IN THE
SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

CASE NO.: 16-2008-CF-012641-AXXX-MA
DIVISION CR-D

APPEAL NO.: SC17-2231

RANDALL DEVINEY Appellant___,
VS
STATE OF FLORIDA Appellee___,

RONNIE FUSSELL,
CLERK
OF THE CIRCUIT AND
COUNTY COURTS

RECORD ON APPEAL

SUPPLEMENTAL VOLUME 1

Appeal from the Circuit Court

Duval County, Florida

BEFORE THE HONORABLE JUDGE MARK BORELLO

PUBLIC DEFENDER
FOR APPELLANT

ATTORNEY GENERAL
FOR APPELLEE

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

RANDALL DEVINEY
APPELLANT

CASE NO: 16-2008-CF-012641-AXXX-MA
DIVISION CR-D

STATE OF FLORIDA
APPELLEE

APPEAL NO: SC17-2231

SUPPLEMENTAL VOLUME 1

INSTRUMENT	DATE FILED	PAGE
VERDICT- DEATH BY A VOTE OF 12 TO 0	10/13/17	Redacted: 6399-6410
COURT ORDER SENTENCING	12/11/17	Redacted: 6411-6569
MOTION TO SUPPLEMENT RECORD OF APPEAL (STYLED SC, SC17-2231)	05/08/18	6570-6572
SUPREME COURT ORDER GRANTING THE APPELLANT'S MOTION TO SUPPLEMENT THE RECORD; DIRECTING THE CLERK TO SUPPLEMENT THE RECORD ON OR BEFORE 05/21/2018, (ATTACHED MOTION) SC17-2231	05/09/18	6573-6576
CERTIFICATE OF CLERK		

- **STATE EXHIBIT 70 – 911 AUDIO RECORDING ON CD FILED 07/15/2015**
- **STATE EXHIBIT 89 – DVD- DEFENDANT'S INTERVIEW ON CD FILED 07/15/2015**
- **STATE EXHIBIT 112- CD-DEFENDANT JAIL CALL RECORDING 09/01/2008 ON CD FILED 07/15/2015**
- **STATE EXHIBIT 113 – CD – DEFENDANT JAIL CALL RECORDING 08/31/2008 ON CD FILED 07/15/2015**

*****END*****

CERTIFICATE OF CLERK

STATE OF Florida,
COUNTY OF DUVAL

16-2008-CF-012641-AXXX-MA
SC17-2231

I, RONNIE FUSSELL, Clerk of the Circuit and County Courts for the County of Duval, State of Florida, do hereby certify that the foregoing pages 6399 to 6576 inclusive contain a correct transcript of the record of the judgment in the case of RANDALL DEVINEY vs. STATE OF FLORIDA and a true and correct recital and copy of all such papers and proceedings in said cause as appears from records and files of my office and that have been directed to be included in said record by the directions furnished to me.

SUPPLEMENTAL VOLUME 1 PAGES 6399-6576

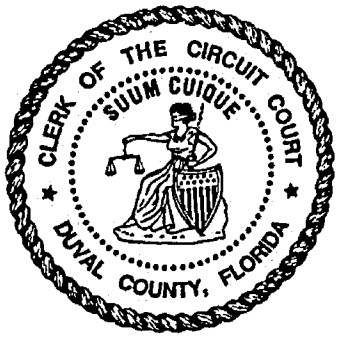
In Witness Whereof, I have set my hand and affixed the Seal of said Court this 18th day of May, A.D. 2018.

RONNIE FUSSELL,
CLERK OF THE CIRCUIT AND
COUNTY COURTS OF DUVAL
COUNTY

/s/ Katherine Espiritu

BY KATHERINE ESPIRITU
Deputy Clerk

501 West Adams St. Room 1228
Jacksonville, FL 32202
(904) 255-2208
Email:
Katherine.Espiritu@DuvalClerk.com



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

STATE OF FLORIDA

CASE NO.: 162008CF012641-A

VS.

DIVISION: CR-D

RANDALL DEVINEY

FILED
OCT 13 2017
CLERK CIRCUIT COURT

VERDICT AS TO SENTENCE

We, the jury, find as follows as to the Defendant, RANDALL DEVINEY, in this case:

A. Aggravating Factors:

We, the jury, unanimously find that the State has proven the following Aggravating Factors beyond a reasonable doubt as to the Defendant, RANDALL DEVINEY, in this case:

1. The First Degree Murder was committed while RANDALL DEVINEY was engaged in the commission of a burglary, or an attempt to commit a burglary, or an attempt to commit a sexual battery.

YES X NO _____

2. The First Degree Murder was especially heinous, atrocious, or cruel.

YES X NO _____

3. DELORES FUTRELL was particularly vulnerable due to advanced age or disability.

YES X NO _____

If you answer YES to at least one of the aggravating factors listed above, please proceed to Section B.

If you answered NO to every aggravating factor listed above, do not proceed to Section B; the Defendant, RANDALL DEVINEY, is not eligible for the death penalty and will be sentenced to life in prison without the possibility of parole. Please sign and date the verdict form and return it to the courtroom.

B. Sufficiency of the Aggravating Factors:

Reviewing the aggravating factors that we unanimously found to be proven beyond a reasonable doubt in Section A above, we, the jury, also unanimously find that the aggravating factors are sufficient to warrant a possible sentence of death.

YES X NO _____

If you answer YES to Section B, please proceed to Section C.

If you answer NO to Section B, do not proceed to Section C; the Defendant, RANDALL DEVINEY will be sentenced to life in prison without the possibility of parole. Please sign and date the verdict form and return it to the courtroom.

C. Statutory Mitigating Circumstances:

We, the jury, find that the following statutory mitigating circumstances have been established by a greater weight of the evidence as to the Defendant, RANDALL DEVINEY, in this case:

1. The First Degree Murder was committed while RANDALL DEVINEY was under the influence of extreme mental or emotional disturbance.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 10 YES to 2 NO

2. The capacity of RANDALL DEVINEY to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 0 YES to 12 NO

3. RANDALL DEVINEY's age at the time of the crime.

YES RM NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 0 YES to 12 NO

4. The existence of any other factors in RANDALL DEVINEY's character, background, or life or the circumstances of the offense that would mitigate against the imposition of the death penalty.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 12 YES to Ø NO

A. RANDALL DEVINEY's parents were convicted of killing his brother (before he was born) and they were still allowed to have custody of him and his younger brother.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 1 YES to 11 NO

B. RANDALL DEVINEY's younger brother stabbed him. When he was taken to the hospital, a number of foreign objects were found in his body

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

C. RANDALL DEVINEY was bounced from parent to parent, creating a very unstable upbringing.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

D. RANDALL DEVINEY was involved in Child Find and awarded a special diploma.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

E. RANDALL DEVINEY is a Christian.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

F. While pregnant with RANDALL DEVINEY his mother smoked tobacco, drank alcohol, and used drugs.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

G. RANDALL DEVINEY was physically abused by his father.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 12 YES to Ø NO

H. RANDALL DEVINEY was physically abused by his mother.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 12 YES to Ø NO

I. RANDALL DEVINEY was physically abused by his stepfather.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

J. RANDALL DEVINEY was verbally abused by his mother.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 12 YES to Ø NO

K. [redacted]

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 5 YES to 7 NO

L. [redacted]

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 10 YES to 2 NO

M. RANDALL DEVINEY was verbally abused by his father.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

N. RANDALL DEVINEY was neglected by his mother as far as supervision and his health and educational upbringing.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 10 YES to 2 NO

O. RANDALL DEVINEY's mother was much more supportive to his half siblings. She never beat them or cursed at them.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

P. RANDALL DEVINEY graduated from high school with a special diploma.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

Q. RANDALL DEVINEY's mother and father have both engaged in and been arrested for domestic battery against each other.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 12 YES to Ø NO

R. RANDALL DEVINEY has been employed and has been described as a hard worker.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

S. RANDALL DEVINEY is close with his brother, Wendall.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

T. RANDALL DEVINEY is close with his father.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 5 YES to 7 NO

U. RANDALL DEVINEY is close with his stepmother, Anne.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

V. When RANDALL DEVINEY was a child, he was prescribed medication for behavior and learning disabilities and his parents refused to administer said medication.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

W. RANDALL DEVINEY was hit in the head with a baseball bat.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

X. RANDALL DEVINEY has limited cognitive ability.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

Y. RANDALL DEVINEY was eighteen years of age at the time of the offense. Adolescent and young adult brains are not fully developed.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 2 YES to 10 NO

Z. RANDALL DEVINEY suffers from exposure to abuse and emotional deprivation.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 12 YES to Ø NO

AA. It is possible RANDALL DEVINEY was experiencing PTSD at the time of the offense.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 10 YES to 2 NO

BB. RANDALL DEVINEY had significant speech and language problems until he was 10 years old.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

CC. As a young person, RANDALL DEVINEY was tested using the WPSSI and a score of 74 was reported as full scale IQ. His current IQ is in the low average.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

DD. RANDALL DEVINEY witnessed violence and was exposed to a great deal of trauma.

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 11 YES to 1 NO

EE. As a child, RANDALL DEVINEY had problems learning to talk. In addition, he had problems with nail biting, stuttering, repetitive rocking, repetitive head banging, and repeated eating of nonfood substances.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

FF. RANDALL DEVINEY was placed in special classes for students with learning problems and took special education classes.

YES _____ NO X

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: Ø YES to 12 NO

GG. RANDALL DEVINEY has suffered from the effects of Adverse Childhood Experiences during his childhood. Said experiences have effected RANDALL DEVINEY's mental, emotional and physical health

YES X NO _____

If you answered YES above, please provide below the numerical jury vote as to the existence of this statutory mitigating circumstance:

Vote of: 11 YES to 1 NO

Please proceed to Section D, regardless of your findings in Section C.

D. Eligibility for the Death Penalty

We, the jury, unanimously find that the aggravating factors that were proven beyond a reasonable doubt in Section A above outweigh the mitigating circumstances established in Section C above.

YES X NO _____

If you answered YES to Section D, please proceed to Section E.

If you answered NO to Section D, do not proceed; the Defendant, RANDALL DEVINEY will be sentenced to life in prison without the possibility of parole. Please sign and date the verdict form and return it to the courtroom.

E. Jury Verdict as to Death Penalty

Having unanimously found that at least one aggravating factor has been established beyond a reasonable doubt in Section A above; that the aggravating factors are sufficient to warrant a sentence of death in Section B above; and that the aggravating factors outweigh the mitigating circumstances in Section D above; we, the jury, unanimously find that the Defendant, RANDALL DEVINEY, should be sentenced to death.

YES X NO _____

If NO, our numeric vote to impose a sentence of life imprisonment without the possibility of parole is as follows:

0 Life 12 Death

If your vote to impose death is less than unanimous, the trial court shall impose a sentence of life without the possibility of parole.

So say we all, this 13TH day of October, 2017.

[redacted]

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

CASE NO.: 16-2008-CF-12641-AXXX-MA

DIVISION: CR-D

STATE OF FLORIDA

v.

RANDALL DEVINEY,
Defendant.
_____/

SENTENCING ORDER

On November 20, 2008, the Duval County Grand Jury indicted Randall Deviney on one count of First Degree Murder for the death of Delores Futrell. On July 17, 2015, by a special verdict form, a jury found Defendant guilty of First Degree Murder.[1] Specifically, the jury found the murder was premeditated and committed during the commission or attempted commission of a Burglary and/or Attempted Burglary and an Attempted Sexual Battery. The jury further found Defendant carried, displayed, or used a weapon during the commission of the offense. On July 23, 2015, the trial court conducted a penalty phase. That same day, the jury recommended, by a vote of eight-to-four, that the trial court sentence Defendant to death. The trial court subsequently sentenced Defendant to death on October 14, 2015.[2]

On April 13, 2017, the Florida Supreme Court issued a Mandate affirming Defendant's conviction for First Degree Murder, but vacating his death sentence and remanding for a new penalty phase based on the United States Supreme Court's decision in Hurst v. Florida, 136 S.

[1] Defendant was previously convicted and sentenced to death for the same offense. On his first direct appeal, the Florida Supreme Court reversed Defendant's conviction and sentence, remanding for a new trial. Deviney v. State, 112 So. 3d 57 (Fla. 2013).

[2] A predecessor judge conducted Defendant's guilt phase and prior penalty phases. This Court reviewed the guilt phase transcripts and records.

Ct. 616 (2016) and the Florida Supreme Court's decision in Hurst v. State, 202 So. 3d 40 (Fla. 2016). On October 9, 2017, through October 13, 2017, this Court conducted a new penalty phase where the State and Defendant presented evidence.

During the penalty phase, the State presented the testimony of:

1. Hartwell Perkins, the victim's boyfriend;
2. Officer S. F. Milowicki, Jacksonville Sheriff's Office;
3. Detective Dwayne Gray, Jacksonville Sheriff's Office;
4. Dr. Jesse Giles, the medical examiner;
5. Mary Schuller, the victim's neighbor;
6. Nancy Mullins, Defendant's mother;
7. Lieutenant Craig Waldrup, Jacksonville Sheriff's Office;
8. Jacquelyn Blades, the victim's daughter;
9. Waverly Futtrell, the victim's son;
10. Lyza Telzer, who read the victim impact statement of Helen Futrell Stewart, the victim's daughter; and
11. Debra Wright, the victim's sister.

Defendant presented the testimony of:

1. Michael Deviney, Defendant's father;
2. Debra Jackson, Defendant's minister;
3. Dr. Stephen Bloomfield, a clinical and forensic psychologist; and
4. Dr. Steven Gold, a trauma psychologist.

Following the testimony and other evidence presented, the jury rendered a unanimous verdict for the death penalty.

On October 25, 2017, this Court conducted a Spencer hearing where Defendant presented a transcript of Anne Deviney's prior penalty phase testimony.[3] The State did not present any additional evidence. On November 13, 2017, in compliance with this Court's directive, the State and Defendant filed memoranda in support of and in opposition to the death penalty, respectively.

In imposing this sentence, this Court has taken into account the jury verdict, all the evidence presented during trial, including the guilt phase and penalty phase, the Spencer hearing, and all sentencing memoranda submitted by the parties.[4] This Court attaches portions of the guilt phase transcript as Exhibit A (Ex. A). This Court now finds as follows:

FACTS

The facts of the case are set forth here. This summary is excerpted from the opinion of the Florida Supreme Court.

> On August 5, 2008, at 10:01 p.m., a Jacksonville police dispatcher received an unverified 911 call from Futrell's residence. Along with another officer, Officer Milowicki of the Jacksonville Sheriff's Office responded to the call.
>
> As the officers approached Futrell's townhome at approximately 10:40 p.m., they noticed that the interior lights were on and heard a television playing. They knocked on the door while calling into an open window; they received no response. Then, the officers attempted to access the backyard, but a tall, locked fence blocked their entrance. Returning to the front, the officers proceeded into the home through the unlocked front door.
>
> Milowicki found Futrell lying on the carpet in front of her television. She recalled:

---

[3] Spencer v. State, 615 So. 2d 688, 691 (Fla. 1993).

[4] This Court did not order a Presentence Investigation Report. See Fla. R. Crim. P. 3.170(a) (providing court has discretion, but is not required, to order report except when sentencing first time felony offenders or defendants under the age of 18); Rose v. State, 461 So. 2d 84, 87 (Fla. 1984) (holding "the ordering of a presentence report is discretionary in capital cases . . . .").

> It was a petite, elderly female. She was cut ear-to-ear and the cut was so deep that it was hanging by just skin on the back of her neck. Her shirt was pulled over her torso exposing her torso. And her underwear, she just had underwear on and the underwear was sliced at the crotch area and pulled up by her hips. So she was nude from the waist down. And her legs had appeared to be posed in a sexual manner showing her genitalia.

Strangely, there was little blood inside the home. Milowicki observed a small table in the dining room with objects knocked over beside a cordless phone base. The phone was on the dining room table and, based on the call log, the police determined that it had been previously used to dial 911. The contents of a purse were emptied onto Futrell's couch; however, Futrell's wallet was across the room on an ironing board. Credit cards laid scattered beside the wallet, which contained a total of fifty-six cents. Behind the ironing board, near the back door, Milowicki saw a pair of bloody jeans.

While walking in the backyard, Milowicki heard "what sounded like a squeegee noise around [her] feet." Her flashlight confirmed that she was standing in a pool of blood that engulfed her shoes. From that vantage, in the center of the back yard, Milowicki noticed blood stains on and near a koi pond in the corner along the fence. Further, she noted that although the pond was lit by a white light, the water was "bright red." A blood trail led from the pool of blood toward Futrell's home. Along that path, beside the back door, was a chair with a blood stain on its armrest. The police found no signs of forced entry.

The crime scene unit, including Detective Gray, arrived around midnight. While examining the backyard, Gray identified the blood on the ledge and side of the koi pond as transfer blood. In multiple areas, both on and near the concrete steps beside the koi pond, Gray found blood stains. Later, when Gray drained the koi pond, he was unable to find a weapon. However, near the large blood pool in the center of the backyard, Gray located a piece of knife blade from a straight-edged knife. From the pool of blood, a blood trail led to the koi pond; another blood trail led to the home.

Inside the home, Gray examined Futrell's body, noting blood on the bottoms of her feet along with grass in her hair and on her left arm. Futrell's bra, shirt, and underwear were cut. There were abrasions and scrapes on Futrell's lower back consistent with being

dragged. Gray opined that, based on the evidence, Futrell was killed in the backyard, dragged inside her home, and—possibly—posed in an explicit position to resemble a sexual battery. However, Gray was unsure whether Futrell's clothing was cut and removed outside or inside her home. None of the latent fingerprints lifted from Futrell's home belonged to Deviney.

Dr. Giles, M.D., a forensic pathologist, conducted an autopsy on Futrell's body. Futrell was sixty-five inches tall (5'5"), 138 pounds, and sixty-five years old. Dr. Giles determined that the cause of death was hypovolemic shock with asphyxiation due to an incised wound of the neck, laryngeal transection: "In layman's terms, she received a large cut across her neck [that] went right through her voice-box and she bled and couldn't breathe." Futrell suffered both blunt and sharp-force injuries. Based on his examination, Dr. Giles believed that "there definitely was a struggle involved in this death." The manner of death was determined as homicide.

On the left side of Futrell's head were various blunt-force injuries: contusions and abrasions around her eye, forehead, and temple, plus abrasions around the nose and mouth. On the right side of Futrell's head, near her mouth and eye, were different types of abrasions than those on the left. Dr. Giles opined that these particular abrasions occurred later in the course of events, either when Futrell was nearly or already dead, because they were yellow.

According to Dr. Giles, the large cut across Futrell's neck went from the right to left. It sliced through Futrell's veins, but not her deeper arteries. However, it partially severed the jugular vein, the major vein on the right side of the neck, which meant that it could not snap shut and continued to bleed. Dr. Giles notes that the incision "completely separated" the upper and lower larynx between the vocal cords. Behind that, the esophagus was partially cut. Taking these together, Dr. Giles opined that Futrell was pulling blood into her lungs as she struggled to breathe. Dr. Giles testified that this sharp-force injury was a straight, clean cut, indicating that it was delivered with a non-serrated blade. When asked how long Futrell lived after her throat was cut, Dr. Giles testified that he could not give a definite answer. However, Futrell lived for only "a short time" due to her neck wound, anywhere from seconds to a few minutes.

Coupled with that injury, Dr. Giles found a major blunt-force injury to Futrell's neck. Specifically, Dr. Giles observed evidence

of crushing blunt force applied to Futrell's upper neck, fracturing her hyoid bone. The larynx was fractured above the cut as well. Because these fractures stopped at the cut, and there was little hemorrhaging in the fractures, this injury likely occurred after Futrell's neck was cut. In Dr. Giles' opinion, the crushing-type force was applied on both sides of Futrell's neck, consistent with strangulation or a choke hold. Dr. Giles testified that this injury occurred prior to Futrell's death; however, it was late in the process.

Aside from the fatal neck injuries, on Futrell's chest were various blunt and sharp-force injuries. There were superficial incisions. Further, small pricks indicated where Futrell was poked with a sharp object. Some of the injuries on her chest were consistent with dragging a sharp object against it. One injury on her chest was a pattern injury, an abrasion with an unusual outline. Dr. Giles testified that this pattern was consistent with a serrated knife, but it could have been made by a broken knife blade. Dr. Giles could not definitively testify as to the sequencing of the injuries on Futrell's chest in relation to the fatal neck wound. However, he opined that the superficial cuts and pricks must have occurred at or about the same time due to bruising.

On Futrell's left arm were abrasions and sharp-force injuries. Various contusions and bruises on Futrell's hands and arms appeared to be defensive wounds. However, there was little to no blood on Futrell's hands. Futrell's lower back had a large abrasion, which indicated that she had been dragged. Another abrasion on her lower back suggested that Futrell had a garment on when the injury occurred.

When Dr. Giles conducted the autopsy, Futrell's shirt was still rolled up. There were cuts on the shirt, but when the shirt was rolled down one cut did not align with the injuries on her body; thus, Dr. Giles concluded that the particular injury occurred when Futrell's shirt was rolled up. A sexual battery kit was used to test Futrell's oral, vaginal, anal, and brest areas. There were no injuries to Futrell's sexual organs. This led Dr. Giles to the conclusion that no sexual activity occurred; however, he could not rule out the possibility that attempted sexual activity occurred. Finally, Dr. Giles took Futrell's fingernail clippings for DNA testing.

Evidence was sent to the Florida Department of Law Enforcement (FDLE) for DNA testing. FDLE conducted tests on the blue jeans from Futrell's house, which tested positive for blood and negative for semen. The test on Futrell's bra yielded the same results. All of

the swabs taken as part of the sexual battery kit tested negative for semen. A swabbing from a flashlight found in Futrell's home was tested, but Deviney was excluded as a contributor to the DNA mixture on the flashlight. Preliminary DNA testing of Futrell's right fingernail clippings matched Deviney. When the DNA profiles of Deviney and Futrell were analyzed, FDLE concluded that there was a 1 in 40 billion chance that anyone other than Deviney left the DNA sample.

These results were forwarded to the Jacksonville Sheriff's Office, which necessitated a confirmation sample. So, detectives brought Deviney to the police station to be questioned, tested, and subsequently arrested. In the days following his arrest, Deviney placed two calls to his father, Michael Deviney. The State introduced recordings of these calls into evidence. In one call, Deviney confessed to the murder, saying, "I lost it. It wasn't me. It was another person inside me."

The State called other witnesses during the guilt phase. Through that testimony, the State elicited evidence that Futrell had multiple sclerosis (MS), which prevented her from walking her large dog or doing yard work. Although she could walk up the stairs in her townhome, she had become very frail over the years. Further, Futrell was a grandmother-type figure for Deviney during his childhood; she cared for him from the time he was seven and she would bake cookies for him. One neighbor testified that, following the murder, Deviney told her that "he heard [Futrell] had been violated." However, the lead detective testified that specific crime scene information was not released prior to Deviney's arrest. Also, Defendant's mother, Nancy Mullins, testified that Deviney had asked her for scissors or a knife on the night of the murder. Mullins told him that there was a straight-blade fish fillet knife in their tackle box, which she never saw again.

After the State completed the presentation of its case, Deviney waived his right to remain silent and testified. During his testimony, Deviney admitted to killing Futrell.

Deviney testified that Futrell's house was a safe place for him growing up. With Futrell, Deviney could discuss personal problems, which included speaking about the physical and sexual abuse that he purportedly suffered as a child. Deviney claims that Mullins abused him and that she would dig her nails into his arm before beating him into submission. On the night of Futrell's death, Deviney contended that he was using the flashlight to help Futrell look for a leak in her koi pond. With his other hand, Deviney

> explained that he used the knife to clear cobwebs off the koi pond ledge. According to Deviney, after he refused to report his sexual abuse, Futrell grabbed his arm and dug her nails into him. This caused him to snap and cut her throat, after which he stabbed her three times, breaking his knife.
>
> Deviney explained that Futrell fell and struck the ledge of the koi pond. Then, he pulled her to the middle of the backyard and placed pressure on her neck. Moreover, he admitted that Futrell was aware of her impending death and that he caused it. Deviney testified that—after Futrell died—he attempted to divert suspicion by staging an attempted sexual battery; so, he pulled Futrell into her home and cut off her clothes with his knife. Then, Deviney claimed that he dialed 911 and walked out the front door without touching Futrell's purse.
>
> There were various inconsistencies that the State raised surrounding Deviney's story. For instance, there was no blood on Futrell's underwear, which he claimed to have cut with the broken knife that he used to cut her throat. Also, he testified that there was no struggle involved in the death, directly conflicting with Dr. Giles' opinion. Finally, Deviney testified that Futrell placed her hands over her throat after it was cut; yet, the pictures entered into evidence show that there was little to no blood on her hands.

Deviney v. State, 213 So. 3d 794, 795-98 (Fla. 2017).

AGGRAVATING FACTORS

In order for a defendant to be eligible for a sentence of death, the State must prove at least one aggravating circumstance beyond a reasonable doubt. § 921.141(2)(a), Fla. Stat. (2017). In imposing the death penalty, the court may only consider an aggravating factor that was unanimously found to exist by the jury. § 921.141(3)(2). Here, the jury unanimously found three aggravating factors exist beyond a reasonable doubt.

1. The capital felony was committed while Defendant was engaged in the commission of a burglary or sexual battery, or an attempt to commit any burglary or sexual battery. § 921.141(5)(d), Fla. Stat. (2008).

Attempted Sexual Battery

A sexual battery is committed when a defendant's sexual organ penetrates or has union

with the sexual organ of the victim without the consent of the victim. § 794.011, Fla. Stat. (2008). To establish the crime of attempt, the state must "prove a specific intent to commit a particular crime and an overt act toward the commission of the crime." Williams v. State, 967 So. 2d 735, 755 (Fla. 2007.) The overt act requirement of an attempted sexual battery may be satisfied despite the absence of physical or medical evidence of such. State v. Ortiz, 766 So. 2d 1137, 1142 (Fla. 3d DCA 2000).

Upon entering her home, police found Ms. Futrell lying on the living room floor with her shirt pulled up to her neck, exposing her breasts and mid-drift. The cuts on Ms. Futrell's shirt and chest were consistent with having occurred when the shirt was already above her breasts. Ms. Futrell's bra was sliced and the crotch of her underwear was cut and pulled upward onto her hips. Her legs were positioned in a way that showed her genitalia. According to police, Ms. Futrell's body was likely posed in this manner as her positon was unnatural for an individual of her age and stature. Acknowledging the massive amount of blood loss typically associated with the stab wounds Ms. Futrell suffered, police found no blood on Ms. Futrell's cut underwear. The lack of blood may indicate Defendant cut Ms. Futrell's underwear prior to killing her or he used another tool to position her in such a way.

The medical examiner, Dr. Jesse Giles, M.D., conducted a sexual battery collection kit. According to Dr. Giles, there was no evidence of trauma to Ms. Futrell's sexual organs; however, the lack of evidence does not mean Ms. Futrell was not the victim of a sexual attack. A few days after the murder, Defendant told Mary Schuller, Ms. Futrell's friend and neighbor, that Ms. Futrell had been "violated." When Defendant made this statement, however, the circumstances of Ms. Futrell's murder were not public knowledge.

During the guilt phase of Defendant's trial, the trial court instructed the jury on the

elements of Attempted Sexual Battery. (Ex. A at 670-72.) By a special verdict form, the jury unanimously found Defendant killed Ms. Futrell during the commission of an Attempted Sexual Battery.

Burglary or Attempted Burglary

Burglary may be proven if the defendant entered the victim's home, and remained therein, after permission had been withdrawn, with the intent to commit an offense therein, or to commit or attempt to commit a forcible felony. § 810.02(1)(b)1, 2c, Fla. Stat (2008). Sexual battery is a forcible felony. § 776.08, Fla. Stat. (2008). As discussed *supra*, the evidence supports an Attempted Sexual Battery conviction. Moreover, there is extensive evidence Defendant remained in Ms. Futrell's home with the intent to commit an Assault and/or Theft therein.

About two weeks before Ms. Futrell's murder, Defendant went to Ms. Futrell's house and asked for twenty dollars in exchange for cutting her grass. On the evening of August 5, 2008, Defendant knew Ms. Futrell was home alone. Defendant armed himself with a knife and went to Ms. Futrell's house. Defendant then murdered Ms. Futrell in her own backyard, dragged her into her living room, and left her exposed body in the middle of the floor. Upon receiving an unverified 911 call from her residence, police were dispatched to Ms. Futrell's home. The police noted there were no signs of forced entry and the inside of Ms. Futrell's home appeared relatively tidy. However, in Ms. Futrell's living room, police found the tousled contents of Ms. Futrell's purse emptied onto the couch. Across the room, Ms. Futrell's iron was plugged in as if she were preparing to iron some clothes. Though, instead of garments, police found Ms. Futrell's open wallet and credit cards scattered across the ironing board. All that remained in Ms. Futrell's wallet was sixty-five cents. According to police, it was evident a burglary had taken place.

In the backyard, police found large pools of blood and a broken knife blade. Further, the

defensive wounds on Ms. Futrell's arms and wrists evidenced she and Defendant engaged in a struggle during the murder.

During the guilt phase of Defendant's trial, the trial court instructed the jury on the elements of Burglary and Attempted Burglary. (Ex. A at 668-70.) By a special verdict form, the jury unanimously found Defendant killed Ms. Futrell during the commission of a Burglary and/or Attempted Burglary.

During the instant penalty phase, the jury unanimously found the State proved this aggravating factor beyond a reasonable doubt. Consequently, this Court finds the jury's unanimous jury verdicts rendered at the guilt and penalty phase demonstrate the State proved this aggravating factor beyond a reasonable doubt. This Court gives this aggravating factor great weight in determining Defendant's sentence.

2. The capital felony was especially heinous, atrocious, or cruel. § 921.141(5)(h), Fla. Stat. (2008).

The heinous, atrocious, or cruel (HAC) aggravator is appropriate when the murder is "conscienceless or pitiless and unnecessarily torturous to the victim." Hartley v. State, 686 So. 2d 1316, 1323 (Fla. 1996).

> It is our interpretation that heinous means extremely wicked or shockingly evil; that atrocious means outrageously wicked and vile; and, that cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others.

Dixon v. State, 283 So. 2d 1, 9 (Fla. 1973). Stated another way, the HAC aggravator "is proper only in torturous murders—those that evince extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another." Cheshire v. State, 568 So. 2d 908, 912 (Fla.1990). Moreover, this aggravating circumstance does not focus on intent or motivation, but instead "on the means and

manner in which the death is inflicted and the immediate circumstances surrounding the death, . . . where a victim experiences the torturous anxiety and fear of impending death." Allred v. State, 55 So. 3d 1267, 1279-80 (Fla. 2010) (citations omitted); see Barnhill v. State, 834 So. 2d 836, 850 (Fla. 2002) (finding torturous manner of victim's death demonstrates defendant's indifference).

HAC applies to cases involving stab wounds if the victim was alive and conscious when the wounds were inflicted. See Simmons v. State, 934 So. 2d 1100, 1122 (Fla. 2006); Schoenwetter v. State, 931 So. 2d 857, 874 (Fla. 2006). If there are defensive wounds, it may be assumed the victim was conscious, unless evidence clearly shows otherwise. See King v. State, 130 So. 2d 676, 684 (Fla. 2013). Further, the act of killing a victim by slicing his or her throat with a knife is in itself heinous, atrocious, and cruel, provided the victim is conscious at the time. Zommer v. State, 31 So. 3d 733, 748 (Fla. 2010).

Ms. Futrell sustained a large, deep slash completely across the front of her neck. The incision went through Ms. Futrell's skin, small veins, the jugular vein, voice box, larynx, and the front half of her esophagus. The dark red color of the injury and aspirated blood indicate Ms. Futrell was alive when this wound was inflicted. As a result of the deep neck incision, Ms. Futrell died of hypovolemic shock with asphyxia. In other words, she bled to death while suffocating from a severed breathing tube. After sustaining this injury, it could have taken seconds to minutes for Ms. Futrell to die.

Absent her deep neck wound, Ms. Futrell had various blunt-force and sharp-force injuries. She had scrapes on the left side of her head, including her face, lip, and nose, as well as a black eye. These injuries likely resulted from separate blows to Ms. Futrell's body and because of the hemorrhage present with these injuries, Dr. Giles determined Ms. Futrell was alive when

they were sustained. She had superficial incisions and sharp-force injuries around her collarbone and the inside of her arm. On her back, Ms. Futrell had bruises and sliding-type abrasions. Ms. Futrell had various defensive wounds such as bruises on her hands, wrists, and forearms. While some were fresher than others, the multiple injuries to Ms. Futrell's face, torso, and upper extremities were consistent with a struggle.

Dr. Giles also noted Ms. Futrell had a blunt-force, crushing injury to both sides of her neck indicative of manual strangulation. Due to the nature of this fracture, it is clear Ms. Futrell sustained this crushing force after her neck was slit and was likely inflicted after death or late in the process of dying. This Court notes events occurring after the victim loses consciousness are not relevant to the HAC determination and, thus, declines to consider this strangulation-type injury to Ms. Futrell's neck.

While the instant penalty phase jury was not privy to Defendant's testimony during the guilt phase portion of the instant proceedings, this Court finds it relevant to note Defendant's version of events when analyzing this aggravating factor. Defendant admitted to slicing Ms. Futrell's throat and stabbing her three times in the chest. (Ex. A at 497-98.) He acknowledged Ms. Futrell suffered and knew she was going to die when he cut her throat, explaining it took thirty to forty-five seconds for Ms. Futrell to die and she was aware she was dying the entire time. (Ex. A at 537.) Defendant's attack on Ms. Futrell was merciless and the force behind Defendant's blows was evidenced by his broken knife blade. While receiving these blows, Ms. Futrell was aware of her imminent passing, gasping for air and bleeding to death. Her attempt to fight off Defendant was futile as her carved body was left lifeless on her living room floor; a death no one should endure.

The jury unanimously found this aggravating factor was proven beyond a reasonable

doubt. This Court gives this aggravating factor great weight in imposing Defendant's sentence.

3. The victim of the capital felony was particularly vulnerable due to advanced age or disability. § 921.141(5)(m), Fla. Stat. (2008).

This aggravator is fact-sensitive and not established by the presence of a specific age. Francis v. State, 808 So. 2d 110, 139 (Fla. 2001). Instead, to find the existence of this aggravator, evidence must be presented that the victim was particularly vulnerable because of the victim's age or disability. Id. Moreover, the significant disparity in age between the victim and the defendant is a proper consideration for this aggravator. Woodel v. State, 804 So. 2d 316, 325 (Fla. 2001).

Defendant was forty-seven years younger than Ms. Futrell when he killed her. Ms. Futrell suffered from Multiple Sclerosis (MS). Around the time of her murder, Ms. Futrell's condition was becoming progressively worse. Activities she once enjoyed, like walking her dog and gardening, were difficult for her and almost non-existent. Her condition often prevented her from leaving the house. Her coordination was declining and she would frequently lose her balance. She no longer worked and was receiving Social Security Disability checks each month. While Ms. Futrell was living alone at the time of the murder, testimony revealed that just prior to the murder, she made plans to fly to New York to be with longtime boyfriend, Mr. Perkins.

While this aggravator is not dependent on the defendant targeting a victim because of the victim's age or disability, this Court finds it relevant that Defendant knew Ms. Futrell suffered from MS and that it made her weak. Such circumstances illustrate the outward and apparent nature of Ms. Futrell's condition. Her vulnerability was palpable.

The jury unanimously found this aggravating factor was proven beyond a reasonable doubt. This Court gives this aggravating factor great weight in imposing Defendant's sentence.

Sufficiency of the Aggravating Factors

This Court finds all three of the aggravating factors, unanimously found by the jury, have been proven to exist beyond a reasonable doubt. As such, Defendant is eligible for a sentence of death and this Court must now consider Defendant's mitigating circumstances. See § 921.141(2)(b)2, Fla. Stat. (2017).

MITIGATING CIRCUMSTANCES

A mitigating circumstance is "any aspect of a defendant's character or record and any of the circumstances of the offense that reasonably may serve as a basis for imposing a sentence less than death." Campbell v. State, 571 So. 2d 415, 419 n.4 (Fla. 1990) receded from on other grounds, Trease v. State, 768 So. 2d 1050 (Fla. 2000). A mitigating circumstance can be "anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant." Fla. Std. Jury Instr. (Crim) 7.11. Unlike the State's burden to prove aggravating factors beyond a reasonable doubt, the defendant need only establish mitigating circumstances by the greater weight of the evidence. Ford v. State, 802 So. 2d 1121, 1133 (Fla. 2001) (citation omitted). Here, Defendant argued and presented four statutory mitigating circumstances and thirty-three non-statutory mitigating circumstances for the jury's consideration.[5]

1. The First Degree Murder was committed while Defendant was under the influence of extreme mental or emotional disturbance. § 921.141(6)(b), Fla. Stat. (2008).

Defendant asserts he was suffering from extreme mental or emotional disturbance at the time of the crime. In support of this contention, Defendant relies on the expert opinions of Dr. Stephen Bloomfield, a forensic psychologist, and Dr. Steve Gold, a trauma psychologist, whom testified Defendant was suffering from Post Traumatic Stress Disorder (PTSD) at the time of the

[5] This Court notes the term "non-statutory" was not used before the jury or on the verdict form.

murder.

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

Dr. Bloomfield evaluated and met with Defendant approximately ten times between April 2015 and October 2017. He reviewed over 2700 pages of documents related to Defendant's childhood, including school records, juvenile history records, and Department of Children and Family Services (DCF) records. According to Dr. Bloomfield, it is possible Defendant suffers from PTSD, which is a form of anxiety stemming from prior trauma. Dr. Bloomfield explained Defendant's potential PTSD is the result of trauma related to the physical, sexual, and verbal

abuse Defendant sustained as a child.

According to Dr. Bloomfield, physical touch can trigger PTSD and explained it is likely Defendant was experiencing PTSD at the time of the offense. Notably, Dr. Bloomfield referenced Defendant's recount of the circumstances surrounding Ms. Futrell's murder. Specifically, Defendant reported Ms. Futrell wanted to talk to Defendant about his history of abuse and put her hand on Defendant, triggering his PTSD in a manifestation of panic. Defendant reported this panic explained why he murdered Ms. Futrell as he connected her physical touch to the physical abuse from his mother. According to Dr. Bloomfield, Defendant's panicked state rendered him significantly impaired at the time of the murder. Dr. Bloomfield noted, however, that his opinion regarding Defendant's PTSD is largely based on Defendant's own self-reporting about the specifics of his childhood and the facts of the murder. Dr. Bloomfield also explained Defendant admitted he posed Ms. Futrell after murdering her because he did not want to get caught.

During Dr. Bloomfield's most recent interview with Defendant, he conducted various psychological assessments. One of these tests was a trauma stress inventory, which measures a person's PTSD levels. According to this test, Defendant's was not experiencing any significant level of PTSD at that time. Dr. Bloomfield interpreted this result to mean that as Defendant gets older, he is starting to manage this anxiety.

Dr. Gold also evaluated Defendant and reviewed the abundant records related to Defendant's childhood. In determining Defendant's history of trauma, Dr. Gold conducted the Adverse Childhood Experiences Study (ACES), a ten-factor study used to identify aspects of an individual's childhood that increase the risk for psychological and other health problems. The factors represent different forms of trauma and the more traumas a person is exposed to, the

more likely that individual will develop PTSD. Dr. Gold determined Defendant had nine risk factors: (1) physical abuse; (2) verbal abuse; (3) parental separation or divorce; (4) emotional neglect; (5) physical neglect; (6) household substance abuse; (7) domestic violence; (8) incarcerated household member; and (9) sexual abuse.[6] Considering these factors, Dr. Gold found Defendant met the criteria for complex PTSD, which contains a broad set of symptoms.

Dr. Gold stated black-out type behavior is common with individuals who have experienced trauma and may be a symptom of PTSD. Defendant told Dr. Gold he specifically remembers the initial cut across Ms. Futrell's throat, but blacked out during his subsequent actions. According to Defendant, it was not until he returned home that he recalled stabbing Ms. Futrell in the chest and posing her body. Defendant also conveyed he has experienced similar black outs prior to Ms. Futrell's murder. Specifically, Defendant reported blacking out during a fight at a bowling alley and another time while in a fight with his father at the family pet shop. Based on the totality of his evaluation, Dr. Gold believes Defendant killed Ms. Futrell while he was under the influence of extreme mental or emotional disturbance.

It is important to note that while these experts always attempt to corroborate information received, Dr. Gold and Dr. Bloomfield's conclusion about Defendant's potential PTSD was largely based on Defendant's own self-report. There is no evidence either doctor has witnessed Defendant actually experiencing PTSD. In fact, Dr. Bloomfield acknowledged Defendant's self-reported symptoms of PTSD have diminished during the two-year period he has known Defendant. Further, while Dr. Gold determined Defendant had nine of the ten ACES factors, this study only contemplates if a factor is present and does not evaluate the extent or intensity of the factor. For example, one, vicarious experience of verbal abuse is given the same consideration as reoccurring, first-hand experiences of verbal abuse. Further, Defendant's reported version of

[6] The tenth factor is household mental illness.

events differs between each expert. Contrary to his statements to Dr. Bloomfield, Defendant never told Dr. Gold he asked his mother for a knife before he went to Ms. Futrell's house. Defendant also never told Dr. Gold that Ms. Futrell grabbed his arm. Further, Defendant did not admit to Dr. Gold that he posed Ms. Futrell's body.

This Court also finds Defendant's actions before and after the murder demonstrate a reduced presence of emotional disturbance. Prior to going to Ms. Futrell's home, Defendant intentionally armed himself with a knife. Defendant admitted he knew Ms. Futrell was home alone. There is no dispute Defendant remembers rendering the fatal cut to Ms. Futrell's throat. After killing Ms. Futrell, Defendant situated her in an explicit position in an attempt to hide his involvement. Defendant disposed of the knife and changed his clothes because he did not want to get caught. Thereafter, Defendant went home, showered, and played dice with his mother and his mother's friends as if nothing had happened. Dr. Bloomfield even acknowledged everything Defendant did after the killing was to cover up his involvement. Indeed, Defendant was able to murder Ms. Futrell without sustaining any injuries and without leaving fingerprints or DNA, absent the DNA found under Ms. Futrell's fingernails.

In any event, this Court cannot deny Defendant's childhood was traumatic and his parents were less than perfect. It would be difficult to conclude Defendant's experiences did not influence the decisions he has made throughout his life; however, to what extent the experiences influenced his decision to murder Ms. Futrell is still uncertain and insignificant at best.

By a vote of ten to two, the jury found this mitigating circumstance was established by the greater weight of the evidence. This Court also finds Defendant has established this mitigating circumstance and gives it minimal weight in determining Defendant's sentence.

2. The capacity of Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. § 921.141(6)(f), Fla. Stat. (2008).

Defendant contends his PTSD substantially impaired his ability to conform his conduct to the requirements of law. Defendant relies on Dr. Gold's testimony to support this circumstance.

This mitigating circumstance involves a mental disturbance, which interferes with but does not obviate the defendant's knowledge of right and wrong. Dixon, 283 So. 2d at 10. A defendant fails to prove this mitigating circumstance when his or her purposeful actions indicate the defendant knew he or she had committed wrong and could conform his or her conduct to the law if so desired. Hoskins, 965 So. 2d at 18. A court can consider a medical expert's opinion as to whether the defendant had the ability to differentiate between right and wrong and to understand the consequences of his action. Ponticelli v. State, 593 So. 2d 483, 490 (Fla. 1991) vacated on other grounds, Ponticelli v. Florida, 506 U.S. 802 (1992).

According to Dr. Gold, Defendant's capacity to conform his conduct to the requirements of the law was substantially impaired at the time of the murder. Dr. Gold explained the trauma Defendant experienced as a child hindered the development of his prefrontal cortex, the part of the brain responsible for thinking and applying logic. In turn, Dr. Gold opined the portion of Defendant's brain responsible for impulses and emotions over-activated. According to Dr. Gold, this imbalance in brain function obstructed Defendant's ability to anticipate the consequences of his actions while making overly impulsive decisions. Because of this occurrence, Dr. Gold believed Defendant could not conform his behavior to the law.

Dr. Bloomfield did not offer an opinion regarding Defendant's ability to appreciate the criminality of his conduct. Dr. Bloomfield did explain, however, that as a child, Defendant received help from multiple state agencies and programs for his behavior. Dr. Bloomfield noted

Defendant obtained behavioral management therapy and mental health intervention at Daniel Memorial, a nationally-acclaimed social agency designed to rectify inappropriate behavior in youth. Defendant was also placed in juvenile justice programs for theft, robbery, and burglary crimes committed during adolescent years. In fact, Mr. Deviney admitted he called DCF regarding Defendant's physical aggression and Defendant was placed in programs in an attempt to manage his issues. Yet, Defendant did not show any progress from such intervention. Further, during Dr. Bloomfield's most recent evaluation of Defendant, he administered the Novaco instrument, which measures an individual's anger management and self-provocation levels. The results indicated Defendant currently has the capacity to understand anger and regulate anger.

In any event, Defendant's continued behavioral problems were not the result of a lack of attempts to help him. While this Court is cognizant that Defendant was reinstated into the same living environment once released from these programs, Defendant's current ability to manage his behavior demonstrates such was achievable. In fact, as shown through his self-reported accounts of child abuse, Defendant had the insight to recognize when his parents were treating him poorly. If he could recognize the irregular and neglectful circumstances of his situation growing up, it is logical he would be able to understand the consequences and criminality of murder as an adult. Indeed, when asked about his prior criminal acts, Defendant reported to Dr. Gold he committed those crimes because it was "the only way to get something without working for it."

Further, when considering Dr. Gold's opinion regarding Defendant's ability to appreciate consequences, it is relevant Dr. Gold's conclusion was founded on the version of events Defendant chose to disclose. Defendant did not tell Dr. Gold about procuring a knife before going to Ms. Futrell's house nor did disclose staging the crime scene and posing Ms. Futrell's body. Defendant also disposed of the clothes he was wearing and the murder weapon,

evidence police never recovered. During his initial interview with police, Defendant repeatedly lied to police about his involvement. Such efforts to conceal his involvement illustrate Defendant's undeniable ability to understand the consequences of his actions.

The jury did not find the existence of this mitigating circumstance. This Court also finds Defendant has failed to establish this mitigating circumstance and gives it no weight in determining Defendant's sentence.

3. Defendant's age at the time of the crime. § 921.141(6)(g), Fla. Stat. (2008).

Defendant contends his age at the time of the murder demonstrates his diminished ability to understand the consequences of his actions at that time. In support of this mitigator, Defendant highlights Dr. Bloomfield's expert opinion regarding the development of the human brain. Defendant also argues his young age is especially relevant as he was never taught how to make appropriate decisions.

"[T]he closer the defendant is to the age where the death penalty is constitutionally barred, the weightier this statutory mitigator becomes." Urbin v. State, 714 So. 2d 411, 418 (Fla. 1998). However, there is no per se rule which pinpoints a particular age as an automatic factor in mitigation. Gonzalez v. State, 136 So. 3d 1125, 1163 (Fla. 2014) (citation omitted). The court must weigh this mitigator based on the evidence adduced during the guilt and penalty phases. Id. To be given any significant weight, the defendant's age must be interrelated to other material characteristics, such as significant emotional immaturity and mental difficulties. Hurst v. State, 819 So. 2d 689, 689 (Fla. 2002). "For example, evidence that a defendant's 'mental, emotional, or intellectual age was lower than his chronological age' would support the finding of age as mitigation." Lebron v. State, 982 So. 2d 649, 660 (Fla. 2008) (quoting Sims v. State, 681 So. 2d 112, 117 (Fla. 1996)).

Defendant was eight days short of his nineteenth birthday when he murdered Ms. Futrell. According to Dr. Bloomfield the human brain is not fully developed until the ages of twenty-four to twenty-five and the part of the brain responsible for controlling executive functions is the last to develop. As such, at the age of eighteen, an individual's ability to make mature decisions and control impulses is not fully established. Because of this occurrence, someone who is eighteen years old is less likely to restrain themselves and has little awareness for consequences. Dr. Bloomfield indicated Defendant's age, low cognitive ability, exposure to violence, and a deprived upbringing resulted in a much more impulsive and impetuous mindset at the time of the murder. In other words, according to Dr. Bloomfield, as a result of Defendant's age and disruptive functioning, "this horrible thing happened."

Dr. Bloomfield further noted an eighteen-year-old brain is more susceptible to rehabilitation because it has not fully developed. To that point, as stated *supra*, Dr. Bloomfield administered various psychological tests that indicated Defendant is currently able to manage anger and regulate his behavior. Dr. Bloomfield attributed these results to Defendant's personality maturation correlated to aging, noting Defendant has changed dramatically since his first interaction with Defendant in 2015.

While Defendant's claim of low cognitive ability is addressed in depth *infra*, this Court notes Defendant had a full scale IQ of 74 as a child, but currently has a low-average to average functioning IQ. Dr. Bloomfield admitted his childhood IQ was probably scored at 74 because of Defendant's speech and language issues, clarifying he was likely much smarter than his score reflected. Defendant graduated from high school and was able to maintain a landscaping job. To the extent Defendant asserts he was never properly taught how to behave, this Court again highlights Defendant received help from multiple state agencies and programs for his behavior.

During adolescence, Defendant obtained behavioral management therapy and mental health intervention at Daniel Memorial. When incarcerated for juvenile offenses, Defendant participated in juvenile justice programs. Moreover, Defendant's mother was heavily involved in curbing Defendant's poor school conduct, actively and regularly addressing any behavior issues.

The facts of the crime also demonstrate Defendant's intelligence. Knowing Mr. Perkins and their large American Bulldog were hundreds of miles away, Defendant took advantage of an opportune time to go to Ms. Futrell's home. He was able to avoid any injury to himself as he engaged in a brutal struggle with Ms. Futrell. Thereafter, Defendant had the forethought to drag Ms. Futrell's body inside and stage an explicit crime scene. He was careful to not leave any fingerprints or trace DNA as he ransacked Ms. Futrell's personal belongings. Defendant was then able to avoid law enforcement for over three weeks after the murder. But for the DNA recovered from Ms. Futrell's fingernails, Defendant may have evaded arrest indefinitely.

The jury did not find the existence of this mitigating circumstance. As shown *infra*, however, the jury, by a vote of two to ten, did find the existence of Mitigating Circumstance Y: "Defendant was eighteen years of age at the time of the offense. Adolescent and young adult brains are not fully developed." These listed circumstances are duplicative and this Court assigns weight once. In any event, this Court accepts as true that adolescent brains are not fully developed at the age of eighteen As such, in the interest of justice, this Court finds Defendant has established this mitigating circumstance and gives it some weight in determining Defendant's sentence.

4. The existence of any other factors in Defendant's background that would mitigate against imposition of the death penalty. § 921.141(6)(h), Fla. Stat. (2008).

This "catch all" statutory mitigating circumstance affords the defense the opportunity to establish non-statutory mitigating circumstances. See Songer v. Wainwright, 769 F.2d 1488,

1489 (11th Cir. 1985) (concluding Florida law entitles a capital defendant "to introduce any and all evidence in mitigation" of a death sentence). The Legislature has clearly defined statutory mitigation; however, "nonstatutory mitigation may consist of any factor that could reasonably bear on the sentence." Consalvo v. State, 697 So. 2d 805, 818 (Fla. 1996). Because non-statutory mitigation is largely undefined, a defendant must identify the non-statutory mitigation he or she relies upon. Lucas v. State, 568 So. 2d 18, 24 (Fla. 1990). Moreover, this evidence "must still meet a threshold of relevance." Geralds v. State, 111 So. 3d 778, 808 (Fla. 2010). That threshold is evidence that "logically [proves] or disprove[s] some fact or circumstance which a fact-finder could reasonably deem to have mitigating value." Id.

Here, Defendant used his ability to present nonstatutory mitigation and submitted thirty-three additional circumstances for the jury's analysis. For the sake of justice and to not limit the facts the jury may find relevant to its inquiry, this statutory mitigating circumstance was listed as a separate consideration on the jury's verdict form. By a twelve to zero vote, the jury found the existence of this mitigating circumstance. This Court defers to the jury's decision and finds Defendant has established this mitigating circumstance and gives it slight weight in determining Defendant's sentence.

A. Defendant's parents were convicted of killing his brother (before [Defendant] was born) and they were still allowed to have custody of him and his younger brother.

Prior to Defendant's birth, Defendant's mother, Nancy Mullins, and his father, Michael Deviney, were convicted of killing Defendant's older, half-brother, Christopher. Mr. Deviney was not the biological father of Christopher, but did raise him as a stepfather. Mrs. Mullins and Mr. Deviney were sentenced to a twenty-year prison term for their involvement, but were both released on parole after serving five years. Six years after Christopher's death, Mrs. Mullins and Mr. Deviney had Defendant.

According to Dr. Bloomfield, being born to parents who were previously convicted of killing their first child is an intense environment and clouds Defendant's childhood perception. Specifically, Dr. Bloomfield opined this fact may have confused Defendant into believing his parents were also capable of killing him with their abuse. Dr. Gold averred this trauma resulted in a less cohesive and loving familial situation for Defendant.

While Defendant knew his half-brother died before he was born, Defendant never knew the details of Christopher's death. Notably, Defendant was not a witness to his death or privy to the circumstances of it. In fact, it is unclear if Mrs. Mullins and Mr. Deviney know what actually happened to Christopher.

By a one to eleven vote, the jury found the existence of this mitigating circumstance. This Court also finds Defendant has established this mitigating circumstance and gives it little weight in determining Defendant's sentence.

B. Defendant's younger brother stabbed him. When he was taken to the hospital, a number of foreign objects were found in his body.

According to Mr. Deviney, Defendant's brother, Wendell, stabbed Defendant in the stomach when the two were children. Mr. Deviney was gathering equipment for a fishing trip and a knife was lying on the coffee table. Wendell grabbed the knife and stuck Defendant in the stomach; though, Mr. Deviney believes it was unintentional. Mr. Deviney and Mrs. Mullins immediately took Defendant to the hospital. Medical records reveal that when the physicians were caring for Defendant, a number of foreign objects were found in Defendant's stomach, such as coins, rubber bands, and paperclips. Dr. Bloomfield opined eating such inedible objects is a sign of dysfunction, chaos, and potential undiagnosed psychological issues. Dr. Gold explained this occurrence exemplifies the physical neglect Defendant sustained. Another unrelated DCF report indicates Defendant stabbed Wendell during a separate incident.

The jury did not find the existence of this mitigating circumstance. This Court's conclusion is two-fold. Notably, this Court finds the literal reading of this factor has been established as medical records corroborate Defendant's claim that he was indeed stabbed in the stomach as a child. Evaluating whether the literal reading of this factor is truly mitigating, however, is more difficult. While a stab wound is serious, the harshness of the experience is undoubtedly lessened under these circumstances: an accidental injury inflicted by a younger sibling. Nevertheless, to the extent this mitigating circumstance signifies child neglect, this Court finds Defendant has proven this incident, in isolation, resulted from negligence. Indeed, when presented with other mitigating circumstances directly addressing Mr. Deviney and Mrs. Mullins's more identifiable neglectful actions, the jury finds the existence of such. Therefore, this Court finds Defendant established this mitigating circumstance and gives it slight weight in determining Defendant's sentence.

C. Defendant was bounced from parent to parent, creating a very unstable upbringing.

A few years after Defendant was born, Mr. Deviney and Mrs. Mullins separated. During the separation, Mr. Deviney and Mrs. Mullins continued to live together; however, Mr. Deviney's girlfriend and her children also moved into the same home. Mr. Deviney and Mrs. Mullins officially divorced when Defendant was six years old. After the divorce, Defendant alternated living with each parent.

According to Mrs. Mullins, after divorcing Mr. Deviney, she remarried and has been in a stable marriage for twenty years. Mrs. Mullins stated Defendant would alternate between her house and Mr. Deviney's house, and every time Defendant came back from Mr. Deviney's home, he would be uncontrollable. She explained Defendant, at times, did not want to live with her because he refused to follow her rules. On the other hand, she stated Defendant, at times,

would not want to live with his father because he fought with him.

The jury did not find the existence of this mitigating circumstance. This Court does not believe splitting time between divorced parents equals an unstable upbringing, per se. Defendant's situation is distinguishable as his parents have an admittedly hostile relationship with one another and obvious differences in parenting style. Growing up to such parents would be difficult absent divorce, separation, or splitting time between homes. As such, to that degree, this Court finds Defendant has established this mitigating circumstance, but gives it minimal weight in determining Defendant's sentence.

D. Defendant was involved in Child Find and awarded a special diploma.

As a child, Defendant participated in Child Find, which is an agency that evaluates children with problems. According to Dr. Bloomfield, Defendant's school referred him to the program, but Mrs. Mullins testified she enrolled Defendant in Child Find before Defendant started elementary school. In any event, while in Child Find, Defendant was diagnosed with a significant speech and language deficit. Child Find offered Defendant speech therapy twice a week and helped him with relevant age-appropriate vocabulary. Once he started school, Defendant was placed in special education classes and ultimately graduated high school with a special diploma. In order to receive this diploma, Defendant was required to maintain a steady job.

The jury did not find the existence of this mitigating circumstance. This Court reiterates Defendant's IQ is in the average to low-average range and there is no indication Defendant's involvement in educational programs is anything more than that already discussed. Nonetheless, Defendant's claim he was in Child Find and received a special diploma is corroborated by record evidence. As such, this Court finds Defendant has established this mitigating circumstance and

gives it minimal weight in determining Defendant's sentence.

E. Defendant is a Christian.

Deborah Jackson, a chaplain at the jail, testified she met Defendant in 2013. She and Defendant meet regularly to read the Bible and pray together. Ms. Jackson believes Defendant is a Christian. During Dr. Bloomfield's testimony, defense counsel introduced a Certificate of Completion for a Bible Study Course awarded to Defendant during his incarceration.

The jury did not find the existence of this mitigating circumstance. In the interest of justice and considering at least some evidence was presented on this matter, this Court finds Defendant has established this mitigating circumstance, but gives it minimal weight in determining Defendant's sentence.

F. While pregnant with Defendant his mother smoked tobacco, drank alcohol, and used drugs.

Defendant told Dr. Bloomfield his mother smoked tobacco, drank alcohol, and abused drugs while she was pregnant with him. Though, Dr. Bloomfield did not find any record evidence to corroborate this self-report and admitted Defendant's recount was pure speculation.

Mrs. Mullins testified she never drank or used drugs while she was pregnant with Defendant. Though, Mrs. Mullins admitted she did smoke cigarettes while she was pregnant with him.

The jury did not find the existence of this mitigating circumstance. Other than Mrs. Mullins's use of tobacco during pregnancy, this Court finds Defendant has not fully established this mitigating circumstance and gives it no weight in determining Defendant's sentence.

G. Defendant was physically abused by his father.

Mr. Deviney acknowledged he has physically abused Defendant. According to Mr. Deviney, during one incident, Defendant threw a bottle at one of the neighbors and, in an attempt

to discipline Defendant, Mr. Deviney grabbed Defendant and tried to kick him from behind. Defendant fell, however, and Mr. Deviney instead kicked Defendant in the face. Though, contrary to Mr. Deviney's account, Dr. Gold opined Mr. Deviney actually kicked Defendant in the face multiple times. In any event, Mr. Deviney was arrested for child abuse and subsequently served eighteen-months of house arrest for this incident. Moreover, Dr. Bloomfield indicated DCF reports substantiate physical abuse by Mr. Deviney.

By a vote of twelve to zero, the jury found the existence of this mitigating circumstance. This Court also finds Defendant has established this mitigating circumstance and gives it slight weight in determining Defendant's sentence.

H. Defendant was physically abused by his mother.

Dr. Bloomfield and Dr. Gold noted Defendant was physically abused by his mother. According to Dr. Gold, Defendant indicated the physical abuse from his mother was much more frequent and intense than that he received from his father. Defendant reported his mother beat him and Wendell every day. Defendant described his mother would grab his arm with her nails before hitting him. She would punch him and hit him with objects that punctured his skin. She would shove Defendant and attack him with objects she used as weapons. Defendant also reported it was not unusual for his mother to slap him so hard that he would fall out of the chair he was sitting in. Conversely, Mrs. Mullins testified she has never physically abused Defendant or Wendell.

By a vote of twelve to zero, the jury found the existence of this mitigating circumstance. This Court notes the lack of documentation corroborating this allegation is suspect, especially considering the amount of evidence substantiating other accounts of physical abuse that Defendant does not consider as intense as that which was inflicted by his mother. Nevertheless,

there is sufficient evidence showing the abusive cloud consuming the home Mrs. Mullins and Mr. Deviney shared with Defendant before their divorce. During that period, it is logical Defendant suffered some type of physical abuse at the hands of his mother. To that extent, this Court finds Defendant has established this mitigating circumstance and gives it slight weight in determining Defendant's sentence.

I. Defendant was physically abused by his stepfather.

Dr. Bloomfield could not recall any reported physical abuse by Defendant's stepfather. According to Dr. Gold, Defendant indicated his stepfather would beat him in the middle of the night at the direction of Defendant's mother.

The jury did not find the existence of this mitigating circumstance. This Court agrees with the jury's finding. Other than Defendant's statements, there is no evidence of Defendant's stepfather abusing Defendant nor is there evidence Mrs. Mullins and Defendant's stepfather created a physically abusive environment for Defendant. As such, this Court finds Defendant has not established this mitigating circumstance and gives it no weight.

J. Defendant was verbally abused by his mother.

According to Dr. Bloomfield, Defendant reported his mother would verbally abuse him by threatening his life. In recounting this abuse, Defendant stated Mrs. Mullins would also punish him psychologically, telling him she was ashamed of him and making him believe he hurt and embarrassed her. Further, Mrs. Mullins would threaten to call the police and threaten to harm Defendant's sexual organs.

Defendant told Dr. Gold that when his mother was being verbally abusive, she would tell Defendant he was just like his father, calling him worthless and stating he would never amount to anything. Defendant indicated she would also allow her friends to speak to him in the same,

humiliating way. Again, Defendant reported his mother's verbal abuse was much more frequent and intense than his father's abuse.

Mrs. Mullins, on the other hand, testified she never verbally abused Defendant. She denied ever calling Defendant worthless and testified she never threatened him nor told him she hated him.

By a vote of twelve to zero, the jury found the existence of this mitigating circumstance. Again, the only evidence of this occurrence is Defendant's own self-report. Much like this Court's analysis of physical abuse by Defendant's mother, however, it is logical Defendant's mother engaged in some form of verbal abuse towards Defendant prior to her and Mr. Deviney's divorce. When faced with the overwhelming evidence of the antagonistic nature of their marital relationship, it is difficult to conclude Mr. Deviney and Mrs. Mullins's verbal abuse of each other did not spread to how they treated their children. Thus, this Court finds Defendant has established this mitigating circumstance and gives it minimal weight in determining Defendant's sentence.

K. Defendant was sexually abused by his mother.

During the guilt phase, Defendant testified his mother sexually abused him. Defendant told Dr. Bloomfield and Dr. Gold that his mother would strap on a false penis and rape him. However, unlike Defendant's other accounts of abuse, Dr. Bloomfield and Dr. Gold noted there was no record evidence corroborating Defendant's self-report of sexual abuse. Still, both experts explained sexual abuse is very difficult to corroborate as victims, especially male victims, rarely report it.

In disclosing this information to Dr. Bloomfield, Defendant appeared to engage in defensive avoidance, a tactic exercised by individuals who are hesitant to discuss specific

trauma. Dr. Bloomfield also opined there was circumstantial evidence of sexual abuse, such as Defendant's behavior issues. Specifically, according to Dr. Bloomfield, Defendant's conduct infractions at school, his speech and language development, and his reaction to anxiety all might be the result of sexual abuse.

Following his divorce from Mrs. Mullins, Mr. Deviney suspected Defendant was being abused while he was living with his mother. According to Mr. Deviney, Defendant's behavior was dramatically worse during that time and noted family services visited Mrs. Mullins's home at the direction of Mr. Deviney. Though, Mr. Deviney explained he could not prove Defendant's behavior change was the result of abuse. Defendant's mother testified she has never sexually abused Defendant. She further stated she has never had any kind of sexual relationship with her son.

By a vote of five to seven, the jury found the existence of this mitigating circumstance. In reaching its conclusion, this Court finds it relevant to mention evidence presented during the guilt phase. Notably, Defendant testified he accidentally murdered Ms. Futrell because she wanted to talk about his sexual abuse, which upset him. (Ex. A at 486-88.) Immediately after confessing to police, however, Defendant told his mother he killed Ms. Futrell because she mentioned Defendant was accused of sexually abusing [redacted] Ex. A at 533-34.) Further, Defendant's deliberate and thoughtful actions taken before and after the murder make any claim that prior sexual abuse contributed to this crime incredible. In any event, this Court acknowledges sexual abuse is almost impossible to corroborate and, thus, gives credence to the jury's determination here. As such, this Court finds Defendant has established this mitigating circumstance, but gives it minimal weight in determining Defendant's sentence.

---

[7] When Defendant was fourteen-years old, his mother accused him of molesting [redacted] The juvenile court held a bench trial where Defendant was acquitted of the charge. (Ex. A at 480-88.)

L. Defendant was sexually abused by his mother's drug dealer.

During the guilt phase, Defendant testified his stepfather's best friend, "Uncle Mike," also sexually abused him. (Ex. A at 481.) Defendant also stated Uncle Mike was his mother's drug dealer. (Ex. A at 481.) According to Defendant, his mother would allow Uncle Mike to sexually abuse him in exchange for drugs. (Ex. A at 481-82.) Defendant explained his mother would facilitate the abuse by digging her fingernails into Defendant's arm and beating him until she allowed Uncle Mike to molest him. (Ex. A at 481-82.) As mentioned above, Mr. Deviney suspected Defendant was being abused while he was living with his mother. According to Mr. Deviney, Defendant's behavior was dramatically worse during that time and noted he attempted to notify DCF of his suspected abuse. Albeit, Mr. Deviney could not prove Defendant's behavior change was the result of abuse.

Defendant also told Dr. Bloomfield and Dr. Gold that Uncle Mike sexually abused him. Defendant reported Uncle Mike would make Defendant take off his clothes while Uncle Mike masturbated. This abuse eventually escalated to Uncle Mike anally raping Defendant and forcing Defendant to perform oral sex.

Like Defendant's other claim of sexual abuse, there is no record evidence corroborating this allegation. Further, Mrs. Mullins stated she is still friends with Mike. According to Mrs. Mullins, Defendant has never been alone with Mike and Mike has never sexually abused him. While anecdotal, Mrs. Mullins also stated Mike is not her drug dealer and denied ever being on drugs.

By a vote of ten to two, the jury found the existence of this mitigating circumstance. Relying on the same analysis as that used in considering Defendant's other claim of sexual abuse, this Court also finds the existence of this mitigator. Claims of sexual abuse are difficult to

corroborate, thus, this Court heeds the jury's decision. As such, this Court finds Defendant has established this mitigating circumstance and gives it minimal weight in determining Defendant's sentence.

M. Defendant was verbally abused by his father.

Dr. Gold briefly mentioned Defendant's report that his father verbally abused him. Dr. Gold did not explain the nature of this verbal abuse, but merely noted Defendant's recount was the verbal abuse by his mother was much more frequent and intense than that by his father.

The jury did not find the existence of this factor. In evaluating this evidence, this Court cannot discount the proven fact that Mr. Deviney physically abused Defendant. Further, like this Court's consideration of verbal abuse by Defendant's mother, it is logical to infer Defendant's father, at some point, subjected Defendant to verbal abuse. As such, in the interest of justice, this Court finds Defendant has established this mitigating circumstance and gives it minimal weight in determining Defendant's sentence.

N. Defendant was neglected by his mother as far as supervision and his health and educational upbringing.

Defendant reported to Dr. Bloomfield that his mother did not criticize him even when she should have. Defendant described she was very lenient and allowed him more freedom than desirable. Dr. Bloomfield explained Defendant was on the streets a lot because no one was taking care of him. Defendant was not nurtured, loved, or hugged as much as other children his age. According to Dr. Bloomfield, Defendant's account of neglect is evidenced in DCF reports; for example, Defendant being stabbed by his younger brother and the inedible objects found in Defendant's stomach.

Dr. Gold also documented incidents of emotional and physical neglect. Dr. Gold noted Defendant's mother constantly berated Defendant and made him feel unloved. Defendant

reported his mother would allow him and Wendell to wander outside the house unsupervised until 2:00 or 3:00 in the morning. Defendant further explained to Dr. Gold that his mother provided more guidance to his half siblings, including helping them with homework, which is something she never did with Defendant.

Mr. Deviney testified Defendant was prescribed medication for his Attention Deficit Disorder (ADD) as a child, but his mother objected to him taking the medication. On the other hand, Defendant told Dr. Gold his mother wanted Defendant to take his medication, but his father was the one who objected.

As mentioned *supra*, Mrs. Mullins stated she identified Defendant had a speech and language issue as a child and enrolled Defendant in Child Find prior to elementary school. Mrs. Mullins indicated she made sure he never missed a session and was adamant about Defendant having an age appropriate vocabulary by the time he began school. Mrs. Mullins also stated she facilitated special help for Defendant's dyslexia. According to Mrs. Mullins, while Defendant was in school, the school called her almost every day regarding Defendant's poor behavior. After every call, Mrs. Mullins would go to the school and attempt to correct the situation. In fact, Mrs. Mullins explained she was so involved with Defendant's educational upbringing that the school asked if she wanted to be a teacher's aide.

By a vote of ten to two, the jury found the existence of this mitigating circumstance. This Court finds the DCF reports that exemplify neglect corroborate this mitigator. This Court cannot discount Defendant being stabbed in the stomach and ingesting inedible objects as such an occurrence is by all accounts neglectful. This Court must also note, however, that Defendant was voluntarily living with his mother at the time of the murder and the contradictory representations about the extent of his mother's neglect is unconvincing. Nevertheless, this Court finds

Defendant established this mitigating circumstance and gives it slight weight in determining Defendant's sentence.

O. Defendant's mother was much more supportive to his half siblings. She never beat them or cursed at them.

In the voluminous documents Dr. Bloomfield reviewed, there was no evidence Mrs. Mullins physically or verbally abused Defendant's half siblings. Defendant reported to Dr. Gold, however, that his mother had disparate treatment towards him and his half siblings. He recounted she would help his half siblings with their homework and never physically or verbally abused them. According to Dr. Gold, Defendant's mother was more abusive toward Defendant and Wendell because of the anger she felt towards their biological father. Specifically, Dr. Gold referenced how Defendant's mother would compare Defendant to his father when she was verbally abusing Defendant.

Conversely, Mrs. Mullins testified she spent more time with Defendant than her other children because Defendant required so much attention. According to Ms. Mullins, Defendant's poor school behavior required her daily consideration and during Defendant's early childhood, she ensured Defendant received adequate help for his speech and language issues.

The jury did not find the existence of this mitigating circumstance. Here, the only evidence showing Defendant's mother treated Defendant's half siblings better is Defendant's own self-report. This Court also finds the lack of DCF reports showing abuse of the half siblings is unconvincing. Indeed, as mentioned in this Court's analysis for Defendant's claims of sexual abuse, not all forms of abuse are readily apparent or easily corroborated. As such, this Court finds Defendant has failed to establish this mitigating circumstance and gives it no weight in determining Defendant's sentence.

P. Defendant graduated from high school with a special diploma.

The jury did not find the existence of this mitigating circumstance. This Court finds it considered this evidence in Mitigating Circumstance D. This Court declines to assign weight a second time.

Q. Defendant's mother and father have both engaged in and been arrested for domestic battery against each other.

According to Dr. Gold, Defendant's biological parents were involved in frequent physical altercations and both were arrested at various times for domestic violence. Mr. Deviney confirmed Defendant witnessed Mrs. Mullins hit Mr. Deviney in the ankle with a shovel. Mr. Deviney was apparently standing on Mrs. Mullins's car in an attempt to get away from her when she hit him. Mrs. Mullins was arrested for battery after this event. On another occasion, Defendant witnessed his father and mother engage in an argument that involved Mrs. Mullins hitting Mr. Deviney in the head with a glass of tea. Mr. Deviney testified he was never arrested for domestic battery against Mrs. Mullins, but admitted he was arrested for an incident that occurred with his second wife, Robin. Mr. Deviney explained Robin was attempting to drive away and he hit her window causing it to shatter. It is unclear if Defendant witnessed this incident.

Dr. Bloomfield corroborated these domestic violence occurrences, referencing various DCF reports indicating domestic violence investigations at Defendant's home. Dr. Bloomfield explained, however, that Defendant was never removed from the home nor provided services after being exposed to such violence.

By a vote of twelve to zero, the jury found the existence of this mitigating circumstance. This Court agrees with the jury's finding. The evidence is clear Mrs. Mullins and Mr. Deviney had a very physically abusive relationship and Defendant witnessed this violence. As such, this

Court finds Defendant has established this mitigating circumstance and gives it some weight in determining Defendant's sentence.

R. Defendant has been employed and has been described as a hard worker.

As mentioned above, in order to graduate high school, Defendant was required to maintain a steady job. Further, at the time of his arrest, Defendant was working for a landscaping company.

The jury did not find the existence of this mitigating circumstance. As stated *supra*, in referencing his prior juvenile criminal convictions for burglary and robbery, Defendant reported to Dr. Gold that stealing things was the easiest way to obtain something without engaging in work. Indeed, the jury found Defendant murder Ms. Futrell during the commission of a Burglary or Attempted Burglary. As such, this Court finds Defendant did not establish this mitigating circumstance and gives it no weight.

S. Defendant is close with his brother, Wendell.

Wendell is Defendant's younger brother. As discussed in Mitigating Circumstance B, Wendell stabbed Defendant in the stomach when they were very young. Dr. Bloomfield also referenced a DCF report that indicated Defendant stabbed Wendell in the stomach on another occasion.

During Mr. Deviney's testimony, Defendant introduced family photographs that depicted Mr. Deviney, Defendant, and Wendell together.

The jury did not find the existence of this mitigating circumstance. This Court agrees with the jury's decision. Other than the family photos, no evidence was presented to support this circumstance. Thus, this Court finds Defendant has not established this mitigating circumstance and gives it no weight in determining Defendant's sentence.

T. Defendant is close with his father.

During the penalty phase, the State introduced recorded jail phone calls between Defendant and Mr. Deviney that were made soon after Defendant was arrested. During one phone conversation, Mr. Deviney was noticeably upset about Defendant's pending murder charges and offered Defendant emotional support.

Further, when Mr. Deviney testified at the penalty phase, he was markedly upset and emotional. Mr. Deviney explained he loves Defendant and will continue to visit and foster a relationship with Defendant. Mr. Deviney also identified family photos showing him and Defendant on Christmas.

By a vote of five to seven, the jury found the existence of this mitigating circumstance. This Court agrees and also finds Defendant has established this mitigating circumstance and gives it some weight in determining Defendant's sentence.

U. Defendant is close with his stepmother, Anne.

According to Mr. Deviney, his current wife and Defendant's stepmother, Anne Deviney (Mrs. Deviney), is more of a mother to Defendant than Mrs. Mullins. Mrs. Deviney regularly visits Defendant and always remembers his birthday. Mr. Deviney explained Mrs. Deviney came to the penalty phase to support Defendant, but was too upset and emotional to testify.

During the Spencer hearing, Defendant presented a transcript of Mrs. Deviney's prior penalty phase testimony, given on July 23, 2015. Mrs. Deviney testified she visits Defendant every three months and accepts phone calls from him every week. She also sends cards to him. Mrs. Deviney identified family photos of Defendant and explained Defendant was present the Christmas Mr. Deviney proposed to her. She stated she loves Defendant and considers him her son. In fact, Defendant calls her mom. Mrs. Deviney opined she will continue to maintain a

relationship with Defendant

The jury did not find the existence of this mitigating circumstance. The jury, however, did not consider Mrs. Deviney's prior testimony that clearly shows her close relationship with Defendant. As such, this Court finds Defendant has established this mitigating circumstance and gives it some weight in determining Defendant's sentence.

V. When Defendant was a child, he was prescribed medication for behavior and learning disabilities and his parents refused to administer said medication.

Mr. Deviney explained Defendant had problems learning and staying focused in school and was diagnosed with ADD, a condition that hinders an individual's ability to concentrate on simple tasks. As discussed *supra*, Defendant was prescribed medication to manage it, but, according to Mr. Deviney, Mrs. Mullins refused to administer the medication. Defendant also reported to Dr. Bloomfield that his mother objected to him taking the medication. In direct contradiction to this report, Defendant told Dr. Gold his mother wanted him to take his medication, but his father was the one who objected. Mrs. Mullins also opined Mr. Deviney was the parent who refused to administer the medication.

Moreover, Defendant suffered from anger problems and has a history of hitting other students. He was suspended from school on at least one occasion for his aggressive behavior. Mr. Deviney admitted he called DCF regarding Defendant's physical aggression and Defendant was placed in programs to cope with these conduct issues. Defendant was also prescribed medication to manage his anger. Medical documents show that at one point, Defendant was prescribed Zoloft and Thorazine. According to Dr. Bloomfield, Zoloft treated Defendant's depression and anxiety while Thorazine was prescribed to curb Defendant's behavior. Dr. Bloomfield explained the Thorazine was likely used to calm Defendant and help facilitate therapy sessions.

The jury did not find the existence of this mitigating circumstance. In weighing this

mitigating circumstance, this Court first looks at the plain text of this factor. There is no question Defendant was prescribed medication for his ADD diagnosis, but he never properly took this medication. Nevertheless, despite this diagnosis and lack of medication, Defendant has an average to low-average IQ and graduated high school with a full time job.

As to Defendant's behavioral issues, this Court heard no evidence that Defendant's parents refused to administer Zoloft and Thorazine. There is evidence, however, that Defendant's parents supported behavioral treatment. Mr. Deviney and Mrs. Mullins testified they attempted to correct Defendant's conduct problems either through DCF programs or academic programs. Defendant, however, did not show any progress from such intervention. As such, while Defendant may have proven he was prescribed medication and may not have adequately taken such, this Court does not believe this occurrence is truly mitigating in nature. Any purported learning disability did not prevent Defendant from achieving a high school degree and any alleged behavioral problem did not result from lackluster attempts to help Defendant. Thus, this Court finds Defendant has established this mitigating circumstance, but gives it no weight in determining Defendant's sentence.

W. Defendant was hit in the head with a baseball bat.

Dr. Bloomfield briefly mentioned Defendant was hit in the head with a baseball bat on one occasion. There was no further evidence presented to support this circumstance or show how this mitigation affected Defendant in any way.

The jury did not find the existence of this mitigating circumstance. In his sentencing memorandum, Defendant argues Dr. Bloomfield can corroborate this mitigation through reports. Even assuming Dr. Bloomfield can corroborate this mitigation, there are no details indicating the extent or nature of this incident. Indeed, getting hit by a baseball bat that accidentally fell off a

bookshelf is much different than an intentional beating by same. Accordingly, this Court cannot adequately evaluate whether this circumstance is mitigating to the instant case. Thus, taking Defendant's representation as true, this Court finds Defendant has established this mitigating circumstance, but gives it no weight in determining Defendant's sentence.

X. Defendant has limited cognitive ability.

According to Dr. Bloomfield, Defendant had limited cognitive ability as a child. To support this conclusion, Dr. Bloomfield opined Defendant was diagnosed with a very significant speech and language deficit when he was a child. Dr. Bloomfield explained Defendant's deficit affected his comprehension and was likely a developmental issue stemming from the abuse and trauma he was experiencing at home. Dr. Bloomfield and Mrs. Mullins noted Defendant received therapy for the issue two times a week. Dr. Bloomfield also indicated the therapy was actually effective.

Dr. Bloomfield also explained Defendant was administered an IQ test as a child and received an IQ score of 74, which is right above the intellectually disabled range. Dr. Bloomfield opined, however, that Defendant's low childhood IQ score was likely inaccurate and attributable to Defendant's speech and language deficit at that time. Specifically, Defendant's speech and language problem likely affected his comprehension, making it difficult for Defendant to articulate words and confusing Defendant's deficit with actual ineptness. Dr. Bloomfield averred Defendant was probably placed into special education classes because of this imprecise IQ score. According to Dr. Bloomfield, Defendant is much more intelligent and currently has a full-scale IQ of 90. As such, Dr. Bloomfield believes Defendant's functioning is average or low-average at worst.

The facts of the instant crime further confirm Defendant's intelligence. Defendant armed

himself with a knife before going to Ms. Futrell's home. There were no signs of forced entry, so he either convinced Ms. Futrell to let him inside or he made his entrance with stealth. He was able to commit a brutal murder without getting a scratch on him and staged the crime scene, leaving no fingerprints. Defendant then lied about his involvement and avoided arrest for weeks. As mentioned earlier, if Defendant's DNA was not recovered from Ms. Futrell's fingernails, this case may have had a different outcome.

The jury did not find the existence of this mitigating circumstance. This Court's analysis has the same result. While Defendant's speech and language deficit may have impacted his early abilities, Defendant has clearly overcome said obstacle. According to Mrs. Deviney, whose testimony was introduced during the Spencer hearing, Defendant currently reads multiple, 500 page novels in a week. He was clearly capable of concealing his involvement in Ms. Futrell's murder and would have likely done so indefinitely. As such, this Court finds Defendant has failed to establish this mitigating circumstance and gives it no weight in determining Defendant's sentence. .

Y. Defendant was eighteen years of age at the time of the offense. Adolescent and young adult brains are not fully developed.

As discussed in Statutory Mitigating Circumstance 3, the jury, by a vote of two to ten, found the existence of this mitigating circumstance. This Court considered this mitigation and the jury's decision regarding it during its analysis of Statutory Mitigaing Circumstance 3. This Court declines to weigh this evidence a second time.

Z. Defendant suffers from exposure to abuse and emotional deprivation.

. Dr. Bloomfield described Defendant's childhood as chaotic and deprived. Through DCF reports, Dr. Bloomfield confirmed Defendant has witnessed multiple domestic disputes between his biological parents and was beaten by his father. Defendant reported no one took care of him

as a child and he did not receive the nurturing, love, or hugs that a kid his age should receive. According to Dr. Bloomfield, Defendant may suffer from Reactive Attachment Disorder, a condition in which Defendant is fearful of attaching to people because, in his experience, he was beaten by those he attached to.

As mentioned above, Defendant reported to Dr. Gold that he felt abandoned once his mother remarried and had other children. Defendant described his mother as too lenient and she failed to offer criticism when Defendant felt he needed it.

Defendant described his father, however, loves him and offered him the criticism and support he needed growing up. Moreover, both of Defendant's parents testified they love Defendant.

By a vote of twelve to zero, the jury found the existence of this mitigating circumstance. This Court agrees with the jury's decision. There is ample evidence corroborating and supporting the claim that Defendant's childhood was less than ideal. This Court finds Defendant has established this mitigating circumstance and gives it some weight in determining Defendant's sentence.

AA. It is possible Defendant was experiencing PTSD at the time of the offense.

By a vote of ten to two, the jury found the existence of this mitigating circumstance. This Court addressed this evidence during its analysis of Statutory Mitigating Circumstance 1. Specifically, Defendant used this evidence to support the notion he was under the influence of extreme mental or emotional disturbance when he committed the murder. This Court found the existence of Statutory Mitigating Circumstance 1 and assigned weight at that time. As such, this Court declines to reweigh this evidence.

BB. Defendant had significant speech and language problems until he was 10 years old.

The jury did not find the existence of this mitigating circumstance. This Court considered this evidence in Mitigating Circumstance X. As such, this Court declines to reweigh this evidence.

CC. As a young person, Defendant was tested using the WPSSI and a score of 74 was reported as full scale IQ. His current IQ is in the low average.

The jury did not find the existence of the mitigating circumstance. This Court considered this evidence in Mitigating Circumstance X. As such, this Court declines to reweigh this evidence.

DD. Defendant witnessed violence and was exposed to a great deal of trauma.

Dr. Bloomfield, Dr. Gold, and Mr. Deviney testified Defendant has witnessed violence. Defendant witnessed his father and mother engage in domestic disputes and saw each parent get arrested for domestic battery. His parents engaged in a hostile divorce when Defendant was six-years-old, and his parents fought over child custody and child support for the remainder of Defendant's childhood. Dr. Bloomfield and Dr. Gold also testified Defendant was exposed to a great deal of trauma. Defendant has suffered physical, emotional, and possibly sexual abuse.

By a vote of eleven to one, the jury found the existence of this mitigating circumstance. This Court also finds Defendant has established this mitigating circumstance and gives it some weight in determining Defendant's sentence.

EE. As a child, Defendant had problems learning to talk. In addition, he had problems with nail biting, stuttering, repetitive rocking, repetitive head banging, and repeated eating of nonfood substances.

Dr. Bloomfield noted Defendant's report of nail-biting and stuttering. Defendant also reported he has a history of repetitive rocking, head banging, and eating of nonfood substances. According to Dr. Bloomfield, these behaviors are characteristic of having a chaotic childhood

and demonstrate ill-conceived attempts to gain self-control. Though, Dr. Bloomfield explained Defendant is not currently experiencing these issues.

The jury did not find the existence of this mitigating circumstance. This Court notes Dr. Bloomfield was able to corroborate Defendant's report of stuttering and eating of nonfood substances; notably, Defendant's speech and language deficit and the doctors' discovery of foreign objects in Defendant's stomach as a child. Other than Defendant's own report, however, there is no evidence of nail biting, problems learning to walk, or repetitive actions. As mentioned above, this Court has already considered Defendant's speech and language issue and Defendant's childhood ingestion of inedible objects. This Court declines to reweigh the only evidence proven to exist here. Thus, other than the evidence already considered and analyzed, this Court finds Defendant has not established this mitigating circumstance and gives it no weight in determining Defendant's sentence.

FF. Defendant was placed in special classes for students with learning problems and took special education classes.

The jury did not find the existence of this mitigating circumstance. This Court considered this evidence in Mitigating Circumstance D and declines to reweigh it.

GG. Defendant has suffered from effects of Adverse Childhood Experiences during his childhood. Said experiences have affected Defendant's mental emotional and physical health.

By a vote of eleven to one, the jury found the existence of this mitigating circumstance. This Court considered this evidence in Statutory Mitigating Circumstance 1 and declines to reweigh it.

Weighing Aggravating Factors and Mitigating Circumstances and the Jury Verdict

The jury unanimously found the aggravating factors proven beyond a reasonable doubt outweigh the established mitigating circumstances. Thereafter, the jury unanimously

recommended Defendant be sentenced to death. As such, as required by law, this Court conducted its own weighing process.

CONCLUSION

This Court thoroughly reviewed and considered the records of Defendant's guilt phase and the sentencing proceedings. Further, this Court evaluated and measured the aggravating factors found to exist by the jury and the mitigating circumstances reasonably established by the evidence. This Court finds the aggravating factors are sufficient to warrant the death penalty. Understanding this process is not a quantitative comparison, but one which requires qualitative analysis, this Court assigned an appropriate weight to each aggravating factor and each mitigating circumstance. This Court finds the jury's recommendation for the death penalty, consistent with its verdict and based on the evidence presented, was well-reasoned.

This Court wholly agrees with the jury's unanimous recommendation based on an assessment of the aggravating factors and mitigating circumstances presented. This Court finds the aggravating factors heavily outweigh the mitigating circumstances, and death is the proper penalty this Court should impose for the murder of Delores Futrell as charged in the Indictment.

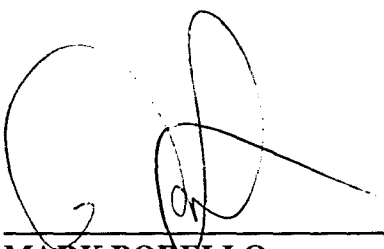
Randall Deviney, you have not only forfeited your right to live among us, but under the laws of the State of Florida, you have forfeited your right to live at all.

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

You are hereby notified this sentence is subject to automatic review by the Supreme Court of Florida. Counsel will be appointed by separate Order to represent you for that purpose. Further, pursuant to section 922.105(1), Florida Statutes (2017), "[a] death sentence shall be executed by lethal injection unless the person sentenced to death affirmatively elects to be executed by electrocution." You have thirty (30) days from the date of issuance of a mandate pursuant to a decision of the Supreme Court of Florida affirming the sentence of death to elect death by electrocution pursuant to the procedures required under that law.

Randall Deviney, upon execution of this sentence by the State of Florida, may God have mercy on your soul.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida this 11th day of December, 2017.



MARK BORELLO
CIRCUIT COURT JUDGE

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

Case No: 2008-CF-012641-AXXX-MA

Division CR-D

STATE OF FLORIDA

-vs-

RANDALL DEVINEY,

Defendant,

TESTIMONY AND PROCEEDINGS taken before the Honorable Mallory D. Cooper, Judge of the Circuit Court, on July 15, 16 and 17, 2015, and as reported by Faye M. Gay, Certified Realtime Reporter, Registered Merit Reporter, and Certified Legal Video Specialist.

OFFICIAL REPORTERS, INC.
421 W. Church St. Suite 430
Jacksonville Florida 32202
904-358-2090

EXHIBIT A

APPEARANCES:

BERNARDO de la RIONDA and PAMELA HAZEL, Esquires,
Assistant State Attorneys,
Appearing on behalf of the State of Florida.

JAMES HERNANDEZ and KELLI BYNUM, Esquires,
Assistant Public Defenders,
Appearing on behalf of the Defendant.

DEFENSE WITNESSES

the courtroom.

THE COURT: Thank you, Mr. Lawson.

(Jury present.)

THE COURT: Mr. Hernandez, you may call your first witness.

MR. HERNANDEZ: Yes, Your Honor. At this time the defense would call Randall Deviney, Your Honor.

THE COURT: I'm sorry. Would you stand back up?

Madam Clerk, would you place him under oath?

(Witness sworn.)

THE WITNESS: Yes, I do.

THE CLERK: Thank you.

RANDALL DEVINEY,

was called as a witness on behalf of the Defense, and after being duly sworn, then testified as follows:

DIRECT EXAMINATION

BY MR. HERNANDEZ:

Q Mr. Deviney, could you please state your name for the jury.

A Randall Deviney.

Q And what is your date of birth, sir?

A 8/13 of 1989.

Q Did your mom get it right the other day when

she testified?

A No, sir.

Q On August the 5th, 2008, how old were you, sir?

A At this time I was 18.

Q Where were you living at at that time?

A 5627 Bryner Drive with my mother and step-father.

Q Now, on August the 5th, 2008, did you know a lady by the name of Delores Futrell?

A Yes, I did.

Q And how long had you known Ms. Futrell?

A Ever since I was seven.

Q What type of relationship did you have with Ms. Futrell in your younger years?

A Very loving, caring relationship with Ms. Futrell.

Q Did you go over to her house?

A Yes, I did.

Q And what did you do whenever you went over to her house?

A I went over to her house, just talked to Ms. Futrell, and her house was like a safe place for me. And I usually just chill, eat cookies and stuff like that.

Q And as you got older, did you continue to go over to Ms. Futrell's house?

A Yes, sir.

Q And what did you do over there as you got older?

A Same thing. Mostly talked to her about personal problems that I was having.

Q Have you ever been convicted of a felony?

A Yes, I have.

Q How many times?

A Three.

Q Now, when you and Ms. Futrell talked, what were you able to talk about to her about?

A I was able to talk to her about a lot of things. She was a lady I trusted and could talk to about the sexual abuse I suffered as a child, about the sexual abuse that I was accused of against [redacted] that I was eventually acquitted of.

Q Did you say that you were accused of sexual abuse or conduct against [redacted]

A Yes, sir, I was.

Q Did you go to trial on that?

A Yes, sir.

Q Was that in juvenile court?

A Yes, sir.

Q And were you acquitted of that?
A Yes, sir.
Q In other words, you were found not guilty, is that right?
A Yes, sir.
Q And you all -- the sexual abuse that you talked to Ms. Futrell about of yourself, how did that occur?
A I was sexually abused by my mother and her dope man.
Q When you say dope man, what are you referring to?
A The man that my mom used to buy drugs from. He was my father's best friend, step-father's best friend.
Q And was he referred to as Uncle Mike?
A Yes, sir.
Q When your mom -- did your mom ever physically abuse you?
A Yes, sir.
Q How did that occur?
A Well, especially on the days that she wanted to get drugs from my Uncle Mike, she would grab me by my arm and dig her nails into the inside of my arm and beat me into submission and I would be raped or

molested by my Uncle Michael.

Q Were you raped by him?

A Yes, sir.

Q Other times did your mom physically abuse you?

A Yes, sir.

Q And how would that start off?

A Well, it depends. There was different degrees bring it on. If I wasn't listening, she would grab ahold of me and beat me, dig her nails into me, stuff like that, sir.

Q Now, did the physical abuse by your mom, did it increase whenever she married her husband?

A Yes, sir.

Q And when I say her husband, I'm talking about Mr. Mullins?

A Yes, sir, it did.

Q And were there children that Mr. Mullins brought into the family?

A Yes, sir.

Q Your brother, Wendell --

A Yes, sir.

Q -- you all were children by your father, is that correct?

A Yes, sir.

Q Wendell, how much -- what was his age?
A He was 13 months younger than I.
Q Whenever you were three, did Wendell stab you with a fish fillet knife?
A Yes, sir.
Q Were your mother and father present whenever he did it?
A Yes, sir.
Q They were sitting in the living room?
A They were sitting on the couch and my brother was chasing me with a fish filleting knife around the coffee table.
Q And where did he stab you at?
A In the side of my ribcage on the right side.
Q Were you able to talk to Ms. Futrell about these things?
A Yes, sir.
Q On August the 5th, 2008, you were at your mom's house living. Did you -- were you working that day?
A Yes, sir.
Q About what time did you get off of work?
A Around 7:30 that night.
Q Did your mom have people coming over?
A Yes, sir. Has a girls night every Tuesday.

Q Randall, did you kill Ms. Futrell?
A Yes, sir, I did.
Q How do you feel about that?
A I feel horrible. There's not a day or night I don't think about it. I don't sleep the way I used to. It's an everyday occurrence.
Q Did you decide that you were going to go over to Ms. Futrell's house that day?
A Yes, sir.
Q And about what time did you go over?
A Around 9:30.
Q Was that 9:30 at night?
A Yes, sir.
Q How were you dressed?
A I was in a pair of dark gray casual shorts and a black T-shirt, sweat pant type shorts.
Q Were you carrying a knife?
A Yes, sir, I was.
Q What type of knife?
A It's a fish filleting knife.
Q Did you ask your mom for that fish fillet knife that night?
A No, sir, I did not.
Q Why were you carrying the knife?
A I always have a tendency to carry a knife with

me because of the work I was doing at the time. I was doing landscaping. And that was the knife I particularly had on me that day.

Q Were you carrying it in a sheath on your belt?

A Yes, sir.

Q When you got to Ms. Futrell's house, did you knock on the door?

A I rung the doorbell.

Q Was the door locked or unlocked?

A The screen door was locked and the front door was open, though.

Q Did Ms. Futrell come to the door?

A Yes. When I walked up she was sitting on the couch. She had just got off the phone and she said she'd be there in a minute to unlock the screen door.

Q Did she let you in?

A Yes, sir.

Q Did you all talk in her home?

A Casually, and we decided to go out back 'cause it was hot in the house.

Q And did you go out to her backyard?

A Yes, sir, I did.

Q Had you helped Ms. Futrell out with her Koi pond before this day?

A Yes, sir, there was other times I had looked at her pond for her when she was having minor issues with it.

Q What were you discussing that night with Ms. Futrell?

A Well, two weeks prior when I was cutting her yard I noticed that the water level in her pond was awfully low and she said she may have a leak and I told her I would check it out eventually for her.

Q Did you ask her for a flashlight?

A Yes, sir, I did.

Q And did she go get you one?

A Yes, sir, she went inside on a dining room table on the left -- left of the couch there was a camouflage flashlight she brought out to me.

Q Did you all continue to talk?

A Yes, sir, we did.

Q Were you all talking about your sexual abuse as a child?

A Yes, sir.

Q Did you check the pool?

A Yes, sir.

Q How did you check the pool?

A Well, I had a flashlight on me and there was a bunch of cobwebs around underneath the piece of wood

that she had on the corner of the pond and so I took the fish filleting knife out and got all the cobwebs out of it and proceeded to check to see if it was a leak.

Q What hand did you have the knife in?

A My left hand.

Q What hand did you have the flashlight in?

A My right hand.

Q Could you see even with the flashlight?

A No, it was very dark that night.

Q Was Ms. Futrell talking to you while you were checking the pond?

A Yes, sir.

Q What did she want you to do about the sexual abuse that you had incurred as a child?

A She wanted me to report it.

Q She wanted you to report it?

A To the police.

Q Did you want to do that?

A No, sir. I was ashamed and embarrassed.

Q Did she talk about you living in your house again and the fact that [redacted] was living in your house?

A Yes, sir.

Q And that [redacted] is the -- [redacted] that you were found not guilty of in juvenile court, is that

correct?

A Yes, sir.

Q Did your mama put [redacted] up to testifying against you?

A Yes, sir.

Q What did you tell Ms. Futrell about whether you could correct the problem or not in the pool?

A I told her I'd be back the next day to look at it.

Q And what did she do at that time?

A She told me if I wasn't willing to report it that she would and I told her, no, I didn't want that to be done, and I was going to leave and that's when Ms. Futrell grabbed me by my arm, on my left arm, dug her nails into my arm and said not to walk away from her. And that's when I turned around and hit her in the throat with the knife, sir.

Q Did you intend to kill her?

A No, sir.

Q What did you want to do whenever you -- she grabbed your arm?

A Sir?

Q What were you trying to do whenever she grabbed your arm and you moved?

A I was just trying to get her arm off -- her

hand off my arm, sir.

Q What occurred after the knife hit her in the throat?

A She put her hands up to her neck and I hit her three times in the chest with the knife. The first two times the blade broke and that's when she fell forward and hit her face and neck on the edge of the pond and slid over and hit her left side of her head on the concrete block.

Q And what did you do after that?

A I rolled her over and drug her to the middle of the yard and put pressure with both hands on her neck, like this (indicating).

Q Did Ms. Futrell pass away?

A Right there, yes, sir.

Q What actions did you take?

A At that point I drug her from that spot from the middle of the yard into the home. Across the porch and into the home. And in that process her pants had came off at the doorstep and I had took them all the way off and threw them into the corner of the room.

Q Why did you do that?

A 'Cause at that point I was going to make it look like a stranger had came in and was trying to pose the body and stuff.

Q Did you cut her garments?
A Yes, sir, I did.
Q What did you use to cut her garments?
A On the fish filleting knife I had, there was still an inch and a half blade on it and that's what I used.
Q Could you tell at that time that the knife had broken?
A Yes, sir.
Q And what did you do then?
A That's when I went back outside with the same flashlight that she had given me earlier and proceeded to look for the pieces of blade that was missing.
Q Were you able to find one?
A I was able to find one, but in the search of the other one I was not able to find.
Q Did you go back inside?
A Yes, sir, I did.
Q There was a 911 call in this case. Who made that?
A I did, sir.
Q Why did you make that?
A I knew she was alone at the time and I didn't want her to be at the house for four days, five days before somebody found her.

Q Are you aware that in hanging up that the police would come, the 911 call?

A Of course.

Q Did you attempt to have sexual battery on Ms. Futrell?

A No, sir.

Q Did you touch her purse or attempt to steal from her?

A No, sir.

Q Did you intend to kill her?

A No, sir.

Q After you made the 911 call, did you leave?

A Yes, sir, I did.

Q How did you leave?

A Through the front door.

Q Did you walk to your house?

A Yes, sir, I did.

Q And what did you do upon entering your house?

A On the way to the home I had threw the handle of the knife blade into the sewer drain on my street and went home and went straight upstairs, took a shower, put my clothes inside of a plastic bag and put them inside my work bag for work and went back downstairs in a pair of shorts and hung out with my mom's -- my mom and my mom's girlfriends and a few

hours later I put the bag in my truck.

Q Did you get rid of the bag the next day?

A Yes, sir.

Q You went to the vigil, is that correct?

A Yes, sir.

Q Were those actual emotions on your part? Sadness?

A Yes, sir.

Q You didn't want to get caught for this, correct?

A I did not.

Q You did get caught, is that right?

A Yes, sir.

Q Did you premeditatedly kill Ms. Futrell?

A No, sir.

Q Did you intend to do her any harm when you went over there that night?

A I did not.

Q Are you sorry that this event occurred?

A I'm extremely sorry.

Q Do you realize how much grief you caused her family?

A Tremendously.

Q Do you think about that each day?

A Yes, sir.

MR. HERNANDEZ: Your Honor, I have no further questions.

THE COURT: All right. Thank you.

Mr. De la Rionda.

CROSS-EXAMINATION

BY MR. De la RIONDA:

Q You were so remorseful that when you're talking to the police on August the 30th you are laughing and joking about this and denying, lying to the police about committing this murder, right?

A Yes, sir. They're the police.

Q But, of course, you're telling the jury now the truth, right?

A Yes, sir.

Q You lied repeatedly to the police, did you not?

A Yes, sir, I did.

Q And you're claiming now that you really cared for this 65 year old frail lady, correct?

A Yes, sir, I did.

Q You cared enough about her that, of course, before you left that residence you made sure that her eyes were closed, right? You had the decency to do that, didn't you?

A Yes, sir.

Q You did?
A Yes, sir.
Q How come her eyes are still open?
A (No response.)
Q How come her eyes are still open, sir?
A I wouldn't be able to tell from that photo. There's a lot of blood on her face.
Q Does this photo show it better?
A No, sir.
Q Doesn't that show her eyes completely open? You just lied, didn't you?
A No, sir.
Q So you told the truth when you said that you had shut her eyes, you had closed her eyes because you were a decent man?
A (Pause.) No, sir.
Q Do you have an answer?
A No, sir.
Q So you acknowledge that you lied to the jury right now, right?
MR. HERNANDEZ: Objection, Your Honor. Argumentative, asked and answered more than five times.
THE COURT: I'll overrule the objection. I'm not sure he answered it.

Well, just ask him directly and let him give an answer.

BY MR. De la RIONDA:

Q Sir, you agree that you told the jury earlier that you were remorseful for this, right?

A Yes, sir.

Q And you agreed that when, sir, I asked you whether you had the decency to close her eyes before you left her that you had, correct?

A I should have said I misunderstood your question, sir.

Q You left her like this, right?

A Yes, sir.

Q With her eyes and she was staring right at you when she -- when you killed her, wasn't she?

A Yes, sir.

Q When you killed her, didn't she beg for her life?

A No, sir.

Q Now, if I understand your scenario, your story today to this jury, you're telling this jury that you had a knife in your right hand, correct?

A Left hand, sir.

Q I'm sorry. Left hand. You're left-handed?

A Yes, sir -- no, I'm right-handed but I had the

knife in my left hand.

Q So you're right-handed, but you had the knife in your left hand because you were going to cut something and I guess even though you're right-handed you cut things better with your left hand, right?

A No, sir, I was just knocking down the cobwebs with the knife in my left hand.

Q Okay. And then with the right hand you were using the flashlight, right?

A I had a flashlight in my hand.

Q And I guess the flashlight is incapable of knocking down those cobwebs, right?

A It was a small light, sir.

Q Is that the same flashlight where your DNA doesn't appear?

A Yes, sir.

Q So what do you do? After you killed her and posed her, what you're saying is you then wiped off your DNA from the flashlight?

A No, I did not.

Q So your story is that you were out there with a flashlight in your right hand, the hand you use, and then a knife in your left hand, and then Ms. Futrell is the one that brought this on, right, because she grabbed you --

A Yes, sir.

Q -- right? So I mean the normal thing is when this frail 65 year old lady, who's got MS, grabs you in the -- by your arm, right?

A Yes, sir.

Q And that was your left arm, right?

A Yes, sir.

Q So you just kind of accidentally just kind of sliced her throat, right, from one side to the other?

A Yes, sir.

Q Okay. Well, if that's true, how come the slice started on the left side and if you're doing this (indicating), wouldn't it start -- on which side? Wouldn't it start over here (indicating)?

A I couldn't be able to answer that question for you, sir.

Q Well, you remember it vividly, don't you?

A Yes, sir.

Q I mean I'm sure you'll never forget this, right?

A No, sir.

Q And what you want this jury to believe is that this lady who's got MS all of a sudden just grabbed your arm and then by reaction you just kind of with that arm with the knife, you just kind of

accidentally sliced her throat?

A Yes, sir.

Q And then what you want this jury to believe after you did that accidentally, then you went over there and stabbed her some more?

A Yes, sir.

Q And, of course, I'm sure that was for what? To put her out of her misery?

A No, sir.

Q That was to what? Just to cause her more pain?

A No, sir.

Q That was to make her feel happy?

A No, sir.

Q That was to see how much blood would come out of her -- the rest of her body?

A No, sir, that happened before she even fell.

Q Oh, so if I understand you correctly, then you sliced her throat, right?

A Yes, sir.

Q And then she just stood there and then you just stabbed her?

A No, sir. She had her hands up to her throat.

Q So she had her hands up to her throat and you managed to get that knife in under her arms. How is

that possible?

A That's what happened, sir.

Q So you're telling me that she got her -- her throat was sliced, she had her hands like this (indicating), right?

A Yes, sir.

Q And then you managed to get a knife in under here (indicating)?

A Yes, sir.

Q You want the jury to believe that?

A That's what happened.

Q Because she has no knife wounds at all on her arms. You would agree with that, wouldn't you?

A From what I heard, she had injuries everywhere.

Q Maybe what happened is that she said, after you stabbed her, hold on, let me lift up my arms so you can stab me again. Is that possible?

A No, sir.

Q Ms. Futrell was a decent lady, wasn't she?

A Yes, sir.

Q She cared about a lot of people, didn't she?

A Yes, sir.

Q She went out of her way to take care of the kids out there who needed help.

A Yes, sir.
Q Right?
A Yes, sir.
Q Not just talking to you. She talked to everybody in the neighborhood.
A Yes, sir.
Q And everybody cared about her, right?
A Yes, sir.
Q And everybody knew that she was in declining health.
A Yes, sir.
Q And at least you knew that H wasn't going to be home that night, correct?
A I did know that, yes.
Q You did?
A Yes, sir.
Q And you also knew that the dog that was kind of there for protection, this 80-pound bulldog, would not be there, too, right?
A Yes, sir.
Q And that night you decided, and at 10:00 o'clock in the evening, you had to go talk to Delores Futrell, right?
A It was 9:30.
Q Oh, it was 9:30. Excuse me. So you decided

at 9:30 p.m. on a Tuesday evening that you just kind of had to go over there and talk to her, right?

A It wasn't out of the ordinary.

Q Pardon me.

A It wasn't out of the ordinary. I had been over there at 9:30 before.

Q On a regular basis?

A Yes.

Q Oh, okay. So I guess you wait for her boyfriend, Mr. Perkins, to finish the phone call and then you just automatically go over there?

A I didn't know he was on the phone with her. Like I just said, she had just got off the phone when I rung the doorbell.

Q It's amazing that Ms. Futrell didn't mention to Mr. Perkins, oh, hold on, Randall Deviney is on his regular visit to my house, let me hang up so I can talk to him, so I can counsel him.

A She was already done with the call, sir.

Q Okay. You were aware that Ms. Futrell had money in the house, did you not?

A No, I did not.

Q Well, aren't you lying a little bit about that right now?

A No, sir.

Q Well, didn't you tell the police that she had paid you $20 two weeks earlier?

A Yes, sir, she did, but she had to go to the ATM for that.

Q So she went and got cash. You knew she had cash?

A I knew she had $20.

Q So two weeks earlier she had gotten $20, but I guess for the next two weeks she was just going to survive on the 56 cents she had left after you robbed her?

A I don't know what she got when she was at the ATM, sir.

Q Did you take her to the ATM?

A No, sir, I did not.

Q Okay. By the way, how many times have you been convicted of a felony, sir?

A Three.

Q [redacted] correct, when this happened to her?

A You talking about to Ms. Delores?

Q No. [redacted] when you sexually abused her.

A When I was accused of it, yes, sir.

Q Yeah. Back in 2000 and -- I think it was '05

-- I'm sorry. 2005, right?

A 2004.

Q 2004. And that was -- happened at that residence there on Bryner?

A Yes, sir.

Q Okay. And you were 15 or 14 at the time?

A I was 14.

Q Okay. And she stated that you had gotten on top of her and she was naked --

MR. HERNANDEZ: Objection, Your Honor. 403. It's acquitted conduct. I've got the judgment of -- 403, Your Honor. I don't want to do a speaking objection.

THE COURT: Okay.

MR. HERNANDEZ: 403, also 401, feature of the trial. We're getting close.

THE COURT: I'll overrule the objection and caution the State to be aware of that.

BY MR. De la RIONDA:

Q You brought up [redacted] correct?

A Sir?

Q You brought up [redacted] in direct examination, did you not?

A Yes, sir.

Q And you're saying that your mother put [redacted]

up to this, correct?

A Yes, sir.

Q And so what she put [redacted] up to was that you -- at that time you were how old you said? 14?

A Yes, sir, I believe so.

Q Had sexually abused her, correct?

A My mother had [redacted] get on the stand and say that and the Judge had acquitted it because she said it was a lie.

Q Okay. Well, isn't it true that according to you your mother forced her to say that you had placed your private part against her private part, correct? Your penis, pardon my language, against her vagina?

A Yes, that's what it was -- that's what the accusations were.

Q And so that was actually -- you got arrested for that, correct?

A Yes, I was arrested.

Q And you actually had a hearing in front of a judge, right, juvenile?

A I had a bench trial.

Q Right. Because in juvenile there's no jury, correct?

A No, it was the State, me, the judge and my attorney.

Q And you were aware that an interview was conducted by Child Protection Team Services, correct?

A Yes, sir.

Q Okay. And then they had recorded the interview of this young girl, correct?

A Yes, sir. I believe so, yes, sir.

Q Okay. And what the judge found was that she was not competent because she was so young when you abused her; isn't that true?

A I don't know that, sir.

Q Well, you were there, weren't you?

A Yes, sir, but at the time I really didn't understand everything that was going on.

Q Well, didn't the judge determine that what happened really is that she was so young that she was not going to be able to testify?

MR. HERNANDEZ: Again objection, 403, 401. We've gone on a few more minutes. Feature of the trial. I would object.

MR. De la RIONDA: I'm going to move on, Mr. Hernandez.

THE COURT: All right.

MR. HERNANDEZ: I object.

THE COURT: Thank you, sir. He's going to move on.

MR. HERNANDEZ: And then I'll redirect.

Thank you, Your Honor.

BY MR. De la RIONDA:

Q Now, sir, this alleged thing that you're saying you were innocent of with [redacted] correct?

A Yes, sir.

Q Okay. So what you're telling this jury is after you killed Delores Futrell -- because you agree that you did kill her, right?

A Yes, sir, I did.

Q I mean you did slice her throat?

A Yes, sir.

Q And by the way, while you were slicing her throat did you enjoy it?

A No, sir, I did not enjoy it.

Q Well, you must have enjoyed after you sliced her throat stabbing her?

A I didn't have no feelings at that time, sir.

Q So what you're telling this jury is that for a minute or two you just lost all -- all feelings, correct?

A Yes, sir.

Q Okay. But then after a minute or two your feelings came back into your mind and you knew enough to go ahead and drag this frail 65 year old lady back

into the house because then you wanted to pose it as if somebody sexually abused her?

A I knew I made a mistake, sir.

Q And the mistake you made was dragging her in after you had killed her?

A No. Cutting her in the throat was a mistake from the beginning, sir.

Q So if you knew that you made a mistake by cutting her throat, why then did you proceed to stab her in the chest?

A Like I said, it all happened at one time, sir.

Q So what you're saying is that for a minute or two you just sliced her throat, then you stabbed her, then she fell to the ground, then you went and grabbed her and took her back inside the house, right?

A Yes, sir, I did.

Q So I guess after two minutes you're telling this jury that you thought enough that you wanted to make sure that it would look like somebody had sexually abused her, correct?

A I wouldn't say sexually abused, but I did pose the body, yes, sir.

Q And then you're saying that you cut her panties, correct?

A I did that, sir.

Q And you're saying that that knife that you used to slice -- I apologize -- cut Ms. Futrell's neck, you cut her panties, correct?

A Yes, sir.

Q Sir, would you mind explaining to the jury how these panties don't have any blood on them?

A I cannot.

Q If you had just done that, as you stated, there would be blood. This blue is not blood, as has previously been testified about, and that knife was full of blood which it had to be --

MR. HERNANDEZ: Objection, Your Honor. Argumentative.

THE COURT: I'll overrule the objection.

BY MR. De la RIONDA:

Q If that knife was bloody, like there's no dispute about, then there would be blood all over her panties, wouldn't there?

A Like I said, I cannot explain that.

Q Is that because, I guess, for a minute or two you didn't know what you were doing and then when you went back in the house and dragged her in there, then you decided to cut her panties, you all of a sudden didn't know what you were doing for the next two or three minutes?

A All I can say, it was the same knife.

Q So I guess during that night you had episodes of knowing what you were doing and then knowing what you were not doing, right? Is that what you're telling this jury?

A Yes, sir.

Q And I guess when I asked you earlier today whether her eyes were shut or open, did you have one of those episodes now?

A I told you I misunderstood you, sir.

Q Well, you understood my question about the fact that there's no blood on those panties so what you're telling us is not the truth because there would be blood if you did it as the way you described.

A Like I said, I cannot explain to you why there's not blood on the panties.

Q Well, wouldn't you agree that there's two possibilities, sir? One possibility is you cut her panties ahead of time, because you enjoyed it, the other possibility is after killing her then you went and washed off the knife and then you decided to go cut her panties?

A That's what you're saying. That's not what I'm saying.

Q Well, what other possibility could there be?

A I can't explain to you why there's not blood on the panties, sir.

Q And you cut her bra for what purpose?

A Like I said, I posed her, sir.

Q And is this something you saw on TV or was this something you dream about on a regular basis?

A No, sir.

Q So which one is it? Do you dream about this on a regular basis, how to pose a woman and make her look like she's been sexually abused?

A No, sir.

Q So did you think about it, did you watch it on TV?

A At that time I was in a panic mode, sir, and I just did that just to throw suspicion off.

Q So you were in a panic mode, but you know what? If you were in a panic mode, wouldn't a better story or the truth be that, if that really happened, you would have just left right there and left her where she was? If you really were in a panic, why did you bother bringing her in, taking her pants off, cutting her panties, cutting her bra and then posing her?

A That's what you're saying.

Q Well, you agree that those actions would be the exact opposite of being in a panic mode?

A That's what you're saying. I'm telling you what I did.

Q Well, I apologize, I misunderstood. I said -- I thought you said you didn't know or didn't remember or you were in a panic mode when you cut her panties. You do remember now cutting her panties?

A I told you I -- I told you I did that. I said I can't explain to you why there's not blood on the panties, sir.

Q And why is that that you can't explain that?

A I don't know, sir. The knife could have been cleaned at that one particular section of the knife. I don't know.

Q Well, didn't you tell this jury that you had enough presence of mind to go look for the pieces of the knife that were broken when you stabbed her?

A I did, sir.

Q And by the way, that stab wound you heard Dr. Giles testify about, I mean it was powerful enough, would you not agree, that it broke when you stabbed her?

A Yes, sir, I said that.

Q So either you were using a lot of force, like really trying to kill her, make sure she was dead, or she was so vulnerable that, she was just so frail that

--

MR. HERNANDEZ: Objection, Your Honor. Compound question.

MR. De la RIONDA: I'll be glad to rephrase it.

THE COURT: Please rephrase it.

BY MR. De la RIONDA:

Q You would admit that knife broke when you were stabbing her, right?

A Yes, sir, it did.

Q And tell me which stab wound did the knife break on when you stabbed her? Which one?

A I couldn't tell you that. Like I said, I hit her two times and I believe the first two times it broke.

Q And did it break when you were slicing her throat?

A No, sir, it did not.

Q Okay. So you do remember that, right?

A Yes, sir.

Q Okay. So you weren't in one of these axis where you didn't know what was going on, right?

A No, I was not.

Q I mean you agree that you were fully aware of everything that was going on that night, correct?

A Yeah.

Q I mean you agree that you did stab her?

A Yes, sir.

Q And not just once, not just twice, but at least three times?

A Three times, sir.

Q And did the little pricks that didn't go far enough, was that just for enjoyment to have her feel pain?

A There was a lot of injuries on that body, sir, I can't explain to you. I don't know how they got there or how they were caused.

Q Well, the ones to her upper body that the Medical Examiner talked about, that were kind of like little pricks, there were like two or three of them. And I'll show them to you so you're not confused. That is this right here, State's Exhibit 101, those little ones (indicating). I apologize. Those little ones right there (indicating), remember Dr. Giles talked about there was like two or three or four of those, that they were just kind of little pricks. Was that just to kind of torture her?

A No, I did not do that.

Q Well, you heard Dr. Giles testify about the fact that she was awake during this whole time. Right?

MR. HERNANDEZ: Objection. Misquoting evidence.

BY MR. De la RIONDA:

Q You heard --

MR. De la RIONDA: I'll be glad to rephrase it.

THE COURT: Go ahead.

BY MR. De la RIONDA:

Q You heard Dr. Giles testify that she was awake -- she was alive when her throat was sliced, correct?

A Yes, sir.

Q You heard Dr. Giles testify that she was alive, awake, when her throat was crushed or fractured in the sense of her hyoid bone was fractured in terms of pressure put on, correct?

MR. HERNANDEZ: Objection. Again misquoting evidence. In cross he brought out that she was dead or dying. Objection.

MR. De la RIONDA: I'm going to object to speaking objections.

THE COURT: Okay. I'm going to sustain the objection and ask you to rephrase it.

BY MR. De la RIONDA:

Q You heard that Dr. Giles testified that she

was alive when her throat was cut.

A Yes, sir.

Q And you heard Dr. Giles testify that she was still alive after her throat was cut. Do you remember that?

A Yes.

Q And you heard him testify that she was still alive when pressure was put on her neck, correct?

A He said it was done very late.

Q I'm sorry.

THE COURT: I'm sorry.

THE WITNESS: He said something about it being done late or close to the time of death.

BY MR. De la RIONDA:

Q Okay. So what you're telling this jury is that you sliced her throat, then you stabbed her a few times, then you went back and crushed her throat?

A I did not crush her throat.

Q Oh, you were trying to save her?

A I was trying to stop the blood, sir.

Q Okay. And that was after you had stabbed her, right?

A Yes, sir.

Q So you cut her throat, stabbed her three times, pricked her a few more times and then you said,

oh, hold on, I've got to save you, right?

A I didn't prick her.

Q Well, what -- what would you call this right here (indicating), State's Exhibit --

A Like I said, I can't explain them injuries to you, sir.

Q Is that because you weren't thinking clearly at that particular point?

A I don't know what happened with them injuries right there, sir.

Q Isn't it true, sir, that she struggled as best she could?

A No, there was no struggle.

Q I'm sorry. What?

A There was no struggle.

Q There was no struggle?

A The only --

Q Go ahead.

A The only time she touched me was when she grabbed me, sir.

Q So you're telling this jury that she didn't try to fight you off?

A The cut was the first thing that I did, sir.

Q Okay. So you remember you cut her and then you left her standing up in order to stab her a few

more times, right?

A She put her hands up to her neck and that's when I hit her three times in the chest with the knife, sir.

Q Okay. And I guess you told this jury earlier that it was so dark, right?

A Yes, sir.

Q Correct?

A It was dark.

Q And yet you're saying you're stabbing her as she's got her hands to her throat. How is it that you managed in this darkness to not stab her in the arms?

A I mean there was -- I mean there was light back there. It was not dark dark. She was right in front of me. She's less than two feet in front of me, sir.

Q After -- so the first thing you're telling this jury you did in terms of injuries to her, to Ms. Futrell, was the slicing of her throat, correct?

A Yes, sir.

Q And that must have taken you what? At least two, three, four, five seconds?

A I don't want to say that long, but maybe. I can't estimate on that.

Q Well, right, you went from -- that was your

-- you said your left hand, correct?

A Yes, sir.

Q And so you went like this (indicating), right?

A Yes, sir.

Q I mean how -- your hand was like over here (indicating)?

A Huh?

Q Your hand -- you were doing the cobwebs, right?

A I was walking away from her so it was in front of me.

Q So if I understand you correctly, you were walking away from her, right?

A Yes, sir.

Q And you were -- you were taking the cobwebs off the fenced area, right? Didn't you say that?

A Pond.

Q The pond. Excuse me.

A Yes, sir.

Q So you're taking the cobwebs -- oh, she's only five-five. How did she grab your arm?

A She grabbed --

Q If you've got your arm up?

A I just told you my arm wasn't that high up.

It was in front of me.

Q Like this (indicating)?

A No, like this right here (indicating).

Q Oh, you had --

A She grabbed me by the inside of my arm.

Q Okay. Let's make sure I've got that. With the Court's permission, would you stand up and show us how she grabbed your arm?

A She grabbed me with her arm like this (indicating) and that's when I did like this (indicating) and that's when I caught her in the throat when I was turning around, sir.

MR. De la RIONDA: Okay. So if I may approach the witness?

MR. HERNANDEZ: I would object to this demonstration.

MR. De la RIONDA: It's totally proper.

THE COURT: I'll overrule the objection.

BY MR. De la RIONDA:

Q So what you're telling this jury -- by the way, how tall are you, sir?

A At that time I was about six feet.

Q You were about six feet?

A Yes, sir.

Q How tall are you now?

A Six-three.
Q Okay. You heard and you saw that detective, Waldrup, right?
A Yes, sir.
Q You would agree he's taller than I am?
A Yes, sir.
Q And the other detective there, Detective Ottinger, is pretty tall, too, right?
A Yeah.
Q Okay. And you were about their height, weren't you?
A I wasn't really paying attention. I know they're taller than you.
Q Right. And I'm five-eleven, six feet.
A I don't think you're six feet.
Q Okay. Let's say -- how tall would you say I am?
A I don't know.
Q Okay. Regardless, you agree that Detective Ottinger and Detective Waldrup are taller than I am?
A Yes, sir.
Q At least two or three inches taller?
A They're taller.
Q And you agree you were the same height as them?

A Yeah.

Q Okay. Well, so when you're telling this jury --

A Actually I was about six foot.

Q So you were only six feet?

A Yes, sir.

Q Okay. And she was five-five?

A Yeah, that's what they said, yeah.

Q Well, she was a lot -- I mean you knew her well, right? She was very frail?

A Yes, sir.

Q She was little?

A Yes, sir.

Q So you're saying that you had your hand up which way? Tell us, show us.

A My hand was in front of me, I had a flashlight in this hand, the knife in this hand (indicating), and she grabbed me by her right hand and dug her nails into my arm.

Q Okay. So the flashlight you were using to illuminate the cobweb that you were cutting, correct?

A Yes, sir.

Q So, you had it up like this (indicating?

A You keep pointing. The pond is down here (indicating), sir.

Q Oh, so you were like this (indicating)?
A I've got a flashlight and knife in my hand.
Q Okay. So you're bent down (indicating)?
A I'm not really bent down, no.
Q So you're like this (indicating)?
A I'm just shining the light and getting the cobwebs off the pond.
Q Okay. Why did you need a knife to get rid of the cobwebs?
A Would you use your hand?
Q Yes.
A With a banana spider sitting on them?
Q Okay. Well, you needed a flashlight to do what? Illuminate what you're doing?
A Yes, sir, I had to see.
Q Okay. And you needed --
A Plus I was looking for a leak.
Q You were looking for a leak to use the knife to cut it some more?
A No.
Q Okay. So you're -- you've got your hand like this (indicating) and then she grabs you 'cause she's standing behind you --
A Yes.
Q -- or in front of you?

A She's behind me.
Q She's behind you. You can have a seat.
A Thank you.
Q So she's standing behind you and she grabs you from behind?
A Yes, sir.
Q And so she grabs you from behind and then you've got your left hand and so then you manage to go all the way around and go down and slice her throat (indicating), correct?
A Yes, sir.
Q So you're like this, she grabs you from behind and then you just happen to go like this (indicating) and your knife just happens to slice her throat, correct?
A Yes, sir.
Q And then after you slit her throat, she remains standing and then you stab her a few times?
A Yes, sir. Three times.
Q And then -- have I got that right?
A Three times.
Q Three times. And then you pricked her, but you don't remember pricking her?
A I did not prick her.
Q And then you let her fall to the ground,

right?

A Yes, sir. She fell onto the pond.

Q Well, why is it that the majority of the blood is in the middle of the yard?

A I just told you that's where I dragged her at after I pulled her off the pond, sir.

Q So, you decided to drag her half-way and then what? Sat down in that chair and said, oh, look what I've done?

A I did not sit down in that chair.

Q So that blood on the chair and what appears to be a handprint is not yours?

A Yes, it is.

Q So you --

A I was leaning on it when I was searching for the blade, sir.

Q And that was before or after you had dragged her inside the house?

A After.

Q So you went and you put her inside the house, right?

A Yes, sir.

Q And by the way, did you carry her in or did you drag her?

A I drag her in.

Q This lady that you cared so much about, what you did after you had killed her, you just kind of grabbed her like a sack of potatoes and just kind of dragged her all through the ground and just dragged her into the house, correct?

A That's what I did, sir.

Q Well, if that's true, how come there's no blood trail inside the house?

A I can't answer that question.

Q Well, is that one of those things that you forgot?

A No, I grabbed her by the wrists, a wrist in his each hand, and I dragged her in the house as I was walking backwards into the house.

Q Did you hit her a few times with just your hand or your fist?

A No, sir.

Q You never hit her at all?

A No, sir.

Q You heard Dr. Giles testify about injuries she received, not from the cuts, but from actual blows of some kind?

A Yes, I did hear him testify about blunt-force trauma.

Q So you did not inflict those?

A No, sir.

Q So she must have inflicted it upon herself, correct?

A No, she could not.

Q Okay.

A Like I said, when she fell she hit her face and her neck on the edge of the pond.

Q Oh.

A And when she fell over, she hit her head on the brick.

Q She did?

A Yes, sir.

Q And she was bleeding profusely and where's all that blood on the brick there?

A There's blood everywhere in that backyard, sir.

Q No, I'm talking about what you just told this jury, that it was right by the pond?

A There was blood on the brick.

Q Very little.

A It was still blood.

Q So she grabbed you from behind, right?

A Yes, sir.

Q And I gather your story is that this is the first time she's grabbed you, right?

A Yes, sir, it was.
Q Are you claiming to the jury that she was sexually abusing you?
A I did not say that.
Q Okay. So you thought it was just an improper grab?
A No, sir.
Q So you thought it was a proper grab?
A No, sir. When she just grabbed me, it tripped -- it -- I got -- and I lost it, sir. I mean that's why.
Q You lost it?
A Yes, sir.
Q Okay. The police must have asked you what? For about half an hour, 45 minutes about whether you had killed Delores Futrell and you repeatedly lied about it, didn't you?
A Yes, sir.
Q Tell me why when they were asking you about that, why were you laughing?
A Because that's what was going on in the whole interview.
Q I'm sorry. What?
A The detectives were laughing, too, sir.
Q I mean you thought it was a joking matter,

right?

A I wouldn't say a joking matter, no. The issue at hand was not a joking matter, no.

Q So why were you laughing?

A That's what I was just doing.

Q I mean isn't it true that you were more concerned about the watch? Remember showing the detectives the watch that your girlfriend had gotten you and how much money it had cost?

A Yes, sir.

Q That's what you were really concerned about, weren't you?

A I wouldn't say I was concerned about that, no.

Q You're telling this jury that you didn't attempt to do any kind of sexual thing to her, right?

A No, sir, I did not.

Q But yet you wanted somebody to believe that somebody had tried to do something sexually to her, right?

A I posed her. I did not -- that's all I did, sir.

Q Well, your intent in posing her is to have people believe that she had been sexually abused.

A I let you believe that.

Q Right?

A If you want to believe that, you can believe that.

Q Well, why else would you pose a 65 year old lady?

A That's what I did. I told you I just posed her.

Q Why?

A I can't really give you no estimation on why I did that, sir. I told you I panicked and I was trying to get out of there.

Q Well, you didn't panic so much that you had the time to pose her. Correct?

MR. HERNANDEZ: Again argumentative, Your Honor. Objection, argumentative.

THE COURT: I'll overrule the objection.

You can answer the question.

THE WITNESS: Like I said, I posed her.

BY MR. De la RIONDA:

Q And your reason in posing what, one leg one way and one leg the other way was why?

A I can't give you an answer to that question, Bernie.

Q And, sir, was your purpose in cutting the panties to make it look like she had been sexually abused?

A No, sir.
Q Your purpose in cutting the panties was to do what?
A I was just posing.
Q Okay. And the purpose in cutting the bra was to make it look like she had been sexually grabbed?
A I did not say that. I posed her.
Q Okay. Well, why did you -- in posing her, why did you put her shirt all the way up exposing her breasts?
A That's just something I did.
Q Did you think that was like exciting to do that?
A No, sir.
Q I'm still a little troubled or I'm not understanding. I should ask -- clarify why you posed her.
A I just did. I can't tell you why because I don't know why.
Q You had enough foresight after-the-fact to get rid of the murder weapon, correct?
A I dropped it in the drain on the way home, yes.
Q Well, I mean you wanted to make sure you didn't get caught with it, right?

A No, I did not want to get caught with it.
Q You didn't want to be walking down the street and all of a sudden the police appear and say, hey, what are you doing and the murder weapon would be on you, right?
A No, sir.
Q Right?
A Yes, sir.
Q I mean you wanted to get away with this murder?
A Yes, sir.
Q Right? You got away with it for awhile. Right?
A Yes, sir.
Q Okay. And you didn't just get rid of the murder weapon, you actually got rid of the other evidence you had, like your clothes. You got rid of that, too, right?
A Yes, sir.
Q And when did you throw that away?
A The next morning on the way to work.
Q So at that point you didn't really have much remorse, isn't that true?
A I had to still live my everyday life, sir.
Q You were concerned about that?

A I mean I couldn't show -- I mean I had to work.

Q You couldn't show that you were guilty?

A Exactly.

Q You kind of had to put on an act, correct?

A Yes, sir.

Q You're pretty good at acting, right?

A I don't want to say that, no, sir.

Q Well, are you half-way decent at acting, making -- pretending, letting people think something and not really be true?

A No, sir.

Q So, what you're telling this jury is that that knife you got, you did ask your mother for that knife that night?

A No. I did not.

Q Okay. So she's mistaken about that?

A She's a liar.

Q Oh, okay.

And by the way, you did tell your mother and Ms. Schuller that she had been violated, correct?

A I said she might have been violated.

Q Oh, you said she might have been?

A Yes, sir.

Q And your purpose in doing that was for people

to believe that she had been sexually abused?

A I was just talking with my mom. That's all.

Q Well, let's make sure we all understand. When you say violated, that means like raped, correct?

A That's not what my definition of it, no.

Q Okay. So to you violated means what?

A Violated.

Q Well, tell me what that means.

A It could be -- mean numerous of things. She --

Q What does it mean to you? You said it to Ms. Schuller and your mother. What does it mean?

A That she was murdered.

Q Well, why didn't you use the words she was murdered?

A Because that's just something that just didn't come to mind.

Q Okay. Now, sir, isn't it true that that interview that the jury saw, that later that same day you actually spoke to your mother? Remember that?

A Yes, sir, I did.

Q And you admitted to your mother that you had murdered this victim, correct?

A Yes, I did.

Q And isn't it true that you told your mother,

mom -- I'm sorry. Let's put it in context. Your mother asked you what was Ms. Delores saying that upset you, and you said, mom, you know how I am about my childhood. She -- she was bringing my shit up, I know my shit was bad. And then she starts talking about [redacted] And I wish she had kept her mouth shut about what happened. Do you remember saying that?

A Yes, sir.

Q So you told your mother the reason you killed her is because Ms. Futrell brought up [redacted] correct?

A I wasn't going to tell my mother that I was talking to Ms. Futrell about her sexually abusing me, sir.

Q About your mother sexually abusing you?

A Yes, sir.

Q That's not what you told your mother on August the 30th of 2008?

A I know what I told my mother on that day. Like I said, I'm not going to sit here and tell my mother that I killed Ms. Delores Futrell because she's going to tell the police that I was -- I was being sexually molested by my mother and her dope man.

Q So are you telling this jury today, in 2015, almost 15 -- I'm sorry -- seven years later, that you told your mother, when that was recorded, that you

killed Delores Futrell because she had brought up the fact that you had done something to [redacted] That was a lie? Did you lie to your mother about that?

A Yes, sir.

Q Okay. Didn't you think at the time when the police were questioning you, specifically when your mother was talking to you about that maybe there's a monster inside of you.

A Was I thinking that?

Q Yeah.

A That day?

Q Yeah.

A I could, yeah.

Q I mean you used the word monster, correct?

A That's right.

Q Correct?

A Yes, sir.

Q And why did you use the word monster to describe what you had done?

A Because it's not what a regular human being would do, I guess.

Q You agree that this is a pretty horrific way to die, correct?

A It was, sir, yes, sir.

MR. HERNANDEZ: Objection, Your Honor. Again

it's -- it's a legal definition.

THE COURT: I'll sustain the objection.

BY MR. De la RIONDA:

Q You agree that nobody would want to die in the manner in which Ms. Futrell died that evening? Would you not agree?

A I would not, no, sir.

Q You would agree?

A Yes, I would agree. I would not want to go like that.

Q You would agree that Ms. Futrell was alive and was looking at the person who killed her when she was killed?

A Yes, sir.

Q Okay. So she was aware of impending death. Would you not agree with that statement?

A She knew it was me, yes, sir.

Q And she knew what was going to happen before you did it; would you not agree with that?

A Yes, sir.

Q How would you describe that, that is somebody knowing that the person in front of them is about to extinguish their life? How would you describe that?

A I don't know how -- I don't know how you would describe that because I've never been placed in that

situation.

Q And you would agree if that wasn't bad enough, that after she realized that this person was killing her, I mean she was looking straight at her killer, she then saw that this person that was killing her continued to inflict pain upon her. You agree with that, right?

A Yes, sir.

Q That's a terrible way to die, isn't it?

A Yes, sir.

Q It's a lot worse than just kind of being shot and left for dead, wouldn't you agree?

A Yes, sir.

Q So it took her what? About 30 seconds, maybe a minute for her to finally die?

A Between 30 to 45 seconds.

Q 30 to 45 seconds. So for 30 to 45 seconds she was aware that she was dying and you were continuing making sure of that, correct?

A Yes, sir.

Q Tell me, were you enjoying this?

A No, I was not. No.

Q You mentioned that you all, that is Ms. Futrell and you, stepped outside because it was too hot, correct?

A Yes, sir.

Q And you went outside to speak more about the subject matter you were speaking about?

A That's not why we went outside. We just went outside because it was hot in the house, sir.

Q Before you went outside, what had you and Ms. Futrell done inside the residence?

A We did nothing inside the residence. We didn't even sit down.

Q So you just came in, you said hello and then you guys went to the outside, correct?

A Yes, sir.

Q And then you killed her and you dragged her inside and then you left, right?

A Yes, sir.

Q Is that what you're telling this jury?

A Yes, sir.

MR. De la RIONDA: If I may have a moment, Judge.

THE COURT: You may.

BY MR. De la RIONDA:

Q Tell me, sir, did you take a few minutes to relieve yourself?

A I did not.

Q Well, State's Exhibit 62, would you not agree

that that toilet seat is up in that bathroom downstairs?

A It is, but I never did step in the bathroom.

Q So I guess Ms. Futrell, a lady, just happened to leave the toilet seat up?

A I don't know why that toilet seat was up.

Q Well, is it maybe possible that you now remember that you went in there and went to the bathroom after you had killed her?

A I did not.

Q You had been to Ms. Futrell's house before, hadn't you?

A Yes, sir.

Q To hear your story, you had gone there on almost a daily basis, correct?

A Yes.

Q Well, why is it that you told the police, and you saw the -- what we played to the jury, that you hadn't been there in two weeks?

A Because I was lying to the police, sir.

Q You decide to lie when it's convenient for you, correct?

A Yes, sir.

Q Okay. You decide to lie when you don't want to be held fully accountable for what you did; wouldn't

you agree with that?

A No, sir.

Q Oh, you lie so you can be held fully accountable?

A I'm telling you I killed Ms. Delores Futrell right now.

Q Well, you're telling us now because you heard the numbers, it's one in 40 billion, right, that DNA?

A DNA doesn't mean you murdered somebody, sir.

Q It doesn't? Well, you told your dad you had murdered her, didn't you?

A Yes, sir, I did.

Q Okay. And you told your dad, I think you said something to the effect there was something inside of you.

A Yes, sir.

Q Okay. You didn't tell your dad that she had grabbed your hand and just by accident you happened to kill her?

A I didn't tell my dad a lot of things, sir.

Q So you were lying to your dad?

A My dad don't know exactly what happened.

Q Tell me, where did you come up with the story about her grabbing your arm?

A It's not a story. That's what happened.

Q Okay. And you're telling this jury that you didn't go through that purse?

A I did not.

Q So she, Ms. Futrell, just dumped the purse when you got there?

A I don't know why the purse was like that. That's the way it was when I got there.

Q And you didn't go through the wallet?

A I did not.

Q Are you saying that this is really Ms. Futrell's fault that this happened?

A No, I'm not saying that.

Q Well, you're saying you wouldn't have done anything but for her grabbing your arm, correct?

A If she never grabbed my arm, it would never happened, no.

Q So it's her fault?

A I would not say it was her fault, no.

Q You did agree with your dad when he told you that you got to be strong and you got to think about what you can do to keep the needle out of your arm, correct?

A Yes.

Q Okay.

MR. De la RIONDA: If I may have a moment,

Judge.

THE COURT: You may.

BY MR. De la RIONDA:

Q You lied to the police about being outside and talking to this lady or neighbor, all that, correct?

A No, I was on the phone.

Q Oh, you were?

A Yeah, I went outside around 9:00 o'clock.

Q So you talked to these people first and then you decided to wander over to Ms. Futrell's house?

A Yes, sir.

Q You used the word monster. Did you believe what you did were the actions of a monster?

A Yes, sir.

Q You agree that you lied repeatedly to the police and then later on in that interview you ended up telling the police that you had killed her, correct?

A Yes, sir.

Q Okay. But you agree that you never told the police that she grabbed your arm, correct?

A I did not.

Q Okay. And the reason when you finally decided to tell the police the truth, that you had murdered Delores Futrell, that you didn't bring up

being grabbed by the arm was because?

A Why I did not tell the police --

Q Yes.

A -- why she grabbed me by the arm? I didn't say it. I mean I don't know.

Q Did you push her at least one time?

A I did not push her, no.

Q Did she try to defend herself before you stabbed her?

A No, sir.

Q Never?

A No, sir.

Q And the 911 call, you're telling us that she was not the one that was calling 911?

A She did not.

Q Well, didn't you tell the police something different?

A I did.

Q Okay. You told the police actually that she's the one that called 911.

A I did not say she.

Q What did you say?

A Police said did I call 911. I said no.

Q Well, let's see. There was only two people in the room. They asked you if you had called 911, you

said no. I'm assuming there wasn't a ghost there that called 911, right?

A At that point in the interview I was lying to the police, sir.

Q So you're telling the -- you're telling this jury even after you told the police the truth that you had killed her, you still lied after you admitted that you killed her, you still lied about you calling 911? Why?

A I didn't want them to have more evidence, sir.

Q Huh?

A I didn't want them to have more evidence.

Q What more evidence would they need than you confessing, admitting that you killed her?

A I don't know.

Q Isn't it true, really, that she is the one that called 911?

A It's not.

Q Now, isn't it true that you told the police, this is after you lied repeatedly, lied, lied about doing it, when you admitted that you killed her, didn't you tell the police she fell down on the ground, she was screaming for help and I didn't believe that she could do that, so I went to go stab her with the knife and it broke and it went somewhere in the yard, I

couldn't find it? Didn't you tell the police that?

A Yes, sir.

Q And that was the truth, wasn't it?

A It was not.

Q So even when you admitted killing her, you lied about the fact that she was screaming for help and fell on the ground and that's when the knife broke because you stabbed her?

A Yes, sir.

Q Why would you lie about that after you admitted killing her?

A Like I said, it was a lie.

Q Yeah, but why -- why do you lie after you say I killed her, why do you lie about her screaming? To make it look better or to make it look worse?

A It was a horrible crime, sir, either way you look at it.

Q But why would you make it even look worse, if you're telling the truth now, and saying that she was screaming for help?

A I don't know why, sir.

Q You thought you really would never get caught, isn't that true?

A I did think that, sir.

Q So that remorse that you've expressed today,

you really weren't that concerned about it after you had killed her and for days after, correct?

A I was hurt, but I did not think it would come back to me, no, sir.

Q I mean, you would have been perfectly happy if you had gotten away with this, correct?

A I wouldn't say perfectly happy, no.

Q Well, you would have gone on in your everyday life, right?

A Yes, sir.

Q And you would have done that after they had a vigil at her house where her family came from out of town, her family, H came from New York and everybody was crying and just in tears, you just went there and acted like nothing had happened? Right?

A Yes, sir.

Q And you're telling this jury now that all of a sudden you have all this remorse, correct?

A I felt bad about it -- I felt bad about it then.

Q Well, you didn't feel so bad about it that you were sitting there pretending and lying to them, correct?

A Nobody asked me did I do that.

Q Oh, so what you're telling us is if H or

Ms. Futrell's daughter or grandson had said, hey, did you do it, you would have said, oh, yeah, I did it? Is that what you're telling this jury?

A No, I would not say that, no.

Q Okay. You were perfectly happy in just continuing to lie and get away with this murder, correct?

A I wasn't happy, but, yes, I was continuing to lie to get away with it, yes.

Q You were pretty upset that, in fact, they had gotten the DNA, isn't that true?

A Yes, I was.

Q What did you mean when you told your mother -- pardon my language -- that shit fucked up, I couldn't sleep at night or something, there's a monster inside of me. What do you mean by that?

A I was having nightmares about what I did, sir.

Q Were you having nightmares in terms of remembering her eyes as they looked at the last breath she was taking as you were killing her?

A Yes, sir.

Q I mean did you remember vividly her face and her eyes, how they looked as you were stabbing her?

A Yes, sir.

Q You agree that that's a pretty compelling

photograph there if one were able to take a picture of that? Wouldn't you agree?

A Yes, sir.

Q A person realizing that they're about to get killed, that they're being killed and looking right at the person who's killing them.

A Yes, sir.

Q You agree that she suffered? Wouldn't you agree?

A Yes, sir.

Q And yet you continued to stab her. Why is that?

A I told you that's just what happened.

MR. De la RIONDA: Your Honor, I think I'm done. I just need a minute to confer with my co-counsel.

THE COURT: You may.

(State counsel conferring.)

BY MR. De la RIONDA:

Q Just a few final questions.

Did you ever say anything about throwing a blade into the pond or throwing the knife into the pond or something like that?

A She fell toward the pond.

Q So she fell in the pond?

A No, I don't believe so. I think she probably got wet, though.

Q Okay. So if she's behind you and you're the one that's taking -- getting rid of the cobwebs on the pond and she -- and you turn around -- I'm sorry -- with your left hand and stab her, how does she fall into the pond and you don't fall in?

A I stepped out of the way, sir.

Q I'm sorry.

A I stepped out of the way.

Q Oh, so when you stabbed her, you actually moved out of the way, slice her throat and then she fell into the pond?

A Yes, sir.

Q Thank you, sir.

MR. De la RIONDA: I have no further questions.

THE COURT: Mr. Hernandez.

MR. HERNANDEZ: Your Honor, may I approach the witness?

THE COURT: You may.

REDIRECT EXAMINATION

BY MR. HERNANDEZ:

Q Mr. Deviney, is this the judgment of acquittal on your juvenile case?

A It is.

MR. HERNANDEZ: Your Honor, I'd ask that this be admitted as Defendant's Exhibit 14 in this case.

THE COURT: Any objection?

MR. De la RIONDA: I have no objection.

THE COURT: All right. That will be entered as Defense Exhibit 14.

(Whereupon the foregoing item was marked in evidence as Defense Exhibit No. 14.)

BY MR. HERNANDEZ:

Q The knife had broke when you had hit her, hit her in the chest, is that correct?

A Yes, sir.

Q And whenever you were cutting her bra, you were cutting it with --

MR. De la RIONDA: Objection as to leading questions.

THE COURT: If you'll just rephrase your question.

MR. HERNANDEZ: Yes, ma'am.

BY MR. HERNANDEZ:

Q What was the condition of the knife whenever you were cutting her bra?

A It was a broken knife.

Q While were you cutting the bra, could you have pricked her skin?

A May have, but I don't recall.

Q We've seen the beginning of the interview that you had with the police. You agree with that, right?

A Yes, sir.

Q Who was the person who was originally joking around in that interview about women having too much estrogen and you having to get out of the house? Was that you or was that the detectives?

A That was the detective.

Q Were they wanting to laugh with you, get you laughing and bond with you?

A They wanted to loosen me up, sir.

Q Later in that interview were you crying and sobbing after you admitted that you had killed her?

A I did.

Q The question that Mr. De la Rionda asked about Ms. Futrell, you did not intend to kill her, did you?

A I did not.

Q And Ms. Futrell was only aware that --

MR. De la RIONDA: Objection. Again it's leading.

THE COURT: If you'll just rephrase the question.

BY MR. HERNANDEZ:

Q It was only after -- was it after she was cut that she was aware that she was hurt?

A Yes, sir. After the initial cut she probably realized she was going to die.

Q Is that what you meant whenever you were trying to talk to Mr. De la Rionda?

A Yes, sir.

Q You were 18, is that correct?

A I was 18 at the time of the crime, yes.

Q You were about six foot, is that right?

A Yes, sir.

Q How old are you right now?

A 25.

Q Have you grown some since you were 18?

A I'm six-three, 250 pounds right now.

Q Have you put on weight also?

A Yes, sir.

Q You've grown in height, is that correct?

A Yes, sir.

Q You heard Dr. Giles state that her voice-box was cut in half, didn't you?

A Yes, sir.

Q So she couldn't have said anything, is that right?

A Yes, sir.

MR. De la RIONDA: Objection again as to leading.

THE COURT: I'll overrule the objection.

Go ahead. Move on.

BY MR. HERNANDEZ:

Q She couldn't have said anything, is that correct?

A I assume not.

Q Did you premeditatedly kill Ms. Futrell?

A No, sir.

Q Do you agree with me that you committed second degree murder?

MR. De la RIONDA: Objection. Again leading.

THE COURT: I'm not sure he can answer that question. If you'll rephrase it.

MR. HERNANDEZ: I'll rephrase the question.

BY MR. HERNANDEZ:

Q Did you have an intent to kill Ms. Futrell?

A I did not have an intent, no, sir.

Q Did you steal anything from her that day?

A I did not.

Q Did you try to sexually batter her?

A I did not.
Q Did you attempt to steal anything?
A No, sir.
Q Do you recall who was it that called 911?
A I made that call.
Q And why was that?
A Because I knew they were going -- I knew they were going to come out and find her because I didn't want to leave her in the house for four days.
Q You're accountable for your actions, right?
A I would like to say so, yes, sir.
Q And you're sorry that this has occurred, right?
A I'm extremely sorry that it happened.

MR. HERNANDEZ: Your Honor, I have no other questions.

THE COURT: Mr. De la Rionda.

RECROSS-EXAMINATION

BY MR. De la RIONDA:

Q Sir, let me show you your arrest docket on August 30th, 2008, and ask you if maybe it refreshes your memory about how tall you were on August the 30th, 2008.
A They don't measure you when you come into the jail.

Q Well --

A This says I'm six-two, but they didn't measure me.

Q And it says you're six-two because that's what you told them?

A They did not ask me for my height, no, sir.

Q So they were just guessing?

A Yes, sir.

Q So if I brought Sergeant Waldrup in here and had him stand next to you, you're saying that you were shorter than him at the time of this murder?

A I wouldn't say I was shorter, but I mean I was not that much taller or shorter than he was, no, sir.

Q Okay. Well, the bottom line regarding your height is you were definitely a lot taller, bigger, more powerful than this 65 year old lady who had MS. Would you not agree with that?

A I will agree with you on that, yes, sir.

Q Okay. And you were asked by Mr. Hernandez that you had no intent to kill her, is that your statement?

A I had no intent, no, sir.

Q Okay. So after you sliced her throat and then went back to stabbing her some more, it was to put her out of her misery?

A All -- all that happened in one quick moment, sir.

Q Well, it happened after 45 seconds, didn't it?

A She may have been dead before 45 seconds. It was just information I was giving you, sir.

Q And you were also asked if you were extremely sorry for what happened, correct?

A I am.

Q Aren't you extremely sorry that you got caught?

A I am that, too.

Q Thank you, sir.

THE COURT: Mr. Hernandez, anything further?

MR. HERNANDEZ: Your Honor, I don't have any other questions.

THE COURT: Okay. Ladies and gentlemen, if you would be so kind as to step into the jury room. I'm not sure if there will be a few minutes or longer. It could be longer.

(Jury absent.)

THE COURT: Mr. Deviney, you can go back to your seat at counsel table.

I didn't know what else you had left so...

MR. HERNANDEZ: Thank you, Your Honor.

want a break and come back for instructions and deliberations?

JUROR: Working lunch.

THE COURT: Okay. We're going to go over the instructions. You don't need to take notes now. Number one, I'm going to read them, I'm required to do that, number two, they're going to be on the monitors in front of you and, number three, you're going to have my written copy with you while you deliberate. So everything that I say and that you read you will have with you so there's no need to take any notes during the instructions.

Let me ask one more thing I forgot to ask. Can you make sure Jeff isn't gone yet.

Can you all eat pizza? Is there anybody who can't eat pizza?

(No response.)

THE COURT: All right. All good. We had one juror one time who couldn't so I needed to find that out.

Members of the jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

Randall Deviney, the defendant in this case, has been accused of the crime of first degree

murder.

In this case Randall Deviney is accused of murder in the first degree. Murder in the first degree includes the lesser crimes of murder in the second degree and manslaughter, all of which are unlawful.

A killing that is excusable or was committed by the use of justifiable deadly force is lawful.

If you find Delores Futrell was killed by Randall Deviney, you will then consider the circumstances surrounding the killing in deciding if the killing was murder in the first degree or was murder in the second degree or manslaughter or whether the killing was excusable or resulted from justifiable use of deadly force.

The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon the defendant or to commit a felony in any dwelling house in which the defendant was at the time of the killing.

The killing of a human being is excusable and, therefore, lawful under any one of the following three circumstances: One, when the killing is committed by accident and misfortune, in doing any

lawful act by lawful means with usual ordinary caution and without any unlawful intent or, two, when the killing occurs by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation or, three, when the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel and unusual manner.

Dangerous weapon is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

I now instruct you on the circumstances that must be proved before Randall Deviney may be found guilty of murder in the first degree or any lesser included crime.

There are two ways in which a person may be convicted of first degree murder. One is known as premeditated murder and the other is known as felony murder.

To prove the crime of first degree premeditated murder, the State must prove the following three elements beyond a reasonable doubt: One, Delores Futrell is dead; two, the death was caused by the criminal act of Randall Deviney and, three, there

was a premeditated killing of Delores Futrell.

An act includes a series of related actions arising from and performed pursuant to a single design or purpose.

Killing with premeditation is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing.

The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant.

The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If you find that Randall Deviney committed first degree murder and you also find beyond a reasonable doubt that during the commission of the crime he personally carried, displayed, used,

threatened to use or attempted to use a weapon, you should find him guilty of first degree murder with a weapon.

A weapon is legally defined to mean any object that could be used to cause death or inflict serious bodily harm.

If you find that Randall Deviney committed first degree murder, but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use or attempted to use a weapon, then you should find him guilty only of first degree murder.

To prove the crime of first degree felony murder, the State must prove the following three elements beyond a reasonable doubt: One, Delores Futrell is dead; two, while engaged in the commission of burglary, attempted burglary or attempted sexual battery, Randall Deviney caused the death of Delores Futrell and, three, Randall Deviney was the person who actually killed Delores Futrell.

In order to convict of first degree felony murder it is not necessary for the State to prove that the defendant had a premeditated design or intent to kill.

I will now define burglary, attempted burglary

and attempted sexual battery for you as it applies to felony murder.

To prove the crime of burglary, the State must prove the following three elements beyond a reasonable doubt: One, Randall Deviney entered a structure owned by or in the possession of Delores Futrell; two, at the time of entering the structure Randall Deviney had the intent to commit assault and/or theft in that structure, and, three, Randall Deviney was not invited to enter the structure.

If the invitation to enter was obtained by Randall Deviney's trick or fraud or deceit, then the invitation to enter was not valid.

You may infer that Randall Deviney had the intent to commit a crime inside the structure if the entering of the structure was done stealthily and without the consent of the owner or occupant, or, and this is another way that the State could prove burglary, to prove the crime of burglary the State must prove the following two elements beyond a reasonable doubt: One, Randall Deviney had permission or consent to enter a structure owned by or in the possession of Delores Futrell; and, two, Randall Deviney, after entering the structure, remained therein, A, surreptitiously and with the

intent to commit an offense and/or theft inside the structure or, B, after permission to remain had been withdrawn and with the intent to commit an assault and/or theft inside the structure or, three, with the intent to commit or attempt to commit sexual battery inside the structure.

The intent with which an act is done is an operation of the mind and therefore is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Even though an unlawful entering or remaining in a structure is proved, if the evidence does not establish that it was done with the intent to commit assault and/or theft, the defendant must be found not guilty of burglary.

Structure means any building of any kind, either temporary or permanent, that has a roof over it and the enclosed space of ground and outbuilding immediately surrounding that structure.

An assault is an intentional and unlawful threat either by word or act to do violence to another at a time when the defendant appeared to have the ability to carry out the threat and his act created a well -founded fear in the other person

that the violence was about to take place.

Theft is knowingly and unlawfully obtaining, using, or endeavoring to obtain or use the property of another to intentionally deprive another either temporarily or permanently of his or her right to that property or benefit from it.

To prove the crime of intent to commit burglary, the State must prove the following two elements beyond a reasonable doubt: In order to prove that the defendant attempted to commit the crime of burglary, the State must prove the following beyond a reasonable doubt: One, Randall Deviney did some act toward committing the crime of burglary that went beyond just thinking or talking about it and, two, he would have committed the crime except that someone prevented him from committing the crime of burglary. It is not an intent to commit burglary if the defendant abandoned his attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of his criminal purpose.

Burglary has been previously defined for you.

To prove the crime of attempted sexual battery upon a person 12 years of age or older, the State

must prove the following two elements beyond a reasonable doubt: One, Randall Deviney did some act toward committing the crime of sexual battery upon a person 12 years of age or older that went beyond just thinking or talking about it and, two, he would have committed the crime except that something or someone prevented him from committing the crime of sexual battery upon a person 12 years of age or older.

It is not an attempt to commit sexual battery upon a person 12 years of age or older if the defendant abandoned his attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of his criminal purpose.

I now will give you the elements of sexual battery upon a person 12 years of age or older.

To prove the crime of sexual battery upon a person 12 years of age or older, the State must prove the following three elements beyond a reasonable doubt: One, Delores Futrell was 12 years of age or older; two, Randall Deviney committed an act upon Delores Futrell in which the sexual organ of Randall Deviney penetrated or had union with the sexual organ of Delores Futrell and, three, the act

was committed without the consent of Delores Futrell.

Consent means intelligent, knowing and voluntary consent and does not include coerced submission. Consent does not mean the failure by the alleged victim to offer physical resistance to the offender.

And union means contact.

If you find that Randall Deviney committed first degree felony murder, and you also find beyond a reasonable doubt that during the commission of the crime he personally carried, displayed, used, threatened to use or attempted to use a weapon, you should find him guilty of first degree felony murder with a weapon.

A weapon is legally defined to mean any object that could be used to cause death or inflict serious bodily harm.

If you find that Randall Deviney committed first degree felony murder, but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use or attempted to use a weapon, then you should find him guilty only of first degree felony murder.

In considering the evidence, you should

consider the possibility that although the evidence may not convince you that the defendant committed the main crime of which he is accused, there may be evidence that he committed other acts that would constitute a lesser included crime. Therefore, if you decide that the main accusation has not been proven beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime. The lesser crimes indicated in the definition of first degree murder are second degree murder and manslaughter.

To prove the crime of second degree murder, the State must prove the following three elements beyond a reasonable doubt: One, Delores Futrell is dead, two, the death was caused by the criminal act of Randall Deviney, and, three, there was an unlawful killing of Delores Futrell by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An act includes a series of related actions, arising from and performed pursuant to a single design or purpose.

An act is imminently dangerous to another and demonstrating a depraved mind if it is an act or series of acts that, one, a person of ordinary

judgment would know is reasonably certain to kill or do serious bodily injury to another and, two, is done from ill-will, hatred, spite or an evil intent and, three, is of such a nature that the act itself indicates an indifference to human life.

In order to convict of second degree murder, it is not necessary for the State to prove the defendant had an intent to cause death

If you find that Randall Deviney committed second degree murder, and you also find beyond a reasonable doubt that during the commission of the crime he personally carried, displayed, used, threatened to use or attempted to use a weapon, you should find him guilty of second degree murder with a weapon.

A weapon has already been defined for you.

If you find that Randall Deviney committed second degree murder, but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use or attempted to use a weapon, then you should find him guilty only of second degree murder.

To prove the crime of manslaughter, the State must prove the following two elements beyond a reasonable doubt: One, Delores Futrell is dead and,

two, Randall Deviney intentionally committed an act or acts that caused the death of Delores Futrell.

The defendant cannot be guilty of manslaughter by committing a merely negligent act or if the killing was either justifiable or excusable homicide.

The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon the defendant or to commit a felony in any dwelling house where the defendant was at the time of the killing.

The killing of a human being is excusable and therefore lawful under any one of the following three circumstances: One, when the killing is committed by accident and misfortune, in doing any lawful act by lawful means, with usual ordinary caution or without any unlawful intent or, two, when the killing occurs by accident or misfortune, in the heat of passion, upon any sudden and sufficient provocation or, three, when the killing is committed by accident and misfortune, resulting from a sudden combat if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.

In order to convict of manslaughter by act, it

is not necessary for the State to prove that the defendant had an intent to cause death, only an intent to commit an act that was not merely negligent, justified or excusable, and which caused death.

Dangerous weapon is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

If you find that Randall Deviney committed manslaughter and you also find beyond a reasonable doubt that during the commission of the crime he personally carried, displayed, used, threatened to use or attempted to use a weapon, you should find him guilty of manslaughter with a weapon.

A weapon has already been defined for you.

If you find that Randall Deviney committed manslaughter, but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use or attempted to use a weapon, then you should find him guilty only of manslaughter.

The State must prove that the crime was committed on August 5th, 2008.

And it must be proved only to a reasonable certainty that the alleged crime was committed in

Duval County.

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the Indictment, through each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence, the State has the burden of proving the crime with which the defendant is charged was committed and the defendant is the person who committed the crime.

The defendant is not required to present evidence or prove anything.

Whenever the words reasonable doubt are used, you must consider the following: A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if after carefully considering, comparing and weighing all the evidence there is not an abiding conviction of guilt, or if having a conviction it is one which is not stable, but one

which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced in this trial and to it alone that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence or the lack of evidence.

If you have a reasonable doubt, you should find the not guilty. If you have no reasonable doubt, you should find the defendant guilty.

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict.

You may find some of the evidence not reliable or less reliable than other evidence. You should consider how the witnesses acted as well as what they said.

Some things you should consider are: Did the witness seem to have an opportunity to see and know the things about which the witness testified; did the witness seem to have an accurate memory; was the

witness honest and straightforward in answering the attorneys' question; did the witness have some interest in how the case should be decided; does the witness' testimony agree with the other testimony and other evidence in the case; did the witness at some other time make a statement that is inconsistent with the testimony he or she gave in court; and has the witness been convicted of a felony.

Whether the State has met its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented.

The fact that a witness is employed by law enforcement does not mean that his or her testimony deserves more or less consideration than that of other any witness.

Expert witnesses are like other witnesses with one exception. The law permits an expert witness to give his or her opinion. However, an expert's opinion is reliable only when given on a subject about which you believe him or her to be an expert.

Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

The defendant in this case has become a witness. You should apply the same rules to consideration of his testimony that you apply to the testimony of the other witnesses.

It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about his or her testimony.

You may rely upon your own conclusion about the credibility of any witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

A statement claimed to have been made by the defendant outside of court has been placed before you. Such a statement should always be considered with caution and be weighed with great care to make certain it was freely and voluntarily made. Therefore, you must determine from the evidence that the defendant's alleged statement was knowingly, voluntarily and freely made.

In making this determination you should consider the total circumstances, including, but not limited to, whether when the defendant made the statement he had been threatened in order to get him

to make it and whether anyone had promised him anything in order to get him to make it.

If you conclude the defendant's out of court statement was not freely and voluntarily made, you should disregard it.

These are some general rules that apply to your discussion. You must follow these rules in order to return a law verdict. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.

This case must be decided only upon the evidence that you have heard from the testimony of the witnesses and have seen in the form of the exhibits in evidence and these instructions.

This case must not be decided for or against anyone because you feel sorry for anyone or are angry at anyone.

Remember the lawyers are not on trial. Your feelings about them should not influence your decision in this case. Your duty is to determine if the defendant has been proven guilty or not in

accord with the law.

Whatever verdict you render must be unanimous. That is each juror must agree to the same verdict.

Your verdict should not be influenced by feelings of prejudice, bias or sympathy. Your verdict must be based on the evidence and on the law contained in these instructions.

Deciding a verdict is exclusively your job. I can't participate in that decision in any way. Please disregard anything I may have said or done that made you think I prefer one verdict over another.

During this trial I have permitted you to take notes. You will be allowed to take those notes into the jury room during deliberation. You are instructed that your notes are a tool to aid your individual memory. You should not compare your notes with those of other jurors in determining the content of any testimony or in evaluating the importance of any evidence.

Notes are for the note-taker's personal use in refreshing his or her recollection of the evidence. They are not evidence. Above all, your memory should be your greatest asset in your recollection of the evidence.

You may find the defendant guilty as charged, actually in the Indictment, or guilty of such lesser included crime as the evidence may justify or not guilty.

If you return a verdict of guilty, it should be for the highest offense which has been proven beyond a reasonable doubt. If you find that no offense has been proven beyond a reasonable doubt, then, of course, your verdict must be not guilty.

Only one verdict may be returned as to the crime charged. This verdict must be unanimous. That is all of you must agree to the same verdict. The verdict must be in writing and for your convenience the necessary verdict form has been prepared for you and it is as follows.

You are you going to see the -- no, not the verdict form?

MS. HAZEL: No, Your Honor.

THE COURT: Okay. That's fine. You don't need to see it because you'll have it in the back with you. Let me go over it with you.

This verdict form is a two-page verdict form. So when you're looking at it, you really need to look at it like that so you're seeing the whole verdict form at one time (indicating). But I'm

going to read it to you page by page.

Up here at the top right-hand corner all the papers that are filed in the case have this information. It's called the style of the case. In the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida. Case No. 16-2008-C-012641-XXXX-MA. Should that have an A? AXXX. Yes. It should be AXXX-MA. Division CR-D. State of Florida versus Randall Deviney. And down here in the center it says verdict. And, again, if you look at this in total down the left-hand side in the margins you have four numbers, one, two, three, four. That's just the number. They're not -- that doesn't have any importance. But those are your four choices of verdict.

So, the first choice is the whole first page and 2, 3, and 4 are the second page. So if this is your choice here at 1, it says, we, the jury, find the defendant guilty of first degree murder as charged in the Indictment. If that is your finding, you have to make some subfindings and they are explained for you on the verdict form and I talked about them in the instructions.

If you find the defendant guilty of first degree murder, you must check one or both of the

following findings: We further find that the killing was premeditated, we further find that the killing was done during the commission or attempted commission of a felony. You may choose one or both of those.

If you include the second finding, which is the felony murder, then you keep going and it says, if you find the defendant committed the killing during the commission or attempted commission of a felony, then you must check one or both of the following felonies that apply and you check here burglary and/or attempted burglary and/or here, attempted sexual battery, then, B, here in the center, this is another finding you have to make that is totally separate from the findings in A. If you find the defendant guilty of this offense, you must choose one of the following findings: Either we find that the defendant did carry, display or use a weapon during the commission of the offense or we find that the defendant did not carry, display or use a weapon during the commission of the offense.

Every time you're required to make a choice either one or both, one or both, or one, that is in bold to help you remember you only make one choice or you make one or both.

Now, if that is not your verdict, you're now on page 2. You may choose here, we, the jury, find the defendant guilty of second degree murder, a lesser included offense, and this requires a subfinding. If you find the defendant guilty of this lesser included offense, you must choose one of the following findings: Either we find that the defendant did carry, display or use a weapon during the commission of the offense or we find that the defendant did not carry, display or use a weapon during the commission of the offense. Or you may find here, we, the jury, find the defendant guilty of manslaughter, a lesser included offense.

Again, you have that same subfinding. If you find the defendant guilty of this lesser included offense, you must choose one of the following findings: Either we find that the defendant did carry, display or use a weapon during the commission of the offense, or we find that the defendant did not carry, display or use a weapon during the commission of the offense.

Or you may choose here, which is, we, the jury, find the defendant not guilty, and if that is your choice, there are no subfindings.

And then it says, so say we all. Done at

Jacksonville, Duval County, Florida. And the verdict form will be signed and dated by the foreperson.

I'll explain that now.

In just a few moments you will be taken to the jury room by the bailiff. The first thing you should do is choose a foreperson who will preside over your deliberations. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. It is also the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict and to bring the verdict form back to the courtroom when you return.

During deliberations jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing or electronic communication, such as a blog, Twitter, e-mail, text message or any other means.

Many of you may have cell phones, tablets, laptops or any other electronic devices here in the

courtroom. The rules do not allow you to bring your phones or any of those type of electronic devices into the jury room during deliberations.

Kindly leave those devices on your seats where they will be guarded by the bailiffs while you deliberate and if you have any devices in the jury room we'll give you a chance to bring those out and put them in your seat.

Do not contact anyone to assist you during deliberations. These communications rules apply until I discharge you at the end of the case. If you become aware of any violation of these instructions, or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

If you need to communicate with me, send a note through the bailiff signed by the foreperson. If you have questions, I will talk with the attorneys before I answer. So it may take some time. You may continue your deliberations while you wait for my answer. I will answer any questions, if I can, in writing or orally here in open court.

During the trial items were received into evidence as exhibits. You may examine whatever exhibits you think will help you in your

deliberations. These exhibits will be sent into the jury room with you when you begin to deliberate.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have lived by the Constitution and the law. No juror has the right to violate the rules that we all share.

Now, ladies and gentlemen, a few housekeeping matters. First of all, the instruction pages are not numbered so it's important that you keep them in order because otherwise -- otherwise they're not in order so it's important to keep them in order. So whoever the foreperson is, that's part of your job, keeping the instructions in order. You may pass them around, everybody may look at them, but they need to stay in order.

And then next, Mr. Bentley, Mr. Frazier and Ms. Hilton, the three of you were actually alternates on the case. We always have alternates on our cases, more on these types of cases, in case someone has an emergency or becomes ill and cannot continue to participate. However, all the members

C E R T I F I C A T E

I, Faye M. Gay, hereby certify that the foregoing transcript is a true and accurate transcription of my Stenograph notes taken at the time and date stated herein.

Dated this 9th day of August, 2015.

/s/ Faye M Gay

Faye M. Gay, CRR, RMR, RPR, CLVS

IN THE SUPREME COURT OF FLORIDA

RANDALL T. DEVINEY,

Appellant,

v.

CASE NO. **SC17-2231**
Cir. Case No. 16-2008-CF-12641

STATE OF FLORIDA,

Appellee.
_____/

MOTION TO SUPPLEMENT THE RECORD

Appellant, RANDALL T. DEVINEY, moves this Court to order the record be supplemented with the following items, and as grounds states:

1. The record on appeal does not include the following items:

A. State's Exhibit 70, a CD recording of an August 5, 2008, "911 call," which was admitted into evidence at the prior "guilt-phase" trial on July 15, 2015, and published at the "penalty-phase" trial on October 11, 2017;

B. State's Exhibit 89, a DVD recording of an August 30, 2008, interview of Mr. Deviney, which was admitted into evidence at the prior "guilt-phase" trial on July 15, 2015, and published at the "penalty-phase" trial on October 11, 2017

C. State's Exhibit 112, a CD recording of a September 1, 2008, "jail call" by Mr. Deviney, which was admitted into evidence at the prior "guilt-phase" trial on July 15, 2015, and published at the "penalty-phase" trial on October 11, 2017;

D. State's Exhibit 113, a CD recording of an August 31, 2008, "jail call" by Mr. Deviney, which was admitted into evidence at the prior "guilt-phase" trial on July 15, 2015, and published at the "penalty-phase" trial on October 11, 2017;

E. The jury's "penalty-phase" verdict form filed on October 13, 2017 (a copy of this item appears to be attached to a post-trial motion, but, out of an abundance caution, undersigned counsel includes the verdict form in this request); and

F. The trial court' sentencing order filed on December 11, 2017.

2. Appellant's attorney needs a copy of the above-mentioned items to properly evaluate whether certain issues should be raised on appeal and/or to properly address certain issues that presently appear appropriate to raise on appeal.

3. Assistant Attorney General, Jennifer L. Keegan, has been contacted, and she has indicated that the State does not have an objection to this motion.

WHEREFORE, Mr. Deviney requests that this Court order (1) the record be supplemented with the above-mentioned items and (2) copies of those items be provided to counsel for the parties.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail to Jennifer L. Keegan, Assistant Attorney General, Capital Appeals Division, The Capitol, PL-01, Tallahasssee, FL, 32399-1050, at capapp@myfloridalegal.com and jennifer.keegan@myfloridalegal.com, as agreed by the parties, and via the Florida Courts E-Filing Portal to the Duval County Clerk of Courts, on this 8th day of May, 2018.

Respectfully submitted,

ANDY THOMAS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

/s/ Richard M. Bracey, III
RICHARD M. BRACEY, III
Assistant Public Defender
Fla. Bar No. 76419
Leon County Courthouse
301 S. Monroe St., Suite 401
Tallahassee, Florida 32301
(850) 606-1000
mose.bracey@flpd2.com

ATTORNEY FOR APPELLANT

Filing # 71896527 E-Filed 05/09/2018 01:43:19 PM

Supreme Court of Florida

WEDNESDAY, MAY 9, 2018

CASE NO.: SC17-2231
Lower Tribunal No(s).:
162008CF012641AXXXMA

CR-D

RANDALL T. DEVINEY vs. STATE OF FLORIDA

Appellant(s) Appellee(s)

Appellant's unopposed Motion to Supplement the Record (copy attached) is granted. The trial court clerk is directed, on or before May 21, 2018, to file a supplemental record that includes the items listed in the attached motion and provide copies to counsel for the parties.

***THE COVERSHEET SHALL REFLECT "SUPPLEMENTAL RECORD - VOLUME 1, ETC." AND PAGE NUMBERING SHOULD RUN CONSECUTIVELY.**

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

cd
Served:

JENNIFER L. KEEGAN
RICHARD M. BRACEY III
HON. MARK J. BORELLO, JUDGE
HON. RONNIE FUSSELL, CLERK
BERNARDO ENRIQUE DE LA RIONDA

FILED
APR 09 2018
CLERK CIRCUIT COURT

IN THE SUPREME COURT OF FLORIDA

RANDALL T. DEVINEY,

Appellant,

v.

CASE NO. **SC17-2231**
Cir. Case No. 16-2008-CF-12641

STATE OF FLORIDA,

Appellee.
_____/

MOTION TO SUPPLEMENT THE RECORD

Appellant, RANDALL T. DEVINEY, moves this Court to order the record be supplemented with the following items, and as grounds states:

1. The record on appeal does not include the following items:

A. State's Exhibit 70, a CD recording of an August 5, 2008, "911 call," which was admitted into evidence at the prior "guilt-phase" trial on July 15, 2015, and published at the "penalty-phase" trial on October 11, 2017;

B. State's Exhibit 89, a DVD recording of an August 30, 2008, interview of Mr. Deviney, which was admitted into evidence at the prior "guilt-phase" trial on July 15, 2015, and published at the "penalty-phase" trial on October 11, 2017

C. State's Exhibit 112, a CD recording of a September 1, 2008, "jail call" by Mr. Deviney, which was admitted into evidence at the prior "guilt-phase" trial on July 15, 2015, and published at the "penalty-phase" trial on October 11, 2017;

D. State's Exhibit 113, a CD recording of an August 31, 2008, "jail call" by Mr. Deviney, which was admitted into evidence at the prior "guilt-phase" trial on July 15, 2015, and published at the "penalty-phase" trial on October 11, 2017;

E. The jury's "penalty-phase" verdict form filed on October 13, 2017 (a copy of this item appears to be attached to a post-trial motion, but, out of an abundance caution, undersigned counsel includes the verdict form in this request); and

F. The trial court' sentencing order filed on December 11, 2017.

2. Appellant's attorney needs a copy of the above-mentioned items to properly evaluate whether certain issues should be raised on appeal and/or to properly address certain issues that presently appear appropriate to raise on appeal.

3. Assistant Attorney General, Jennifer L. Keegan, has been contacted, and she has indicated that the State does not have an objection to this motion.

WHEREFORE, Mr. Deviney requests that this Court order (1) the record be supplemented with the above-mentioned items and (2) copies of those items be provided to counsel for the parties.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail to Jennifer L. Keegan, Assistant Attorney General, Capital Appeals Division, The Capitol, PL-01, Tallahasssee, FL, 32399-1050, at capapp@myfloridalegal.com and jennifer.keegan@myfloridalegal.com, as agreed by the parties, and via the Florida Courts E-Filing Portal to the Duval County Clerk of Courts, on this 8th day of May, 2018.

Respectfully submitted,

ANDY THOMAS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

/s/ Richard M. Bracey, III
RICHARD M. BRACEY, III
Assistant Public Defender
Fla. Bar No. 76419
Leon County Courthouse
301 S. Monroe St., Suite 401
Tallahassee, Florida 32301
(850) 606-1000
mose.bracey@flpd2.com

ATTORNEY FOR APPELLANT