98 (Fla. 2002) (upholding the death sentence as proportionate after defendant killed his brother's girlfriend during a fight and where the court found two aggravators (prior violent felony and on probation), no statutory mitigators, and five nonstatutory mitigators (little or some weight)); Floyd v. State, 850 So. 2d 383, 392-93, 408-09 (Fla. 2002) (determining that death sentence was proportionate after defendant killed mother-in-law and where there were three aggravators (avoid arrest, prior violent felony, and on probation), no statutory mitigators, and four nonstatutory mitigators (all little weight)); Robinson v. State, 761 So. 2d 269, 272-73 (Fla. 1999) (finding the death penalty proportionate where defendant killed his girlfriend and there were three aggravators (pecuniary gain, avoid arrest, and CCP), two statutory mitigators (extreme emotional distress (some weight) and ability to conform conduct to the requirements of the law (great weight)), and eighteen nonstatutory mitigators).

Based on the specific facts and circumstances of the murder and the aggravators and mitigators found by the trial court in this case, we conclude that when compared with other capital cases, the death sentence in this case is proportionate.

Alleged Prosecutorial Misconduct

Under this issue, Silvia raises two separate arguments concerning alleged prosecutorial misconduct—one concerning evidence of lack of remorse and the other concerning comments about the testimony of Patrick Woodard. We address, and then reject, each argument in turn.

Lack of Remorse

Silvia first argues that the trial court erred in overruling his objections and denying his motion for mistrial when the State's expert witness, Dr. Danziger, testified that Silvia lacked remorse for the murder of his wife. We conclude that a close examination of the record reveals that the trial court did not err with regard to its rulings on this issue.

During the direct examination of Dr. Danziger the following occurred:

Dr. Danziger: Then you take that MMPI data and say, well, does it fit what we know about this person? Let's look at our interviews with him. Let's look at other tests. . . . Let's look at what people say about him. You put all of the pieces together. In this case, I believe that Dr. Day and I are in agreement that the MMPI-2 profile does accurately describe him.

Prosecutor: The 4 Scale did you call that the psychopathic deviancy and if so, can you explain what that is?

Dr. Danziger: The 4 Scale clinically means someone that may tend to violate the norms of society. Someone who does not respect authority, the end justifies the means and a lack of remorse. So the higher that you score on that scale, the stronger those characteristics.

(Emphasis added.) Defense counsel objected and moved for a mistrial, arguing that Dr. Danziger's testimony improperly introduced evidence of lack of remorse

in Silvia's penalty phase. The State argued that the testimony was not improper because Dr. Danziger was talking generally about the score Silvia received on the MMPI. The trial court denied the motion for mistrial but instructed the State to have Dr. Danziger clarify his testimony to explain that just because an individual has a certain profile on the MMPI does not mean that they have all of the characteristics of the profile. The State complied.

Later during cross-examination of Dr. Danziger by defense counsel, when asked about the criteria of antisocial personality disorders, the following occurred:

Dr. Danziger: That in my opinion is yes. My understanding is that he had multiple jobs, evicted from homes, could not sustain employment. When he had money from his mother's death, apparently blew through that money. Did not handle it properly. In my opinion, there is a history of irresponsibility in his work and financial life leading to some serious consequences.

Defense Counsel: And were there other criteria of these antisocial personality disorders that you observed in Mr. Silvia?

Dr. Danziger: Limited remorse. Not much remorse for what has happened or what has been done.

(Emphasis added.) Following this exchange, defense counsel again expressed concern that the witness raised the issue of lack of remorse and asked that the question be withdrawn and the answer stricken. The trial court granted the request and advised the jury to disregard the question and answer.

There is no question that lack of remorse is an improper aggravator. In Pope v. State, 441 So. 2d 1073, 1078 (Fla. 1983), this Court held:

[H]enceforth lack of remorse should have no place in the consideration of aggravating factors. Any convincing evidence of remorse may properly be considered in mitigation of the sentence, but absence of remorse should not be weighed either as an aggravating factor nor as an enhancement of an aggravating factor.

See also Robinson v. State, 520 So. 2d 1, 5-6 (Fla. 1988) (vacating death sentence in part because the State impermissibly argued during closing argument that the defendant lacked remorse).

Unlike in Robinson, where the prosecutor stated in closing argument that the defendant lacked remorse, here the State did not attempt to introduce lack of remorse. Initially, the prosecutor was questioning Dr. Danziger regarding his diagnosis of antisocial personality disorder. Dr. Danziger first mentioned lack of remorse because, as he testified, showing little remorse is one of the diagnostic criteria for antisocial personality disorder.

Defense counsel objected to the first mention of lack of remorse. Following a sidebar, the response was clarified by the prosecutor when Dr. Danziger confirmed that when a profile is generated on a person from the MMPI-2, it does not necessarily mean that someone who is scored that way has all of those characteristics (e.g., lack of remorse). Further, after the second mention of lack of remorse by Dr. Danziger, which was elicited by defense counsel, the trial court, upon defense counsel's request, struck the question and the answer and instructed the jury to disregard it.

“A motion for a mistrial should only be granted when an error is so prejudicial as to vitiate the entire trial. A trial court’s ruling on a motion for mistrial is subject to an abuse of discretion standard of review.” England v. State, 940 So. 2d 389, 401-02 (Fla. 2006) (citation omitted). The State never argued lack of remorse to the jury, and we conclude that in light of the trial court’s actions in this case to address the objectionable testimony, the trial court did not abuse its discretion in denying the motion for mistrial.

Comments about Patrick Woodard

Silvia next argues that the trial court erred in overruling his objections when the State misstated evidence during its guilt phase closing argument suggesting that Silvia attempted to murder Patrick Woodard. In essence, Silvia asserts that this error during the guilt phase “tainted” the penalty-phase trial. Regardless of whether this issue should have been raised as a guilt-phase claim rather than a penalty-phase claim, we find that it lacks merit.

During the prosecutor’s closing argument in the guilt phase, he stated:

Patrick’s in the back master bedroom. He hears that shot and he comes around. And by the time he comes around, Patricia’s on the ground. That gun could fire that fast. And he climbs over Patricia and he is shutting that door. What does Rachel say? Grandpa, Patrick, was shutting that door. And we saw the pictures of the damage to the door, that buckshot was an angle, it wasn’t directly in, that buckshot was not shot when that door—

Defense counsel objected on the grounds that the prosecutor was misstating the

evidence. The trial court overruled the objection, ruling that it would allow the jury to rely upon its collective memory. The prosecutor continued:

That buckshot, [the crime scene investigator] told you, she couldn't do a spread on it because it was at an angle it wasn't a true plane. So, Rachel says Patrick was closing the door. Patrick says he went over—

Defense counsel again objected on the grounds that the prosecutor was misstating the evidence. The trial court again overruled the objection, indicating that it would allow the jury to rely upon its memory. The prosecutor went on to state the following without objection:

Patrick said that he went to close the door. What did he tell you? he saw Silvia pumping the gun. And he—if he didn't close that door, I submit to you that he would have taken some buckshot.

Silvia claims that the trial court erred in overruling his objections because these statements were “highly inflammatory and not supported by the evidence.”⁷ We disagree because the prosecutor's statements were fair comments on the evidence. Attorneys are permitted wide latitude in closing argument, but that latitude does not extend to allowing improper argument. Gore v. State, 719 So. 2d 1197, 1200 (Fla. 1998). “The proper exercise of closing argument is to review the

7. In his initial brief, Silvia contends that defense counsel objected to the prosecutor's statement “And he—if he didn't close that door, I submit to you that he would have taken some buckshot.” However, it is clear that defense counsel did not object to this specific comment. Rather, defense counsel objected to the two previous comments.

evidence and to explicate those inferences which may reasonably be drawn from the evidence.” Gonzalez v. State, 990 So. 2d 1017, 1028-29 (Fla. 2008) (quoting Bertolotti v. State, 476 So. 2d 130, 134 (Fla. 1985)). The following evidence was introduced during the guilt phase: Patrick Woodard testified he saw Silvia point the gun at him. Because he saw Silvia pump the shotgun as if to “tak[e] a round” at him, Patrick shut the door to prevent getting “hit in the chest.” Rachel also testified that when Patrick was kneeling down by the door, she could still hear gunshots. Further, there were two impact sites on the exterior of the carport door, behind which Patrick took cover. Thus, we conclude that the trial court did not err in overruling Silvia’s objections to these statements.

Even if there was any lack of clarity in Patrick Woodard’s guilt-phase testimony regarding his location, he removed any possible confusion on this issue when he clearly testified in the penalty phase that Silvia pointed the gun at him and then pumped it, after which Patrick shut the door as Silvia fired. Accordingly, we reject any claim that these guilt-phase closing arguments caused harmful error in the penalty phase.

Victim Impact Evidence

Silvia’s next argument is that the trial court improperly permitted inflammatory and improper victim impact evidence during the penalty phase. Because defense counsel failed to make specific objections to the content of the

victim impact evidence, we reject this claim as not properly preserved for appeal.

At the beginning of the penalty phase, discussions were held concerning victim impact evidence, and it was determined that the victim advocate would read letters from Patricia's children and her coworker. Before the letters were actually read to the jury, the defense attorney renewed a "general objection" to the victim impact evidence and the trial judge acknowledged that the defense attorney could have a "standing objection." The victim advocate then read the letters.

In Ross's letter, he stated, "God needed another angel and he picked my mom." He also stated, "I know that my mom is watching up above and she's my Number 1 angel." In Aura Boyd's letter, she stated, "I have a lot [of] fear because this showed me it does not matter how you live your life if someone who does not see a value in a life wants to take it from you, they can for any reason they feel necessary just because they want money or your car, maybe they don't want you to end a relationship with them or just because they can."

As an initial matter, we agree with the State that this issue is not preserved because there was no specific objection to the comments now cited as improper. In Wheeler v. State, 4 So. 3d 599, 606 (Fla. 2009), we explained:

During the entire presentation of victim impact evidence, Wheeler made no specific objections to any portion of the testimony or any particular aspect of the photographic evidence, although Wheeler renewed his general objection to presentation of any victim impact evidence. We conclude that the claim Wheeler now makes that the victim impact evidence was impermissibly made a feature of

the penalty phase was not preserved by Wheeler's general pretrial objections addressed to all victim impact evidence, where he made no specific objections to any of the evidence presented and failed to object below on the grounds argued here. It is well-established that for a claim "to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below." F.B. v. State, 852 So. 2d 226, 229 (Fla. 2003) (quoting Steinhorst v. State, 412 So. 2d 332, 338 (Fla. 1982)).

Silvia did not object to the specific comments with which he takes issue on appeal.

Silvia's "standing objection" was based on a general objection to victim impact evidence and not to any specific statement in the letters. Defense counsel even stated that he had reviewed the letters and had come to an agreement with the State on the redaction of certain statements in the letters.

Because there was no specific objection, Silvia must establish that fundamental error or a violation of due process occurred in this case. See Wheeler, 4 So. 3d at 607 ("In the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief," (emphasis removed) (quoting Payne v. Tennessee, 501 U.S. 808, 825 (1991))). We conclude that the statements cited by Silvia in the letters do not rise to the level of fundamental error or a violation of due process. Accordingly, we deny relief on this claim.

Constitutionality of Florida's Death Sentencing Scheme Under Ring v. Arizona

In his final argument, Silvia contends that Florida's death penalty statute is

unconstitutional under the Sixth Amendment pursuant to Ring v. Arizona, 536 U.S. 584 (2002). He acknowledges our precedent to the contrary. In any event, Ring does not apply to this case because one of the aggravating circumstances found by the trial court in this case was Silvia's prior conviction for a violent felony—the contemporaneous conviction for the attempted murder of Betty Woodard. See Jones v. State, 855 So. 2d 611, 619 (Fla. 2003) (recognizing that the prior violent felony aggravator is “a factor which under Apprendi v. New Jersey, 530 U.S. 466 (2000),] and Ring need not be found by the jury”). Therefore, we deny relief on this claim.

CONCLUSION

After a thorough review of all of the issues raised by Silvia, and after our own independent review of the sufficiency of the evidence, we affirm Silvia's convictions and sentences.

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

An Appeal from the Circuit Court in and for Seminole County,
Donna L. McIntosh, Judge – Case No. 2006CF4522A

James S. Purdy, Public Defender, and George D.E. Burden, Assistant Public
Defender, Seventh Judicial Circuit, Daytona Beach, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, Tallahassee, Florida, and Barbara C. Davis,
Assistant Attorney General, Daytona Beach, Florida,

for Appellee

Exhibit “5”

Supreme Court of Florida

FRIDAY, MAY 20, 2011

CASE NO.: SC09-220

Lower Tribunal No(s): 2006CF4592A

WILLIAM FRANCES SILVIA

vs. STATE OF FLORIDA

Appellant(s)

Appellee(s)

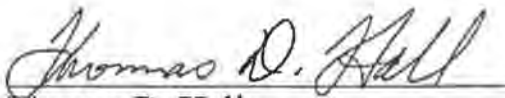
Pursuant to Florida Rule of Criminal Procedure 3.851(b), the Office of the Capital Collateral Regional Counsel-Middle Region is hereby appointed to handle postconviction proceedings for appellant.

The Office of the Capital Collateral Regional Counsel-Middle Region shall, within thirty days from this date of this order, file a notice of appearance in the trial court or a motion to withdraw based on a conflict of interest or some other legal ground. **A copy of the notice of appearance or motion to withdraw shall be served on the Florida Supreme Court.**

In accordance with this Court's opinion issued in Amendments to Florida Rules of Criminal Procedure 3.851, 3.852, and 3.991 and Florida Rule of Judicial Administration 2.215, 802 So. 2d 298 (Fla. 2001), the chief judge shall forthwith assign this case to a judge qualified to handle capital cases. **A copy of the assignment order shall be served on the Florida Supreme Court.**

A True Copy

Test:



Thomas D. Hall

Clerk, Supreme Court



th

Served:

HON. NORMAN ROBERT WOLFINGER

GEORGE D. E. BURDEN

BARBARA CURTIS DAVIS

WILLIAM FRANCES SILVIA

BILL JENNINGS

CHRISTOPHER SINCLAIR QUARLES

HON. DONNA L. MCINTOSH, JUDGE

Exhibit “6”

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN
AND FOR SEMINOLE COUNTY, FLORIDA,

STATE OF FLORIDA,

Plaintiff,

TRANSCRIPT OF PROCEEDINGS

VS.

CASE NO.: 2006-4522CFA

WILLIAM FRANCES SILVIA, JR.

Defendant.

BEFORE THE HONORABLE

DONNA McINTOSH

JUDGE OF THE COURT

REPORTED BY:

SHELLY COFFEY, R.P.R.

Seminole County Courthouse

101 Bush Boulevard

Sanford, Florida

June 26, 2012

APPEARANCES:

OFFICE OF THE STATE ATTORNEY

EIGHTEENTH JUDICIAL CIRCUIT

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Attorneys for Plaintiff

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OFFICE OF THE ATTORNEY GENERAL

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Attorneys for Plaintiff

BY: KENNETH NUNNELLEY, ESQ.

MITCHELL BISHOP, ESQ.

(Appearing telephonically)

2012 OCT 19 PM 1:51

CLERK OF CIRCUIT COURT
SEMINOLE COUNTY, FL

(Appearances continued:)

LAW OFFICE OF THE CAPITAL
COLLATERAL REGIONAL COUNSEL - MIDDLE
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33619
Attorneys for Defendant
BY: RICHARD E. KILEY, ESQ.
JAMES VIGGIANO, JR.

1 WHEREUPON:

2 The following proceedings were had:

3 THE COURT: Good morning. Please be seated.
4 We are here this morning for a status conference in
5 case number 06-4522 CFA, State of Florida versus
6 William Silvia, Jr.

7 Would the parties identify themselves for the
8 record?

9 MR. VIGGIANO: James Viggiano with CCRC Middle
10 on behalf of Mr. Silvia.

11 MR. KILEY: Richard Kiley from CCRC Middle on
12 behalf of Mr. Silvia.

13 MR. SILVIA: And I'm William Silvia, Jr.

14 THE COURT: Yes, sir.

15 THE DEPUTY: Judge, you have the number for the
16 attorney general on that e-mail.

17 THE COURT: On this e-mail?

18 THE DEPUTY: Yes.

19 MS. VALENTINI: Good morning, Your Honor. Anna
20 Valentini for the State of Florida. Mr. Nunnelley
21 will be appearing by telephone. I believe you have
22 all the connecting information in front of you.

23 THE COURT: I do have a number. I understand
24 there was no objection from the party for his
25 appearance here by telephone this morning; is that

1 correct?

2 MR. VIGGIANO: That is correct, Your Honor.

3 MR. KILEY: That is correct.

4 THE COURT: We will see if we can get him on
5 the line.

6 (Whereupon, there was a pause in proceedings.)

7 MR. NUNNELLEY: Hello.

8 THE COURT: Good morning. This is Judge
9 McIntosh. With whom am I speaking?

10 MR. NUNNELLEY: Ken Nunnellely and Mitch Bishop,
11 attorney general's office, Your Honor. I appreciate
12 you letting us phone in for this.

13 THE COURT: Okay. Are the parties in the
14 courtroom able to hear?

15 MR. VIGGIANO: Yes, Your Honor.

16 MR. KILEY: Yes, Your Honor.

17 THE COURT: I'm going to turn it up as high as
18 I can get it. If at any point in time you're not
19 able to hear Attorney Nunnellely, would you let me
20 know?

21 MR. VIGGIANO: I will, Your Honor.

22 THE COURT: Okay. And same with you,
23 Mr. Silvia, would you let the Court know?

24 MR. SILVIA: Yes, ma'am.

25 THE COURT: You're able to hear Attorney

1 Nunnelley?

2 MR. SILVIA: Yes, ma'am.

3 THE COURT: Thank you.

4 MR. BISHOP: Your Honor, David Arthur from the
5 Department of Corrections is also on the line.

6 THE COURT: Thank you.

7 MR. VIGGIANO: Your Honor, in addition to the
8 status conference we had added on the docket a
9 motion to determine counsel.

10 THE COURT: Yes.

11 MR. VIGGIANO: Basically, this stems from our
12 overall relationship with Mr. Silvia dating back to
13 the beginning of the representation. We kind of got
14 off to a difficult start. Mr. Silvia wrote a letter
15 to the Court --

16 THE COURT: Yes.

17 MR. VIGGIANO: -- asking that he not proceed
18 with post-conviction.

19 THE COURT: Yes. Let me stop you there. I did
20 review the file. I did receive a letter from
21 Mr. Silvia, and it's been a year. This letter is
22 dated June 28th, 2001 (sic), so we're right at one
23 year, when he did announce to the Court that he did
24 want to give up, waive his right to any and all
25 post-conviction appeals.

1 MR. VIGGIANO: Yes. And then we had numerous
2 refusals to come down, refusals to come to the
3 phone, that kind of thing, over a period of time.
4 However, we were still able to continue to represent
5 him and develop the case as best we could. Then we
6 had a mitigation specialist get on the case, and he
7 made it clear at that point that he didn't want to
8 cooperate. Then on June 6th we -- the motion says
9 June 13th. That should be the 6th. Counsel
10 called --

11 THE COURT: June 6th of this year, sir?

12 MR. VIGGIANO: This year, Your Honor, 2012. On
13 paragraph 8, June 6th, undersigned counsel called
14 Mr. Silvia to advise him that we would need
15 additional releases from him and told him we're
16 coming up to UCI to get those releases. Then on
17 June 12th he refused to meet with us, and June 13th
18 he refused to come down for a telephone conference.
19 And then he wrote another letter, and it should be
20 attached -- I don't think it's attached to the
21 motion, but it's a recent letter where Mr. Silvia
22 advises that he is not coming down anymore and that
23 he wants to waive his rights to appeal. With that,
24 we filed this motion with the Court to determine our
25 status as his counsel.

1 And I understand today that he's not changing
2 his position with respect to his interest in coming
3 down and assisting us and in his interests in
4 proceeding with post-conviction litigation. So,
5 basically, that's what we're here for, to determine
6 our status as counsel.

7 THE COURT: Have you had an opportunity then
8 today to speak your client?

9 MR. KILEY: Yes, Your Honor. As a matter of
10 fact, Your Honor, I was the one who made the call on
11 June 6th and advised him that we would be coming up
12 on the 12th with the releases.

13 I did speak to him before court and he
14 indicated that his position is unchanged from the
15 original letter and the letter which we have,
16 unfortunately, failed to attach to this Court. We
17 can send it later, but I think Your Honor -- well,
18 first of all, Your Honor, I cannot in good
19 conscience or in good faith represent to this Court
20 that Mr. Silvia is incompetent to proceed, and I
21 would request that the Court do a formal colloquy
22 just to make sure that Mr. Silvia knows exactly what
23 he's doing. I don't have any reason to doubt that,
24 but I think in the interests of caution the Court
25 would be prudent to do that.

1 THE COURT: Have you, sir, had -- have you been
2 talking and meeting with him over the past year?

3 MR. KILEY: Very rarely, Your Honor.

4 THE COURT: But you have had opportunity to
5 talk with him over the past year?

6 MR. KILEY: Yes, Your Honor, and --

7 THE COURT: At any point in time have you
8 questioned his competency to proceed in this post-
9 conviction matter?

10 MR. KILEY: No, Your Honor, I hadn't. I had no
11 good faith basis. He -- he -- we do that very
12 rarely, when the Defendant is obviously incompetent,
13 but Mr. Silvia is -- in my estimation he is
14 competent to proceed and he does know what the
15 results of his decision is going to mean. I just
16 request that the Court put it on the record.

17 As I said, on June 6th he knew exactly who I
18 was and what my specific job was on this team. And
19 he didn't come down to see us on the 12th, and
20 subsequent attempts to reach him by phone he has
21 refused. We simply can't proceed like this, Judge.

22 THE COURT: Mr. Silvia did speak with you this
23 morning, though?

24 MR. KILEY: Yes, Your Honor.

25 THE COURT: Okay. And this morning you

1 continue to hold the opinion that he is competent to
2 proceed in this matter?

3 MR. KILEY: Yes, Your Honor.

4 THE COURT: Okay. And did your client tell you
5 again today that he did not want to proceed?

6 MR. KILEY: Yes, he did, Your Honor.

7 THE COURT: Now, the letter that you're
8 referring to is a letter that I filed -- well, maybe
9 it's not. Do you have yet another letter?

10 MR. KILEY: Yeah, I have another letter, Judge,
11 but in the rush to get out of here in the morning we
12 did not take it. It is a letter --

13 THE COURT: Let's see. The clerk is saying
14 that is attached to your motion to determine
15 counsel. Okay. There is a letter here.

16 MR. KILEY: It should be dated received by CCRC
17 June 11th.

18 THE COURT: Yes.

19 MR. KILEY: That's it, Judge.

20 THE CLERK: Actually, that's --

21 THE COURT: I have a motion to determine
22 counsel. It was filed with the clerk on June 22nd,
23 2012. Certificate of service is June 18th.

24 MR. KILEY: Yes, Your Honor.

25 THE COURT: And that's coming from your office.

1 MR. KILEY: Yes.

2 THE COURT: And attached to that motion is
3 Exhibit A, which is a letter dated November 14th,
4 2011.

5 MR. KILEY: Okay. There should be one at the
6 end where Mr. Silvia wrote it and we received the
7 letter, but we were on our way to state prison and
8 proceeded to go to state prison. Unfortunately, we
9 did not -- my secretary did not attach it. I was
10 out sick on the 18th.

11 THE COURT: Is that letter also handwritten?

12 MR. KILEY: Yes.

13 THE COURT: And does that letter announce
14 unequivocal -- unequivocally -- I can't talk --
15 unequivocally that he is going to give up, waive his
16 right to any and all post-conviction relief?

17 MR. KILEY: Not only that, Your Honor, the
18 letter says that he will not appear, he will not
19 accept phone calls, and he wants his time to run
20 out, and he doesn't want representation, and I --

21 THE COURT: And we don't have that letter here
22 today?

23 MR. KILEY: Well, I did talk to Mr. Silvia
24 about it, and he said, yes, he did write the letter
25 and his position is unchanged from both letters.

1 THE COURT: So there are now three letters
2 where he has announced that, that he wants to waive
3 all of his rights to post-conviction relief?

4 MR. KILEY: I think there's only two.

5 THE COURT: Two?

6 MR. KILEY: Yes.

7 THE COURT: I have one -- let me just verify
8 with you so that we know what we're moving forward
9 on. I have one dated June 28th, 2011. That's the
10 one we originally referenced a year ago when he did
11 send this letter to me, and I did a notice of filing
12 dated July 6th, 2011.

13 MR. KILEY: Yes, Judge.

14 THE COURT: Then there was the November 14th,
15 2011.

16 MR. KILEY: I --

17 THE COURT: And now you're saying there's yet
18 another one, correct?

19 MR. KILEY: Yes.

20 THE COURT: So there are three letters.

21 MR. KILEY: I did not see the November.

22 THE COURT: Here. If you'll come forward, this
23 is what's attached to your motion. That's dated
24 November of 2011.

25 MR. KILEY: Okay. Now, Judge, yeah, we did see

1 this one before, but there was a more recent letter.

2 THE COURT: Okay. Here is the original letter.
3 You've seen this one.

4 MR. KILEY: Oh, yes, Your Honor.

5 THE COURT: Okay. So there's the original.
6 Then we have the November 14th letter, correct? And
7 now you're saying there's yet another one.

8 MR. KILEY: Yes.

9 THE COURT: Now, in the interim, of course, the
10 Court did receive a letter on your -- this is your
11 letterhead, this letter right here, on your
12 letterhead, where he is retracting his request.

13 MR. KILEY: That is correct, Your Honor.

14 THE COURT: We have that in the court file
15 also, and that was dated September 1st.

16 MR. KILEY: Yes,

17 THE COURT: Where he announced that he wanted
18 to withdraw his prior representation and that he was
19 going to allow you-all to represent him.

20 MR. KILEY: Yes.

21 THE COURT: Okay. And then we get two more
22 written ones where he's declining representation and
23 waiving his right to post-conviction relief; is that
24 where we are?

25 MR. VIGGIANO: Yes.

1 MR. KILEY: That's where we are.

2 THE COURT: Thank you.

3 MR. KILEY: Thank you, Your Honor.

4 THE COURT: And at this point in time,

5 Mr. Silvia --

6 MR. SILVIA: Yes, ma'am.

7 THE COURT: -- sir, if you'll stand and raise
8 your right hand. I'm going to have the clerk place
9 you under oath.

10 WILLIAM SILVIA, JR.

11 having been first duly sworn, was examined and testified
12 as follows:

13 THE COURT: Do you have any objection to the
14 Court inquiring of your client today?

15 MR. KILEY: I have no objection, Your Honor.
16 In fact, I would request it.

17 THE COURT: And, Mr. Silvia, are you also
18 agreeable to answering the Court's questions and the
19 parties' questions here today?

20 MR. SILVIA: Yes, ma'am.

21 THE COURT: Okay. If you'll have a seat.

22 MR. SILVIA: Thank you.

23 THE COURT: Mr. Silvia, you've heard me go
24 through the letters that the Court has received.

25 MR. SILVIA: Yes.

1 THE COURT: And you know initially in June, one
2 year ago, I did receive a letter from you where you
3 were rejecting representation and pursuing any and
4 all of your post-conviction relief.

5 MR. SILVIA: Yes, ma'am.

6 THE COURT: Then you sent a letter and you
7 retracted that and said you did want help.

8 MR. SILVIA: Yes, ma'am.

9 THE COURT: And subsequently now it appears --
10 I received a second letter where you once again said
11 you were firm and fixed in your decision, and you --

12 MR. SILVIA: Yes.

13 THE COURT: -- know that you had flipped the
14 last time, but you were not going to flip your
15 decision again.

16 MR. SILVIA: Yes.

17 THE COURT: Okay. And then your attorneys are
18 now saying you have yet offered another handwritten
19 note rejecting legal representation and waiving your
20 right to post-conviction relief.

21 MR. SILVIA: Well, technically the last one
22 was -- what I said was is that I would prefer if
23 they let the time run out, because there's only two
24 months left.

25 THE COURT: So there --

1 MR. SILVIA: Essentially, the same thing, yes,
2 ma'am.

3 THE COURT: Well, as you're seated before me
4 today, where are you on this decision? This is a
5 critical decision.

6 MR. SILVIA: Right.

7 THE COURT: You understand that --

8 MR. SILVIA: Yes, ma'am.

9 THE COURT: -- for you?

10 MR. SILVIA: Yes, ma'am.

11 THE COURT: And it is my responsibility to
12 determine that you have knowingly, voluntarily, and
13 freely waived your right to post-conviction relief.
14 That's my job.

15 MR. SILVIA: All right.

16 THE COURT: So I need to know if you're firm
17 and fixed in your decision.

18 MR. SILVIA: Yes, ma'am.

19 THE COURT: And what is that decision?

20 MR. SILVIA: To discharge the collateral
21 counsel and waive my rights to any more appeals.

22 THE COURT: Do you need any more time to talk
23 to your lawyers prior to making that decision?

24 MR. SILVIA: No, ma'am.

25 THE COURT: Do you have any questions that your

1 lawyers or this Court could answer that would help
2 you in making that decision?

3 MR. SILVIA: No, ma'am.

4 THE COURT: Have you had enough time to talk to
5 your lawyers about that decision?

6 MR. SILVIA: Yes, ma'am.

7 THE COURT: Now -- and I want -- I'm going to
8 have your attorneys announce in open court what
9 they're able to do for you.

10 MR. SILVIA: Okay.

11 THE COURT: So there's no misunderstanding
12 about what services, legal services, they can
13 provide to you.

14 MR. SILVIA: Okay.

15 THE COURT: So I don't know which one would
16 like to do it, but I would like for one of you to
17 announce the services that your office can provide
18 Mr. Silvia in post conviction, by way of post-
19 conviction relief.

20 MR. KILEY: Well, Your Honor, we have engaged
21 the services of a mitigation --

22 THE COURT: Can you hear?

23 MR. SILVIA: Yes, ma'am.

24 MR. KILEY: A mitigation expert, one Tiffany
25 Lawrence, and along with our investigator, Ms. Rita

1 Perry (phonetic), who is seated in the courtroom
2 today, we have obtained records for Mr. Silvia. We
3 are attempting to obtain records of a prior
4 hospitalization and mental treatment. We have
5 contacted --

6 THE COURT: And let me interrupt you. Have I
7 not signed orders that those confidential documents
8 were to be sent to me for in camera review?

9 MR. KILEY: Yes. However, we also have
10 developed some civilian witnesses who knew
11 Mr. Silvia and were aware that he did suffer some
12 significant mental problems. We are prepared to
13 call Dr. Lillienfeld (phonetic) who had treated
14 Mr. Silvia when he was a juvenile.

15 We are also prepared and have retained the
16 services of an expert, mental health expert, one
17 Dr. Michael Meyer, a psychiatrist, and Mr. Silvia
18 did briefly meet with Dr. Meyer and pretty much told
19 him what he told the Court today. And we are simply
20 unable to proceed with any further investigation
21 without Mr. Silvia's cooperation.

22 But we would be prepared to offer expert
23 testimony, civilian witnesses that knew him when he
24 was younger, a physician, a psychiatrist who had
25 treated him for a previous mental disorder, but we

1 can't proceed without his cooperation in regards to
2 Dr. Meyer and his present condition now.

3 THE COURT: Mr. Silvia, do you hear everything
4 that your attorneys have done to date on your
5 behalf?

6 MR. SILVIA: Yes, ma'am.

7 THE COURT: And you understand that they're
8 unable to proceed without your participation?

9 MR. SILVIA: Yes, ma'am.

10 THE COURT: Now, you would represent -- you
11 would file motions on behalf of Mr. Silvia?

12 MR. KILEY: Absolutely, Your Honor.

13 THE COURT: And you're prepared -- you were
14 preparing to do that, correct?

15 MR. KILEY: Yes, Your Honor. I was writing the
16 3.851 and I've gotten as far as I could get without
17 Mr. Silvia's cooperation, but I don't have a claim
18 without his cooperation.

19 THE COURT: When is that motion due?

20 MR. KILEY: That is due August 20th, ma'am.
21 And, like I said, we've been trying to get Dr. Meyer
22 up there. We've been trying to get these releases
23 from Mr. Silvia. We've been trying to get his
24 cooperation so we can proceed with the investigation
25 and writing the motion, and we can't do it, Your

1 Honor.

2 THE COURT: And with his assistance would you
3 be able to timely file a motion seeking post-
4 conviction relief?

5 MR. KILEY: With his assistance it would be
6 tough, but we would get it -- we've never missed a
7 deadline yet, and we would get it --

8 THE COURT: Tough because of the delay in the
9 proceedings because of him not assisting you?

10 MR. KILEY: Yes, your Honor.

11 THE COURT: But you still would be able to do
12 that?

13 MR. KILEY: It might be on the Court's desk on
14 the 19th of August, but it would be in the clerk's
15 office at the time within the deadline.

16 THE COURT: And you've gone over the nature of
17 the issues that you would raise in front of this
18 Court with Mr. Silvia?

19 MR. KILEY: Judge, I could not do that because,
20 first of all, I cannot say he's incompetent. And
21 although I suspect there is an underlying mental
22 illness there which was not developed, which without
23 Mr. Silvia's cooperation with my expert witness, I
24 can't fully develop that claim. I can call the
25 doctor who treated him when he was younger, but I

1 don't know if that condition still persists. In
2 other words, Judge, without Dr. Meyer I don't have a
3 claim to write for this Court.

4 THE COURT: Mr. Silvia, do you have any
5 questions of your lawyer?

6 MR. SILVIA: No, ma'am.

7 THE COURT: Okay. Mr. Silvia, I do need to ask
8 you, as you're seated before me right now are you
9 fully alert?

10 MR. SILVIA: Yes, ma'am.

11 THE COURT: And are you capable of exercising
12 your very best judgment?

13 MR. SILVIA: Yes, ma'am.

14 THE COURT: As you're seated before me right
15 now, are you under the influence of any medicines?

16 MR. SILVIA: No, ma'am.

17 THE COURT: You're not taking any medicines
18 given to you by the prison?

19 MR. SILVIA: No, ma'am.

20 THE COURT: Are you under the influence of any
21 drugs?

22 MR. SILVIA: No, ma'am.

23 THE COURT: Are you under the influence of any
24 alcohol?

25 MR. SILVIA: No, ma'am.

1 THE COURT: So as you're seated before me right
2 now, you're fully capable of understanding
3 everything going on in this proceeding?

4 MR. SILVIA: Yes, ma'am.

5 MR. KILEY: Your Honor, I would request the
6 Court to inquire of Mr. Silvia if he understands
7 that if the Court terminates our representation and
8 a motion is not filed he will become warrant
9 eligible.

10 THE COURT: He will become what?

11 MR. KILEY: Warrant eligible. The governor
12 could sign a warrant, a death warrant.

13 THE COURT: Yes, I'll verify that. I will
14 verify that with him.

15 Mr. Silvia, this Court needs to know that you
16 understand certain things.

17 MR. SILVIA: Okay.

18 THE COURT: And one of the things that I need
19 to know is that you do understand that if the Court
20 were to grant your request to discharge your
21 attorneys and allow you to waive your right to post-
22 conviction relief that you would be, as your
23 attorney styled it, warrant eligible, which means
24 that the governor of the State of Florida could sign
25 a warrant for your execution.

1 MR. SILVIA: Yes, ma'am.

2 THE COURT: You understand that?

3 MR. SILVIA: Yes, ma'am.

4 THE COURT: Now, do you also understand that if
5 you do discharge your attorneys at this stage of the
6 proceeding prior to motions being filed, evidence
7 being gathered and presented to this Court and this
8 Court ruling on whatever issues may be raised by
9 your attorneys, that you are permanently waiving
10 your right to have that kind of motion, a post-
11 conviction relief motion, filed?

12 MR. SILVIA: Yes, ma'am.

13 THE COURT: You understand that's a permanent
14 waiver on your behalf?

15 MR. SILVIA: Yes, ma'am.

16 THE COURT: You can't wake up tomorrow morning
17 or the next year or five years from now or however
18 long in the future and say I changed my mind.

19 MR. SILVIA: I understand that.

20 THE COURT: You understand that?

21 MR. SILVIA: Yes, ma'am.

22 THE COURT: It is permanent.

23 MR. SILVIA: Yes.

24 THE COURT: It's a permanent decision that you
25 are making.

1 MR. SILVIA: Yes, ma'am.

2 THE COURT: Do you also understand by waiving
3 your right to have post-conviction relief at this
4 very early stage before the motion, your first
5 motion is even filed, that you're also losing
6 permanently your right to take advantage of any
7 changes that may occur in the law?

8 MR. SILVIA: Yes, ma'am.

9 THE COURT: That could retroactively be applied
10 to your case and benefit you.

11 MR. SILVIA: Yes, ma'am.

12 THE COURT: You understand that?

13 MR. SILVIA: Un-huh.

14 THE COURT: Is there any other inquiry that the
15 attorneys -- that the attorneys feel that the Court
16 would need to make?

17 MR. KILEY: Well, he would also be waiving his
18 rights to federal review of the state proceedings.

19 THE COURT: To what?

20 MR. KILEY: Federal review, Your Honor. We
21 would not be able to file --

22 THE COURT: Yes. The Court also needs to make
23 sure that you understand by waiving your right to
24 post-conviction relief at this very early stage
25 before your first motion is even filed that you

1 would be permanently losing your right to relief
2 through the federal system.

3 MR. SILVIA: Yes, ma'am.

4 THE COURT: Do you understand that all of
5 your -- all of your motions and writs and every
6 single petition that you could file to the United
7 States Supreme Court to the Courts of Appeal through
8 the federal system will be lost?

9 MR. SILVIA: Yes, ma'am.

10 THE COURT: Now, Mr. Silvia, do you also
11 understand that you are making this decision very
12 early in the post-conviction relief process?

13 MR. SILVIA: Yes, ma'am.

14 THE COURT: Prior to the first motion even
15 being filed on your behalf.

16 MR. SILVIA: Yes, I do.

17 THE COURT: Do you understand it's difficult
18 for the Court to even discuss with you the
19 implications of your decision because you're making
20 this decision so very early in the process?

21 MR. SILVIA: Yes, ma'am.

22 THE COURT: I do not even know what issues
23 would be raised on your first motion for relief, and
24 I'm not sure that your attorneys do either having
25 not completed their discovery.

1 MR. KILEY: Your Honor, I would -- Your Honor,
2 I usually do the penalty phase issues. And I have
3 reviewed his entire trial. We cannot find any
4 impropriety in the jury selection. We cannot find
5 any fundamental error in the guilt phase due to the
6 facts of the case. And I am unable to plea a
7 penalty phase investigation without Mr. Silvia's
8 cooperation. But we did thoroughly check into his
9 guilt phase claims and a possibility of his guilt
10 phase claims and possible jury claims, which we
11 routinely do. We just don't have it there due to
12 the facts of the case. It's very difficult to get
13 guilt phase claims from a crime such as this that
14 was committed in front of so many witnesses.

15 THE COURT: Well, would you agree that identity
16 in this case was not an issue?

17 MR. KILEY: No, it was not, Your Honor.

18 THE COURT: Which could be -- you know,
19 obviously, many times is an important issue in cases
20 such as this.

21 MR. KILEY: Yes, Your Honor.

22 THE COURT: But identity, obviously, has -- the
23 family being -- with the family, so many family
24 members being present during the day, you would
25 agree identity was not an issue you were looking at?

1 MR. KILEY: No. We -- we're pretty sure that
2 Mr. Silvia was there at the time of the crime. The
3 only thing we could have possibly did was fault
4 trial counsel for making an argument not trying to
5 get a lesser included offense of second degree
6 murder, but he did, and so we were out of luck on
7 that one, too, Your Honor.

8 THE COURT: Mr. Silvia, did you hear what your
9 attorney has said based upon the limited amount of
10 discovery that they've done at this point in time?

11 MR. SILVIA: Yes, ma'am.

12 THE COURT: And you do -- do you understand
13 that they have only done a limited amount of
14 discovery at this early stage?

15 MR. SILVIA: Yes, ma'am.

16 THE COURT: So are you -- are you 100 percent
17 firm and fixed in your decision knowing that your
18 attorneys have not completed their discovery in your
19 case?

20 MR. SILVIA: Yes, ma'am.

21 THE COURT: In fact, the documents that you had
22 asked this Court to review in camera, I've not even
23 received them yet.

24 MR. KILEY: I know, Your Honor. I'm mainly
25 concerned with the psychiatric presentation, which

1 I'm unable to complete due to Mr. Silvia's non-
2 cooperation. The other documents and the civilian
3 witnesses would only bolster the conclusion of
4 Dr. Meyer and buttress our contention that he was
5 misdiagnosed or was not provided with due process in
6 the penalty phase of his trial. However, without
7 Mr. Silvia's cooperation I can't proceed.

8 THE COURT: Mr. Silvia, did you hear what your
9 attorney said?

10 MR. SILVIA: Yes, ma'am.

11 THE COURT: So you understand at this point in
12 time the path that -- sir, at this point in time the
13 issues that you were focusing on were psychiatric
14 issues that either were not -- you were going to
15 argue were not fully developed or were not
16 presented?

17 MR. KILEY: Correct, Your Honor.

18 THE COURT: Mr. Silvia, did you hear that that
19 is the path that your attorneys are heading down at
20 this point in time?

21 MR. SILVIA: Yes, ma'am.

22 THE COURT: Okay. And you understand that
23 they've not completed their discovery in that issue?

24 MR. SILVIA: Yes, ma'am.

25 THE COURT: And that they could discover --

1 they could. It is possible that they could discover
2 information that would be beneficial to you on post-
3 conviction relief.

4 MR. SILVIA: Yes, ma'am.

5 THE COURT: Knowing that, do you want them to
6 stop all of their discovery?

7 MR. SILVIA: Yes, ma'am.

8 THE COURT: Now, are there any questions or any
9 areas of inquiry that the State would like for the
10 Court to pursue?

11 MS. VALENTINI: Not myself, Your Honor.
12 Mr. Nunnelley may have some.

13 THE COURT: Mr. Nunnelley.

14 MR. NUNNELLEY: Yes, ma'am. A couple of
15 things, Judge. You might want to -- you might want
16 to make sure that there's been no offer or hope of
17 reward or other kind of inducement. I'm sure
18 there's not, but --

19 THE COURT: Yes, I will make that inquiry.

20 MR. NUNNELLEY: Okay.

21 THE COURT: Anything else?

22 MR. NUNNELLEY: Just that he understands that
23 this is -- that Mr. Silvia understands that if he
24 does this, this ends the review of his conviction in
25 that sense for all time.

1 THE COURT: That is exactly what I'm trying to
2 make sure he does understand it. Mr. Silvia, do you
3 understand that?

4 MR. SILVIA: Yes, ma'am.

5 THE COURT: Okay. Mr. Silvia, I do need to
6 inquire of you to make sure that there has been no
7 one, including your lawyers in this case, that have
8 offered you anything to make you present yourself
9 here today and take this position. Has anybody
10 offered you anything?

11 MR. SILVIA: No, ma'am.

12 THE COURT: Has anybody promised you anything?

13 MR. SILVIA: No, ma'am.

14 THE COURT: Has anybody forced you or coerced
15 you to waive your right to post-conviction relief?

16 MR. SILVIA: No, ma'am.

17 THE COURT: Has anybody in any way at all,
18 including your lawyers, threatened you to waive your
19 right to post-conviction relief?

20 MR. SILVIA: No, ma'am.

21 THE COURT: Nobody at all has interfered with
22 your decision that you're making here today?

23 MR. SILVIA: No, ma'am.

24 MR. KILEY: Your Honor, except trying to
25 dissuade him from doing this, but that's the only

1 interference we did.

2 THE COURT: Is there somebody that has,
3 including your lawyers, that have persuaded you from
4 waiving your right to post-conviction relief?

5 MR. SILVIA: No, ma'am.

6 THE COURT: Have you made this decision on your
7 own?

8 MR. SILVIA: Yes, ma'am.

9 THE COURT: Have you relied upon, though,
10 counsel in making this decision? After talking to
11 counsel, have you factored in what they've said to
12 you in making this decision?

13 MR. SILVIA: Yes, ma'am. Yes.

14 THE COURT: So it would be correct for me to
15 conclude that no one, including your lawyers, have
16 forced you, threatened you or coerced you in regards
17 to your decision here today?

18 MR. SILVIA: No, ma'am.

19 THE COURT: Would it be correct for this Court
20 to conclude that you have freely made this decision?

21 MR. SILVIA: Yes, ma'am.

22 THE COURT: And is it -- and that it is a
23 voluntary decision on your behalf?

24 MR. SILVIA: Yes, ma'am.

25 THE COURT: And do you think that it is a

1 decision that's being made after knowing the
2 permanency of your decision?

3 MR. SILVIA: Yes, ma'am.

4 THE COURT: Do you need any more time to talk
5 to your lawyers?

6 MR. SILVIA: No, ma'am.

7 THE COURT: Is there anything in your
8 relationship with your lawyers -- for instance, have
9 you had lawyers come to talk to you that you don't
10 feel that you've had an opportunity -- that you're
11 able to communicate with them?

12 MR. SILVIA: No, ma'am.

13 THE COURT: Is it -- are the attorneys that are
14 representing you -- let me rephrase that.

15 Are you making this decision because you don't
16 like or have confidence in the attorneys that have
17 been appointed to represent you?

18 MR. SILVIA: No, ma'am.

19 THE COURT: Are you satisfied with the legal
20 services that they have provided you to date?

21 MR. SILVIA: Yes, ma'am.

22 THE COURT: So it's not because of your lack of
23 confidence in these attorneys that you're making
24 this decision?

25 MR. SILVIA: No, ma'am.

1 THE COURT: Attorney Nunnelley, any other lines
2 of inquiry?

3 MR. NUNNELLEY: No, ma'am. I think we've
4 covered it.

5 THE COURT: Mr. Silvia, is there anything that
6 you're basing your decision on that I've not
7 inquired about today?

8 MR. SILVIA: No, ma'am.

9 THE COURT: Did you form this decision
10 originally in June of 2011? Is that when you
11 originally decided you did not want to
12 participate --

13 MR. SILVIA: Yes, ma'am.

14 THE COURT: -- in post-conviction relief
15 proceedings?

16 MR. SILVIA: Yes, ma'am.

17 THE COURT: And then why is it that you sent me
18 the letter later on saying that you were retracting
19 that decision?

20 MR. SILVIA: Because of the conversation I had
21 with the counsel.

22 THE COURT: Okay. So you met with them and
23 then you did change your mind?

24 MR. SILVIA: Yes, ma'am.

25 THE COURT: Okay. What was it that caused you

1 to change your mind back to not wanting to
2 participate in post-conviction relief?

3 MR. SILVIA: Because I didn't -- even though
4 they asked me to allow them to try, I still didn't
5 really want them to. I just wanted to go along with
6 what they wanted to do.

7 THE COURT: So is it a true statement that
8 since you sent me the original letter in June of
9 2011 you've really not changed your mind?

10 MR. SILVIA: Yes, ma'am.

11 THE COURT: Were you, for lack of a better
12 word, accommodating them because they came to see
13 you?

14 MR. SILVIA: Yes, ma'am.

15 THE COURT: But you have been pretty firm and
16 fixed in your decision for at this point one year,
17 correct?

18 MR. SILVIA: Yes, ma'am.

19 THE COURT: During this one-year period have
20 you ever, you, yourself, decided I do want to
21 proceed with --

22 MR. SILVIA: No, ma'am.

23 THE COURT: You have not?

24 MR. SILVIA: No.

25 THE COURT: Okay. Then I do have -- I'm

1 looking for the -- I'm going to use the November
2 14th, 2011 letter that I did receive from Mr. Silvia
3 where he is giving up, waiving his right to any and
4 all post-conviction appeals as a -- treat it as a
5 motion. I'm assuming that's what -- Mr. Silvia, did
6 you want the Court to move forward on your letter
7 that you did send to me back in November?

8 MR. SILVIA: Yes, ma'am.

9 THE COURT: And did you want me to treat this
10 letter as a motion to discharge your attorneys and
11 to dismiss post-conviction proceedings?

12 MR. SILVIA: Yes, ma'am.

13 THE COURT: Now, you didn't, obviously, style
14 it as a motion, but is that -- is that what your
15 intent was?

16 MR. SILVIA: Yes, ma'am.

17 THE COURT: And is there any objection to the
18 Court doing that or do the attorneys think that the
19 Court should allow this to be put in a formal,
20 written motion?

21 MR. KILEY: Judge, this has never happened to
22 me before. I think the Court ruling and we would
23 send the Court a formal order discharging us and
24 having him waive his appeals would suffice, Your
25 Honor.

1 THE COURT: So you're comfortable with the
2 Court moving forward with this letter, treating it
3 as a motion?

4 MR. KILEY: Yes, I am, Judge.

5 THE COURT: And, Attorney Nunnelley, are you
6 also?

7 MR. NUNNELLEY: Yes, ma'am. I think it
8 satisfies the spirit and intent of 3.851(i).

9 THE COURT: Yes. Which does seem to -- when
10 you look at 3.851(i), it does appear that the Court
11 would always be looking at a motion and a written
12 motion at that. That's why I was wondering if we
13 should allow an opportunity for a written, formal,
14 written motion to be filed, or if I should just
15 proceed forward with the written letter from
16 Mr. Silvia.

17 MR. KILEY: Or the Court could incorporate our
18 motion to determine counsel as -- you know, the
19 Court could make a pronouncement that we are no
20 longer counsel for Mr. Silvia and incorporate
21 both.

22 THE COURT: The most important issue, of
23 course, being before this Court is dismissal of the
24 post-conviction proceedings. So that's why I'm
25 looking at the motion really to -- just, you know,

1 considering this as a motion to dismiss, which
2 brings along the attendant discharge of counsel.
3 I'm focusing on the motion to dismiss proceedings.

4 MR. KILEY: Very well, Your Honor.

5 THE COURT: Mr. Silvia, then do you want the
6 Court -- you do want -- I don't want to state this
7 any other way. Do you want the Court to treat your
8 letter dated November 14th, 2011 as a motion to
9 dismiss post-conviction proceedings under the law?

10 MR. SILVIA: Yes, ma'am.

11 THE COURT: The Court will -- in light of where
12 we find ourselves then, the Court will treat this
13 letter as a motion to dismiss post-conviction
14 proceedings. And any other lines of inquiry that --
15 from the office of -- from your office, sir?

16 MR. KILEY: No, Your Honor. I have nothing
17 further.

18 THE COURT: No. And, Attorney Nunnelley, any
19 other lines of inquiry that you think would be
20 appropriate at this point in time?

21 MR. NUNNELLEY: No, ma'am, I do not.

22 THE COURT: Okay. This Court then having
23 considered the testimony of Mr. Silvia does
24 determine and make the finding that he has made a
25 firm and fixed decision to dismiss any and all post-

1 conviction proceedings and to discharge collateral
2 counsel and make a finding that he has knowingly,
3 freely and voluntarily made the decision to dismiss
4 post-conviction proceedings, and the Court will at
5 this point in time enter an order. I do grant his
6 motion to dismiss post-conviction proceedings. And
7 I am going to upon -- I need to write, obviously, a
8 written order, and then we have some post-order work
9 that needs to be done. I think it's a little
10 premature to discharge your office. Under the rule
11 I think you're going to need to wait at least...

12 MR. KILEY: Does --

13 THE COURT: He's got -- maybe I can discharge,
14 because it says discharged counsel shall within ten
15 days after issuance of the order --

16 MR. KILEY: Very well, Your Honor.

17 THE COURT: -- file with the clerk. You have
18 some work to do, obviously, still pursuant to the
19 rule.

20 MR. KILEY: Well, Your Honor, since we are
21 going to be discharged and Mr. Silvia is waiving his
22 rights to post-conviction review, I am reluctant to
23 engage any more experts or do any more investigation
24 on this case.

25 THE COURT: The Court does then in light of the

1 evidence before the Court and the findings of the
2 Court grant the motion to dismiss post-conviction
3 proceedings and discharge counsel --

4 MR. KILEY: Very well, Your Honor, and --

5 THE COURT: -- for Mr. Silvia.

6 MR. KILEY: Is the Court going to have a
7 written order or shall we just -- I'm prepared to go
8 back to my office, get a purchase order, have this
9 transcript written up, placed into the court file on
10 file.

11 THE COURT: Yes. We need to have the
12 transcript filed, correct?

13 MR. NUNNELLEY: Yes, Your Honor, under sub
14 eight.

15 THE COURT: 20 days from the signing of the
16 order. Let's see. Discharged counsel -- I'm
17 looking at the rule right now -- shall within ten
18 days after issuance of the order file with the clerk
19 of the circuit court two copies of the notice
20 seeking review in the Supreme Court of Florida and
21 shall within 20 days after filing of the transcript
22 serve an initial brief. So you still have some
23 matters to attend to. So the Court will -- at this
24 point in time I'll issue the order.

25 MR. KILEY: Very well, Your Honor.

1 THE COURT: Anything further from you, sir?

2 MR. KILEY: No, Your Honor.

3 THE COURT: Mr. Silvia, anything further?

4 MR. SILVIA: No, ma'am, except thank you,
5 ma'am.

6 THE COURT: And anything further from Attorney
7 Nunnelley?

8 MR. NUNNELLEY: No, ma'am.

9 THE COURT: This concludes this proceeding.

10 (Whereupon, the foregoing proceedings were
11 terminated at 11:50 a.m.)
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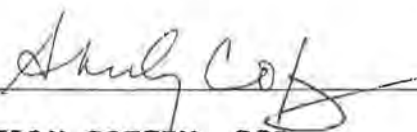
1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA)
4 COUNTY OF SEMINOLE)
5
6

7 I, SHELLY COFFEY, Registered Professional
8 Reporter, certify that I was authorized to and did
9 stenographically report the foregoing proceedings and
10 that the transcript is a true and complete record of my
11 stenographic notes.

12 I FURTHER CERTIFY that I am not a relative,
13 employee, attorney, or counsel of any of the parties, nor
14 am I a relative or employee of any of the parties'
15 attorney or counsel connected with the action, nor am I
16 financially interested in the action.

17
18 Dated this the 12th day of October, 2012.
19
20

21 
22 _____
23 SHELLY COFFEY, RPR
24
25

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO: 2006-CF-4522-A

STATE OF FLORIDA,
Plaintiff,
v.

WILLIAM FRANCES SILVIA, JR.,
Defendant.

FILED IN OFFICE
MARVINE MORSE
CLERK CIRCUIT COURT
12 JUL -2 PM 2:16
BY SEMINOLE CO. FL. D.C.

**ORDER DISMISSING POSTCONVICTION PROCEEDINGS
and DISCHARGING CAPITAL COLLATERAL REGIONAL COUNSEL**

THIS CAUSE, having come before the Court for hearing on June 26, 2012, pursuant to Fla. R. Crim. P. 3.851(i), on the Motion to Determine Counsel, filed on behalf of the Defendant, William Silvia, by Collateral Counsel and the Defendant's pro se motion filed on November 22, 2011, requesting that pending postconviction proceeding be dismissed and that Collateral Counsel be discharged, and the Court having made inquiry of the Defendant and having heard arguments by counsel for the State, Collateral Counsel, and the Defendant finds as follows:

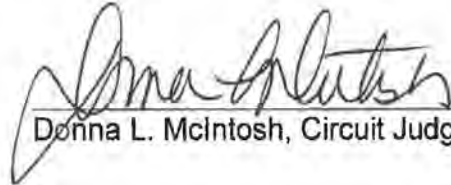
1. There are no reasonable grounds to believe that the Defendant is not mentally competent to proceed for the purposes of this hearing.
2. After conducting an inquiry of the Defendant, the Court determines that William Frances Silvia, Jr. has made the decision to dismiss pending postconviction proceedings and discharge Collateral Counsel knowingly, freely and voluntarily.
3. Upon agreement with the Defendant, Collateral Counsel and State, the Court allowed the Defendant's pro se motion filed on November 22, 2011, to be heard at the hearing on the Motion to Determine Counsel.

It is therefore,

ORDERED that all pending postconviction proceedings in the above styled cause are hereby dismissed and the Office of Capital Collateral Regional Counsel is discharged from further representation of the Defendant.

IT IS FURTHER ORDERED that the Clerk of the Court shall forward copies of the Defendant's pro se motion filed on November 22, 2011, this order, and the transcript of the hearing conducted on June 26, 2012, on the motion, to the Clerk of the Supreme Court of Florida within 30 days of the date of this order.

DONE AND ORDRED this 29~~th~~ day of July, 2012, in Sanford, Seminole County, Florida.


Donna L. McIntosh, Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to:

Kenneth Nunnelley
Assistant Attorney General
Office of the Attorney General
444 Seabreeze Boulevard, Fifth Floor
Daytona Beach, FL 32118

Anna Valentini
Assistant State Attorney
101 Bush Blvd.
Sanford, FL 32773

Richard E. Kiley

Assistant CCC

James Viggiano

Assistant CCC

Ali Andrew Shakoor

Capital Collateral Regional

Counsel-Middle Region

3801 Corporex Park Drive, Suite 210

Tampa, FL 33619

The Honorable Thomas D. Hall

Clerk, Supreme Court of Florida

Supreme Court Building

500 South Duval Street

Tallahassee, FL 32399-1927

William Silvia

DOC #512579

Union Correctional Institution

7819 N.W. 228th Street

Raiford, FL 32026-1000

this 2nd day of July, 2012.


Judicial Assistant

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO: 2006-CF-4522-A

STATE OF FLORIDA,
Plaintiff,
v.

WILLIAM FRANCES SILVIA, JR.,
Defendant.

CORRECTED*
ORDER DISMISSING POSTCONVICTION PROCEEDINGS
and DISCHARGING CAPITAL COLLATERAL REGIONAL COUNSEL

THIS CAUSE, having come before the Court for hearing on June 26, 2012, pursuant to Fla. R. Crim. P. 3.851(i), on the Motion to Determine Counsel, filed on behalf of the Defendant, William Silvia, by Collateral Counsel and the Defendant's pro se motion filed on November 22, 2011, requesting that pending postconviction proceeding be dismissed and that Collateral Counsel be discharged, and the Court having made inquiry of the Defendant and having heard arguments by counsel for the State, Collateral Counsel, and the Defendant finds as follows:

1. There are no reasonable grounds to believe that the Defendant is not mentally competent to proceed for the purposes of this hearing.
2. After conducting an inquiry of the Defendant, the Court determines that William Frances Silvia, Jr. has made the decision to dismiss pending postconviction proceedings and discharge Collateral Counsel knowingly, freely and voluntarily.

***Corrected as to date of entry only.**

FILED IN OFFICE
MARYANNE MORSE
CLERK CIRCUIT COURT
12 JUL 13 AM 10:53
SEMINOLE CO. FL
BY

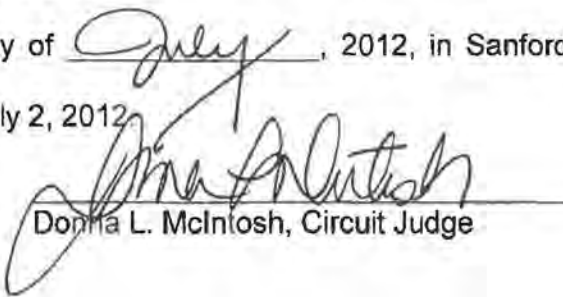
3. Upon agreement with the Defendant, Collateral Counsel and State, the Court allowed the Defendant's pro se motion filed on November 22, 2011, to be heard at the hearing on the Motion to Determine Counsel.

It is therefore,

ORDERED that all pending postconviction proceedings in the above styled cause are hereby dismissed and the Office of Capital Collateral Regional Counsel is discharged from further representation of the Defendant.

IT IS FURTHER ORDERED that the Clerk of the Court shall forward copies of the Defendant's pro se motion filed on November 22, 2011, this order, and the transcript of the hearing conducted on June 26, 2012, on the motion, to the Clerk of the Supreme Court of Florida within 30 days of the date of this order.

DONE AND ORDERED this 12th day of July, 2012, in Sanford, Seminole County, Florida, nunc pro tunc to July 2, 2012.


Donna L. McIntosh, Circuit Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to:

Kenneth Nunnelley
Assistant Attorney General
Office of the Attorney General
444 Seabreeze Boulevard, Fifth Floor
Daytona Beach, FL 32118

Anna Valentini

Assistant State Attorney
101 Bush Blvd.
Sanford, FL 32773

Richard E. Kiley

Assistant CCC

James Viggiano

Assistant CCC

Ali Andrew Shakoor

Capital Collateral Regional
Counsel-Middle Region
3801 Corporex Park Drive, Suite 210
Tampa, FL 33619

The Honorable Thomas D. Hall

Clerk, Supreme Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399-1927

William Silvia

DOC #512579
Union Correctional Institution
7819 N.W. 228th Street
Raiford, FL 32026-1000

this 12th day of July, 2012.


Judicial Assistant

Supreme Court of Florida

WEDNESDAY, SEPTEMBER 11, 2013

CASE NO.: SC12-1863

Lower Tribunal No(s): 2006-CF-4522-A

WILLIAM FRANCES SILVIA

vs. STATE OF FLORIDA

Appellant(s)

Appellee(s)

William Frances Silvia, a prisoner under sentence of death, has waived his postconviction proceedings and counsel. After conducting a hearing and the required colloquy on June 26, 2012, the trial court entered an order finding that there were no reasonable grounds to believe that Silvia was not mentally competent for purposes of the hearing and that Silvia's waiver was knowing, intelligent, and voluntary. The trial court accordingly dismissed Silvia's postconviction proceedings and discharged Silvia's counsel. Pursuant to Florida Rule of Criminal 3.851(i), discharged counsel has appealed that order to this Court.

Competency

Discharged counsel does not raise Silvia's competency as an issue in this case. Silvia's counsel represented to the trial court at the hearing that he could not in good faith argue that Silvia was incompetent. The trial court in its order determined that there were "no reasonable grounds to believe that [Silvia] is not mentally competent to proceed for the purposes this hearing." See Fla. R. Crim. P. 3.851(i)(4). On appeal, although discharged counsel argues that Silvia has mental health problems that would form the basis for postconviction claims, discharged counsel does not argue that the trial court erred in its finding or that there are questions as to Silvia's competency. We conclude that the trial court did not abuse its discretion in finding that there were no reasonable grounds to believe that Silvia was incompetent for purposes of waiving his postconviction counsel and proceedings.

Waiver

This Court has explained that "capital defendants who are competent can waive postconviction counsel and postconviction proceedings, reasoning '[i]f the right to representation can be waived at trial, we see no reason why the statutory

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CLERK OF THE SUPREME COURT
SEMINOLE COUNTY, FL
MAYANNE MORSE

right to collateral counsel cannot also be waived.' This Court explained that it 'cannot deny [a death row inmate] his right to control his destiny to whatever extent remains.' " Trease v. State, 41 So. 3d 119, 123 (Fla. 2010) (quoting Durocher v. Singletary, 623 So. 2d 482, 484 (Fla. 1993)). However, this Court has also explained that under such circumstances, an inquiry is required to ensure that the waiver is knowing, intelligent, and voluntary. Trease, 41 So. 3d at 123. That procedure was since codified in Florida Rule of Criminal Procedure 3.851(i).

The transcript of the hearing in this case reflects that, as required by Florida Rule of Criminal Procedure 3.851(i)(3)-(4), the trial court held a hearing and conducted an inquiry of Silvia, eliciting that Silvia was not under the influence of any medicines, drugs, or alcohol. The transcript reflects that Silvia understood the consequences of waiving postconviction counsel and proceedings, and he understood that his right to pursue postconviction proceedings would be forever lost. The transcript further reflects that Silvia understood that if the court granted his request to discharge his attorneys and waive postconviction proceedings, he would become warrant-eligible-that is, the governor could sign a warrant for his execution. Silvia also indicated that he understood that his waiver of postconviction proceedings was permanent and that he could not change his mind in the future.

In addition, Silvia indicated that he understood that by waiving postconviction proceedings early in the process-before a motion was filed-he was losing permanently his right to take advantage of any changes that may occur in the law, that he was waiving his right to federal review, and that because his attorneys had not yet completed their discovery, it was unknown what issues could be raised.

Silvia acknowledged that he understood everything his attorneys had done to date and that his attorneys could discover information that would be beneficial to him in postconviction. Silvia indicated that he understood that the issues in his case were not fully developed, that his attorneys could not proceed further in their investigation without his cooperation, and that his attorneys could discover information that would be beneficial to him. He nevertheless indicated that he did not wish his attorneys to proceed with any further discovery and that he was voluntarily waiving his postconviction counsel and proceedings.

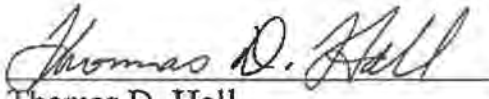
CASE NO. SC12-1863
PAGE THREE

On the basis of this record, we conclude that the trial court did not abuse its discretion in discharging Silvia's postconviction counsel and dismissing postconviction proceedings. Accordingly, we affirm the trial court's order.

It is so ordered.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

A True Copy
Test:


Thomas D. Hall
Clerk, Supreme Court



tw
Served:

HON. NORMAN ROBERT WOLFINGER
RICHARD EDWARD KILEY
ALI ANDREW SHAKOOR
WILLIAM FRANCES SILVIA
JAMES VINCENT VIGGIANO, JR.
KENNETH SLOAN NUNNELLEY
HON. MARYANNE MORSE, CLERK
HON. DONNA L. SURRATT-MCINTOSH, JUDGE

Exhibit “7”

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. 2006-CF-4522-A

Plaintiff,

v.

WILLIAM SILVIA,

Defendant.

SUCCESSIVE MOTION TO VACATE DEATH SENTENCE

Defendant, WILLIAM SILVIA, by and through undersigned counsel, files this second successive motion to vacate under Fla. R. Crim. P. 3.851. This motion is filed in light of a change in Florida law following the decisions in *Hurst v. Florida*, 136 S. Ct. 616 (2016), the enactment of Chapter 2016-13 on March 7, 2016 and the Florida Supreme Court opinions in *Hurst v. State*, No. SC12-1947 (Fla. Oct. 14, 2016) and *Perry v. State*, No. SC16-547 (Fla. Oct. 14, 2016).

(A) JUDGMENT AND SENTENCE UNDER ATTACK:

On October 24, 2006, a grand jury in and for Seminole County returned a two count Indictment for: COUNT 1 First Degree premeditated murder of Patricia Ann Silvia. COUNT 2: Attempted first degree premeditated murder of Betty MacIntyre Woodard. (FSC ROA Vol. I p. 4-5). Guilt phase took place from June 2 to 6, 2008.

The penalty phase was held July 17-21, 2008. The penalty phase jury recommended death by a vote of **11 to 1**. (FSC ROA Vol. III p.486). The trial court issued a sentencing order on January 28, 2009. (FSC ROA Vol. III p. 565-584). A timely appeal was filed and the Florida Supreme Court affirmed the judgment and sentences. See *Silvia v. State*, 60 So.3d 959 (Fl. 2011). A Mandate was returned on May 20, 2011, CCRC-M was appointed on the same date. A motion to determine counsel was heard on June 26, 2012. Collateral counsel was discharged and filed a

timely notice of seeking review. Transcription of the June 26th 2012 hearing discharging counsel was ordered on October 16, 2012. The postconviction record was received by discharged counsel on October 25th, 2012. Discharged counsel filed a brief pursuant to Fla. R. Crim. P. 3.851 (I) (8) (B) on November 20, 2012. The Florida Supreme Court denied relief on March 18, 2013.

The Court found the following Aggravators:

- (1) The court found that Silvia's contemporaneous conviction for attempted murder for the shooting of Betty Woodard established the prior violent felony aggravator.
- (2) The court found that Silvia created a great risk of death to many persons.
- (3) The court found that the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification ("CCP").

The Court found the following Mitigators:

The trial court did not find any statutory mitigating circumstances, but found several nonstatutory mitigating circumstances:

- (1) emotional distress from loss of job and wife (little weight);
- (2) impaired ability to conform conduct due to chronic personality disorder not otherwise specified and chronic alcohol dependence (moderate weight);
- (3) chronic personality disorder not otherwise specified with paranoid, antisocial, and schizoid features and alcohol dependence (moderate weight);
- (4) chronic alcohol dependence (moderate weight);
- (5) diagnosis as a teenager with "schizoid" or "schizophreniform" disorder (little weight); and
- (6) dysfunctional family setting when growing up with domestic violence (little weight).

On direct appeal, Silvia raised claims concerning how the trial court erred in ruling on several matters:

- (1) the trial court erred in finding CCP;
- (2) the trial court erred in finding that Silvia knowingly created a great risk of death to many persons;
- (3) his death sentence is not proportionate;
- (4) the prosecutor's repeated improper and inflammatory elicitation of irrelevant evidence tainted the penalty phase;

- (5) reversible error occurred when the trial court permitted improper victim impact evidence; and
- (6) Florida's death sentencing scheme is unconstitutional under the Sixth Amendment pursuant to *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002).

The judgment and sentence for first degree murder in this case were affirmed on appeal by the Florida Supreme Court on April 7, 2011. *Silvia v. State*, 60 So.3d 959 (Fla. 2011).

(B) PREVIOUS POST-CONVICTION CLAIMS AND DISPOSITION

Mr. Silvia waived his initial postconviction proceedings on June 26, 2012. However, Mr. Silvia intends to exert his right to pursue postconviction relief based on the holding in *Hurst v. Florida*, 136 S. Ct. 616 (2016) and its progeny.

(C) NATURE OF RELIEF SOUGHT

- 1. Silvia respectfully requests that he be granted leave to amend as necessary.
- 2. Silvia requests that this Court vacate his death sentences.
- 3. Any other relief that this Court may find appropriate.

(D) REASON CLAIMS RAISED IN PRESENT MOTION WERE NOT RAISED IN FORMER MOTION

On January 12, 2016, *Hurst v. Florida*, 136 S. Ct. 616 (2016), issued. It declared Florida's capital sentencing scheme unconstitutional. On March 7, 2016, Chapter 2016-13 was enacted. It was the legislature's effort to rewrite § 921.141 in the wake of *Hurst* to cure the constitutional deficiencies. It was intended to apply in any trial, penalty phase, retrial or resentencing conducted in Florida, even when the homicide at issue had occurred prior to March 7, 2016. The revised sentencing statute provided that when 3 or more jurors voted in favor of a life sentence, the judge could not impose a death sentence. For a death recommendation to be returned, 10 jurors must have voted in favor of a death sentence.

On October 14, 2016, the Florida Supreme Court issued its decision in *Perry v. State*, No.

SC16-547 (Fla. Oct. 14, 2016), and declared the 10-2 provision contained in Chapter 2016-13 to be unconstitutional under *Hurst v. Florida*. In *Perry*, the Florida Supreme Court concluded that the Sixth and the Eighth Amendment required a unanimous jury verdict recommending a death sentence before one could be imposed. Accordingly, the jury must unanimously find that sufficient aggravators existed to justify a death sentence and that the aggravators outweighed the mitigating factors that were present in the case. Finally, if a unanimous death recommendation is not returned, a death sentence cannot be imposed. Thus, a life sentence is mandated if one or more jurors vote in favor of a life sentence due to a desire to be merciful even if the jury unanimously determined that sufficient aggravators existed and that they outweighed the mitigators that were present. *Perry v. State*, Slip Op. at 20, (quoting *Hurst v. State*, __So. 3d __, 2016 WL 6036978 at *15) (Fla. October 14, 2016)¹ (“the penalty phase jury must be **unanimous in making the critical findings and recommendation** that are necessary **before a sentence of death may be considered by the judge or imposed.**”) (Emphasis added). See also *Hurst v. State*, No. SC12-1947 (Fla. Oct. 14, 2016). On the basis of the new Florida law arising from *Hurst v. Florida*, the enactment of Chapter 2016-13, *Perry v. State*, and *Hurst v. State*, Silvia files this motion to vacate and presents his claims for relief arising from the resulting new Florida law.

Timeliness

This motion is filed within one year of the issuance of *Hurst v. Florida*, the enactment of Chapter 2016-13, the issuance of *Perry v. State*, and the issuance of *Hurst v. State*, all of which established new Florida law. The claims presented herein could not have been presented before the change in Florida law that these cases and statutory amendment brought about. The claims

¹ The opinion in *Hurst v. State* also issued on October 14, 2016, simultaneous with the release of the opinion in *Perry v. State*.

were simply not ripe before because the basis for the Defendant's claims did not exist before the change in Florida law resulting from *Hurst v. Florida*, the enactment of Chapter 2016-13, the issuance of *Perry v. State*, and the issuance of *Hurst v. State*. Accordingly, this motion is timely.

Retroactivity

Mr. Silvia was sentenced to death based on a statute that was actually rendered unconstitutional pursuant to *Ring*. Defendant's sentences became final after the United States Supreme Court issued its decision in *Ring*. Pursuant to *Mosley v. State*, No. SC14-436 (Fla. Dec. 22, 2016) at *45-62, the Supreme Court's decision in *Hurst v. Florida*, and the Florida Supreme Court decisions following *Hurst*, are retroactive and apply to this case.

**(E) CLAIMS NOT REQUIRING AN EVIDENTIARY HEARING UNLESS
FOUND NECESSARY BY THE FLORIDA SUPREME COURT**

The claim and sub-claims that follow come before this Court with a complete trial record and a complete postconviction record. Both records are more than sufficient for this Court to render a decision that is right and follows the United States and Florida Constitutions.

All factual allegations contained within this motion and set forth in the Defendant's previous motions, and all evidence presented by him during the previously conducted evidentiary hearing on the previously presented motion to vacate are incorporated herein and may apply to all the claims.

CLAIM 1

**IN LIGHT OF *HURST*, DEFENDANT'S DEATH SENTENCE VIOLATES
THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS OF
THE UNITED STATES CONSTITUTION, THE CORRESPONDING
PROVISIONS OF THE FLORIDA CONSTITUTION.**

This claim is evidence by the following:

1. The Sixth Amendment right enunciated in *Hurst v. Florida*, and found applicable

to Florida's capital sentencing scheme, guarantees that all facts that are statutorily necessary before a judge is authorized to impose a sentence of death are to be found by a jury, pursuant to the capital defendant's constitutional right to a jury trial. *Hurst v. Florida* held that "Florida's capital sentencing scheme violates the Sixth Amendment . . ." It invalidated Fla. Stat. §§ 921.141(2) and (3) as unconstitutional. Under those provisions, a defendant who has had been convicted of a capital felony could be sentenced to death only after the sentencing judge entered written fact findings that: 1) sufficient aggravating circumstances existed that justify the imposition a death sentence, and 2) insufficient mitigating circumstances existed to outweigh the aggravating circumstances. *Hurst*, 136 S. Ct. at 620-21. *Hurst v. Florida* found Florida's sentencing scheme unconstitutional because "Florida does not require the jury to make critical findings necessary to impose the death penalty," but rather, "requires a judge to find these facts." *Id.* at 622. On remand, the Florida Supreme Court held in *Hurst v. State* that *Hurst v. Florida* means "that before the trial judge may consider imposing a sentence of death, the jury in a capital case must unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that the aggravating factors are sufficient to impose death, unanimously find that the aggravating factors outweigh the mitigating circumstances, and unanimously recommend a sentence of death." *Hurst v. State*, 2016 WL 6036978 at *13.

2. The Sixth Amendment error under *Hurst v. Florida* cannot be proven by the State to be harmless beyond a reasonable doubt in Mr. Silvia's case. Mr. Silvia's death recommendation was not unanimous. The only document returned by the jury was an advisory recommendation that a death sentence should be imposed. Mr. Silvia's penalty phase jury did not return a verdict making any findings of fact, so we have no way of knowing what aggravators, if any, the jurors unanimously found were proven beyond a reasonable doubt, if the jurors unanimously found the

aggravators sufficient for death, or if the jurors unanimously found that the aggravating circumstances outweighed the mitigating circumstances. In *Hurst v. Florida*, the Supreme Court found:

Florida concedes that *Ring* required a jury to find every fact necessary to render Hurst eligible for the death penalty. But Florida argues that when Hurst's sentencing jury recommended a death sentence, it "necessarily included a finding of an aggravating circumstance."... The State fails to appreciate the central and singular role the judge plays under Florida law....The State cannot now treat the advisory recommendation by the jury as the necessary factual finding that *Ring* requires. *Id.* at 622. (Emphasis added).

In *Hurst v. State*, The Florida Court quoted the Supreme Court, "The Sixth Amendment protects a defendant's right to an impartial jury. This right required Florida to base Timothy Hurst's death sentence on a jury's verdict, not a judge's factfinding. Florida's sentencing scheme ... is therefore unconstitutional." The Florida Court went on to note, "In reaching these conclusions, the Supreme Court flatly rejected the State's contention that although '*Ring* required a jury to find every fact necessary to render Hurst eligible for a death penalty,' the jury's recommended sentence in Hurst's case necessarily included such findings. *Id.* at 622. (Emphasis added.)

3. In the wake of *Hurst v. Florida* and the resulting new Florida law, the jury under *Caldwell v. Mississippi*, 472 U.S. 320 (1985), must be correctly instructed as to its sentencing responsibility. This means that post-*Hurst*, the individual jurors must know that each will bear the responsibility for a death sentencing resulting in a defendant's execution since each juror possesses the power to require the imposition of a life sentence simply by voting against a death recommendation. See *Perry v. State*. As was explained in *Caldwell*, jurors must feel the weight of their sentencing responsibility if the defendant is ultimately executed after no juror exercised his

or her power to preclude a death sentence. In Mr. Silvia's case, the jury was not told that each individual juror carried responsibility for whether a death sentence was authorized or a life sentence was mandated. Moreover, Mr. Silvia did not receive a unanimous jury recommendation.

4. Further scrutiny must also be given to the mitigating evidence presented by the defense. While the sentencing judge downplayed the significance of the mitigating circumstances, the jurors under *Hurst* would have been free to conclude that the defense had established the existence of mitigating factors which were presented in Mr. Silvia's case and given them greater weight.

5. In *Hurst v. State*, the Florida Supreme Court stated that error under *Hurst v. Florida* "is harmless only if there is no reasonable possibility that the error contributed to the sentence." *Hurst*, No. SC12-1947 at 54. "[T]he harmless error test is to be rigorously applied, and the State bears an extremely heavy burden in cases involving constitutional error." *Id.* (internal citations and quotation marks omitted). Therefore, as to *Hurst* error, "the burden is on the State, as beneficiary of the error, to prove *beyond a reasonable doubt* that the jury's failure to unanimously find all the facts necessary for imposition of the death penalty did not contribute to [the defendant]'s death sentence in this case." *Id.* at 54-55 (emphasis added).

6. The *Hurst* error in Mr. Silvia's case warrants relief. The State simply cannot show the error to be harmless beyond a reasonable doubt that no properly instructed juror would have refused to vote in favor of a death recommendation. Unless it is proven beyond a reasonable doubt that no juror would have voted for a life sentence and through such a vote mandated that Mr. Silvia receive a life sentence, Mr. Silvia's death sentence must be vacated and a resentencing ordered. Because the State cannot meet its burden here, Rule 3.851 relief is required.

CLAIM 2

UNDER *HURST V. STATE*, DEFENDANT'S DEATH SENTENCE VIOLATES THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

This claim is evidence by the following:

1. In *Hurst v. State*, the Florida Supreme Court:

In addition to the requirements of unanimity that flow from the Sixth Amendment and from Florida's right to trial by jury, we conclude that juror unanimity in any recommended *verdict* resulting in a death sentence is required under the Eighth Amendment. (Emphasis added)...The foundational precept is the principle that death is different. This means that the penalty may not be arbitrarily imposed, but must be reserved only for defendants convicted of the most aggravated and least mitigated of murders. Accordingly, any capital sentencing law must adequately perform a narrowing function in order to ensure that the death penalty is not being arbitrarily or capriciously imposed. (FNs omitted) ... If death is to be imposed, unanimous jury sentencing recommendations, *when made in conjunction with the other critical findings unanimously found by the jury*, provide the highest degree of reliability in meeting these constitutional requirements in the capital sentencing process. (Emphasis added)

Mr. Silvia's sentence was not the product of unanimous jury findings. His sentence was the product of an arbitrary and capricious system that did not afford him the rights that the Eighth Amendment guarantees.

2. The Florida Court also ruled that on the basis of the Eighth Amendment and on the basis of the Florida Constitution, evolving standards of decency now require jury "unanimity in a recommendation of death in order for death to be considered and imposed". 2016 WL 6036978 at *17. Quoting the US Supreme Court, the Court in *Hurst* noted "that the 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'" 2016 WL 6036978at *17. Then from a review of the capital sentencing laws throughout the United States, the Court in *Hurst v. State* found that a national consensus reflecting society's evolving standards of decency was apparent:

The vast majority of capital sentencing laws enacted in this country provide the clearest and most reliable evidence that contemporary values demand a defendant not be put to death except upon the unanimous consent of the jurors who have deliberated upon all the evidence of aggravating factors and mitigating circumstances.

2016 WL 6036978 at *17. Accordingly, the Court in *Hurst v. State* concluded:

the United States and Florida Constitutions, as well as the administration of justice, are implemented by requiring unanimity in jury verdicts recommending death as a penalty before such a penalty may be imposed. 2016 WL 6036978 at *18.

3. What constitutes cruel and unusual punishment under the Eighth Amendment turns upon considerations of the “evolving standards of decency that mark the progress of a maturing society.” *Atkins v. Virginia*, 536 U.S. 304, 312 (2002).² “This is because ‘[t]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.’ *Furman v. Georgia*, 408 U.S. 238, 382 (1972) (Burger, C. J., dissenting).” *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008). According to *Hurst v. State*, the evolving standards of decency are reflected in a national consensus that a defendant can only be given a death sentence when a *properly instructed* penalty-phase jury has voted unanimously in favor of the imposition of death. The US Supreme Court has explained that the “near-uniform judgment of the Nation provides a useful guide in delimiting the line between those jury practices that are constitutionally permissible and those that are not.” *Burch v. Louisiana*, 441 U.S. 130, 138 (1979). The near-uniform judgment of the states is that only a defendant who a jury

² “The basic concept underlying the Eighth Amendment is nothing less than the dignity of man... The Amendment must draw its meaning from the evolving standards that mark the progress of a maturing society.” *Atkins*, 536 U.S. at 311-12 (internal quotation marks omitted).

unanimously concluded should be sentenced to death, can receive a death sentence. As a result, those defendants who have had one or more jurors vote in favor of a life sentence are not eligible to receive a death sentence. This class of defendants, those who have had jurors formally vote in favor a life sentence, cannot be executed under the Eighth Amendment.

4. Mr. Silvia is within the protected class. Mr. Silvia did not receive the benefit of a penalty phase jury verdict. His case was only heard by an advisory panel and the verdict was rendered by a judge. Moreover, he did not receive a unanimous jury recommendation. Under the Eighth Amendment, his execution would thus constitute cruel and unusual punishment. His death sentences must accordingly be vacated.

5. Under *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), the Florida Supreme Court's ruling in *Hurst v. State* must be applied retroactively. Under *Witt v. State*, the Florida Supreme Court's decision in *Hurst v. State* must be applied retroactively. It is not constitutionally permissible to execute a defendant who is within a class that society's evolving standards of decency has concluded to be ineligible for death sentences.

6. Because jurors at Mr. Silvia's trial formally voted against the imposition of a death sentence, his sentences of death stand in violation of the Eighth Amendment and the Florida Constitution. Rule 3.851 relief must issue and Mr. Silvia's death sentences must be vacated and life sentences substituted.

CLAIM 3

IN LIGHT OF *HURST, PERRY V. STATE* AND *HURST V. STATE*, DEFENDANT'S DEATH SENTENCE VIOLATES THE FLORIDA CONSTITUTION, INCLUDING ARTICLE I, SECTIONS 15 AND 16, AS WELL AS FLORIDA'S HISTORY OF REQUIRING A UNANIMOUS JURY VERDICT.

On remand the Florida Supreme Court applied the Supreme Court's decision in *Hurst* in

light of the Florida Constitution and held:

As we will explain, we hold that the Supreme Court's decision in *Hurst v. Florida* requires that all the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury. We reach this holding based on the mandate of *Hurst v. Florida* and on Florida's constitutional right to jury trial, considered in conjunction with our precedent concerning the requirement of jury unanimity as to the elements of a criminal offense. In capital cases in Florida, these specific findings required to be made by the jury include the existence of each aggravating factor that has been proven beyond a reasonable doubt, the finding that the aggravating factors are sufficient, and the finding that the aggravating factors outweigh the mitigating circumstances. We also hold, based on Florida's requirement for unanimity in jury verdicts, and under the Eighth Amendment to the United States Constitution, that in order for the trial court to impose a sentence of death, the jury's recommended sentence of death must be unanimous.

Hurst v. State, No. SC12-1947, 2016 WL 6036978, at *2 (Fla. Oct. 14, 2016). In *Perry v. State*, the Florida Supreme Court found Florida's post-Hurst revision of the death penalty statute was unconstitutional after reviewing the statute in light of the its opinion in *Hurst*. The Florida Supreme held,

that as a result of the longstanding adherence to unanimity in criminal jury trials in Florida, the right to a jury trial set forth in article I, section 22 of the Florida Constitution requires that in cases in which the penalty phase jury is not waived, the findings necessary to increase the penalty from a mandatory life sentence to death must be found beyond a reasonable doubt by a unanimous jury.⁴ *Hurst*, SC12-1947, slip op. at 4. Those findings specifically include unanimity as to all aggravating factors to be considered, unanimity that sufficient aggravating factors exist for the imposition of the death penalty, unanimity that the aggravating factors outweigh the mitigating circumstances, and unanimity in the final

jury recommendation for death.

Id. at 23-24, 36. Thus, the new statute was unconstitutional.

Mr. Silvia has a number of rights under the Florida Constitution that are at least coterminous with the United States Constitution, and possibly more extensive. This Court should also vacate Mr. Silvia' death sentences based on the Florida Constitution. Article I, Section 15(a) provides:

(a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.

Article I, Section 16(a) provides in relevant part:

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges . . .

In *Hurst*, the United States Supreme Court applied *Ring* to Florida's system and held that a jury must find any fact that subjects an individual to a greater penalty. Prior to *Apprendi*, *Ring*, and *Hurst*, the United States Supreme Court addressed a similar question in a federal prosecution and held that: "elements must be charged in the indictment, submitted to a jury, and proven by the Government beyond a reasonable doubt" *Jones v. United States*, 526 U.S. 227, 232, 119 S. Ct. 1215, 1219 (1999). Because the State proceeded against Mr. Silvia under an unconstitutional system, the State never presented the aggravating factors of elements for the Grand Jury to consider in determining whether to indict Mr. Silvia. A proper indictment would require that the Grand Jury find that there were sufficient aggravating factors. Mr. Silvia was denied his right to a proper Grand Jury Indictment. Additionally, because the State was proceeding under an unconstitutional

death penalty scheme, Mr. Silvia was never formally informed of the full "nature and cause of the accusation" because the aggravating factors were not found by the Grand Jury and contained in the indictment.

In addition to United States Constitution's requirement that Mr. Silvia' death sentences be vacated, this Court should also vacate Mr. Silvia' death sentences because his death sentences were obtained in violation of the Florida Constitution.

CLAIM 4

THE DECISIONS IN *HURST V. STATE* AND *PERRY V. STATE* ARE NEW LAW THAT WOULD GOVERN AT A RESENTENCING AND MUST ALSO BE CONSIDERED WITH PREVIOUSLY RAISED POSTCONVICTION CLAIMS. THE NEW LAW, DUE PROCESS PRINCIPLES, AND THE EIGHTH AMENDMENT ALL REQUIRE THIS COURT TO REVISIT MR. SILVIA'S PREVIOUSLY PRESENTED CLAIMS AND DETERMINE WHETHER THE EVIDENCE PRESENTED TO SUPPORT EACH CLAIM AND ALL THE OTHER ADMISSIBLE EVIDENCE AT A FUTURE RESENTENCING WOULD PROBABLY RESULT IN A LIFE SENTENCE IN LIGHT OF THE NEW LAW THAT WOULD GOVERN AT A RESENTENCING.

This claim is evidence by the following:

1. On March 7, 2016, Chapter 2016-13 was signed it law by Governor Scott. It substantially revised Florida's capital sentencing statute. It constitutes new law cognizable in Rule 3.851 proceedings. As the Staff Analysis of the Criminal Justice Subcommittee accompanying HB 7101 (Chapter 2016-13) makes clear, its adoption was intended to cure the constitutional defect in Florida's capital sentencing scheme identified in *Hurst v. Florida*, 136 S. Ct. 616 (2016). See House of Representatives Final Bill Analysis, H.B. 7101, at 8 (Fla. 2016) ("The bill amends ss. 921.141 and 921.142, F.S., to comply with the United States Supreme Court's holding that a jury, not a judge, must find each fact necessary to impose a sentence of death.").

2. In *Perry v. State*, the Florida Supreme Court addressed the newly revised statute.

While generally approving all other aspects of the newly revised statute, it held that the 10-2 provision was unconstitutional under *Hurst v. Florida* because to be constitutional the findings of fact and the death recommendation necessary to authorize the imposition of a death sentence had to be reached unanimously by the jury. The Florida Supreme Court held in *Perry* that

to increase the penalty from a life sentence to a sentence of death, the jury must unanimously find the existence of any aggravating factor, that the aggravating factors are sufficient to warrant a sentence of death, that the aggravating factors outweigh the mitigating circumstances, and must unanimously recommend a sentence of death.

Slip Op. at 20. This is the law that now governs when a death sentence is vacated and a resentencing is ordered in a capital case. In *Hurst v. State*, the Florida Supreme Court explained:

Requiring a unanimous jury recommendation before death may be imposed, in accord with precepts of the Eighth Amendment and Florida's right to trial by jury, is a critical step toward ensuring that Florida will continue to have a constitutional and viable death penalty law, which is surely the intent of the Legislature. The requirement will dispel most, if not all, doubts about the future validity and long-term viability of the death penalty in Florida.

2016 WL 6036978 at *17.

3. In *Hildwin v. State*, 141 So. 3d 1178, 1184 (Fla.2014), the Florida Supreme Court explained then when presented with qualifying newly discovered evidence:

the postconviction court must consider the effect of the newly discovered evidence, in addition to all of the evidence that could be introduced at a new trial. *Swafford v. State*, 125 So. 3d 760, 775-76 (Fla. 2013). In determining the impact of the newly discovered evidence, the court must conduct a cumulative analysis of all the evidence so that there is a 'total picture' of the case.

In *Swafford*, the Florida Supreme Court indicated the evidence to be considered in evaluating whether a different outcome was probable, included “evidence that [had been] previously excluded as procedurally barred or presented in another proceeding.” *Swafford v. State*, 125 So. 3d at 775-76. The “standard focuses on the likely result that would occur during a new trial with all admissible evidence at the new trial being relevant to that analysis.” *Id.* Put simply, the analysis requires envisioning how a new trial or resentencing would look with all of the evidence that would be available. Obviously, the law that would govern at a new trial or resentencing must be part of the analysis. Here, the revised capital sentencing statute would apply at a resentencing and would require that the jury unanimously determine that sufficient aggravating factors existed to justify a death sentence and unanimously determine that the aggravators outweigh the mitigating factors. It would also require the jury to unanimously recommend a death sentence before the sentencing judge would be authorized to impose a death sentence. One single juror voting in favor of a life sentence would require the imposition of a life sentence.

4. This is new Florida law that did not exist when counsel for Mr. Silvia was previously prepared to present his postconviction claims. Accordingly, before the enactment of Chapter 2016-13 on March 7, 2016, and before the issuance of *Perry v. State* and *Hurst v. State* on October 14, 2016, Mr. Silvia could not present his claim as set forth herein because the new law that would govern any resentencing ordered in Mr. Silvia’s case was previously unavailable.

Implicit in the justification for the new Florida law is an acknowledgment that death sentences imposed under the old capital sentencing scheme were (or are) unreliable. Before executions are carried out in cases in which the reliability of a death sentence is subpar, a re-evaluation of such a death sentence in light of the changes made by Chapter 2016-13, *Hurst v. State*, and *Perry v. State* is warranted. A previous waiver of a death sentenced defendant’s

postconviction claims should be re-evaluated in light of the new requirement that juries must unanimously make the necessary findings of fact and return a unanimous death recommendation before a death sentence is even a sentencing option. Mr. Silvia has informed undersigned counsel that he wishes to receive the benefit of a review of his case under *Hurst*.

5. In *Hurst v. State*, the first advisory panel that heard his case did so without the benefit of mental health mitigation and recommended death eleven to one. When the second advisory panel heard this mitigation, only seven to five recommended death for the stabbing of the clerk. During Mr. Silvia's postconviction pleadings and proceedings, additional substantial mitigation and other evidence was being investigated and prepared by postconviction counsel. These matters must also be considered with the fact that Mr. Silvia did not receive a unanimous jury recommendation. This Court must re-visit and re-evaluate the waiver of Mr. Silvia's previous postconviction proceedings, in light of the new Florida law which would govern at a resentencing. When a re-evaluation is conducted, the State cannot meet its burden that there is no reasonable possibility that the *Hurst* error contributed to Mr. Silvia's sentence. Mr. Silvia's death sentences should be vacated and a new penalty phase ordered.

CLAIM 5

**THIS COURT SHOULD VACATE MR. SILVIA'S DEATH SENTENCE
BECAUSE THE FACT-FINDING THAT SUBJECTED MR. SILVIA TO
THE DEATH WAS NOT PROVEN BEYOND A REASONABLE DOUBT.**

In *In re Winship* the United States Supreme Court held that the elements necessary to adjudicate a juvenile and subject him or her to sentencing under the juvenile system required each fact necessary be proved beyond a reasonable doubt. The Court made clear, "Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable

doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970).

In *Ivan V. v. City of New York*, the Supreme Court applied Winship's proof-beyond-a-reasonable doubt standard retroactively, stating,

'Where the major purpose of new constitutional doctrine is to overcome an aspect of the criminal trial that substantially impairs its truth-finding function and so raises serious questions about the accuracy of guilty verdicts in past trials, the new rule has been given complete retroactive effect. Neither good-faith reliance by state or federal authorities on prior constitutional law or accepted practice, nor severe impact on the administration of justice has sufficed to require prospective application in these circumstances.' *Williams v. United States*, 401 U.S. 646, 653, 91 S.Ct. 1148, 1152, 28 L.Ed.2d 388 (1971). See *Adams v. Illinois*, 405 U.S. 278, 280, 92 S.Ct. 916, 918, 31 L.Ed.2d 202 (1972); *Roberts v. Russell*, 392 U.S. 293, 295, 88 S.Ct. 1921, 1922, 20 L.Ed.2d 1100 (1968).

Winship expressly held that the reasonable-doubt standard 'is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence—that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law' . . . 'Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the factfinder of his guilt.' To this end, the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.' 397 U.S., at 363—364, 90 S.Ct., at 1072.

Plainly, then, the major purpose of the constitutional standard of proof beyond a reasonable doubt

announced in *Winship* was to overcome an aspect of a criminal trial that substantially impairs the truth-finding function, and *Winship* is thus to be given complete retroactive effect.

Ivan V. v. City of N.Y., 407 U.S. 203, 204–05, 92 S. Ct. 1951, 1952, (1972).

In *Mullaney v. Wilbur*, 421 U.S. 684, 95 S. Ct. 1881 (1975), the Court held that the Due Process Clause requires the prosecution to prove beyond a reasonable doubt the absence of the heat of passion on sudden provocation when the issue is properly presented in a homicide case. *Id.* at 704, 1892. Thus, under the Due Process Clause, it is the state, and the state alone, which must prove each element beyond a reasonable doubt and has the burden of persuasion. Again, this right was so fundamental that the United States Supreme Court found no issue with retroactive application in *Hankerson v. N. Carolina*, 432 U.S. 233, 240–41, 97 S. Ct. 2339, 2344, (1977).

Hurst v. Florida mandates that the State prove each element beyond a reasonable doubt. Mr. Silvia was denied a jury trial on the elements that subjected him to the death penalty. It necessarily follows that he was denied his right to proof beyond a reasonable doubt.

CONCLUSION

Based on the foregoing, Mr. Silvia prays for the following relief, based on his prima facie allegations showing violation of his constitutional rights: 1) a “fair opportunity” to demonstrate that his death sentence stands in violation of the Sixth and Eighth Amendments and *Hurst v. Florida*, *Perry v. State* and *Hurst v. State*; 2) a re-evaluation of his previously waived postconviction proceedings in light of the new Florida law that would govern at a resentencing in order to enhance the reliability of any resulting death sentence; 3) an opportunity for further evidentiary development to the extent necessary; 4) authorization to proceed *in forma pauperis*; 5) leave to supplement this motion should new claims, facts, or legal precedent become available to counsel; and, 6) on the basis of the reasons presented herein, Rule 3.851 relief vacating his

death sentences and substituting a life sentence on the basis of Claim 2, or alternatively a new penalty phase proceeding on the basis of Claim 1, Claim 3, Claim 4 and Claim 5.

CERTIFICATION PURSUANT TO FLA. R. CRIM. P. 3.851 (e)

Pursuant to Fla. R. Crim P. 3.851(e)(2)(A) and (e)(1)(F), undersigned counsel hereby certifies that discussions with Mr. Silvia of this motion and its contents has occurred over a period time as relevant new Florida has unfolded during the past year. Counsel has endeavored to fully discuss and explain the contents of this motion with Mr. Silvia, and that counsel to the best of his ability has complied with Rule 4-1.4 of the Rules of Professional Conduct, and that this motion is filed in good faith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day of January 6, 2017, I electronically filed the foregoing Motion with the Clerk of the Circuit Court by using the Florida Courts e-portal filing system which will send a notice of electronic filing to the following: Anna Valentini, Assistant State Attorney, avalentini@sa18.org Vivian Singleton, Assistant Attorney General Vivian.Singleton@myfloridalegal.com CapApp@myfloridalegal.com I further certify that a copy has been furnished by U.S. Mail to, William Silvia DOC#512579, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083.

/s/ Ali A. Shakoor
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IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

CASE NO. 06-4522CFA

vs.

WILLIAM SILVIA,
Defendant.

FILED IN OFFICE
GRANT MALLOY
CLERK CIRCUIT COURT
17 FEB 20 PM 3:16
BY SEMINOLE CO. FLA
D.C.

**ORDER VACATING DEFENDANT'S SENTENCE OF DEATH AND SETTING
STATUS HEARING**

THIS CAUSE comes before the Court on the Defendant's "Successive Motion to Vacate Death Sentence," filed pursuant to Fla. R. Crim. P. 3.851 on January 6, 2017. The State filed its response on January 26, 2017. Having conducted a case management conference and upon due consideration, the Court finds as follows:

The record reflects that the Defendant was charged with first-degree premeditated murder (Count 1) and attempted first-degree premeditated murder (Count 2). After a jury trial, the Defendant was found guilty on both counts on June 6, 2008. The penalty phase was held on July 17 to 21, 2008, after which, the jury recommended a death sentence by a vote of eleven to one as to Count 1. On January 28, 2009, the trial court imposed a sentence on death on Count 1 and a sentence of life imprisonment on Count 2. The Defendant appealed and the Florida Supreme Court affirmed. Silvia v. State, 60 So. 3d 959 (Fla. 2011).¹

Following the affirmance of his conviction and sentence, the Defendant sought to waive his postconviction proceedings and counsel. The trial court conducted a colloquy on June 26, 2012, and found that the Defendant was competent and that his waiver was knowing and voluntary. As a result, the trial court dismissed the Defendant's postconviction proceedings and discharged counsel. The Florida Supreme Court affirmed the dismissal. Silvia v. State, 123 So. 3d 1148 (Fla. 2013).

¹ The Florida Supreme Court opinion contains a summary of the facts in this case. Silvia, 60 So. 3d at 963-67.

In his current motion, the Defendant raises five claims for relief based upon the United States Supreme Court ruling in Hurst v. Florida, 136 S. Ct. 616, 621 (2016), hereinafter Hurst I, and the Florida Supreme Court ruling in Hurst v. State, 202 So. 3d 40, 45 (Fla. 2016), hereinafter Hurst II. In Hurst I, the United States Supreme Court held that Florida's capital sentencing scheme is unconstitutional because the judge, and not the jury, makes the necessary findings of fact to impose the death sentence. 136 S. Ct. at 619. In Hurst II, the Florida Supreme Court held:

before the trial judge may consider imposing a sentence of death, the jury in a capital case must unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that the aggravating factors are sufficient to impose death, unanimously find that the aggravating factors outweigh the mitigating circumstances, and unanimously recommend a sentence of death.

Hurst II, 202 So. 3d at 57. In Mosley v. State, the Florida Supreme Court addressed whether Hurst I and Hurst II apply retroactively. The Court concluded that the Hurst rulings apply to all defendants whose sentences were not yet final when the United States Supreme Court issued its opinion in Ring v. Arizona, 536 U.S. 584 (2002).² Mosley v. State, SC14-2108, 2016 WL 7406506, at *25 (Fla. Dec. 22, 2016), reh'g denied, SC14-2108, 2017 WL 510491 (Fla. Feb. 8, 2017).

As an initial matter, the State asserts that the Defendant should be precluded from seeking relief under the Hurst rulings because he waived his initial postconviction proceedings in this case. In support of its position, the State cites to James v. State, 974 So. 2d 365 (Fla. 2008) and Trease v. State, 41 So. 3d 119 (Fla. 2010). However, both of those cases involved a defendant's attempt to reinstate his postconviction proceedings after validly waiving those proceedings, whereupon the Florida Supreme Court concluded that a "mere change of mind is an

² In Asay v. State, the Florida Supreme Court held that the Hurst rulings do not apply retroactively to defendants whose sentences were final before the issuance of Ring. Asay v. State, SC16-102, 2016 WL 7406538, at *13 (Fla. Dec. 22, 2016).

insufficient basis for setting aside a previous waiver.” James, 974 So. 2d at 366, 368; Trease, 41 So. 3d at 120-21. In the case at bar, the Defendant is not seeking to reinstate his previously waived postconviction proceedings because he has changed his mind. Rather he is seeking to avail himself of a newly established constitutional right, which has been held to apply retroactively. The Defendant could not knowingly and voluntarily waive a right he did not possess at the time of the waiver. Therefore, the Court finds that he is not precluded from seeking Hurst relief based upon his waiver of his initial postconviction proceedings.

Turning now to whether the Defendant is entitled to relief, the Florida Supreme Court has examined whether a Hurst error constituted harmless error in several cases.³ Only in cases when the jury recommendation was unanimous has the Florida Supreme Court held that the Hurst error was harmless beyond a reasonable doubt. Davis v. State, 2016 WL 6649941 (November 10, 2016); King v. State, SC14-1949, 2017 WL 372081 (Fla. Jan. 26, 2017); Knight v. State, SC14-1775, 2017 WL 411329 (Fla. Jan. 31, 2017); Kaczmar v. State, SC13-2247, 2017 WL 410214 (Fla. Jan. 31, 2017); Hall v. State, SC15-1662, 2017 WL 526509 (Fla. Feb. 9, 2017). In those cases with non-unanimous recommendations, the Florida Supreme Court has remanded the cases for new penalty phases because the Court could not “conclude beyond a reasonable doubt that the jury ... unanimously found that there were sufficient aggravating factors to impose death, or that the aggravators outweighed the mitigation.” Williams v. State, SC14-814, 2017 WL 224529 (Fla. Jan. 19, 2017) (jury recommendation of 9 to 3); see also, Durousseau v. State, SC15-1276, 2017 WL 411331 (Fla. Jan. 31, 2017) (jury recommendation of 10 to 2); Hojan v. State, SC13-2422, 2017 WL 410215 (Fla. Jan. 31, 2017) (jury recommendation of 9 to 3); Calloway v. State, SC10-2170, 2017 WL 372058 (Fla. Jan. 26, 2017) (jury recommendation of 7 to 5); McGirth v.

³ In several other cases, the Florida Supreme Court has found that a defendant is not entitled to Hurst relief because either the defendant waived a penalty phase jury or his sentence became final prior to King. See Wright v. State, 41 Fla. L. Weekly S561 (Fla. Nov. 23, 2016); Mullens v. State, 197 So. 3d 16, 38 (Fla. 2016), reh'g denied, SC13-1824, 2016 WL 4377112 (Fla. Aug. 9, 2016), and cert. denied, 16-6773, 2017 WL 69535 (U.S. Jan. 9, 2017); Asay v. State, SC16-102, 2016 WL 7406538, at *13 (Fla. Dec. 22, 2016); Gaskin v. State, SC15-1884, 2017 WL 224772, at *2 (Fla. Jan. 19, 2017); Bogle v. State, SC11-2403, 2017 WL 526507, at *16 (Fla. Feb. 9, 2017).

State, SC15-953, 2017 WL 372095 (Fla. Jan. 26, 2017) (jury recommendation of 11 to 1); Armstrong v. State, SC14-1967, 2017 WL 224428 (Fla. Jan. 19, 2017) (jury recommendation of 9 to 3); Kopsho v. State, SC15-1256, 2017 WL 224727 (Fla. Jan. 19, 2017) (jury recommendation of 10 to 2); Mosley v. State, SC14-2108, 2016 WL 7406506 (Fla. Dec. 22, 2016), reh'g denied, SC14-2108, 2017 WL 510491 (Fla. Feb. 8, 2017) (jury recommendation of 8 to 4); Simmons v. State, SC14-2314, 2016 WL 7406514 (Fla. Dec. 22, 2016) (jury recommendation of 8 to 4); Johnson v. State, 205 So. 3d 1285 (Fla. 2016) (jury recommendation of 11 to 1); Franklin v. State, 41 Fla. L. Weekly S573 (Fla. Nov. 23, 2016) (jury recommendation of 9 to 3). In fact, the Florida Supreme Court has recently stated, “We have also determined that in cases where the jury makes a non-unanimous recommendation of death, the Hurst error is not harmless.” Dubose v. State, SC10-2363, 2017 WL 526506, at *12 (Fla. Feb. 9, 2017) (jury recommendation of 8 to 4).

In McGirth, a case procedurally very similar to the case at bar, in which there was a jury recommendation for death of 11 to 1 and the defendant was also convicted of an attempted first-degree murder, the Court held:

Although the prior violent felony aggravating circumstance was found unanimously by the jury by virtue of McGirth's conviction for attempted first-degree murder of James Miller, whether this aggravating circumstance was “sufficient” to qualify for the death penalty would also be a jury determination. Because the jury vote was eleven to one, there is no way of knowing if such a finding was unanimous. The same rationale applies to the aggravating factor that the murder occurred during the commission of a robbery. Moreover, there is no way of knowing if the jury found any of the other aggravating circumstances unanimously, or if any aggravators that were unanimously found were also unanimously found to be sufficient to qualify for the death penalty.

Further, this was not a case that completely lacked mitigation. ... As with the aggravators, there is no way to know whether the jury unanimously found that any mitigation established during the penalty phase was outweighed by the aggravation.

In sum, any attempt to determine what findings were made by the one juror who voted for life and the eleven jurors who voted for

death would amount to speculation, and cannot rise to the level of proof beyond a reasonable doubt. Accordingly, the error in this case cannot be considered harmless.

McGirth v. State, SC15-953, 2017 WL 372095, at *12 (Fla. Jan. 26, 2017).

Based upon the foregoing, this Court finds that the Hurst rulings apply to the Defendant because his death sentence was final after Ring. Furthermore, given that the jury recommendation was not unanimous, this Court cannot find that the Hurst error was harmless beyond a reasonable doubt. Therefore, the Defendant is entitled to a new penalty phase.

Accordingly, it is

ORDERED that the Defendant's sentence of death on Count 1 is VACATED.

It is further **ORDERED** that the case is hereby set for a status hearing in Sanford, Florida on 17th day of March, 2017, at 8:30 a.m. at the Criminal Justice Center, Courtroom 5A, 101 Bush Blvd, Sanford, Florida 32773.

DONE AND ORDERED in chambers at Sanford, Seminole County, Florida, this 20th day of February, 2017.


DONNA L. McINTOSH, Circuit Judge

I hereby certify that copies of the foregoing have been furnished by mail this 20th day of February 2017 to:

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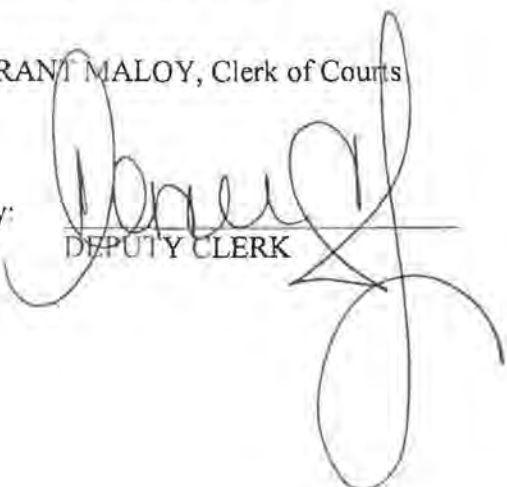
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GRANT MALOY, Clerk of Courts

By:


DEPUTY CLERK

235 So.3d 349

Supreme Court of Florida.

STATE of Florida, Appellant,

v.

William Frances SILVIA, Appellee.

No. SC17-337

I

[February 1, 2018]

Synopsis

Background: Following affirmance of his convictions for first degree murder and attempted first degree murder and sentence of death on direct appeal, 60 So.3d 959, and affirmance of dismissal of his postconviction proceedings, 123 So.3d 1148, defendant filed postconviction motion to vacate death sentence. The Circuit Court, Seminole County, No. 592006cf004522a000xx, Donna L. Surratt-McIntosh, J., granted motion. State appealed.

[Holding:] The Supreme Court held that waiver of postconviction proceedings and counsel precluded defendant from seeking new penalty phase under *Hurst v. Florida*, 136 S.Ct. 616.

Reversed.

Canady, J., concurred in the result.

Lewis, J., dissented with opinion.

West Headnotes (1)

[1] **Criminal Law** — Effect of guilty or nolo contendere plea

Defendant's waiver of postconviction proceedings and counsel, following convictions for first degree murder and attempted first degree murder and sentence of death, precluded him from seeking new penalty phase under *Hurst v. Florida*, 136 S.Ct. 616, which was decided after waiver and found that sentencing scheme

under which judge made critical findings needed for imposition of death sentence violated Sixth Amendment right to jury trial; defendant did not challenge validity of his postconviction waiver, which included waiver of right to take advantage of any changes that might have occurred in law. *U.S. Const. Amend. 6*.

5 Cases that cite this headnote

***350** An Appeal from the Circuit Court in and for Seminole County, Donna L. Surratt-McIntosh, Judge—Case No. 592006CF004522A000XX

Attorneys and Law Firms

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James Vincent Viggiano, Jr., Capital Collateral Regional Counsel, and Ali A. Shakoor, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida, for Appellee

Opinion

PER CURIAM.

The issue in this case is whether William Frances Silvia's original, valid waiver of postconviction proceedings and counsel precludes him from claiming a right to relief under *Hurst v. State* (*Hurst*), 202 So.3d 40 (Fla. 2016), cert. denied, — U.S. —, 137 S.Ct. 2161, 198 L.Ed.2d 246 (2017). This Court has jurisdiction. See art. V, § 3(b)(1), Fla. Const. Silvia is a prisoner under sentence of death whose sentence, which was imposed after a jury recommended death by a vote of 11–1, became final on June 6, 2011. See *Silvia v. State*, 60 So.3d 959, 966 (Fla. 2011).

This Court fully explained the facts underlying Silvia's sentence of death in its opinion on direct appeal. *Id.* at 963–64. On direct appeal, Silvia argued, among other claims, that Florida's capital sentencing scheme was unconstitutional under the United States Supreme Court's opinion in *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), which provided the underpinnings of the United States Supreme Court's opinion in *Hurst v. Florida*, — U.S. —, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), and *Hurst*.

See [Silvia](#), 60 So.3d at 978. This Court denied the claim and affirmed Silvia's convictions and sentences. *Id.*

In 2012, Silvia waived his right to postconviction proceedings and counsel. See [Silvia v. State](#), No. SC12-1863, 2013 WL 5035694, *1 (Fla. Sept. 11, 2013) (123 So.3d 1148). Upon review in 2013, this Court "conclude[d] that the trial court did not abuse its discretion in discharging Silvia's postconviction counsel and dismissing postconviction proceedings." *Id.* at *2. Silvia does not dispute in this case the validity of his original waiver.

Three years after this Court affirmed the dismissal of Silvia's postconviction proceedings, the United States Supreme Court decided [Hurst v. Florida](#), and this Court decided [Hurst](#) on remand. After [Hurst](#), Silvia filed a Successive Motion to Vacate Death Sentence claiming a right to [Hurst](#) relief. The postconviction court concluded that Silvia was not "seeking to reinstate his previously waived postconviction proceedings because he had changed his mind" but was "seeking to avail himself of a newly established constitutional right he did not possess at the time of the waiver." The court determined that Silvia "could not knowingly and voluntarily waive a right ... he did not possess at the time of the waiver" and, therefore, found that Silvia "is not precluded from seeking [Hurst](#) relief." Applying [Hurst](#) to Silvia's sentence, the postconviction court granted Silvia a new penalty phase. The State appealed.

*351 The issue in this case is whether Silvia's waiver of postconviction proceedings and counsel precludes him from claiming a right to [Hurst](#) relief. Although there is certainly a difference between a defendant who changes his mind after validly waiving postconviction proceedings and a defendant who asserts a right to relief under [Hurst](#), we conclude that this distinction does not afford Silvia any basis for claiming [Hurst](#) relief that would entitle him to a new penalty phase.

In [Mullens v. State](#), 197 So.3d 16 (Fla. 2016), an analogous case, a defendant waived the right to a penalty phase jury and then attempted to claim a right to relief under [Hurst](#). This Court denied relief, explaining that a defendant "cannot subvert [a] right ... by waiving that right and then suggesting that a subsequent development in the law has fundamentally undermined his sentence." *Id.* at 40. In [Mullens](#), this Court held that [Hurst](#) does not apply to defendants who validly waived their right to a penalty phase jury, writing:

If a defendant remains free to waive his or her right to a jury trial, even if such a waiver under the previous law of a different jurisdiction automatically imposed judicial

factfinding and sentencing, we fail to see how Mullens, who was entitled to present mitigating evidence to a jury as a matter of Florida law even after he pleaded guilty and validly waived that right, can claim error. As our sister courts have recognized, accepting such an argument would encourage capital defendants to abuse the judicial process by waiving the right to jury sentencing and claiming reversible error upon a judicial sentence of death.

Id. at 39–40 (emphasis omitted).

In this case, Silvia does not challenge the validity of his postconviction waiver. In fact, in reviewing Silvia's waiver in 2013, this Court made clear:

In addition, Silvia indicated that he understood that by waiving postconviction proceedings early in the process—before a motion was filed—he was losing permanently his right to take advantage of any changes that may occur in the law, that he was waiving his right to federal review, and that because his attorneys had not yet completed their discovery, it was unknown what issues could be raised. Silvia acknowledged that he understood everything his attorneys had done to date and that his attorneys could discover information that would be beneficial to him in postconviction. Silvia indicated that he understood that the issues in his case were not fully developed, that his attorneys could not proceed further in their investigation without his cooperation, and that his attorneys could discover information that would be beneficial to him. He nevertheless indicated that he did not wish his attorneys to proceed with any further discovery and that he was voluntarily waiving his postconviction counsel and proceedings.

[Silvia](#), 2013 WL 5035694, at *2 (emphasis added). Further, at the time of Silvia's postconviction waiver in 2012, [Ring](#), which provided the underpinnings for [Hurst v. Florida](#), had been decided for over a decade and almost all defendants, including Silvia, had raised a [Ring](#) claim on direct appeal. Thus, we conclude that Silvia's original, valid postconviction waiver, which he has never contested before this Court, precludes him from claiming a right to relief under [Hurst](#).

CONCLUSION

For the reasons fully explained above, we conclude that Silvia's valid postconviction waiver, which included his understanding that "he was losing permanently his right to take advantage of any changes that may occur in the law,"

*352 *Silvia*, 2013 WL 5035694, at *2, precludes him from claiming a right to the benefit of *Hurst*. Accordingly, we reverse the postconviction court's order granting Silvia a new penalty phase and reinstate his death sentence.

It is so ordered.

LABARGA, C.J., and PARIENTE, QUINCE, POLSTON, and LAWSON, JJ., concur.

CANADY, J., concurs in result.

LEWIS, J., dissents with an opinion.

LEWIS, J., dissenting.

Today this Court advances for the first time a new excuse, not a valid reason, to push Florida's death penalty jurisprudence into an unconstitutional abyss. This case is a classic example which illustrates application of this Court's retroactivity approach to *Hurst v. Florida*, — U.S. —, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), and *Hurst v. State*, 202 So.3d 40 (Fla. 2016), to deny relief to defendants who have fully and completely preserved the constitutional challenges to Florida's death sentencing scheme. This new denial approach results in equal protection and due process violations, constitutes cruel and unusual punishment, and the arbitrary and capricious operation of the death penalty. The Court simply turns its eyes from the violation of the Sixth, Eighth, and Fourteenth Amendments under the United States Constitution and the corresponding provisions under our Florida Constitution.

The construction of our current death penalty dilemma finds its origin in the issuance of *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). Although it was not a death penalty case, our high court in *Apprendi* addressed the issue of requiring a unanimous jury vote for certain factors. Two years later, in *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), the United States Supreme Court applied the principles of *Apprendi* to capital defendants, holding that capital defendants "are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment." *Ring*, 536 U.S. at 589, 122 S.Ct. 2428. For years after *Ring*, defendants facing the death penalty in Florida, including Silvia, attempted to rely on and asserted that *Ring* required a unanimous jury verdict to support a valid death penalty judgment. Over and over and over again the

concept addressed in *Ring* with regard to unanimous jury verdicts was denied application in death penalty proceedings in Florida. E.g., *Pietri v. State*, 885 So.2d 245, 276 (Fla. 2004) (denying relief because the felony murder aggravator involved "circumstances submitted to a jury and found to exist beyond a reasonable doubt"); *Sochor v. State*, 883 So.2d 766, 790 (Fla. 2004) ("We previously have addressed this [*Ring*] claim and denied relief."); *Kimbrough v. State*, 886 So.2d 965, 984 (Fla. 2004) ("This Court has previously declined to hold that Florida's death penalty scheme is unconstitutional on the basis of *Apprendi* or *Ring*.").

It was not until January 12, 2016, when the United States Supreme Court issued *Hurst v. Florida* that the "fundamental constitutional right" requiring a unanimous jury verdict arose in death penalty proceedings constructed and built upon the foundational principles announced earlier in *Ring*.

With the issuance of *Hurst v. Florida*, the logical question arose as to how it would be applied and the extent to which it would be retroactively applied to those pending execution of a death sentence. That retroactivity question was answered, in part, by this Court in *Asay v. State*, 210 So.3d 1 (Fla. 2016), when the Court held that *Hurst* would retroactively apply to only those cases in which the death penalty *353 had been imposed on or after the date *Ring* had been issued in 2002. At that time, I reasoned in *Asay* that *Hurst* should also apply to cases prior to 2002 if the issue of requiring a unanimous jury verdict had been properly preserved for review in the proceedings even prior to *Ring*, relying on *James v. State* (*James I*), 615 So.2d 668, 669 (Fla. 1993). *Asay*, 210 So.3d at 30 (Lewis, J., concurring in result). The Court rejected that reasoning and adopted a fixed retroactive date.

Within these parameters, cases began flowing to this Court in successive postconviction motions. Those cases that became final after *Ring* with unanimous jury verdicts for death were denied relief. E.g., *King v. State*, 211 So.3d 866, 889–93 (Fla. 2017); *Davis v. State*, 207 So.3d 142, 174–75 (Fla. 2016). Defendants in cases that became final after *Ring* in which the defendants had totally waived a penalty phase jury trial were also denied relief. *Mullens v. State*, 197 So.3d 16, 38–40 (Fla. 2016). Until this time, in all other cases in which less than a unanimous jury verdict for death was returned, the judgment for death has been quashed and the cases remanded to the trial court for proceedings consistent with *Hurst* without regard to any preservation issues. Even those cases in which defendants conceded during oral argument that *Ring* did not apply to Florida death cases based on existing Florida law

have received the benefit of Hurst, but Silvia will not simply because he did not come to this Court for an oral argument on a postconviction motion having preserved the issue at trial and on direct appeal.

We now face Silvia in which Silvia has received a post-Ring, nonunanimous death penalty verdict. Silvia v. State, 60 So.3d 959, 966 (Fla. 2011). By now, it is well-established Florida law that Hurst requires unanimity and applies retroactively to “defendants whose sentences became final after the United States Supreme Court issued its opinion in Ring.” Mosley v. State, 209 So.3d 1248, 1276 (Fla. 2016). Thus, regardless of the majority’s unwillingness to mention this fact, Hurst applies retroactively to Silvia’s case. E.g., Hojan v. State, 212 So.3d 982, 999 (Fla. 2017) (“Hurst appl[ies] retroactively to defendants, like Hojan, whose sentences were not yet final when the Supreme Court issued Ring.”). There have been many post-Ring, nonunanimous defendants whose various appeals and postconviction motions were correctly resolved when this Court granted them Hurst relief. See, e.g., Gregory v. State, 224 So.3d 719 (Fla. 2017) (post-Ring, nonunanimous postconviction motion defendant); Jeffries v. State, 222 So.3d 538 (Fla. 2017) (post-Ring, nonunanimous direct appeal defendant); Bailey v. Jones, 225 So.3d 776 (Fla. 2017) (post-Ring, nonunanimous habeas corpus petition defendant). In view of these cases, the appropriate disposition is clear. Yet, for the first time, the majority decision eschews recent precedent and denies Hurst relief to a post-Ring, nonunanimous defendant because he did not continue a meritless, fruitless—and at that point frivolous—Ring challenge in the context of a postconviction proceeding even though he had asserted that right during trial and on direct appeal and had fully preserved the argument for appellate purposes. Silvia, 60 So.3d at 978. Silvia was not even required to file for postconviction relief but did file and later withdrew his meritless pleading. This arbitrary denial of rights treats similarly situated defendants differently. In doing so, Silvia is being denied equal protection and due process under the law, violating his rights under the Fourteenth Amendment and article I, section 2 of the Florida Constitution.

Although not specifically stated, the basis for this decision is simple, albeit misguided. However, by skirting the underlying law, the majority disregards the real *354 substance of the question presented and develops a holding absent any precedential support. The decision impliedly relies upon the concept regarding a waiver of postconviction proceedings. See majority op. at 350–51. As a general matter, this Court has held that the waiver of postconviction proceedings is

a final determination. See Trease v. State, 41 So.3d 119, 126 (Fla. 2010); James v. State (James II), 974 So.2d 365, 368 (Fla. 2008). Nevertheless, neither Trease nor James II determinatively answers the issue in this case. Our James II holding was actually quite narrow: “[W]e conclude that a mere change of mind is an insufficient basis for setting aside a previous waiver.” James II, 974 So.2d at 368 (emphasis added). We explained that James could not overcome his waiver because there was no dispute that the Durocher¹ proceedings were followed and James “asserted no valid basis for avoiding his waiver.” James II, 974 So.2d at 368. Likewise, as it concerned reversing the waiver of postconviction proceedings, Trease held that “because this Court in James II held that a change of mind is insufficient grounds to set aside a prior valid waiver, we deny Trease’s request to reinstate his postconviction proceedings.” Trease, 41 So.3d at 126. Trease and James II are factually distinguishable from this case because, here, Silvia did not simply change his mind like the defendants in those cases. Instead, the trial court here—which is better positioned than this Court to determine Silvia’s intentions—specifically found that Silvia “is not seeking to reinstate his previously waived postconviction proceedings because he has changed his mind. Rather he is seeking to avail himself of a newly established constitutional right, which has been held to apply retroactively.” As a result, the trial court here vacated Silvia’s death sentence. In my view, the constitutional rights generated by Hurst are a sufficient basis to avoid Silvia’s waiver. Cf. James II, 974 So.2d at 368 (changing of the mind was not a sufficient basis). Such a scenario is specifically contemplated as an exception to the time limitation on postconviction motions under Florida Rule of Criminal Procedure 3.851:

(2) No motion shall be filed or considered pursuant to this rule if filed beyond the time limitation provided in subdivision (d)(1)^[2] unless it alleges:

....

(B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively

Fla. R. Crim. P. 3.851(d)(2)(B). Accordingly, nothing in Florida law precludes Silvia from raising a Hurst claim.

¹ Durocher v. Singletary, 623 So.2d 482, 485 (Fla. 1993) (establishing that a defendant is entitled to waive postconviction proceedings so long as there is an inquiry conforming to Faretta v. California, 422 U.S. 806, 95

S.Ct. 2525, 45 L.Ed.2d 562 (1975), into the “knowing, intelligent, and voluntary” nature of the waiver).

- 2 This subdivision prescribes a one-year time limit on filing an initial postconviction motion after the sentence becomes final. See Fla. R. Crim. P. 3.851(d)(1).

In the past, this Court has granted relief on changes in the law retroactively to postconviction defendants who preserved the issue for review on their direct appeal prior to the change. *James I*, 615 So.2d at 669. In *James I*, we granted relief to a defendant who had asserted at trial and on direct appeal that the jury instruction pertaining to the heinous, atrocious, or cruel aggravating circumstance was unconstitutionally vague before the United States Supreme Court ultimately reached that same conclusion in *Espinosa v. Florida*, 505 U.S. 1079, 112 S.Ct. 2926, 120 L.Ed.2d 854 (1992). *James I*, 615 So.2d at 668–69. We concluded that—despite his case becoming *355 final before the principle of law had a case name—it would be unjust to deprive James of the benefit of the Supreme Court’s holding in *Espinosa* after he had properly presented and preserved such a claim. *James I*, 615 So.2d at 669. Similarly, I believe that defendants who properly preserved the substance of a *Ring* challenge at trial and on direct appeal prior to that decision should also be entitled to have their constitutional challenges heard. *Hitchcock v. State*, 226 So.3d 216, 218–19 (Fla. 2017) (Lewis, J., concurring in result); *Asay*, 210 So.3d at 30 (Lewis, J., concurring in result). Similar to the defendant in *James I*, Silvia properly preserved his *Ring* challenge at trial and on direct appeal. *Silvia*, 60 So.3d at 978. Therefore, Silvia is entitled to *Hurst* relief. He could not validly waive a constitutional right that simply did not exist at the time of the alleged waiver.

In *Mosley*, this Court recognized that “fundamental fairness alone may require the retroactive application of certain decisions involving the death penalty after the United States Supreme Court decides a case that changes our jurisprudence.” *Mosley*, 209 So.3d at 1274–75. There, we cited *James I* and held that, “because Mosley raised a *Ring* claim at his first opportunity and was then rejected at every turn, we conclude that fundamental fairness requires the retroactive application of *Hurst*, which defined the effect of *Hurst v. Florida*, to Mosley.” *Mosley*, 209 So.3d at 1275. In that case, we further conducted a standard retroactivity analysis under *Witt v. State*, 387 So.2d 922 (Fla. 1980); however, *Mosley* clearly stands for the proposition that, under *James I*, it is fundamentally unfair to withhold *Hurst* relief to post-*Ring*, nonunanimous defendants who properly raised the issue, regardless of whether they are in this Court on direct appeal or postconviction motion. *Mosley*, 209 So.3d at 1274–

75. Therefore, to deny *Hurst* relief to Silvia is a violation of his right to due process under the Fourteenth Amendment and article I, section 9 of the Florida Constitution. See *Gore v. State*, 719 So.2d 1197, 1203 (Fla. 1998) (“Due process requires that fundamental fairness be observed in each case for each defendant.”).

As a practical matter, if Silvia had merely re-raised his *Ring* claim in a postconviction motion, then he would be entitled to *Hurst* relief. Yet, at the time of his postconviction proceedings, any *Ring* challenge by Silvia was futile, meritless, and frivolous. See *Johnson v. State*, 904 So.2d 400, 406 (Fla. 2005) (“[V]irtually every postconviction appeal filed in this Court since *Ring* invokes that case. We repeatedly have denied such requests for clear lack of merit”), abrogated by *Jackson v. State*, 213 So.3d 754 (Fla. 2017). Moreover, under this Court’s broader postconviction standard, it would have been inappropriate for Silvia to continue his *Ring* challenge through postconviction proceedings. This Court has stated,

The purpose of the Rule 3.850^[3] motion is to provide a means of inquiry into the alleged constitutional infirmity of a judgment or sentence, not to review ordinary trial errors cognizable by means of a direct appeal. The motion procedure is neither a second appeal nor a substitute for appeal. Matters which were raised on appeal and decided adversely to the movant are not cognizable by motion under Rule 3.850. Furthermore, any matters which could have been presented on appeal are similarly held to be foreclosed from consideration by motion under the Rule. Therefore, a Rule 3.850 motion based upon grounds which either were or could have been raised as issues on appeal may be summarily denied.

*356 *McCrae v. State*, 437 So.2d 1388, 1390 (Fla. 1983) (emphasis added) (citations omitted). Silvia properly preserved the error and unsuccessfully challenged *Ring* at trial and on direct appeal. *Silvia*, 60 So.3d at 978. Therefore, there was nothing further for Silvia to challenge relating to the unconstitutionality of Florida’s previous death scheme through postconviction proceedings and he was not required to perform a frivolous act. Moreover, nothing requires capital defendants to pursue postconviction proceedings. Despite this, the majority denies the *Hurst* relief that is clearly warranted. Such a decision effectively encourages postconviction counsel to raise meritless claims, even if they have been decided on direct appeal, simply to satisfy an arbitrary procedural step in the hope of future retroactivity.

3 Today, capital postconviction motions are covered by [Florida Rule of Criminal Procedure 3.851](#), which was adopted in 1993. *See Fla. R. Crim. P. 3.851* cmt. (1993).

Crucially, nothing in this Court's post-[Hurst](#) jurisprudence suggests any requirement for defendants to have pursued postconviction appeals to receive the benefit of [Hurst](#). This Court has noted, however, that defendants who waived their Sixth Amendment right to a jury are precluded from benefitting from [Hurst](#). *E.g., Mullens*, 197 So.3d at 38–40. Because the defendant in [Mullens](#) waived the rights to which [Hurst](#) applied, we correctly concluded that the defendant waived his entitlement to [Hurst](#) relief. [Mullens](#), 197 So.3d at 38–40. The majority relies on [Mullens](#) as “an analogous case” and its *only* support for this decision. Majority op. at 350–51. It never explains why [Mullens](#) is analogous, and perhaps that is because [Mullens](#) is inapposite. [Mullens](#) totally waived his rights to a penalty phase jury determination to which [Hurst](#) applied. Whereas, here, Silvia simply did not proceed with postconviction proceedings, which is wholly separate from the Sixth and Eighth Amendment rights implicated by [Hurst](#). In effect, the majority attempts to compare a lightning bug to the lightning. A little over one year ago, in [Hurst](#), this Court waxed poetic about the right to a jury trial as a quintessential right in both Florida and the United States. [Hurst](#), 202 So.3d at 53–59. We called this right our “birthright and inheritance.” *Id.* at 54 (quoting [Duncan v. Louisiana](#), 391 U.S. 145, 154, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968)). Yet, now the Court equates waiver of this “birthright” to not proceeding with postconviction proceedings—which originally were a judicial creation to efficiently address the “postconviction crisis” caused in Florida by [Gideon v. Wainwright](#), 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). *See Baker v. State*, 878 So.2d 1236, 1238–44 (Fla. 2004) (surveying the history of postconviction relief in Florida). Silvia did not waive his right to a jury and that jury returned a nonunanimous death recommendation. Quite simply, to deny him relief is to deny him his right to a jury trial under the Sixth Amendment and [article I, section 22 of the Florida Constitution](#), along with his right to be free from an arbitrary death penalty under the

Eighth Amendment and [article I, section 17 of the Florida Constitution](#).

Relatedly, the majority does not make clear whether it treats Silvia's waiver of postconviction proceedings as a waiver of his right to habeas corpus. Of course, habeas corpus constitutes a substantial portion of postconviction proceedings; thus it would appear that this decision may effectively preclude Silvia and other similarly situated defendants from filing writs of habeas corpus. If this understanding is correct, then the decision borders dangerously on a suspension of these writs to a class of individuals, the right to which is protected under [article I, section 9 of the United States Constitution](#) and [article I, section 13 of the Florida Constitution](#). In my view, our case law on not proceeding with postconviction proceedings does not supersede the express language of our Florida Constitution: “The writ of habeas corpus shall be grantable by right, freely and without cost.” [Art. I, § 13, Fla. Const.](#)

Finally, this decision is ripe for reversal. As demonstrated above, there are a number of constitutional claims that Silvia can raise from this decision. Furthermore, unlike [Asay](#) which, despite its faults, relied heavily on Florida's adequate and independent retroactivity standard under [Witt](#), [Asay](#), 210 So.3d at 15–22, this decision does not rely on *any* standard. The reasoning here amounts to “this is the answer because I say it is.” Considering the fundamental constitutional rights at issue, such reasoning is an insufficient basis to deny [Hurst](#) relief.

Based on the foregoing, I would apply [Hurst](#) to Silvia's case, vacate his death sentence, and remand for resentencing in accordance with the Constitution, our precedent, and fundamental fairness.

All Citations

235 So.3d 349, 43 Fla. L. Weekly S70

End of Document

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No. _____

IN THE
Supreme Court of the United States

WILLIAM FRANCES SILVIA

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

***THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY AUGUST 18, 2026 AT 6:00 P.M.***

APPENDIX D

Warrant Packet for William Frances Silvia, Jr.



RON DeSANTIS
GOVERNOR

July 17, 2026

Warden Randall Polk
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32036-1000

Re: Execution Date for William Frances Silvia, Jr., DC# 512579

Dear Warden Polk:

Enclosed is the death warrant that I signed to carry out the sentence for William Frances Silvia, Jr., as well as certified copies of his judgment and sentence. I have designated the week beginning at 12:00 noon on Tuesday, August 18, 2026, through 12:00 noon on Tuesday, August 25, 2026, for the execution. I have been advised that you have set the date and time of execution for Tuesday, August 18 at 6:00 p.m.

This letter is incorporated into and made a part of the death warrant identified above.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

Enclosures

FILED

2026 JUL 17 PM 12:33

DEPARTMENT OF STATE
TALLAHASSEE, FL

Warden Randall Polk

July 17, 2026

Page 2

cc:

Honorable John D. Couriel
Chief Justice
Supreme Court of Florida
500 S. Duval Street
Tallahassee, Florida 32399

Honorable Melanie Chase
Chief Judge, 18th Judicial Circuit
Seminole County Criminal Justice
Center
101 Eslinger Way
Sanford, Florida 32773

Secretary Richard D. Comerford
Department of Corrections
501 S. Calhoun Street
Tallahassee, Florida 32399-2500

Marilyn Muir
Associate Deputy Attorney General
Office of the Attorney General
The Capitol, FL-01
Tallahassee, Florida 32300-0001

Eric Pinkard
Capital Collateral Regional Counsel
12973 N. Telecom Parkway
Temple Terrace, Florida 33637

Office of Executive Clemency
4070 Esplanade Way
Building C, Room 229
Tallahassee, Florida 32399-2450

William Frances Silvia, Jr., DC# 512579
Union Correctional Institution
7819 N.W. 228th Street
Raiford, Florida 32083

Ali Shakoor
Capital Collateral Regional Counsel
12973 N. Telecom Parkway
Temple Terrace, Florida 33637



STATE OF FLORIDA

JAMES UTHMEIER
ATTORNEY GENERAL

July 16, 2026

The Honorable Ron DeSantis
Governor
The Capitol
Tallahassee, Florida 32399-0001

RE: William Frances Silvia

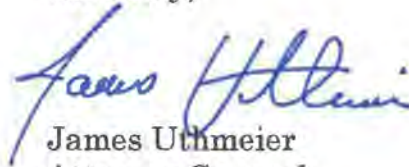
Dear Governor DeSantis:

William Silvia was convicted of first-degree murder of his estranged wife, Patricia Silvia, and the attempted first-degree murder of Patricia's mother, Betty Woodard. On September 22, 2006, Silvia purchased a shotgun and went to his mother-in-law's home where Patricia was living. Patricia and her family were having a cook-out at the house, and after attempting to reconcile with Patricia, Silvia returned to his truck and retrieved his shotgun. Silvia shot Betty in the face and fatally shot Patricia in the head. Silvia was convicted of the first-degree murder of Patricia Silvia and the attempted murder of Betty Woodard. The jury recommended a death sentence by a vote of eleven to one for Patricia's murder. The Florida Supreme Court affirmed the conviction and death sentence on direct appeal. *Silvia v. State*, 60 So. 3d 959 (Fla. 2011).

In 2012, Silvia knowingly and voluntarily waived his postconviction proceedings and discharged his collateral counsel. *Silvia v. State*, 123 So. 3d 1148 (Fla. 2013) (table). On January 6, 2017, Silvia filed a motion to vacate his death sentence following the decisions in *Hurst v. Florida*, 577 U.S. 92 (2016), *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), and *Perry v. State*, 210 So. 3d 630 (Fla. 2016). The postconviction court granted Silvia's motion and vacated his death sentence. The State appealed and the Florida Supreme Court reversed the postconviction court's order granting Silvia a new penalty phase and reinstated his death sentence. *State v. Silvia*, 235 So. 3d 349 (Fla. 2018).

The record has been reviewed and there are no stays of execution issued by any court of competent jurisdiction in this cause. Based upon the above-referenced summary of litigation affirming the judgment and sentence of death imposed for first-degree murder, the record is legally sufficient to support the issuance of a death warrant.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Uthmeier". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James Uthmeier
Attorney General

Sentence Deferred
Until Later Date
(Check if Applicable)

☐ The Court hereby defers imposition of sentence until _____ (date)

The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
6. L. Thumb	7. L. Index	8. L. Middle	9. L. Ring	10. L. Little
				

Fingerprints taken by:

Name and Title

DONE AND ORDERED in Open Court at Seminole County, Florida, this 10 day of June, 192008
I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, William
Frances Silvia, Jr. and that they were placed thereon by said Defendant in my presence in Open Court this date.

CERTIFIED COPY - GRANT MALOY
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER
SEMINOLE COUNTY, FLORIDA
BY [Signature] DEPUTY CLERK
Date 7-16-26



[Signature]
JUDGE

000420

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA

VICTIM IS A MINOR
RESENTENCING - RETRIAL
PROBATION VIOLATOR
COMMUNITY CONTROL VIOLATOR
DRUG OFFENDER VIOLATOR

CASE NO.

06 CF 4522 A

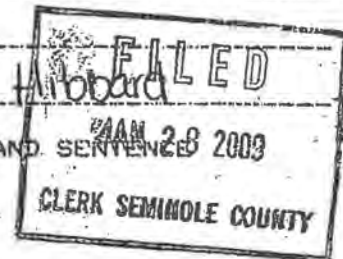
DBTS#

COURT REPORTER

MINUTES, JUDGMENT AND SENTENCE

STATE OF FLORIDA
VS.

William Frances Silvia Jr
DEFENDANT



COURT WAS OPENED WITH THE HONORABLE Judge Donna L McIntosh
PRESIDING, AND IN ATTENDANCE: ASSISTANT STATE ATTORNEY A. Valentini / C. White
COURT CLERK D. Rivera

THE DEFENDANT, William Frances Silvia Jr, BEING PERSONALLY BEFORE
THIS COURT REPRESENTED BY T. Caudill W. Figgatt, ATTORNEY OF RECORD
AND HAVING:

- (☒) BEEN TRIED AND FOUND GUILTY
- () ENTERED A PLEA OF GUILTY
- () ENTERED A PLEA OF NOLLO CONTENDERE

COUNT: CRIME/STATUTE NUMBER(S)

DEGREE OF CRIME

- 01 First Degree Premeditated Murder 782.04(1a)(1) CF
- 02 Attempted First Degree Premeditated Murder while inflicting 777.04(4)(b) 782.04(1a)(1) F-L

- () REVOKED PROBATION/COMMUNITY CONTROL
- (☒) CONFIRMED PRIOR ADJUDICATION OF GUILT
- () ADJUDICATED GUILTY: AND NO CAUSE HAVING BEEN SHOWN WHY DEFENDANT SHOULD NOT BE ADJUDICATED GUILTY, IT IS ORDERED THAT THE DEFENDANT IS HEREBY ADJUDICATED GUILTY OF THE ABOVE CRIME(S).
- () ADJUDICATION WITHHELD: IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD OF THE ABOVE CRIME(S)
- () AND PURSUANT TO SEC. 943.325, F.S. HAVING BEEN CONVICTED OF ATTEMPTS OR OFFENSES RELATING TO CHAPTERS 794 OR 800; SS 784.02, 784.045, 812.133 OR 812.135, F.S., THE DEFENDANT SHALL BE REQUIRED TO SUBMIT TWO BLOOD SPECIMENS.

DISTRIBUTION: WHITE-COURT FILE; GREEN-SHERIFF; YELLOW-STATE ATTORNEY;
PINK-PROBATION & PAROLE; GOLDENROD-DEFENSE ATTORNEY
DEPT OF CORRECTIONS(2) SENTENCING GUIDELINES COMMISSION

000585

PAGE 1 OF

Certified Copy - Grant Maloy
Clerk of the Circuit Court and Comptroller
Seminole County, Florida



Seminole County Clerk of the Circuit Court and Comptroller

eCertified at 07/13/2023 16:13:31 -04:00

eCertified Id: C7C3-8BG0-FE1M

Page 1 of 4

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL COURT,
AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO.: 06 CF 4522A

STATE OF FLORIDA
VS.

William Frances Silvia Jr.
Homeless

ORDER OF COURT COSTS/FINE/RESTITUTION/JUDGMENT

The defendant is ordered to pay the following sums if checked:

a. You will pay the following sums to the Clerk of the Court, P.O. Box 850, Sanford, FL 32772:

- () As a special condition of probation/community control.
() \$ _____ FINE plus \$ _____ at the 5% surcharge required by F.S. 938.04.
() \$50 CCTF (Crimes Compensation TF) (F.S. 938.03(1)).
() \$200/\$50 additional court cost (F.S. 938.05(1)).
() \$3 for CJT (F.S. 938.01) and \$2 CJE (F.S. 938.15).
() \$20 for CSTF (Crime Stoppers TF) (F.S. 938.06(1)).
() \$50/\$20 for CPTF (Crime Prevention T.F.) (F.S. 775.083(2)).
() \$65 additional court costs assessed (F.S. 939.185(1)(a) and Seminole County Ord. #2004-37).
() \$10/_____ Costs per Administrative Order 00-04S (misdemeanors only).
() \$25/\$5 EMS TF, \$60 for B/SCIRTF and \$50 for FDLE (F.S. 938.07).
() \$15 for County Alcohol/other Drug Abuse TF (F.S. 938.13 and Seminole County Ord. #94-11 and #2004-37).
() \$101 additional court costs for DCE's Child Advocacy TF (F.S. 938.10(1)).
() \$201 surcharge for Domestic Violence TF (F.S. 938.08).
() \$151 surcharge for Rape Crisis Program TF (F.S. 938.085).
() \$ _____ additional assessment County Alcohol/other Drug Abuse TF (F.S. 938.21).
() \$40 Application of Indigency Fee pursuant to F.S. 27.52(2)(a).
() \$100 additional assessment for Operating TF Law Enforcement (F.S. 938.25).
() \$ _____ additional fine for CCTF (F.S. 775.0835(1), charges resulting in injury or death).
() \$40 cost assessed against non-prevailing party (F.S. 28.2402(1)(b)).
() \$3 Teen Court program (F.S. 938.19(2)) \$100 cost of prosecution \$100 Attorneys
() Court waived any statutory costs not imposed above. fees and cost F.S. 938.29
() Pay the sum of \$ _____ determined to be a reasonable attorney's fee for the services rendered on behalf of the above-named Defendant through the date of entry of the judgment for Public Defender's services (F.S. 938.29), and the sum of \$ _____ determined to be the amount of costs expended by the Clerk of the Circuit Court on behalf of the Defendant in the above-styled case.

() The Court further orders that Maryanne Morse, Clerk of the Circuit Court, 301 N. Park Avenue, Sanford, Florida 32771-1243, on behalf of the State of Florida, recover from the defendant all the above costs, in the total sum of \$ 563.00 which shall bear interest at the rate of 8% per year, for which let execution issue.

- b. () Pay restitution (F.S. 775.089):
() per attached schedule () as a special condition of probation () to be determined at subsequent hearing.
c. () Pay \$ _____ investigative costs to _____ (F.S. 938.27(1)).

Done and Ordered at Sanford, Seminole County, Florida, this 28th day of January, 2009

[Signature]
CIRCUIT JUDGE

CR0305.068

SQ

000586

cc recording

Certified Copy - Grant Maloy
Clerk of the Circuit Court and Comptroller
Seminole County, Florida



Seminole County Clerk of the Circuit Court and Comptroller

eCertified at 07/13/2023 16:13:31 -04:00

eCertified Id: C7C3-8BG0-FE1M

Page 2 of 4

SENTENCE

(As to Count 02)

IT IS THE SENTENCE OF THE LAW:

- () The Defendant shall pay a fine of \$ _____ pursuant to F.S. 775.083, plus \$ _____ as the 5% surcharge required by F.S. 960.25.
- (☒) The Defendant is hereby committed to the custody of the Department of Corrections.
- () The Defendant is hereby committed to the custody of the Sheriff of Seminole County, Florida.
- () The Defendant is sentenced as a youthful offender in accordance with F.S. 958.04.

TO BE IMPRISONED (check one; unmarked sections are inapplicable)

- (☒) For a term of Natural Life.
- () For a term of _____
- () The SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.
- () Followed by a period of _____ on PROBATION/COMMUNITY CONTROL under the supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control set forth in this Order.
- () However, after serving a period of _____ imprisonment in Department of Corrections, the balance of such sentence shall be suspended and the Defendant shall be placed on PROBATION/COMMUNITY CONTROL for a period of _____ under the supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control set forth in the Order.

In the event the Defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

- JAIL CREDIT** (☒) It is further ordered that the Defendant shall be allowed a total of 858 days credit for time incarcerated before imposition of this sentence.
- PRISON CREDIT** () It is further ordered that the Defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.
- CONSECUTIVE CONCURRENT AS TO OTHER COUNTS** (☒) It is further ordered that the sentence imposed for this count shall run [] consecutive to [☒] concurrent with the sentence set forth in Count 01.
- PREVIOUS CREDIT** () Defendant is allowed credit for _____ days county jail credit served between date of arrest as a violator and date of resentencing. The Department of Corrections shall apply original jail credit awarded and shall compute and apply credit for time served and unforfeited gain-time awarded during prior service of case number/count number _____.
- RETENTION OF JURISDICTION** () The court retains jurisdiction over the Defendant pursuant to section 947.16(4), Florida Statutes.

Page _____ of _____

CRJ0199.021

TD

000587



State of Florida

vs.

DEFENDANT William Francis Silva Jr

CASE NO. 06CF4522A

() Defendant, having been convicted, or previously convicted, as defined in s. 943.325(10)(d), Florida Statutes, of an offense(s) or an attempt of an offense(s) specified in s. 943.325(1)(b), Florida Statutes.

IS HEREBY ORDERED to submit two blood or other biological specimens as approved by the Florida Department of Law Enforcement (FDLE) to a testing facility designated by FDLE or as otherwise directed by the Florida Department of Corrections. The ordered specimens shall be submitted within _____ weeks of the date of this order.

IT IS FURTHER ORDERED, pursuant to s. 943.325(11), Florida Statutes, in the event that Defendant fails or refuses to submit the specimens within the time period specified in this order, the Department of Corrections and/or any law enforcement agency, upon the filing of an affidavit showing probable cause, which shall consist of a showing that Defendant failed or refused to submit the ordered specimens within the time period specified in this order, is authorized to secure the ordered specimens. This authorization to secure the ordered specimens shall include taking or causing Defendant to be taken into custody for the purpose of securing the ordered specimens.

CONSECUTIVE/CONCURRENT It is further ordered that the composite term of all sentences imposed for the counts specified (As to other convictions) in this order shall run [] consecutive to [] concurrent [] conterminous [] non-conterminous with the following:

() Any active sentence being served.

() Specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Seminole County, Florida, is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the Department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statute.

(✓) The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

(✓) Court appointed the Public Defender for appeal purposes.

In imposing the above sentence, the Court further recommends _____

() Restitution not ordered.

DONE AND ORDERED in Open Court at Sanford, Seminole County, Florida, this 28th day of January, 2009

JUDGE [Signature]

I acknowledge receipt of a certified copy of this Order, and that the conditions have been explained to me. I will, within 72 hours, report to the Department of Corrections, Probation & Parole Office, for further instructions.

DATE: _____

PROBATIONER/COMMUNITY CONTROLEE

INSTRUCTED BY: _____

CRK0202.021

Page _____ of _____

TD:

000588

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Clerk of the Circuit Court and Comptroller
Seminole County, Florida



Seminole County Clerk of the Circuit Court and Comptroller

eCertified at 07/13/2023 16:13:31 -04:00

eCertified Id: C7C3-8BG0-FE1M

Page 4 of 4

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY,
FLORIDA

CASE NO. 06-CF-4522-A

STATE OF FLORIDA,

Plaintiff,

VS.

WILLIAM FRANCES SILVIA, JR.,

Defendant.

FILED IN OPEN COURT THIS

Jan 28, 2009

MARYANNE MORSE

Clerk of Circuit Court

Seminole County, Florida

By:

Deputy Clerk

SENTENCING ORDER

The Defendant, William Frances Silvia, Jr., was charged with Count I – Premeditated Murder of Patricia Silvia and Count II – Attempted Premeditated Murder of Betty Woodard. The Defendant was tried by a jury before this court on June 4, 2008, through June 6, 2008. The jury found the Defendant guilty as charged.

The penalty phase of the case was held before the same jury on July 17, 18 and 21, 2008. On July 21, 2008, the same jury recommended by a vote of eleven to one that this court sentence the Defendant to death for the murder of Patricia Silvia. On November 10, 2008, the State and Defendant were permitted to present additional evidence to the court during a *Spencer* hearing¹. Final sentencing was set for today's date, January 28, 2009.

Having heard the evidence presented in both the guilt and penalty phases of the trial, the additional evidence presented at the *Spencer* hearing, the legal arguments of

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

000565 248
085



counsel, and having reviewed the sentencing memoranda, both in favor of and in opposition to the death penalty, the court now considers and weighs the evidence presented as to the following aggravating and mitigating factors, both statutory and non-statutory, and makes the following findings of fact and conclusions of law:

AGGRAVATING FACTORS

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

In this case the Defendant has been contemporaneously found guilty of Count II- Attempted Premeditated Murder of Betty Woodard, which can be considered as a prior violent felony for purposes of this aggravator.² This aggravating factor was established by the verdict finding the Defendant guilty of attempted murder of Betty Woodard.³

The evidence establishes that Betty Woodard was standing in front of her daughter, Patricia Silvia, at her carport door during a family gathering when the Defendant shot her in the face with a Mossberg Persuader 12 gauge shotgun. As a result, Betty Woodard lost her left eye and the top portion of her nose, and her jaw was shattered. She still has metal fragments in her face and has lost her sense of smell. At the time of trial, she had eight doctors attending to the medical problems she was suffering from her injuries.

There is no evidence that Betty Woodard had done or said anything to the Defendant to aggravate or inflame the Defendant. There is no evidence to mitigate Defendant's attempted murder of Betty Woodard.

² See *Lecroy v. State*, 533 So.2d 750 (Fla. 1988); *Correll v. State*, 523 So.2d 562 (Fla. 1986).

³ *Buzia v. State*, 926 So.2d 1203 (Fla. 2006) (jury's guilty verdict for attempted murder of victim's wife was a "conviction" for purposes of prior violent felony aggravator for murder of husband; adjudication was unnecessary).



This aggravating factor has been proven beyond a reasonable doubt and, because of the appalling injuries to Betty Woodward, is given great weight by the court.

The Defendant knowingly created a great risk of death to many persons.

To support a finding of this aggravator, the State must prove that the Defendant knowingly created a great risk of death to many persons. In *Johnson v. State*, 696 So.2d 326, (Fla. 1997), the Florida Supreme Court established that "many persons" means four or more persons, other than the victim.

On the evening of September 22, 2006, at approximately 9:20 p.m., the Woodard family was having a cookout at their home located at 2536 Zelina Point, Seminole County, Florida. The Woodard home is owned by Patrick and Betty Woodard, Patricia Silvia's step-father and mother. In addition to Patrick and Betty Woodard, Patricia Silvia and her minor children, Ross Shadron and Rachel Shadron, were present at the cookout. Also present at the cookout were Jerome Woodard, Patrick Woodard's brother; Robin McIntyre, Patricia Silvia's sister who suffers from Down Syndrome; and Beth Parker and Doug Caldwell, family friends. Not counting the murder victim, the evidence is sufficient to establish that Betty Woodard, Patrick Woodard, Ross Shadron, Rachel Shadron, Jerome Woodard and Robin McIntyre were knowingly put in great risk of death by the Defendant.

Betty Woodard was in great risk of death when the Defendant shot her in the face. On the evening of the family cookout, Betty Woodard was sitting in her carport and talking with Patricia Silvia, her daughter, Rachel Shadron, her granddaughter, and Jerome Woodard, her brother-in-law. The Defendant showed up that evening and



spoke briefly with Patricia. He then turned around and walked away. Betty Woodard thought he had left. Both she and Patricia then went inside the house.

Betty Woodard told her husband that the Defendant was at their house. She was inside the home when she thought she heard firecrackers. At that time, Patricia Woodard was in the kitchen getting ice tea out of the refrigerator. As Betty walked past Patricia, she asked Patricia if she was okay and if she was coming back outside. Patricia told her mother that she would be back outside in a minute. Betty Woodard opened the door to the carport and saw a flash of light. She fell forward into the carport and woke up lying in a pool of blood. Three shotgun pellets were later removed from her left eye. The Defendant knowingly created a great risk of death to Betty Woodard.

Patrick Woodard was put in great risk of death by the Defendant. On the evening of the cookout, Patrick Woodard was in the master bedroom talking with Beth Parker when his wife came to the master bedroom door and told him the Defendant was at their home. Betty asked him to come outside. Patrick Woodard continued talking with Beth Parker until he heard gunshots. Later it was discovered that one of the shotgun pellets went through the kitchen wall into the master bedroom.

By the time Patrick Woodard entered the kitchen, he saw Patricia Silvia lying on the kitchen floor in front of the refrigerator. Then, looking through the open carport door, he saw his wife lying on the ground in the carport bleeding. While looking into the carport, Patrick Woodard saw the Defendant looking directly at him. He then saw the Defendant pump his shotgun and point the shotgun at him to shoot him in his chest. Patrick Woodard stepped over Patricia Silvia and shut the door to the carport so he would not be shot in the chest.



Patrick Woodard held the carport door closed, waited for the Defendant to leave and then opened the carport door to attend to his wife. After all the shooting, the carport door, which was solid wood, had both buck shot and bird shot in it. The Defendant knowingly created a great risk of death to Patrick Woodard.

Ross Shadron was put in great risk of death by the Defendant. Ross Shadron, Patricia Silvia's son, was twelve years old at the time of the family gathering. He was inside the home watching television when he heard gunshots. He ran towards the carport door. He saw smoke everywhere. He was looking for his sister, Rachel. He saw his mother standing beside him and saw her fall in front of him. Ross Shadron was standing close to his mother when she was shot. The shotgun pellets that hit his Mother and the refrigerator and kitchen cabinets could have killed Ross Shadron. The Defendant knowingly created a great risk of death to Ross Shadron.

Rachel Shadron was put in great risk of death by the Defendant. Rachel Shadron, Patricia Silvia's daughter, was fifteen years old at the time of the family gathering. She was in the carport with her mother, her grandmother, her aunt Robin McIntyre, Jerome Woodard, and Doug Caldwell when the Defendant arrived at the Woodard home.

Betty Woodward was sitting next to Patricia Silvia when the Defendant walked up to the carport. He stood there for a moment, then Rachel asked him what he wanted. The Defendant said that he needed to speak with her mother. Patricia Silvia walked out to the edge of the carport to where the Defendant was standing and spoke with him briefly, then she returned to the carport. As Patricia was walking away from the Defendant, Rachel Shadron heard the Defendant tell her mother that she would be



sorry. The Defendant then walked away from the Woodward's home toward the street. He had parked his truck at the end of the street.

Rachel was talking in the carport and did not notice the Defendant again until she heard gun shots. She looked to see what was happening and saw the Defendant standing at the edge of the carport and pointing his shotgun at her. The shotgun was approximately one foot away from her. Suddenly, she was pushed down from behind and fell onto the carport floor.⁴ She then crawled inside the house to find her brother. As she was crawling through the carport door into the house, and heading for the bathroom, she continued to hear gunshots. As she crawled through the kitchen, she saw her mother on the floor in front of the refrigerator and her grandfather holding the carport door shut. The Defendant knowingly created a great risk of death to Rachel Shadron.

Jerome Woodard was in great risk of death when he was standing at the edge of the Woodward's carport and the Defendant began firing his shotgun. The Woodward's carport is a one car carport. He hit the ground as the Defendant fired his second shot and did not get up because he feared for his life. The crime scene drawing and photos show pellets struck the front of the Ford Contour he had hid behind and the carport column near him. He was lying on the floor of the carport between the front and rear tires of the Ford Contour as the Defendant continued to shoot. Jerome Woodard

⁴ Rachel Shadron thought it was her mother behind her who pushed her down but she did not testify that she actually saw who pushed her to the ground. The evidence in the case establishes that Patricia Silvia was in the kitchen when the Defendant was in the carport shooting. While Patricia Silvia could not have been the person who pushed Rachel to the ground, the court finds that someone in the carport pushed Rachel to the ground when the Defendant pointed his shotgun at her. Obviously, when the Defendant was in the carport shooting, chaos occurred.



heard seven shots in total and saw the Defendant walk away before he got up. The Defendant knowingly created a great risk of death to Jerome Woodard.

Robin McIntyre was in great risk of death as she was also in the carport when the shooting started. After the shooting started but before Patrick Woodard shut the carport door, she entered the home through the carport door. Robin McIntyre suffers from Down Syndrome and did not testify. The Defendant knowingly created a great risk of death to Robin McIntyre.

The physical evidence, photographs and testimony of crime scene technicians establish the Defendant fired seven shots from a 12 gauge shotgun at the Woodard's home on September 22, 2006. The shots impacted areas on the left front quarter panel of the Ford Contour in the driveway, the carport column on the other side of the Ford, the carport door leading into the kitchen, the refrigerator and cabinets in the kitchen, and the master bedroom wall.

This aggravating factor has been proven beyond a reasonable doubt and is given great weight by the court.

The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

To establish this aggravator, the State must prove beyond a reasonable doubt that (1) the murder was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage, (2) the defendant had a careful plan or prearranged design to commit murder before the killing, (3) the defendant exhibited heightened premeditation, and (4) the defendant had no pretense of legal or moral justification. *Jackson v. State*, 704 So.2d 500 (Fla. 1997), *Nelson v. State*, 748 So.2d



237 (Fla. 1999) and *Sereci v. Moore*, 825 So.2d 882 (Fla. 2002). The court incorporates the findings and conclusions from the two prior aggravators into this aggravator.

The evidence is sufficient to establish that the murder of Patricia Silvia was the product of cool and calm reflection by the Defendant and not prompted by emotional frenzy, panic, or a fit of rage. The Defendant and Patricia Silvia were married in 2002. In July of 2006, Patricia Silvia separated from the Defendant and she and her two minor children, Ross and Rachel Shadron, moved in with Betty and Patrick Woodard at their Zelina Point home. From the date of the separation until the evening of September 22, 2006, the Defendant came by the Woodard's home several times and called on the phone to talk to Patricia Silvia, seeking to reconcile with her. Patricia Silvia was not receptive to the Defendant's attempts to reconcile.

On September 22, 2006, at approximately 3:50 p.m., the Defendant purchased a 12 gauge Mossberg Persuader shotgun from Shoot Straight II.⁵ The surveillance video from Shoot Straight II shows the Defendant looking at the guns in the store, speaking with the store clerk, selecting the 12 gauge Mossberg Persuader shotgun, purchasing the shotgun and leaving the store with the shotgun.⁶ This video is important because it shows the Defendant on the day of the murder calmly participating in a routine transaction. The Defendant exhibited no bizarre, agitated, frenzied or panicked behavior. The Defendant was calm the entire time he was at Shoot Straight II. He then went to Al's Army Navy where he purchased four individual boxes of shells, including both bird and buck shot.

⁵ State's Exhibit 101.

⁶ State's Exhibit 100.



The Defendant rented a hotel room at the Regency Inn on Highway 17-92 in Fern Park that same afternoon and purchased a six-pack of beer at the nearby Winn-Dixie at 6:09 p.m.⁷ Approximately five and a half hours after purchasing the shotgun, the Defendant drove to the Woodard's home with the shotgun and ammunition in his truck.

Later that evening the Defendant went to the Woodward's home to give Patricia Silvia one last chance to reconcile with him, and, if she refused, to kill her. When Patricia Silvia walked away from the Defendant after briefly speaking with him, Rachel Shadron heard the Defendant tell her mother, "You will be sorry." The Defendant walked back to his truck, got his shotgun, and, as he walked back to the Woodard's house, commenced shooting. The first shot was fired into the air and the next six shots were fired into the Woodard's carport and house. After firing seven rounds and killing Patricia Silvia, the Defendant walked back to his truck and drove away.

There is no evidence that the Defendant was intoxicated at the time of the murder or at anytime on September 22, 2006. There is no evidence that the murder of Patricia Silvia, or any of Defendant's conduct on September 22, 2006, was prompted by emotional frenzy, panic, or a fit of rage.

The Defendant was arrested in the early morning hours of September 23, 2006. The Defendant asked Sergeant Hardesty, the law enforcement officer driving him to the jail, if he was married. Sergeant Hardesty said, "Yes." The Defendant then stated, "That's the reason I'm in this situation. My wife spent all my money. I placed the

⁷ State's Exhibit 87.



checking account in her name. She started re-dating her ex-husband. That is the reason I shot her."⁸ Sergeant Hardesty described the Defendant as lacking any type of emotion during his arrest and transport to jail. The evidence supports the "cold" element of the CCP aggravator.

The evidence is sufficient to establish that the Defendant had a careful plan or prearranged design to commit murder before the killing. Approximately five and a half hours before killing Patricia Silvia, the Defendant armed himself by purchasing the shotgun and shells used to kill her. He put the shotgun and shells in his truck when he went to the Woodard's house that evening. The Defendant's plan was to give Patricia Silvia one last chance to reconcile with him and, if she refused, to kill her.

When Patricia Silvia walked away from him that evening, Rachel heard the Defendant say to her mother, "You will be sorry." He walked back to his truck. The Defendant could have gotten into his truck and driven away. No one followed the Defendant when he left the Woodard's home. Instead, the Defendant calmly continued to carry out his plan to kill. The Defendant got his shotgun and walked back approximately one hundred feet to the carport, shooting as he walked, until he had a clear shot of Patricia Silvia. Then he shot her in the head.

The Defendant gave the mental health experts in this case different reasons for purchasing the shotgun on September 22, 2006. At first, the Defendant reported that he bought it for his own safety. He was sleeping in his truck and he said he needed the shotgun to protect himself. The Defendant had been homeless for some time prior to September 22, 2006. Then, he said he was afraid of the Woodard family. Yet, the

⁸ The Defendant's statement is not verbatim.



Defendant did not take the shotgun with him the first time he went to the Woodard's home. At some point, he reported he was afraid of Patricia Silvia's ex-husband. Lastly, he told Dr. Buffington that he bought the shotgun to commit suicide.⁹ Neither Dr. Day nor Dr. Danziger found the Defendant suicidal. The court rejects the Defendant's inconsistent statements as to why he purchased the shotgun and finds the Defendant purchased the shotgun to kill Patricia Silvia.

Patricia Silvia's murder was neither spontaneous, nor impulsive. The killing of Patricia Silvia was carried out as a matter of course, consistent with the Defendant's careful plan. The evidence supports the "calculated" element of the CCP aggravator.

The evidence is sufficient to establish that the Defendant exhibited a heightened premeditation. The "heightened premeditation" required by the CCP aggravator is more than what is required to prove first degree, premeditated murder. The Florida Supreme Court has found the heightened premeditation required for this aggravator when a Defendant has the opportunity to leave the crime scene and not commit the murder but, instead, commits the murder. See *Buzia v. State*, 926 So.2d 1203 (Fla. 2006).

The Defendants actions rise to the level of "heightened premeditation" because after speaking with Patricia Silvia, the Defendant had the opportunity to leave the Woodard's house, get into his truck, drive away, and not commit the murder; instead, he used the time to arm himself, return to the Woodard's house, and commit the murder.

⁹ The court questions the purchase of four boxes of shells if the goal is suicide.



Additionally, the time lapse that occurred between the time the Defendant armed himself and the time he shot Patricia Silvia allowed the Defendant to reflect upon his criminal conduct and to change his mind. Each time the Defendant fired his shotgun, he had to pump the shotgun. The Defendant shot at least four times before he shot at Patricia Silvia in the Woodard's kitchen. The Defendant used this time to perfect his plan and ruthlessly get closer to Patricia Silvia so he could kill her.

The Defendant's actions reflect a deliberate and conscious choice to commit murder. The Defendant's actions rise to the level of deliberate ruthlessness and support the "heightened premeditation" element of the CCP aggravator.

The evidence is sufficient to establish that the Defendant had no pretense of any legal or moral justification. No evidence of any moral or legal justification for the murder was presented and none was argued.

The Defendant has been diagnosed by Dr. Danziger with a chronic personality disorder not otherwise specified (NOS), with characteristics that include paranoid, anti-social and schizoid components, and with chronic alcohol dependence. However, the evidence establishes that the Defendant had the ability to engage in cool and calm reflection, make a careful plan to commit the murder and exhibit the required heightened premeditation. Dr. Day testified that the Defendant had the mental capacity to commit the murder in a cold, calculated and premeditated fashion and the court accepts her testimony as being credible. See *Evans v. State*, 800 So.2d 182 (Fla. 2001).



The court finds that each of the elements of the CCP aggravator has been proven beyond a reasonable doubt and the court gives great weight to the CCP aggravator.

MITIGATING CIRCUMSTANCES¹⁰

1. The Defendant suffered from extreme emotional distress at the time of the killing.

The evidence in this case clearly establishes that the Defendant was not suffering from extreme emotional distress at the time of the killing. The defense presented the testimony of Dr. Deborah Day, a licensed psychologist, during the penalty phase. Dr. Day met with the Defendant five times between December of 2006 and the trial for a total of approximately eight hours of interviews, reviewed and performed psychological testing on the Defendant, reviewed records given to her by defense counsel and obtained by her, and interviewed family members.

Dr. Day diagnosed the Defendant with a chronic personality disorder NOS with a combination of anti-social, schizoid and paranoid features. Dr. Day also diagnosed the Defendant with a delusional disorder and substance dependency. Dr. Day opined that the Defendant was not under an extreme mental or emotional disturbance at the time of the murder.

At the *Spencer* hearing, the defense presented the testimony of Dr. Daniel Buffington, a forensic pharmacologist, regarding the Defendant's mental and emotional state leading up to and including the murder. Dr. Buffington saw the Defendant one

¹⁰ The court uses the mitigating circumstances contained in Defendant's Sentencing Memorandum.



time for approximately two hours on October 17, 2008, three months after the penalty phase. Dr. Buffington reviewed the documents provided to him by defense counsel.¹¹

Dr. Buffington testified that the day of the murder was a peak emotional day for the Defendant and opined that the Defendant was suffering from extreme emotional stress at the time of the murder. The defense experts disagree as to the existence of the extreme emotional disturbance mitigator. Based on the court's review of all the evidence, the court accepts the opinion of Dr. Day as credible and finds the Defendant was not suffering from an extreme mental or emotional disturbance leading up to and at the time of the murder.

While it is clear the Defendant was not suffering from extreme emotional disturbance, the Defendant was emotionally disturbed by the fact that he had lost his job on September 22, 2006. He was already homeless and living out of his truck when he was fired from his job.¹² His employer had allowed him to park his truck near his place of employment at night and he was sleeping in his truck. Losing his job meant that he no longer had a place to park his truck in the evenings.

Additionally, the Defendant was disturbed that his marriage was dissolving. He and his wife had been separated since July of 2006, when she left him and moved in with her family at the Zelina Point home. He repeatedly attempted to reconcile the marriage. Patricia Silvia was not receptive to any of the Defendant's attempts to reconcile.

¹¹ Defendant's Exhibit 1, *Spencer* hearing.

¹² The Defendant had entered a plea to a grand theft in Tampa. When he applied for an apartment, the apartment complex management did a background check and discovered the grand theft. He lost the apartment. Later, his employer found out about the grand theft and fired him.



The court finds the Defendant was emotionally distressed by the loss of job and homelessness and the fact that his marriage was dissolving. The court gives this mitigator little weight.

2. The Defendant's ability to conform his behavior to the requirements of the law was substantially impaired at the time of the killing.

The defense expert at the penalty phase, Dr. Day, opined that the Defendant's capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of the law were not "substantially" impaired; although, Dr. Day did testify that they were impaired based on the Defendant's severe personality disorder, his impulsivity, his drinking alcohol and his false beliefs.

The defense expert at the *Spencer* hearing, Dr. Buffington, relied upon the diagnoses made by Dr. Day and Dr. Danziger.¹³ Dr. Buffington testified that the Defendant's symptoms at the time of the murder were consistent with an alcohol related blackout, fragmented in nature. Dr. Day testified that she had no explanation for the Defendant to have had a blackout at the time of the murder. Dr. Danziger did not believe that the Defendant had an alcohol related blackout at the time of the murder. The court rejects Dr. Buffington's testimony that the Defendant experienced an alcohol related blackout at the time of the murder and Dr. Day's testimony that it was a dissociative episode. The court accepts the testimony of Dr. Danziger as credible.

The Defendant told Dr. Buffington that he was having suicidal thoughts on

¹³ Dr. Buffington mischaracterized the diagnosis of Dr. Danziger as being consistent with Dr. Day's diagnosis of the Defendant when, in fact, they were different. Dr. Danziger did not diagnose the Defendant with a delusional disorder.



September 22, 2006, and that is why he bought the shotgun. Neither Dr. Day nor Dr. Danziger found the Defendant suicidal during the time leading up to and including September 22, 2006. The Defendant's IQ of 107 is in the average range. There is no evidence of the Defendant having any brain damage. The court finds the Defendant purchased the shotgun to kill his wife.

The court accepts the opinion of Dr. Day and finds that the Defendant's capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of law were not "substantially" impaired. Based on the Defendant's chronic personality disorder NOS and chronic alcohol dependence as testified to by Dr. Danziger, the court finds the Defendant's ability to conform his behavior to the requirements of law was impaired, though not substantially, and assigns this mitigator moderate weight.

3. The Defendant suffered from significant psychological disorders at the time of the killing, including a personality disorder NOS with paranoid, delusional and anti-social features.

Dr. Day diagnosed the Defendant with a chronic personality disorder not otherwise specified (NOS) with a combination of anti-social, schizoid and paranoid features. Dr. Day also diagnosed the Defendant with a delusional disorder and substance dependency.

Dr. Danziger diagnosed the Defendant with a chronic personality disorder NOS, but he diagnosed the Defendant with anti-social and paranoid features. He opined that a schizoid feature is also possible and did not disagree with Dr. Day's diagnosis as to the schizoid feature. Dr. Danziger disagreed with Dr. Day that the Defendant had a



delusional disorder of any type because the delusional component of his personality was not prominent enough. Dr. Danziger testified that any paranoid thoughts the Defendant may have had could have been the natural result of the Defendant being high on alcohol or marijuana. The court finds Dr. Danziger's diagnosis of the Defendant as credible.

The court does not find this mitigator to have been established by the evidence; however, the court does find that the Defendant had a chronic personality disorder NOS with paranoid, anti-social and schizoid features and alcohol dependence as testified to by Dr. Danziger and assigns this mitigator moderate weight.

4. The Defendant suffered from alcohol dependence at the time of the killing.

The Defendant reported a long history of drinking alcohol and smoking marijuana to all the experts. At some point in time he began to abuse both substances. Both Dr. Day and Dr. Danziger diagnosed the Defendant as alcohol dependent. As discussed above, the court rejects the defense theory that the Defendant experienced an alcoholic related blackout at the time of the murder.¹⁴

All of the doctors who testified in this case agreed that the Defendant was not intoxicated on September 22, 2006.¹⁵ On September 22, 2006, the Defendant purchased the shotgun at approximately 3:50 p.m., purchased a six pack of beer at 6:09 p.m., killed Patricia Silvia at approximately 9:20 p.m., and purchased a six pack of

¹⁴ The court incorporates its findings and conclusions from the second mitigator into this mitigator.

¹⁵ *Mahn v. State*, 714 So.2d 391 (Fla. 1998). (not being under the influence of drugs or alcohol at the time of the offense is not the standard for determining whether long term substance abuse is mitigating).



beer at 10:02 p.m.¹⁶ The Defendant had consumed, at the most, one six pack of beer from 6:09 p.m. until 9:20 p.m., the approximate time of the murder. Dr. Day testified that a six pack of beer was not much alcohol for the Defendant.

While it is uncontroverted the Defendant was not intoxicated at the time of the murder, the Defendant does not have to be intoxicated to be impaired by his chronic alcohol dependence. This mitigator has been established and is given moderate weight by the court.

5. The Defendant had previously been diagnosed with a schizoid or schizophreniform disorder as a teenager while he was hospitalized for mental treatment.

The evidence establishes that the Defendant had been diagnosed with a schizoid or schizophreniform disorder as a teenage while he was hospitalized for mental treatment. Dr. Day diagnosed the Defendant with schizoid features in his personality disorder NOS. Dr. Danziger did not disagree that the Defendant had schizoid features in his personality disorder NOS.

However, neither Dr. Day nor Dr. Danziger ever diagnosed the Defendant with a schizoid disorder or a schizophreniform disorder. In fact, Dr. Danziger, whose diagnosis the court accepts, did not diagnose the Defendant with any psychotic mental illness but only with a personality disorder NOS and alcohol dependence.

While this mitigator has been established, the court assigns this mitigator little weight.

¹⁶ State's Exhibit 87.



6. The Defendant grew up in a dysfunctional family setting where there was domestic violence.

The Defendant grew up in a home where his mother and father verbally and physically fought. The police were called to the home once for domestic violence. No one was ever hospitalized as a result of the fighting. The father began physically abusing the Defendant at age thirteen and this continued for several years. The Defendant said the physical abuse consisted of the father hitting him with a leather belt or with his fist.

As a child the Defendant witnessed domestic violence between his parents and as a teenager was physically abused by his father, which constitutes child abuse. This mitigating circumstance has been established and is given little weight by the court.

CONCLUSION

Having reviewed and weighed all of the aggravating and mitigation circumstances and having considered the nature and quality of each, the court finds that the aggravating circumstances far outweigh the mitigating circumstances for the murder of Patricia Silvia. Accordingly,

IT IS THE JUDGMENT OF THIS COURT:

1. For the murder of Patricia Silvia, the Defendant, William Frances Silvia, Jr., is sentenced to be put to death in the manner prescribed by law.
2. For the attempted murder of Betty Woodard, the Defendant, William Frances Silvia, Jr., is sentenced to serve a term of imprisonment in the Department of Corrections for the rest of his natural life.

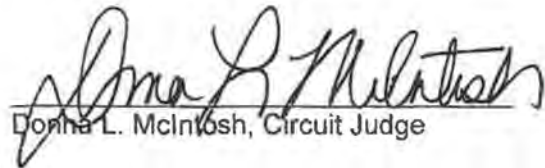


3. These sentences are to run concurrent with each other and the Defendant is given credit for 858 days time served on each count.

4. The Clerk is directed to assess the statutory costs and enter judgment accordingly.

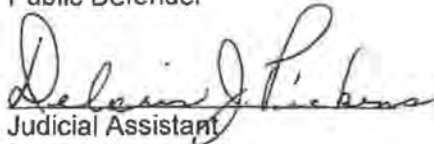
5. The Defendant is advised that the judgment and sentences in this case will automatically be appealed to the Supreme Court of Florida and the Public Defender of the Seventh Judicial Circuit is appointed for the purpose of representing the Defendant on appeal.

ORDERED in Sanford, Seminole County, Florida, this 28th day of January, 2009.


Donna L. McIntosh, Circuit Judge

Copies furnished to:

State Attorney
Public Defender


Judicial Assistant



DEATH WARRANT

STATE OF FLORIDA

WHEREAS, WILLIAM FRANCES SILVIA, JR., on or about the 22nd day of September, 2006, murdered PATRICIA SILVIA; and

WHEREAS, WILLIAM FRANCES SILVIA, JR., on the 6th day of June, 2008, was convicted of first degree murder and, on the 28th day of January, 2009, was sentenced to death for the murder of PATRICIA SILVIA; and

WHEREAS, on the 7th day of April, 2011, the Supreme Court of Florida affirmed the conviction and death sentence of WILLIAM FRANCES SILVIA, JR.; and

WHEREAS, on the 11th day of September, 2013, the Supreme Court of Florida affirmed the trial court order discharging WILLIAM FRANCES SILVIA, JR.'s postconviction counsel and dismissing his postconviction proceedings based upon his waiver of the same; and

WHEREAS, on the 18th day of March, 2024, the United States District Court for the Middle District of Florida dismissed WILLIAM FRANCES SILVIA, JR.'s Amended Motion to Appoint Federal Habeas Counsel Pursuant to U.S.C. § 3599(a)(2); and

WHEREAS, further postconviction motions and petitions filed by WILLIAM FRANCES SILVIA, JR. have been denied and the denials affirmed on appeal; and

WHEREAS, executive clemency for WILLIAM FRANCES SILVIA, JR., as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate; and

WHEREAS, attached hereto is a certified copy of the record of the conviction and sentence pursuant to section 922.052, Florida Statutes.

NOW, THEREFORE, I, RON DESANTIS, as Governor of the State of Florida and pursuant to the authority and responsibility vested in me by the Constitution and Laws of Florida, do hereby issue this warrant, directing the Warden of the Florida State Prison to cause the sentence of death to be executed upon WILLIAM FRANCES SILVIA, JR., in accordance with the provisions of the Laws of the State of Florida.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, this 17th day of July, 2026.




GOVERNOR

ATTEST:


SECRETARY OF STATE

FILED
2026 JUL 17 PM 12:33
DEPT. OF STATE
TALLAHASSEE, FL

No. _____

IN THE
Supreme Court of the United States

WILLIAM FRANCES SILVIA

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

***THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY AUGUST 18, 2026 AT 6:00 P.M.***

APPENDIX E

Warrant Packet for Dominick Anthony Occhicone



RON DESANTIS
GOVERNOR

June 26, 2026

Warden Randall Polk
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32036-1000

Re: Execution Date for Dominick Anthony Occhicone, Jr., DC# 226426

Dear Warden Polk:

Enclosed is the death warrant that I signed to carry out the sentence for Dominick Anthony Occhicone, Jr., as well as certified copies of his judgment and sentence. I have designated the week beginning at 12:00 noon on Tuesday, July 28, 2026, through 12:00 noon on Tuesday, August 4, 2026, for the execution. I have been advised that you have set the date and time of execution for Tuesday, July 28 at 6:00 p.m.

This letter is incorporated into and made a part of the death warrant identified above.

Sincerely,

A blue ink signature of Ron DeSantis, consisting of a stylized 'R' followed by 'DeSantis'.

Ron DeSantis
Governor

Enclosures

FILED
2026 JUN 26 PM 3:32
DEPARTMENT OF STATE
TALLAHASSEE, FL

Warden Randall Polk
June 26, 2026
Page 2

cc:

Honorable Carlos G. Muñiz
Chief Justice
Supreme Court of Florida
500 S. Duval Street
Tallahassee, Florida 32399

Honorable Shawn Crane
Chief Judge, 6th Judicial Circuit
7530 Little Rd.
New Port Richey, Florida 34654

Secretary Ricky Dixon
Department of Corrections
501 S. Calhoun Street
Tallahassee, Florida 32399-2500

Marilyn Muir
Associate Deputy Attorney General
Office of the Attorney General
The Capitol, FL-01
Tallahassee, Florida 32300-0001

Eric Pinkard
Capital Collateral Regional Counsel
12973 N. Telecom Parkway
Temple Terrace, Florida 33637

Office of Executive Clemency
4070 Esplanade Way
Building C, Room 229
Tallahassee, Florida 32399-2450

Dominick Anthony Occhicone, Jr., DC#
226426
Union Correctional Institution
7819 N.W. 228th Street
Raiford, Florida 32083



STATE OF FLORIDA

JAMES UTHMEIER
ATTORNEY GENERAL

June 26, 2026

The Honorable Ron DeSantis
Governor
The Capitol
Tallahassee, Florida 32399-0001

RE: Dominick Anthony Occhicone, Jr.

Dear Governor DeSantis:

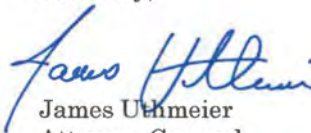
Raymond and Martha Artzner were Dominick Occhicone's former girlfriend's parents. In the early morning hours of June 10, 1986, Occhicone went to the Artznerns' home where his former girlfriend was living with her child. He awakened his former girlfriend by knocking on her bedroom's sliding glass door. The woman refused to talk with Occhicone and she threatened to call the police, so he left. Occhicone returned shortly after, armed with a handgun. He cut the telephone lines to the home and roused the household. When Raymond Artzner confronted Occhicone outside the home, Occhicone shot and killed him. The woman and her child managed to flee while Occhicone was breaking into the home through a locked door. Once inside, Occhicone fatally shot Martha Artzner four times. A jury found Occhicone guilty of two counts of first-degree murder and recommended death for each count. The trial court sentenced Occhicone to life imprisonment for killing Raymond Artzner and to death for killing Martha Artzner. The Florida Supreme Court affirmed Occhicone's judgment and death sentence on direct appeal, and the United States Supreme Court denied certiorari review. *Occhicone v. State*, 570 So. 2d 902, 904 (Fla. 1990) *cert. denied*, 500 U.S. 938 (1991).

In the decades that followed, Occhicone engaged in unsuccessful litigation in state and federal courts. *See Occhicone v. Singletary*, 618 So. 2d 730 (Fla. 1993) (denying state habeas corpus petition); *Occhicone v. State*, 768 So. 2d 1037 (Fla. 2000) (affirming the denial of Occhicone's initial state postconviction motion); *Occhicone v. Moore*, No. 8:01-cv-2136, 2005 WL 1073936 (M.D. Fla. Mar. 31, 2005) (denying federal

habeas corpus petition), *aff'd*, *Occhicone v. Crosby*, 455 F.3d 1306 (11th Cir. 2006), *cert. denied*, *Occhicone v. McDonough*, 549 U.S. 1122 (2007); *Occhicone v. State*, 235 So. 3d 299 (Fla.) (affirming denial of successive postconviction motion), *cert. denied*, 586 U.S. 863 (2018).

The record has been reviewed and there are no stays of execution issued by any court of competent jurisdiction in this cause. Based upon the above-referenced summary of litigation affirming the judgment and sentence of death imposed for first-degree murder, the record is legally sufficient to support the issuance of a death warrant.

Sincerely,



James Uhlmeier
Attorney General

IN THE DISTRICT COURT, SIXTH
JUDICIAL CIRCUIT IN AND FOR

Parco COUNTY, FLORIDA

DIVISION Felony

CASE NUMBER 8601355CEAWS

SPN# 11019

STATE OF FLORIDA

-V8-

Domfnick Occhicone
Defendant

JUDGMENT

BY

The Defendant, Dominick Occhicone, being personally before this Court represented by Bruce Boyer, Bruce Young, Craig LaPorte his attorney of record, and having:

(Check Applicable Provision)

- ☒ Been tried and found guilty of the following crime(s)
☐ Entered a plea of guilty to the following crime(s)
☐ Entered a plea of nolo contendere to the following crime(s)

[illegible]

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

(\$20.00)

The Defendant is hereby ordered to pay the sum of ~~ten~~ three dollars (~~\$10.00~~ \$3.00) pursuant to F.S. 900.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of ~~two~~ three dollars (~~\$2.00~~ \$3.00) as a court cost pursuant to F.S. 943.25(4).

- ☒ The Defendant is ordered to pay an additional sum of two dollars (\$2.00) pursuant to F.S. 934.25(8).
(this provision is optional; not applicable unless checked.)

(Check if Applicable)

- ☐ The Defendant is further ordered to pay a fine in the sum of \$ _____ pursuant to F.S. 775.0835.
(This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s)).

- ☒ The Court hereby imposes additional court costs in the sum of \$ 200.00
pursuant to F.S. 27.3455.

Imposition of Sentence
Stayed and Withheld
(Check if Applicable)

☐ The Court hereby stays and withholds the imposition of sentence as to count(s) _____
and places the Defendant on probation for a period of _____
under the supervision of the Department of Corrections (conditions of probation set forth in
separate order.)

Sentence Deferred
Until Later Date
(Check if Applicable)

☒ The Court hereby defers imposition of sentence until pending Sentencing.
(date)

The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the
Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The
Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing
of indigency.

JUDGE

1673

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
6. L. Thumb	7. L. Index	8. L. Middle	9. L. Ring	10. L. Little
				

Fingerprints taken by:

Name and Title

DONE AND ORDERED in Open Court at Pasco County, Florida, this 18th day
of September A.D., 19 87. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of
the Defendant, Dominick Occhicone and that they were placed thereon by said Defendant in my
presence in Open Court this date.

JUDGE

Page _____ of _____

RECORD VERIFIED

BOOK 2000 PAGE 222A

Defendant DOMINICK A. OCCHICONE

Case Number 8601355CEAMS

SPN 11019

SENTENCE

(As to Count 1)

The Defendant, being personally before this Court, accompanied by his attorney, BRUCE BOYER

and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown.

☒ and the Court having on 09/18/87 deferred imposition of sentence until this date.
(Check either provision if applicable)

☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that:

☐ The Defendant pay a fine of \$ _____, plus \$ _____ as the 5% surcharge required by F.S. 960.25.

☒ The Defendant is hereby committed to the custody of the Department of Corrections

☐ The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida
(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one: unmarked sections are inapplicable)

☐ For a term of Natural Life

☒ For a term of LIFE without eligibility for parole for 25 years

☐ For an indeterminate period of 6 months to _____ years.

1674

☐ Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

If "split" sentence complete either of these two paragraphs

☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm-3 Year mandatory minimum

☐ It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

Drug Trafficking-mandatory minimum

☐ It is further ordered that the _____ year minimum provisions of F.S. 893.135(1)(X) are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction

☐ The Court pursuant to F.S. 947.18(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender

☐ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit

☒ It is further ordered that the Defendant shall be allowed a total of 518 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive Concurrent

It is further ordered that the sentence imposed for this count shall run ☐ consecutive to ☐ concurrent with (check one) the sentence set forth in count _____ above.

Page _____ of _____

F3-c
2-238a

BOOK BBB PAGE 212B
RECORD VERIFIED

Defendant DOMINICK A. OCCHIONE

Case Number 8601355CFAWS

SPN 11019

SENTENCE

(As to Count 2)

The Defendant, being personally before this Court, accompanied by his attorney, BRUCE BOYER

and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown.

☒ and the Court having on 09/18/87 deferred imposition of sentence until this date.
(Check either provision if applicable)

☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that:

☐ The Defendant pay a fine of \$ _____, plus \$ _____ as the 5% surcharge required by F.S. 980.25.

☒ The Defendant is hereby committed to the custody of the Department of Corrections

☐ The Defendant is hereby committed to the custody of the Sheriff of _____ County, Florida
(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one: unmarked sections are inapplicable)

☐ For a term of Natural Life

☒ For a term of DEATH

☐ For an indeterminate period of 6 months to _____ years.

1675

☐ Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

If "split" sentence complete either of these two paragraphs

☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm-3 Year mandatory minimum

☐ It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

Drug Trafficking- mandatory minimum

☐ It is further ordered that the _____ year minimum provisions of F.S. 893.136(1)(X) are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction

☐ The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender

☐ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit

☐ It is further ordered that the Defendant shall be allowed a total of _____ credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive Concurrent

It is further ordered that the sentence imposed for this count shall run ☐ consecutive to ☐ concurrent with (check one) the sentence set forth in count _____ above.

Page _____ of _____

F3-a
2-239a

BOOK 200 PAGE 200C
RECORD VERIFIED

PM-7) IN OPEN COURT
THIS 9 DAY OF November 1987
Jed Pittman, Clerk 11:15 AM
BY [Signature] D.C.

Defendant DOMINICK A. OCCHICONE
Case Number 8601355CFAMS
SPN 11019

Consecutive/Concurrent It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run ☐ consecutive to ☐ concurrent with (check one) the following:

- ☐ Any Active Sentence being served.
☐ Specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of PASCO County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further recommends _____

1676

DONE AND ORDERED in Open Court at PASCO county, Florida, this 9th day of NOVEMBER A.D., 19 87

[Signature]
JUDGE

Page _____ of _____

BOOK 000 PAGE 2120

RECORD VERIFIED

F3-d

STATE OF FLORIDA, COUNTY OF PASCO
THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE AND CORRECT COPY OF THE DOCUMENT
ON FILE OR OF PUBLIC RECORD IN THIS OFFICE
WITNESS MY HAND AND OFFICIAL SEAL THIS
05 DAY OF August 2 014
PAULA S. ONEIL, CLERK & COMPTROLLER
BY [Signature] DEPUTY CLERK

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

CASE NUMBER 86Q1355CPAWS

STATE OF FLORIDA

VS.

Dominick Occhicone

INDICTMENT FOR

Murder In The First Degree

Count 1

(Death of Raymond Artsner)

VERDICT

FILED IN OPEN COURT
THIS 18th day of September 1987
at Pasco, Florida, Clerk 4:24 PM.

BY John G. Gaudin, D.C.

WE, the Jury, find as follows:

Check one and only one on this form by inserting a single check mark on the line next to the description of the verdict which you have found.

1677

☒ 1. The defendant is guilty of Murder In The First Degree

as charged by the Indictment.

2. The defendant is guilty of the lesser included crime of:

☐ Murder In The Second Degree

☐ Manslaughter

☐ 3. The defendant is not guilty.

So say we all this 18th day of September, 19 87.

Robert Roy Walker
Signature of Foreman or Forewoman

BOOK 11A PAGE 1504
RECORD VERIFIED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

CASE NUMBER 860135507AWS

STATE OF FLORIDA

VS.

Dominick Occhicone

INDICTMENT FOR

Murder In The First Degree

Count 2

(Death of Martha E. Artaner)

VERDICT

FILED IN OPEN COURT
THIS 18th day of September 1987
Jed P. Nathan, Clerk 4:24 PM.

WE, the Jury, find as follows:

BY Robert Roy Walker D.C.

Check one and only one on this form by inserting a single check mark on the line next to the description of the verdict which you have found.

1678

☒ 1. The defendant is guilty of Murder In The First Degree

as charged by the indictment.

2. The defendant is guilty of the lesser included crime of:

Murder In The Second Degree

Manslaughter

☐ 3. The defendant is not guilty.

So say we all this 18th day of September, 19 87.

Robert Roy Walker
Signature of Foreman or Forewoman

BOOK 111 PAGE 1505
RECORD VERIFIED

STATE OF FLORIDA, COUNTY OF PASCO
THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE AND CORRECT COPY OF THE DOCUMENT
ON FILE OR OF PUBLIC RECORD IN THIS OFFICE
WITNESS MY HAND AND OFFICIAL SEAL THIS
25th day of August 2014
PAULA S. O'NEIL, CLERK & COMPTROLLER
BY Paula S. O'Neil DEPUTY CLERK

DEATH WARRANT

STATE OF FLORIDA

WHEREAS, DOMINICK ANTHONY OCCHICONE, JR., on or about the 10th day of June, 1986, murdered Raymond Artzner and Martha Artzner; and

WHEREAS, DOMINICK ANTHONY OCCHICONE, JR., on the 18th day of September, 1987, was convicted of first degree murder and, on the 9th day of November, 1987, was sentenced to death for the murders of Raymond Artzner and Martha Artzner; and

WHEREAS, on the 11th day of October, 1990, the Supreme Court of Florida affirmed the conviction and death sentence of DOMINICK ANTHONY OCCHICONE, JR.; and

WHEREAS, on the 29th day of June, 2000, the Supreme Court of Florida affirmed the trial court order denying DOMINICK ANTHONY OCCHICONE, JR.'s initial Motion for Postconviction Relief and, on the 8th day of April, 1993, denied his Petition for Writ of Habeas Corpus; and

WHEREAS, on the 31st day of March, 2005, the United States District Court for the Middle District of Florida denied DOMINICK ANTHONY OCCHICONE, JR.'s federal Petition for Writ of Habeas Corpus; and

WHEREAS, on the 14th day of July, 2006, the United States Court of Appeals for the Eleventh Circuit affirmed the denial of DOMINICK ANTHONY OCCHICONE, JR.'s federal Petition for Writ of Habeas Corpus; and

WHEREAS, further postconviction motions and petitions filed by DOMINICK ANTHONY OCCHICONE, JR. have been denied and the denials affirmed on appeal; and

WHEREAS, executive clemency for DOMINICK ANTHONY OCCHICONE, JR., as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate; and

WHEREAS, attached hereto is a certified copy of the record of the conviction and sentence pursuant to section 922.052, Florida Statutes.

NOW, THEREFORE, I, RON DESANTIS, as Governor of the State of Florida and pursuant to the authority and responsibility vested in me by the Constitution and Laws of Florida, do hereby issue this warrant, directing the Warden of the Florida State Prison to cause the sentence of death to be executed upon DOMINICK ANTHONY OCCHICONE, JR., in accordance with the provisions of the Laws of the State of Florida.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, this 26th day of June, 2026.




GOVERNOR

ATTEST:


SECRETARY OF STATE

2026 JUN 26 PM 3:32
DEPARTMENT OF STATE
TALLAHASSEE, FL

FILED

No. _____

IN THE
Supreme Court of the United States

WILLIAM FRANCES SILVIA

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

***THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY AUGUST 18, 2026 AT 6:00 P.M.***

APPENDIX F

Warrant Packet for Harold Gene Lucas



RON DESANTIS
GOVERNOR

July 30, 2026

Warden Randall Polk
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32036-1000

Re: Execution Date for Harold Gene Lucas, DC# 058279

Dear Warden Polk:

Enclosed is the death warrant that I signed to carry out the sentence for Harold Gene Lucas, as well as certified copies of his judgment and sentence. I have designated the week beginning at 12:00 noon on Tuesday, September 1, 2026, through 12:00 noon on Tuesday, September 8, 2026, for the execution. I have been advised that you have set the date and time of execution for Tuesday, September 1 at 6:00 p.m.

This letter is incorporated into and made a part of the death warrant identified above.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

Enclosures

FILED
2026 JUL 30 PM 2:17
DEPARTMENT OF STATE
TALLAHASSEE, FL

Warden Randall Polk

July 30, 2026

Page 2

cc:

Honorable John D. Couriel
Chief Justice
Supreme Court of Florida
500 S. Duval Street
Tallahassee, Florida 32399

Honorable J. Frank Porter
Chief Judge, 20th Judicial Circuit
Lee County Justice Center
1700 Monroe Street
Fort Myers, Florida 33901

Secretary Richard D. Comerford
Department of Corrections
501 S. Calhoun Street
Tallahassee, Florida 32399-2500

Marilyn Muir
Associate Deputy Attorney General
Office of the Attorney General
The Capitol, FL-01
Tallahassee, Florida 32300-0001

Eric Pinkard
Capital Collateral Regional Counsel
12973 N. Telecom Parkway
Temple Terrace, Florida 33637

Office of Executive Clemency
4070 Esplanade Way
Building C, Room 229
Tallahassee, Florida 32399-2450

Harold Gene Lucas, DC# 058279
Union Correctional Institution
7819 N.W. 228th Street
Raiford, Florida 32083

Ali Shakoor
Capital Collateral Regional Counsel
12973 N. Telecom Parkway
Temple Terrace, Florida 33637



STATE OF FLORIDA

JAMES UTHMEIER
ATTORNEY GENERAL

July 30, 2026

The Honorable Ron DeSantis
Governor
The Capitol
Tallahassee, Florida 32399-0001

RE: Harold Gene Lucas

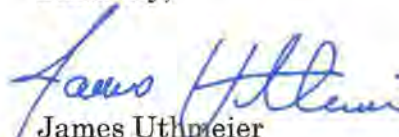
Dear Governor DeSantis:

Harold Gene Lucas was convicted of first-degree murder and sentenced to death for the murder of his sixteen-year-old girlfriend, Jill Piper. Lucas was also convicted of the attempted murders of Jill's friends, Ricky Byrd and Terri Rice. During the week prior to the murder, Lucas and Jill had been arguing and Lucas threatened to kill her. On the night of the murder, Lucas went to Jill's house armed with a rifle and began shooting at Jill and her friends as they stood in the yard. Jill was struck immediately. Her friends ran into the house, hid in a bedroom, and called law enforcement. Jill, though shot, made it inside the house but Lucas followed her and shot her several more times. *Lucas v. State*, 376 So. 2d 1149, 1150 (Fla. 1979).

Lucas's initial death sentence was vacated on direct appeal, *Lucas v. State*, 417 So. 2d 250, 250-52 (Fla. 1982), and after multiple resentencing proceedings, the Florida Supreme Court affirmed his death sentence. *Lucas v. State*, 613 So. 2d 408 (Fla. 1992), *cert. denied*, 510 U.S. 845 (1993). Subsequent collateral challenges in state and federal courts have been universally rejected. See *Lucas v. State*, 841 So. 2d 380 (Fla. 2003); *Lucas v. Sec'y, Dep't of Corr.*, 682 F.3d 1342 (11th Cir. 2012), *cert. denied*, 568 U.S. 1104 (2013); *Lucas v. State*, 234 So. 3d 647 (Fla. 2018).

The record has been reviewed and there are no stays of execution issued by any court of competent jurisdiction in this cause. Based upon the above-referenced summary of litigation affirming the judgment and sentence of death imposed for first-degree murder, the record is legally sufficient to support the issuance of a death warrant.

Sincerely,


James Uthmeier
Attorney General

Probation Violator
Community Control Violator
Retrial
Resentence
Amended Sentence

IN THE CIRCUIT COURT, TWENTIETH
JUDICIAL CIRCUIT, IN AND FOR
LEE COUNTY, FLORIDA
DIVISION FELONY

CASE NUMBER 76-588CF

HAROLD GENE LUCAS
Defendant

3033708

The Defendant, Harold Gene Lucas, being personally before this Court represented by Robert Jacobs, Assistant Public Defender, his attorney of record, and the State represented by Stephen Russell, Assistant State's Attorney, and having

XX Been tried and found guilty of the following crime(s):
 _____ Entered a plea of guilty to the following crime(s):
 _____ Entered a plea of nolo contendere to the following crime(s):

[illegible]

and no cause being shown why the Defendant should not be adjudicated guilty, it is ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

Under penalty of perjury, I certify that the foregoing is a true and correct copy of the record on file in my office.
Kevin C. Karnes, Clerk of the
Circuit Court, Lee County, FL
Dated: 7/27/2026
By: [Signature]
Deputy Clerk



Defendant HAROLD ENE LUCAS

Case Number 76-598CF

OBTS Number _____

SENTENCE

(As to Count 1)

The Defendant, being personally before this Court, accompanied by his attorney, Robert Jacobs, Assistant Public Defender, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

(Check one _____ and the Court having on _____, deferred imposition of sentence if applicable) _____ until this date,

XX _____ and the Court having previously entered a judgment in this case on the Defendant, now resentsences the Defendant,

_____ and the Court having placed the Defendant on Probation/Community Control and having subsequently revoked the Defendant's Probation/Community Control,

IT IS THE SENTENCE OF THE COURT that:

_____ The Defendant pay a fine of \$ _____, pursuant to F.S. 775.083, plus \$ _____ as the 5% surcharge required by F.S. 960.25,

XX _____ The Defendant is hereby committed to the custody of the Department of Corrections,

_____ The Defendant is hereby committed to the custody of the Sheriff of LEE County, Florida,

_____ The Defendant is sentenced as a Youthful Offender in accordance with F.S. 958.05,

TO BE IMPRISONED (check one; unmarked sections are inapplicable)

_____ For a term of Natural Life.

XX For a term of Natural Life to await the imposition of the death penalty.

_____ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this Order.

If "Split" Sentence, complete either paragraphs) _____ Followed by a period of _____ on Probation/Community Control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate Order entered herein.

_____ However, after serving a period of _____ imprisonment in _____, the balance of such sentence shall be suspended and the Defendant shall be placed on Probation/Community Control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control set forth in a separate Order entered herein.

In the event the Defendant is ordered to serve additional "split" sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision term.



0331 0007
03225 Pg2762

Defendant HAROLD GENE LUCAS

Case Number 76-588CF

CONSECUTIVE/CONCURRENT
AS TO OTHER CONVICTIONS _____

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run _____ consecutive to / _____ concurrent with (check one) the following:

_____ Any active sentence being served

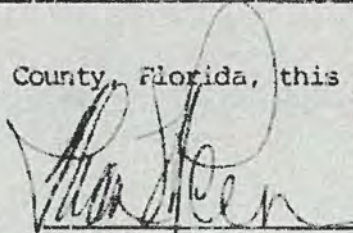
_____ Specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of LEE County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the Department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statutes.

The Defendant in Open Court was advised to his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of the Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court ~~Further recommends~~ attaches its sentencing Order dated May 14, 1991.

DONE AND ORDERED in Open Court at LEE County, Florida, this 14th day of May, 1991.


THOMAS S. REESE, JUDGE

Page 3 of 3



DR2225 PG2763

0334 0008

BEST IMAGE
AVAILABLE

OR222 Filed Lee County Clerk of Courts

CHARLE GREENLEE CITY FL

Form 191.21 1/89

OR2222 PC3331

3029458

51 MAY 29 AM 8:51

1-b

Defendant

Case No.

Imposition of Sentence
Stayed and Withheld
(Check if applicable)



The Court hereby stays and withholds the imposition of sentence as to Count(s) _____ and places the Defendant on Probation for a period of _____ under the supervision of the Department of Corrections (conditions of probation set forth in separate order).

Sentence Deferred
Until Later Date
(Check if applicable)



The Court hereby defers imposition of sentence until _____.

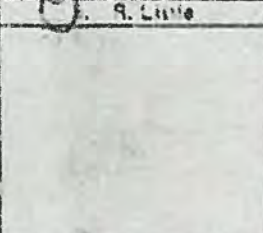
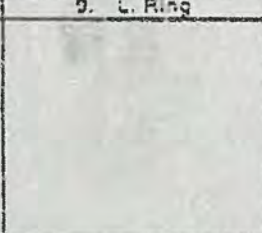
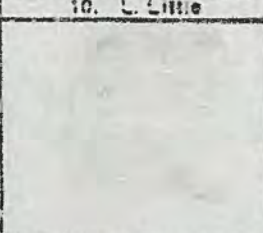
The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

Date

May 14, 1991

Judge

Fingerprints of Defendant

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
6. L. Thumb	7. L. Index	8. L. Middle	9. L. Ring	10. L. Little
				

Fingerprints taken by:

Name and Title

DONE AND ORDERED in Open Court at Lee County, Florida, this _____ day of _____ A.D., 19____. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, _____, and that they were placed thereon by said Defendant in my presence in Open Court this date.

I hereby certify this document to be a true and correct copy of the record on file in my office
Kevin C. Karnes, Clerk of the Circuit Court, Lee County, FL
Dated: 7/27/2024

By _____
Deputy Clerk



Judge

033
0010

In Circuit Court

Twentieth Judicial Circuit, Lee County, Florida

Time 1:49 P.m.

Ct Rm "C"

Min BK 35

DATE OF ACTION 5-14-91

CASE NO 76-588 CF

STATE OF FLORIDA vs

Lucas Harold Gene

STATUTE

OFFENSE 1st Degree Premeditated Murder

JUDGE

Thomas S Reese

ASSISTANT STATE ATTORNEY

Stephen Russell

ACTING COURT REPORTER

Marvin Harris

ASSISTANT PUBLIC DEFENDER ATTORNEY

Robert Jacobs Pub Def

DEPUTY SHERIFF

mazzotta

DEPUTY CLERK

Pavese

APPEARANCE		HEARINGS		MOTIONS	
☒ PRESENT W/ ATTY		☐ BOND		☐ SUPPRESS	
☐ PRESENT W/O ATTY		☐ PRELIMINARY		☐ DISMISS	
☐ PRESENT BY ATTY		☐ PROB R. VOCATION		☒ OTHER Re-sentencing	
☐ FAILED TO APPEAR		DISPOSITION ON HEARING/MOTION			
☐ BW ORDERED BOND	☐ SET ASIDE				
☐ BOND ESTREATED	☐ SET ASIDE				
CONTINUANCES		PLEA		PLED GUILTY TO	
CONT'D TO _____ FOR _____		☐ OFFENSE AS CHARGED		☐ PLED NOLO TO	
☐ TRIAL ☐ SENTENCING		☐ AMENDED OFFENSE OF			
☐ SPEEDY TRIAL WAIVED		☐ LESSEE INCLUDED OFFENSE OF			
VERDICT JURY/NON JURY		☐ NO ADJUDICATION		☐ ADJUDICATED	
☐ GUILTY AS CHARGED		☐ PSI ORDERED		☐ PDR ORDERED	
☐ GUILTY OF _____		☐ SENTENCING SET FOR			
☐ NOT GUILTY		CUSTODY STATUS			
☐ MISTRIAL		☐ REMANDED		☐ ROR	
				☐ CONT'D ON BOND	
FINAL DISPOSITION		SENTENCE/COMMITMENT			
☐ NOLLE PROSSED		☐ PLED G/NC		☐ VERDICT	
☐ DISMISSED		☒ AC JUDICATED		☐ PROB REVOKED	
☐ STATE PRISON		YEARS/MO'S _____		☐ NO ADJUDICATION	
		YEARS/MO'S _____			
		YEARS/MO'S _____			
☐ CTS _____		DAYS/YEAR _____		☐ CTS _____	
☐ NO CTS		YEARS/MO'S _____			
☐ COUNTY JAIL					
☐ COMMUNITY CONTROL					
☐ PROBATION		YEARS/MO'S _____			
(STATE/COUNTY/COURTS)		YEARS/MO'S _____			
		YEARS/MO'S _____			
SPECIAL CONDITIONS					
☐ DRUG SCREENING					
☐ PERFORM _____ HOURS COMM SERV					
☐ EARLY TERMINATION					
☐ FINE \$					
☐ + COURT COSTS \$					
☐ + 5% SURCHARGE					
☐ ATTY S FEES \$					
☐ RESTITUTION \$					
☐ OTHER					

I hereby certify this document to be a true and correct copy of the record on file in my office

Kevin C. Karnes, Clerk of the Circuit Court, Lee County, FL

Dated: 7/27/2020

By [Signature] Deputy Clerk



JUDGE

RECEIVED BY DEP SHERIFF

DATE 5-14-91

CLERK'S COPY

FILED

0333 1519

DEATH WARRANT

STATE OF FLORIDA

WHEREAS, HAROLD GENE LUCAS, on or about the 13th day of August, 1976, murdered JILL PIPER; and

WHEREAS, HAROLD GENE LUCAS, on the 9th day of February, 1977, was convicted of first degree murder and, on the 14th day of May, 1991, was sentenced to death for the murder of JILL PIPER; and

WHEREAS, on the 14th day of June, 1979, the Supreme Court of Florida affirmed the conviction of HAROLD GENE LUCAS and, on the 24th day of December, 1992, affirmed the death sentence of HAROLD GENE LUCAS; and

WHEREAS, on the 9th day of January, 2003, the Supreme Court of Florida affirmed the trial court order denying HAROLD GENE LUCAS's initial Motion for Postconviction Relief and denied his Petition for Writ of Habeas Corpus; and

WHEREAS, on the 5th day of September, 2008, the United States District Court for the Middle District of Florida denied HAROLD GENE LUCAS's federal Petition for Writ of Habeas Corpus; and

WHEREAS, on the 8th day of June, 2012, the United States Court of Appeals for the Eleventh Circuit affirmed the denial of HAROLD GENE LUCAS's federal Petition for Writ of Habeas Corpus; and

WHEREAS, further postconviction motions and petitions filed by HAROLD GENE LUCAS have been denied and the denials affirmed on appeal; and

WHEREAS, executive clemency for HAROLD GENE LUCAS, as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate; and

WHEREAS, attached hereto is a certified copy of the record of the conviction and sentence pursuant to section 922.052, Florida Statutes.

NOW, THEREFORE, I, RON DESANTIS, as Governor of the State of Florida and pursuant to the authority and responsibility vested in me by the Constitution and Laws of Florida, do hereby issue this warrant, directing the Warden of the Florida State Prison to cause the sentence of death to be executed upon HAROLD GENE LUCAS, in accordance with the provisions of the Laws of the State of Florida.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, this 30th day of July, 2026.




GOVERNOR

ATTEST:


SECRETARY OF STATE

2026 JUL 30 PM 2:17
DEPARTMENT OF STATE
TALLAHASSEE, FL

FILED