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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-0008

MICHAEL LAWRENCE WOODBURY,
APPELLANT,

VS.

STATE OF FLORIDA,
APPELLEE.

---

ON APPEAL FROM THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT, IN AND FOR OKEECHOBEE, FLORIDA (CRIMINAL DIVISION)

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## PRELIMINARY STATEMENT

This brief will refer to Appellant as such, Defendant, or by proper name, e.g., "Woodbury." Appellee, State of Florida, was the prosecution below; the brief will refer to Appellee as such, the prosecution, or the State. Reference to the appellate record will be by "R" followed by the page number; the trial transcript "T" followed by the page number; and the supplemental materials "S" followed by the page number. Woodbury's initial brief will be notated as "IB" followed by the appropriate page number.

## STATEMENT OF THE CASE AND FACTS

### Background

Appellant, an inmate with the Florida Department of Corrections (FDOC), was indicted on one count of first-degree premeditated murder by an Okeechobee County grand jury, following the September 22, 2017 assault and subsequent death of his cellmate, Antoneeze Haynes. (R 18). During Appellant's first appearance, he declined a court appointed attorney and asserted his right to represent himself. (S 1926). The court went through a *Faretta*[1] colloquy with Woodbury. (S 1926-31).

The State filed its Notice of Intent to Seek Death Penalty on March 22, 2018. (R 35). On April 12, 2018, Woodbury filed a pro se demand for discovery and a speedy trial demand. (R 39-42). Woodbury pled not guilty on April 16, 2018, and renewed

[1] *Faretta v. California*, 422 U.S. 806 (1975).

his request to waive counsel and proceed pro se. The court again conducted a *Faretta* inquiry and allowed Woodbury to represent himself. (T 6-27). The court also formally appointed standby counsel, Mr. Stanley Glenn, to represent Woodbury until the conclusion of the case. (T 36-37). After discovery and pre-trial rulings were complete, the matter proceeded to trial on May 14, 2018. Woodbury remained adamant that he would proceed pro se, and did so throughout the trial, occasionally consulting with standby counsel. By the end of this matter, the court had conducted a *Faretta* inquiry on twelve separate occasions.[2]

After the State rested, the defendant chose to put forward evidence in his defense. (T 1352). Woodbury testified on his own behalf, but prior to cross-examination, Woodbury abruptly decided to plead guilty. (T 1366). The judge went through both a *Faretta* inquiry and a lengthy guilty plea colloquy. (T 1366-96). The penalty phase took place on July 24, 2018. The jury unanimously recommended that Appellant be sentenced to death after unanimously finding that the four aggravating factors were proven beyond a reasonable doubt, unanimously finding that those aggravating factors were sufficient to warrant the death penalty, and unanimously finding that those aggravating factors outweighed the mitigating circumstances. (T

[2] The *Faretta* inquiries occurred on the following dates: April 4, 2018, April 16, 2018, May 4, 2018, May 14, 2018, May 15, 2018, May 16, 2018, May 17, 2018, May 18, 2018, May 21, 2018, June 28, 2018, July 23, 2018, July 24, 2018, and September 21, 2019.

1802-04).

The *Spencer*[3] hearing took place on September 21, 2018. (T 1817). With Woodbury's standby counsel present, the court again conducted a *Faretta* inquiry. (T 1818-33). Woodbury attempted to waive the *Spencer* hearing, but the court denied his request. (T 1833-34). Appellant was sentenced to death on September 21, 2018. This direct appeal follows.

## Facts of the Case

On September 22, 2017, Appellant and Antoneeze Haynes were inmates and roommates at the Okeechobee Correctional Institution. Both were housed in C-dorm along with approximately 258 other inmates. (T 1055). At some point in the early morning hours, Woodbury covered the window of the shared cell and barricaded the cell door by pushing it off of its tracks and jamming it with objects to prevent correctional officers from entering. (T 1057-58). Once this was done, Appellant engaged in a hours long tortuous assault of Mr. Haynes. Woodbury repeatedly beat Haynes with his fists, bludgeoned him with a lock either on a belt or contained inside a laundry bag (to increase the force of the blows),[4] manually broke his fingers and

[3] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).
[4] Corrections Officer Ramos testified that Woodbury struck Haynes with the bag and lock over 50 times. (T 1043).

toes,[5] and cut him with a razor blade or homemade blade of some type. (T 1042-44).

Correctional Officer Ramos was the first to respond to the cell once it became clear something was amiss. He observed Mr. Haynes face down on the bunk and noted that Woodbury was yelling and aggressive. (T 1039). C.O. Ramos remained outside of the cell for the entire four hour period and witnessed everything that occurred when the window was not covered. He heard the entire incident and spoke with Woodbury at certain times. (T 1036-50); State's video exhibit 1.

C.O. Castro, as the senior corrections officer, responded to the cell and attempted to negotiate with Woodbury, asking him to remove the shirt that was covering the window in an effort to determine what was occurring inside. (T 1057). Woodbury refused to comply and demanded to see a "white shirt."[6] (T 1057). C.O. Castro eventually convinced Woodbury to remove the shirt long enough to get a glimpse of what was occurring inside the cell. C.O. Castro observed Mr. Haynes lying face down on the bottom bunk with blood spattered on the walls. (T 1057-58). Woodbury relayed that he would keep hurting Mr. Haynes until a "white shirt" arrived. Woodbury also stated that if anyone tried to open the cell door, he would cause further harm to Mr. Haynes. (T 1063). C.O. Castro immediately called for a

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[5] Sgt. Wright testified that Haynes "fingers were all dismantled, they were pointed in all different directions. And they were all, in my opinion, were broken. You could tell they were dislocated and broken." (T 1074).

[6] A "white shirt" is a person with supervisory authority, typically a lieutenant or above. (T 1197).

cell extraction team. (T 1057-58).

Ultimately Major Gatto arrived and began to communicate with Woodbury. Woodbury had a variety of demands, including his immediate return to New Hampshire.[7] (T 1200). Major Gatto tried to appeal to Woodbury by telling him that his roommate was scared and was just lying there. (T 1214). Major Gatto testified that Woodbury appeared very "methodical about the way he was doing things, too. His actions seemed to be almost planned out, like he had a plan in mind." (T 1214). At a later point of the incident, Woodbury struck Mr. Haynes simply because the Boston Red Sox lost a game. (T 1221). Ultimately after medical equipment was staged, Woodbury told Major Gatto to "remove that medical equipment too because you're probably not going to need it. You're probably going to need a body bag, but not medical equipment." (T 1251). Major Gatto relayed that throughout his contact with Woodbury, he would frequently strike Mr. Haynes for no reason at all. (T 1214-61).

As this was occurring, a Crisis Negotiation Team was assembling, which included Correctional Officer Sergeant Mark Wright. Sgt. Wright, a trained crisis negotiator, was at home when he was called to respond to the facility. (T 1067-68). When Sgt. Wright responded to the cell, Woodbury was displeased that a person who only had a sergeant's rank had attempted to communicate with him. Woodbury

[7] Woodbury was serving time in Florida for crimes committed in New Hampshire.

then covered the window and struck Mr. Haynes again stating, “That was for you. That’s your fault.” (T 1068). Woodbury only wanted to speak to someone with the rank of major or above and made it clear that Mr. Haynes would be punished further if one did not appear. (T 1070).

Sgt. Wright was also on the “Rapid Response Team” (RRT) which is a unit that has specialized training to respond to hostage or riot situations, including the utilization of appropriate weaponry, in this case a 40 millimeter multi launcher loaded with a chemical agent. (T 1071). Ultimately the RRT, the Direct Action Response Team, the cell extraction team and a medical team were assembled. (T 1073-74; 1251). By this time nearly four hours had passed with Woodbury continuously assaulting Mr. Haynes. Only when Woodbury realized that the specialized teams were preparing to forcibly extract him from his cell, did he voluntarily surrender. (T 1074).

During the course of the assault Woodbury made a variety of statements. At one point Woodbury showed C.O. Ramos a homemade knife and said that if anyone entered the cell, the knife would be stuck through Hayne’s temple. (T 1044). Several times C.O. Ramos asked about Mr. Hayne’s condition. To this, Woodbury would respond by commanding Mr. Haynes to lift a specific arm. (T 1048). C.O. Castro testified that Woodbury repeatedly stated things along the lines of, “I have the power now. You look at me. Pay attention to me.” (T 1058). Woodbury also repeatedly

threatened Mr. Haynes if the cell was approached, stating things like, “If anybody walks up to this door, I’m going to hurt him. I’m going to keep hurting him.” (T 1058). Just prior to surrender, Woodbury told the officers that they were “probably going to need a body bag, but not medical equipment. You can take that stuff with you.” (T 1251).

Nearly two hours of the assault were recorded. The recording depicts the cell door, a significant amount of audio, as well as Woodbury and several corrections officers. The recording also captured Woodbury’s surrender and shows the victim lying face down on his bunk which is covered in blood. There is a significant amount of blood on the wall and bunk area as well. State’s video exhibits 1 & 2. C.O. Ramos testified that Haynes was “face down on his bunk with blood all over the place, like puddles on his bed and mattress, splattered all over the wall.” (T 1039). By the time the correctional staff gained entry into the cell, Mr. Haynes was deceased from severe blunt force trauma to the head. (T 1157).

Dr. Shandelle Nordford was the medical examiner who conducted the post-mortem on Mr. Haynes. To summarize, Dr. Nordford testified that Mr. Haynes was essentially beaten to death, having sustained numerous cuts and lacerations to his skull and face; numerous abrasions and lacerations to the torso, chest, abdomen, and arms; swollen hands; lacerations and bruising on his back; a large laceration near the Achilles tendon; various fractures and dislocations of the metacarpals; a

fractured and displaced jaw; a fractured sternum; fractured ribs; and a brain hemorrhage. (T 1132-57). Dr. Nordford noted that the head lacerations were so extensive, that a portion of Mr. Haynes scalp was nearly falling off. (T 1147). Dr. Nordford testified that the force used during the assault was extreme and that Mr. Haynes would have experienced a "great, great, great deal of suffering…an extreme amount of suffering." (T 1157).

Woodbury gave a voluntary statement after he was removed from the cell. The interview was conducted by FDLE Special Agent Sapp and witnessed by Prosecutor Ashley Albright. The interview was recorded and parts of it were introduced during the penalty phase of the trial. (T 1691-1709). Woodbury admitted to the killing and stated, among other things, that he enjoyed the torturing of Mr. Haynes. (T 1698).

**Pre-trial Hearings**

At his first appearance, Woodbury declined court appointed counsel and demanded to proceed pro se. The court went through a full *Faretta* hearing with Woodbury, who not only indicated he understood every question posed by the court, but also stated he was "absolutely positive" he did not want the court to appoint an attorney for him. (S 1930-31). When asked about mental illness, Woodbury stated that he had been diagnosed with bipolar disorder and that he was currently taking Tegretol two times per day. (S 1929-30). Ultimately the court allowed Woodbury to proceed pro se, but appointed standby counsel. (S 1931-32).

Woodbury then filed a pro se demand for discovery as well as a demand for speedy trial. Both were in the proper format, cited the appropriate rules, and contained certificates of service. (R 39-42). At the next court hearing, Judge Bauer informed Woodbury that a *Faretta* inquiry would occur "pretty much almost every time we come to court." Woodbury responded to this by asking Judge Bauer if he was serious, expressing frustration at being required to go through the *Faretta* inquiry at each appearance. (T 5).

Prior to starting the formal dialogue, Judge Bauer noted, "[y]ou've acted like a perfect gentleman since you've been here, so I have no reason to ask except that it's on my list of things to ask. You have to be mentally incapacitated, competence, so I need to determine if you are competent to make a knowingly and intelligent waiver of counsel." (T 23). During the colloquy, when the court asked about any history of mental illness, the following exchange occurred:

> THE COURT: Have you ever been diagnosed or treated for mental illness?
> MR. WOODBURY: Allegedly, yes.
> THE COURT: Allegedly diagnosed, or allegedly treated?
> MR. WOODBURY: They say yes, but I'm saying not really. I don't feel I have a mental –
> THE COURT: How about this, when was that?
> MR. WOODBURY: I'm a conscientious objector and their – their take on it, so.
> THE COURT: Conscientious objector.
> MR. WOODBURY: Yeah, I don't really feel like that's proper.
> THE COURT: You mean to ask that?
> MR. WOODBURY: No. I just don't think that's an issue.
> THE COURT: Okay.

> MR. WOODBURY: --any type of issue. Yes, I have. Yes, I have. I've been diagnosed as bipolar, manic depressive, but –
> THE COURT: Were you supposed to take any treatment that you didn't do?
> MR. WOODBURY: No, sir.
> THE COURT: So you completed whatever treatment they asked you to do?
> MR. WOODBURY: Yes, sir.
> THE COURT: Okay. Just give me a ballpark on the time frame. That was back in the last two years?
> MR. WOODBURY: Yes, sir.
> THE COURT: Last year?
> MR. WOODBURY: It's been a recurrent theme since I've been like 18 years old.
> THE COURT: All right.
> MR. WOODBURY: Mood swings, just stuff like that.
> THE COURT: Well, okay. But is bipolar was what the diagnoses was?
> MR. WOODBURY: Yes, sir. But I don't feel like that's a – that's not-
> THE COURT: Well, it may not be.
> MR. WOODBURY: I don't feel like that's correct.
> THE COURT: It may not be.
> MR. WOODBURY: I've had – I've had other doctors telling me that it's not. So it's like I've had some doctors say yes, some doctors say no. It's like –
> THE COURT: I gotcha.
> MR. WOODBURY: -- I don't really –
> THE COURT: Okay. All right. So some doctors did not diagnose you with that, some did.
> MR. WOODBURY: Yeah. I believe that whole branch of science is a bunch of quacks.

(T 24-6).

Woodbury then told the court he didn't want a lawyer appointed and stated, "I'm representing myself. I'm not going to change my mind." (T 33). Judge Bauer then proceeded with the full hearing ultimately finding Woodbury competent, stating:

> So I am going to find, for the record, that the defendant is certainly competent to make a decision he indicated or not to make a decision, for lack of a better word, to make the decision that he's not being forced in any way to make this decision.
>
> So I do find that it's a freely made, voluntarily made decision to represent himself made with a full understanding of what his rights are, and that he is competent to make this decision and has made the decision.
>
> Understand this, if at any point during the proceedings, and point, it could be five minutes from now, it could be next week, you write a letter to the court file, they'll make sure I get it, and you want counsel, I will appoint counsel to represent you. So at any point you do want counsel, you say so, you get counsel.

(T 37). The court then discussed the likely timing of the upcoming trial, the demand for a speedy trial, and how discovery would be completed. Woodbury was adamant that the trial commence within the 45 day requirement. (T 37-50).

Another pretrial hearing was held on May 4, 2018. Judge Bauer again conducted a *Faretta* inquiry with Woodbury.[8] This inquiry again included the questions about mental illness, with Woodbury answers consistent with previous hearings. Regarding Woodbury's competency to waive counsel, Judge Bauer stated:

> THE COURT: All right. Then I am going to find that, again, that the Defendant, this is probably the third time that you've gone through questioning like this --
> MR. WOODBURY: Yeah.
> THE COURT: -- I mean, Judge Bryant, myself, and then here today again, that you are competent to waive counsel. That I don't find that there's anything to indicate that you are not competent to understand

[8] Prosecutor Ashley Albright submitted a proposed *Faretta* inquiry which contained some additional questions. (R 76-84).

> the advantages, disadvantages of having counsel or not having counsel, you understand that it isn't going to cost you anything, that it would be helpful in the presentation of your case, preservation of the issues such as the issues that arise on appeal or for appeal, and that your mental capacity, age, education, ability to read, write and understand the English Language, all of that, I have no hesitation in determining that you're competent to make the decision, and that your decision in this particular case has been made knowingly, voluntarily, and intelligently. So, therefore, I find that you have validly waived your counsel again in this matter.

(T 125-26).

At the end of the hearing, the parties discussed the necessity of going through a *Faretta* inquiry every day of the trial. The prosecution stated that it may take 10 or 15 minutes, but that it would create a perfect record. (T 176). The court balked at reading *Faretta* daily but noted that it would be read at each critical stage of the matter. (T 175-77). Woodbury again objected and engaged in the following exchange with the judge:

> MR. WOODBURY: Sir, I've read at least 105 trials and they do the *Faretta*, you know, on people representing their cases, okay, they only read it one time.
> THE COURT: Well, I know, but it's not a –it's not a murder case.
> MR. WOODBURY: It's Supreme Court – if they read it, it's over with. The Supreme Court knocks it down. It's not a basis for appeal, you know what I'm saying?
> THE COURT: All right. Well, I'll tell you what. I understand. I will –
> MR. WOODBURY: I think he's [prosecutor Albright] doing it to annoy us, at least me.
> THE COURT: Us, you and me?
> MR. WOODBURY: He's trying to annoy me, that's why you're doing it.

(T 176-77).

## **Guilt Phase/Change of Plea**

The trial commenced on May 14, 2018, with Woodbury appearing pro se and the court conducting the *Faretta* inquiry. (T 184-98). During the exchange, Woodbury told the court that if he were to be convicted, then he would like a lawyer to handle his appeal. Woodbury made it clear to the court that he did not want an attorney for the trial or for the penalty phase. (T 186-87). At one point, Woodbury, while discussing his appeal, said, "I want to handle this myself. I'm just saying in the event of the death penalty, I'll be in a cell on death row. You know, it would be much easier to have lawyers handle my appeal. But right now, I'm good." (T 188). With respect to the court's question regarding prior mental illness, Woodbury remained consistent with previous inquiries, telling the court that while he has been diagnosed with bipolar disease, he was currently medicated for the condition. (T 196.)

The trial began on May 14, 2018 with jury selection. Woodbury, after another *Faretta* hearing, fully participated in jury selection, asked questions, and made objections, routinely consulting with his standby attorney. (T 238, T generally). At one point, Woodbury demanded his standby counsel not be seated with him at counsel table so the jurors would not see that he had attorneys. (T 247). He continued on to tell the judge, [s]ir, under no circumstances will any lawyer be representing me in this case in the guilt and penalty phase no matter who words the question. (T 252).

Judge Bauer praised Woodbury's performance in court, stating:

> Actually, I was going to – to note that in kind of a different way, more of in a complimentary way. That – you know, actually, I think that while I'm sure it's frustrating to have to try to deal with the rules that we have to deal with, I think you've done actually very well for somebody in your circumstance with what you're charged with, the seriousness of it, you're pro se, that fact that you've got, you know, a bunch of people on one side and you've got other counsel and you've got, you know, a Judge who's trying to tell you what to do and all that. I actually will compliment you on your behavior.
>
> It's a little more laid back than an attorney is going to do, there's no question about that, you know what I mean. But overall I think you've complied with the general courtroom demeanor that's necessary and I appreciate that for what it's worth…But I certainly think that will reflect on the record to show that there's a real understanding of what's going on, almost a purpose for the things that you're doing. You'd be surprised, some people come here unrepresented and you can't figure what their focus is. Yours I think is pretty clear.
>
> So I'll leave the record at that and I think it's actually quite impressive.

(T 497-98).

Jury selection continued on May 15, 2018. The court conducted an abbreviated *Faretta* inquiry. Woodbury once more demanded to proceed pro se and the court again found him competent to do so. (T 503-04). Woodbury remained engaged in jury selection from start to finish and actively participated in seating his jury. (T 181-84).

On May 17, 2018, the testimonial portion of the trial began. The court conducted its seventh *Faretta* inquiry, with Woodbury giving nearly identical answers as he had in the past. When asked about mental health issues, Woodbury again indicated

he'd been diagnosed bipolar and was taking Tegretol to treat it. (T 1011). In addition to the verbal acknowledgement of his medication, Woodbury brought some documentation of the medication and the court noted some of its side effects on the record. (T 1011). Woodbury stated that he'd been taking the medication for about five months and that it did help him to maintain his mood. Woodbury also stated that he had no difficulty in understanding what was occurring in the courtroom. (T 1012). Judge Bauer again found Woodbury competent to waive his right to counsel and proceed pro se. (T 1015).

Woodbury gave an opening statement that offered a version of the incident which included a claim that Mr. Haynes had attempted to rape him just prior to the assault. Woodbury stated that the rape attempt is what lead to Haynes's death. During his opening, Woodbury said he "gave him (Haynes) the business, man" and "I proceed to kick him in the face like a 50-yard field goal that would have been good from 60. One fight, we had another fight after that, he lost badly again. In short, I went berserk." (T 1031, 1035).

Over the next two days, the State called several witnesses including the responding correctional officers, the medical examiner, a crime scene analyst, and an investigator with the Florida Department of Law Enforcement. The State also offered an edited version of the recording of the actual incident as well as numerous photographs. Once the State rested, prior to the start of Woodbury's case in chief,

the court conducted another *Faretta* hearing over Woodbury's objection. (T 1327).

> MR. WOODBURY: We are doing the Faretta hearing again?
> THE COURT: Yep.
> MR. WOODBURY: I'd object to this.
> THE COURT: You'd object to doing it again?
> MR. WOODBURY: Yes. And I'm objecting on the grounds that every case law I read by the Supreme Court, they only had to do it one time. I have a constitutional right to represent myself, and this has rose to the level of harassment.

(T 1327). The court again found Woodbury competent to waive his right to counsel and to proceed pro se. (T 1331-32). Woodbury then called two witnesses, Carmen Prescott and Kurt Sanders, who were offered to support the claim that Mr. Haynes had attempted to rape Woodbury prior to the assault. Immediately after this, the court took a recess to discuss with Woodbury whether or not he would be testifying and to be sure he had an understanding about how the testimony would be offered. Woodbury then took the stand and testified about the incident, claiming that Haynes touched Appellant's penis during the night. Woodbury testified to the following:

- And basically the whole time I had this man hostage, I am just waiting for the tactical team to show up. Because when the tactical team shows up, they have to bring the camera. Because I'm afraid as soon as I come out, they're going to throw me down some stairs, beat me up, do whatever. And that's basically how that situation escalated like that.

  And all the while, as Major Gatto stated, this man did try to get up, not off the bed, but sat up. And every time he sat up, I refreshed him with the business. I didn't want to do it to him, but I was afraid this man was going to attack me again.

  So back to what this case is about. This case is about a rape case. (T 1360).

- And it went bad, it went bad, it went real bad. And it was really - - I regret it, I regret it. Nobody deserves to die like that, nobody. I mean maybe Hitler or Stalin, Polpot (sic), some people like that. But the punishment did not fit the crime, but he provoked me. (T 1364).

- So in the eyes of the law, you know, what the prosecution has charged me with is true. And at this time, I'd like to plead guilty to first-degree premeditated murder, your Honor. What you got? (T 1364).

The Court then excused the jury and consulted with all parties. The court noted that while Woodbury had previously alluded to pleading guilty, it had not anticipated that the plea would come in the middle of testimony.[9] Judge Bauer confirmed that Woodbury wanted to change his plea to guilty and Woodbury responded affirmatively saying, "Yes your Honor. I'm pleading guilty as charged." (T 1365). The court then went through the guilty plea form, first filling it out with input from Woodbury, and then conducting the colloquy. When the *Faretta* inquiry began, Woodbury objected and made it clear he would delay the proceedings if forced to go through the colloquy again. (T 1366-96). There was discussion about whether the prosecution would be allowed to cross-examine Woodbury. Woodbury vehemently objected to this, noting several times that the case was over. (T 1373; 1383; 1384).

[9] On May 17, 2018, during the discussion regarding trial procedures and timing, Woodbury had stated, "Yes, sir. And I'm probably only going to be one, two minutes with Ramos; one, two minutes with Kurt Sanders, and probably like 20 minutes with myself and be done and then I'm probably going to change my plea to guilty and then rest. I know, it's crazy, but that's what I'm doing tomorrow. I'll be changing my plea to guilty of first-degree murder tomorrow after I get done testifying." (T 1163).

Woodbury also consulted with his standby counsel and stated that they had been "excellent." (T 1392). Judge Bauer again found Woodbury competent to waive his right to an attorney and proceed pro se, stating:

> But I do believe that your – that your ability to understand, you're obviously intelligent and you have been able to handle yourself in court, whether it's just questioning or just behavior or being – being able to ask your standby counsel. Even asking to do so, you've been polite, you've been courteous, and I think your behavior has been, compared to all the other pro se people in the past, actually better than all of them combined.

(T 1394).

At the conclusion of the guilt phase, Woodbury reiterated his demand to proceed to the penalty phase pro se, noting he had spoken with his standby attorneys. (T 1398). The court ordered Woodbury to undergo a pre-sentence investigation, discussed housing and transportations logistics, and set the penalty phase to July 23, 2018. (T 1399-1415). The State requested a mental health expert be appointed to Woodbury for potential mitigation during the penalty phase. (T 1424). The court asked Woodbury's standby counsels, Mr. Shane Manship and Mr. Stanley Glenn, to suggest some options for appropriate mental health experts. (T 1427).

At the request of the State, the court set a status hearing for June 28, 2018 to discuss the posture of the mental health expert and other sentencing matters, most notably, whether Woodbury intended to offer mental health mitigation. (T 1433-5). Woodbury again made it clear that he had no intention of offering any mental health

evidence or mitigation. When asked specifically if he was filing for any type of mental health mitigation defense, Woodbury stated, "None whatsoever." (T 1435-46). Woodbury continued the mitigation discussion by asking the court how much mitigation he would need to present in order to prevent the State from stepping in and making its own mitigation offering, noting that mental health issues did not fit with his strategy. (T 1452). Prior to the court moving on to an abbreviated *Faretta* inquiry, Judge Bauer made some further observations regarding Woodbury's behavior in court and stated:

> If it matters, for the record I will state Mr. Woodbury has always conducted himself within the norms of how we should conduct ourselves in here. Like I said, I've found it before, I find you competent to represent yourself, and we'll have another conversation in a minute on that, but that is not saying that you're a great lawyer. It is just saying you're competent to make that decision.

(T 1459). The court then went through a shortened *Faretta* inquiry noting that the hearing was not a critical part of the proceeding and again finding Woodbury desired to waive his right to counsel and proceed pro se. (T 1461).

**<u>Penalty Phase</u>**

The penalty phase began on July 23, 2018 with the court noting it was a critical stage of the proceeding which required a *Faretta* inquiry. Woodbury participated without objection, answering "Yes, sir" or "No, sir" to nearly every question. (T 1476-85). Judge Bauer again found Woodbury competent to make a knowing, voluntary, intelligent waiver of counsel. (T 1485). The court also pointed out that

both standby counsels were present and capable of stepping in at any time if Woodbury changed his mind about having an attorney. (T 1485-86).

The State's initial focus in the penalty phase was to establish the prior violent felony aggravator. To this end, the State called various witnesses, both victims and law enforcement, to establish Woodbury's previous convictions, which included six robberies as well as three previous capital murders. The robberies were further substantiated by State's exhibits 1-3, certified indictments, fingerprints, and a judgement and sentence. (R 467-84). The murders occurred at an Army Surplus Store in Conway, New Hampshire during the course of a robbery. Steve Rowland, a retired law enforcement officer from New Hampshire, testified that Woodbury first shot the clerk, and then shot two patrons as he was fleeing the scene. Woodbury was apprehended by police and gave them a statement. Woodbury told police that he entered the store to rob it and to take the clerk's vehicle. The clerk became suspicious of Woodbury and moved behind the counter, bending down. Woodbury said he didn't know what the clerk was doing so he pulled his weapon and shot him. Just as that was occurring, two customers walked into the store. Woodbury said that they were just in the wrong place at the wrong time. Woodbury shot and killed both of them before fleeing the scene. (T 1675-76). Woodbury was convicted for each of the three homicides and was given three life sentences. (T 1677). This was further substantiated by State's exhibit 5, the judgement and sentence related to the

homicides. (R. 485).

To prove the HAC aggravator, the State relied not only on the evidence introduced during the guilt phase, but also offered parts of Woodbury's recorded interview which occurred shortly after Mr. Haynes was killed wherein Woodbury did not mention anything about Mr. Haynes making sexual advances. (T 1520). During the interview, Woodbury is aggressive and threatens to terminate it if he is interrupted. Woodbury, while elevated, appears lucid and clear headed. (State video exhibit 11, clip 4). Woodbury did not know the interview was being recorded. (R 1441). The State emphasized that the evidence showed that Woodbury beat and tortured Haynes for over three and a half hours using "razor blades", "needles", "a padlock", "his hands", "his feet", and "anything he had". (T 1763). Ultimately, during his testimony, Woodbury admitted "in hindsight, yes, it is torture, there's no question about that." (T 1742). The State also relied on trial evidence to prove that the murder was committed while Woodbury was serving a sentence of imprisonment.[10] (T 1520).

To prove the cold, calculated and premeditated aggravator, the State relied upon Woodbury's own statements talking about how he sharpened the piece of metal, took the lock from his locker in advance, waited until a certain time of night and for a

[10] Woodbury admitted during his testimony that he was serving three life sentences at the time of the Haynes killing. T 1735.

certain correctional officer, laced up and wore his boots, and barricaded the door to prevent any of the responding team from reaching Mr. Haynes. (T 1768).

Woodbury initially waived calling any witnesses and elected not to testify, offering only the reports prepared by C.O. Ramos and C.O Sanders. (Defense exhibits 1 & 2; R 546-49). Judge Bauer had an exchange with Woodbury about his decision not to testify.

> THE COURT: With regard to the penalty phase, there's not obligation that you testify, and I don't even think I need to inquire as to whether you have – that you have the right to remain silent, that you also have the right to testify, but I'm going to ask you anyhow.
> MR. WOODBURY: Yes, sir.
> THE COURT: I mean, you don't have to. But you understand if you want to, you can?
> MR. WOODBURY: Yes, sir. It's just – can I have one second?
> THE COURT: Yes.
> (Defendant confers with standby counsel.)
> MR. WOODBURY: Sir, we are ready. I am.
> THE COURT: Are there any other issues based upon your conversation?
> MR. WOODBURY: No, sir. No, sir.
> THE COURT: All right. Then let me just go ahead and ask you a couple of questions. You understand that you – you can testify if you'd like to at this point to the jury, do you understand that?
> MR. WOODBURY: Yes, sir.
> THE COURT: You understand you don't have to if you don't want to? So is it your choice that you do not wish to testify at this point to the jury, which will be the only point you have, the only opportunity?
> MR. WOODBURY: No, sir.
> THE COURT: Okay. You understand that one of the things that I will tell the jury, remind the jury is that what the lawyers say or what you say in closing argument is not evidence and they are not considered as such.
> MR. WOODBURY: Yes, sir.
> THE COURT: Okay. Do you have any questions at all about your

> decision not to testify in the penalty phase of this case?
> MR. WOODBURY: No, sir.

(T 1712-13).

After the exhibits were agreed upon, Appellant changed his mind and decided to testify. He told the jury that he didn't think he'd done anything wrong because Mr. Haynes had tried to rape him and that it was "all downhill" after that. (T 1730). Woodbury also attempted to discount the statements he gave after the murder, saying, "it's pretty obvious that I'm making that up as I go along. You can look at the video and tell that, you know, I'm just making stuff up. It looks like I'm lying." (T 1731).

Woodbury then stated, "that was me at my bipolar worst. I am on medication now, I've been on medication for nine straight months. That's the longest I've ever been on medication in my life. I'm a totally different person on medication. I plan on staying on this medication for the rest of my life." (T 1731).

Woodbury then continued testifying about the rape allegation and said that he was not crazy when he killed Mr. Haynes, rather it was because "he tried to rape me and it was getback time." (T 1731). Woodbury stated that any American would behave basically the same way if confronted with a rapist in the bedroom and would "reach over to the nightstand and blow that dude's head off." (T 1731). Woodbury acknowledged that the killing of Haynes took too long. *Id*. He also testified that if he had done nothing, Mr. Haynes's behavior would have continued, saying, "he's

just going to try again and again and again. He's going to keep trying until he gets it in." (T 1733).

Woodbury admitted to all of the criminal history brought in by the prosecution, saying about the 2007 New Hampshire killings, "That day was the worst day of my life, worst day of – I can't even – I killed three people." (T 1732). On cross examination, Woodbury admitted to all of the robberies and acknowledged that the documents introduced by the State to prove the prior felony convictions all applied to him. (T 1734-35).

Woodbury told the jury that it would be wrong to give him the death penalty now for what he had done in 2007 and told them that he had been in prison for 22 years and had only killed Mr. Haynes. (T 1733). During cross examination, Woodbury admitted that there were several inconsistencies between the statement he gave law enforcement immediately after the murder and the testimony and statements he gave during the trial. (T 1737-39; 1749-54).

Woodbury also admitted that he tortured Mr. Haynes for over three and a half hours, that he was angry, seeing red, "berserking", and that he "completely lost his mind". (T 1742). Woodbury testified that while Mr. Haynes may not have deserved the type of death he got, Woodbury believed that Mr. Haynes "deserved death, yes," and that "all rapists and child molesters should die." (T 1745).

Woodbury proposed two instructions which were outside of the standard packet.

(T 1636-37; R 553-54). The court denied the request for a special instruction, opting instead to offer only the pattern instructions. (T 1715-16). Woodbury did not object to the final instructions given to the jury. (T 1504; T 1779).

The jury was instructed that "[a] finding that an aggravating factor must exist must be unanimous, that is, all of you must agree that each presented aggravating factor exists" (T 1783). The aggravating factors were: (1) that the Appellant was previously convicted of a felony and under a sentence of imprisonment; (2) that the Appellant was previously convicted of another capital felony, or a felony involving the use or threat of violence to another person, specifically robbery and attempted robbery; (3) that the first-degree murder was especially heinous, atrocious, or cruel (HAC); and (4) that the first-degree murder was committed in a cold, calculated, and premeditated (CCP) manner without any pretense of moral or legal justification. (T 1780-81).

The jury was instructed to consider whether the defendant had proved by a greater weight of the evidence that either of the following two mitigating circumstances existed: (1) the first-degree murder was committed while Michael Woodbury was under extreme mental or emotional disturbance; or (2) the existence of any other factors in Michael Woodbury's character, background or life, or the circumstances of the offense that would mitigate against the imposition of the death penalty. (T 1785).

The jury was also instructed to weigh whether the aggravating factors found were sufficient to justify the death penalty, whether they outweighed any mitigating circumstances found to exist, and whether death is the appropriate sentence. (T 1785-86). Specifically, they were instructed as follows:

> if your verdict is that the defendant should be sentenced to death, your finding that each aggravating factor exists must be unanimous, your findings that the aggravating factors are sufficient to impose the death must be unanimous, and your finding that the aggravating factors found to exist outweigh the established mitigating circumstances must be unanimous and your decision to impose the death sentence – excuse me – a sentence of death must be unanimous.

(T 1786). The jury found unanimously that all four aggravating factors were proven beyond a reasonable doubt and found unanimously that the aggravating factors were sufficient to warrant a possible sentence of death. (T 1803). The jury did not find that either of the offered mitigators were established by a greater weight of the evidence. (T 1803). After weighing, the jury unanimously found that the aggravation outweighed the offered mitigation. (T 1803). The jury then unanimously determined that the Appellant should be sentenced to death. (T 1804).

At the conclusion of the jury's verdict, the court asked Woodbury if he wanted his standby counsel to assist with preparation of his final argument. After conferring with both standby counsels, Woodbury responded that he was "absolutely certain" that he did not want their help. (T 1813). Judge Bauer also told Appellant that they would be going through the *Faretta* inquiry again when court resumed in September.

Woodbury acknowledged this would occur. (T 1814-15).

**Spencer Hearing**

When court resumed for the *Spencer* hearing on September 21, 2018, another full *Faretta* inquiry, the 12th of the trial, was conducted. Woodbury's answers remained consistent with prior hearings.[11] When asked if the court should appoint a lawyer to represent him, Woodbury responded, "Absolutely not, sir." (T 1818). The colloquy continued with:

> THE COURT: Okay. And you understand , though, that a lawyer could, if you had a lawyer, that would – if there are any issues with that – we've discussed it in the past – but if there are any issues with that, that they could have and could still would help you with that?
> MR. WOODBURY: Yes. Yes, sir. I just believe that my constitutional right to represent myself supersedes the – supersedes that right there.
> THE COURT: All right. You've made that clear before. I'm just – I'm asking you again because this is a critical portion and obviously you're in sentencing, it's a pretty important part of the case, especially this case. So you do understand that you will not be entitled to a continuance simply because you wish to represent yourself.
> MR. WOODBURY: Yes, sir.

Later in the colloquy, when asked about mental illness, the dialogue was as follows:

> THE COURT: Have you ever been diagnosed or treated for mental illness?
> MR. WOODBURY: I think we've been through that.
> THE COURT: You mentioned that when you were approximately 18 years old you were diagnosed with bipolar, that you did go receive some treatment, that you haven't received treatment really since you've been in prison, is that all correct?
> MR. WOODBURY: Yes, sir.

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[11] Woodbury requested the abbreviated version of the *Faretta* inquiry at the beginning of this hearing.

> THE COURT: Are there any other mental illnesses you've been diagnosed with?
> MR. WOODBURY: No, sir.
> THE COURT: No? Okay. You had a hesitation. It's fine with me if you answer it. I mean, now – look, it's for your benefit.
> MR. WOODBURY: None that I believe. None that I believe.

The court then asked one final time if Woodbury wished to have an attorney appointed:

> THE COURT: Okay. Then having been advised of your right to counsel, the nature of the charges, possible consequences once you are convicted, which you have been, to include the death penalty, let me ask you, are you certain, absolutely certain that you do not want me to appoint a lawyer to represent you and defend you at this time?
> MR. WOODBURY: Yes, sir.

(T 1830-31).

Based upon a request by the State, the court asked further questions about Woodbury's mental illness, any treatment, and length of time Woodbury had been medicated. Appellant told the court he'd been taking Tegretol for his bipolar disorder since immediately after he committed the instant murder. Woodbury said he started taking the Tegretol about a year ago and that he'd been taking it regularly since then. (T 1831-33). The court concluded the final *Faretta* hearing with this:

> With regard to representing yourself, I do find that you are making that decision knowingly and voluntarily, that you understand the advantages and disadvantages of having counsel and/or representing yourself; that your answers have been consistent for the multiple times that we've gone through those questions, I think that you're making that decision competently and, therefore, you will continue to represent yourself.

(T 1833).

Immediately after this, Appellant asked the court to "waive this hearing" and "proceed to sentencing." (T 1833). The court denied the request, told Woodbury that he could present what he wanted, but noted that if he failed to present mitigation or other relevant evidence, it would be waived. (T 1834-35).

Ultimately, Woodbury elected to proceed with only his own testimony and argument. The State presented no additional evidence and went forward only with argument. During his testimony, Appellant referenced his bipolar disorder stating it was "pretty legitimate." (T 1845). Woodbury also told the court that he had recanted his confession in a letter. (T 1846). During cross examination, in response to a question about his bipolar medication, Appellant told the court that the medication had been "working quite nicely" since the crime and including the trial. (T 1850).

In an effort to confirm the State had met its burden regarding mitigation on behalf of Woodbury, the State asked the court to hear from Woodbury's standby counsel, Mr. Stanly Glenn. Mr. Glenn testified that he had, at the court's direction, employed Dr. Sesta to evaluate Woodbury's mental health. (T 1865). Mr. Glenn was reluctant to testify about specifics, evidently concerned about violating client confidentiality. (T 1866). This privilege was waived by the court, and Mr. Glenn was directed to answer questions only on whether mitigation evidence was discussed with Woodbury. (T 1867). Mr. Glenn recalled having a specific discussion with Appellant about using Dr. Sesta during mitigation, noting that there was a discussion

about what would happen if Woodbury presented testimony from Dr. Sesta, namely that the State would then be able to have a second expert evaluate Appellant. (T 1868). Mr. Glenn testified that Appellant elected not to present Dr. Sesta's report because he did not want the State to seek a "Rule 3.202 evaluation" on him.[12] (T 1869). Appellant then followed up with Mr. Glenn, confirming that they had indeed discussed strategy. Appellant then asked Mr. Glenn, "[d]idn't I discuss that I wasn't presenting the mental health mitigation because I already had a strategy laid out for the jury….that I want to stick to?" (T 1869). Mr. Glenn agreed that this was accurate. *Id*. Appellant also asked if there was a "strategical" decision made to not present mental health mitigation. Mr. Glenn answered in the affirmative. *Id.* Appellant concluded with this, "In other words, I wanted to let these people know, the 12 jurors, that this man tried to rape me and he got the business?" (T 1870). Again, Mr. Glenn answered in the affirmative. (T 1870). Upon further questioning from the court, Appellant again confirmed that at no time had he intended to offer a mental health defense or mental health mitigation. (T 1871-72; 1874-77). Woodbury concluded with "I laid out a strategy and, quite honestly, it failed, and it didn't include mental health mitigation." (T 1877).

The State then offered Dr. Sesta's report into evidence, in the event the court

[12] According to Florida Rule of Criminal Procedure 3.202, if a defendant intends to offer expert testimony of mental health mitigation, the defendant may then be examined by a different mental health expert chosen by the state.

wished to consider it as possible mitigation. (T 1880). The State noted that Dr. Sesta had not been cross-examined about his findings and that if, after reading the report, the court wished to hear from him, that the hearing could be concluded at a later time. (T 1880). The court admitted Dr. Sesta's report and reviewed it prior to sentencing. (T 1882). Appellant objected to this, noting that the report was based on DOC records only. Appellant specifically noted that a lot of the records used by Dr. Sesta "are false". (T 1883). The court went through the report, noting that Appellant's scores were mostly average or above average, and that none seemed to be below average. (T 1886). The court took note of the diagnoses of schizophrenia disorder bipolar type and a chronic history of "severe and persistent mental illness, " though the judge further stated that his had been somewhat refuted by Appellant himself. (T 1887).[13]

The court then adjudicated Appellant guilty to the charge of murder in the first-degree and sentenced him to death for the murder of Antoneeze Haynes. The judge entered a 30 page sentencing order on September 27, 2018. (R 275). The judge found that the jury's finding that the four aggravating factors had been proven beyond a reasonable doubt was supported by the evidence and gave great weight to

[13] While the judge didn't specifically reference the pre-sentence report during sentencing, it was submitted and is part of the record. (R 628-36).

each of them .[14] The judge summarized his findings as follows:

> The Court considered the records of the trial and sentencing proceedings. The Court considered the aggravating factors found to exist by the jury. The Court considered the mitigating circumstances reasonably established by the evidence. The Court determined whether there are sufficient aggravating factors to warrant the death penalty and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence. The Court, after considering all of the evidence, sentenced the Defendant to death.

(R 275). Appellant's direct appeal followed.

## SUMMARY OF THE ARGUMENT

**ISSUE I:** The court did not abuse its discretion in allowing Appellant to proceed pro se. Absent any outward signs of severe mental illness, Appellant had the absolute right to waive his right to counsel and proceed without an attorney.

**ISSUE II:** Appellant was competent to waive counsel and proceed pro se despite a history of bipolar disorder. Both the trial court and standby counsel followed established procedures to determine if Appellant was competent to waive his constitutional right to counsel. Because competency never appeared to be an issue, the court was not required, *sua sponte*, to order a formal competency evaluation and the trial court did not abuse its discretion by granting Appellant's demand to proceed without appointed counsel.

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[14] The four proven aggravators are (1) Capital felony committed by one previously convicted of a felony and under sentence of imprisonment; (2) Previous violent felony; (3) HAC; and (4) CCP.

**ISSUE III**: Appellant was competent to enter a knowing, intelligent and voluntary guilty plea to first-degree murder, despite a history of bipolar disorder. The trial court followed established procedures and because competency was not an issue, Appellant had the absolute right to continue to proceed pro se and to change his plea to guilty.

**ISSUE IV**: The trial court did not abuse its discretion by allowing Appellant to proceed pro se. Appellant was repeatedly offered an attorney including at all necessary and critical stages of the case and waived that right on each occasion.

**ISSUE V**: The trial court did not abuse its discretion by allowing Appellant to waive mental health mitigation and properly considered the mental health mitigation contained in the trial record.

**ISSUE VI**: The trial court did not err in offering the jury instruction on, and ultimately in finding, that the killing of Antoneeze Haynes was cold, calculated, and premeditated. The CCP aggravator was proven beyond a reasonable doubt. Competent, substantial evidence supports the trial court's finding where Appellant obtained the weapons in advance, barricaded the cell door, tortured the victim for an extended period, and confessed that he wanted to punish the victim and see him suffer. Further, this claim is waived as it was not preserved at trial.

**ISSUE VII**: The trial court did not abuse its discretion in admitting and possibly considering the pre-sentence report. Further, this claim is waived as it was

not preserved at trial.

**ISSUE VIII**: The trial court did not abuse its discretion when it determined that Appellant was not under the influence of extreme mental or emotional distress when he killed Antoneeze Haynes.

**ISSUE IX**: The trial court did not commit error by not offering Appellant's proposed jury instruction on mercy.

**ISSUE X:** There is no crime of "capital murder" in Florida. The jury need not determine the sufficiency and weight of aggravating factors and mitigating circumstances beyond a reasonable doubt. Appellant's argument that aggravating factors must outweigh mitigating circumstances beyond a reasonable doubt is incorrect. The findings regarding sufficiency and weighing are not subject to a beyond-a-reasonable-doubt standard because they are not elements of a crime and they do not increase the eligible penalty that can be applied in Appellant's case.

**ISSUE XI:** Upon review of capital cases which are factually similar, and contain similar aggravating factors and mitigating circumstances, it is clear that this case is among the most aggravated and least mitigated cases. The death penalty is a proportionate punishment and this Court should affirm the sentence in this case.

## ARGUMENT

**ISSUE I: THE TRIAL COURT DID NOT ERR IN ALLOWING APPELLANT TO WAIVE HIS RIGHT TO COUNSEL AND PROCEED PRO SE.**

A trial court's decision as to self-representation under *Faretta* is reviewed for abuse of discretion. *Holland v. State*, 773 So. 2d 1065 (Fla. 2000).

Here, Appellant argues that the court should have denied his demand to proceed pro se, despite the fact that there was no visible indication of mental illness. Through twelve separate *Faretta* inquiries, and countless hours before the court, Appellant maintained appropriate courtroom decorum, employed a detailed and specific trial and penalty phase strategy, actively participated in all facets of his hearings, and exhibited an understanding of trial procedures. Because of this, the court had no reason to doubt Woodbury's competence and did not abuse its discretion in allowing him to waive his right to an attorney and proceed pro se.

"Under … *Faretta* [*v. California*, 422 U.S. 806 (1975)], an accused has the right to self-representation at trial. A defendant's choice to invoke this right 'must be honored out of that respect for the individual which is the lifeblood of the law.'" *Tennis v. State*, 997 So. 2d 375, 377-78 (Fla. 2008) (quoting *Faretta v. California*, 422 U.S. 806, 834 (1975)).

**Rule 3.111(d)(3)**

Florida Rule of Criminal Procedure 3.111, which lays out the rule for trial

courts to follow when a defendant makes a request to discharge counsel and proceed *pro se*, contains certain requirements, however technical competence is not a component of the analysis. *McKenzie v. State*, 29 So. 3d 272, 282 (Fla. 2010).

Initially, the request must be unequivocal, as only an unequivocal request can trigger the requirement for a *Faretta* inquiry. *See* Fla. R. Crim. P. 3.111(d)(3) ("the court shall not deny a defendant's unequivocal request to represent himself or herself …"); *see also State v. Craft*, 685 So. 2d 1292, 1295 (Fla. 1996). If a trial court fails to conduct a *Faretta* inquiry after a defendant makes an unequivocal request, then that failure constitutes *per se* reversible error on appeal. *See Tennis,* 997 So. 2d at 379, (citing *State v. Young*, 626 So. 2d 655, 657 (Fla. 1993)).

Next, the waiver of counsel must be knowing and intelligent. *See* Fla. R. Crim. P. 3.111(d)(3) ("if the court makes a determination of record that the defendant has made a knowing and intelligent waiver of the right to counsel …"); *see also Aguirre-Jarquin v. State*, 9 So. 3d 593, 602 (Fla. 2009) (citing *Porter v. State*, 788 So. 2d 917, 927 (Fla. 2001)). In order for the waiver of counsel to qualify as knowing, intelligent, and voluntary, the defendant must be aware of the potential pitfalls of self-representation and must make his decision with "eyes open." *Faretta,* 422 U.S. 806, 835 (1975) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942)); *see also* Fla. R. Crim. P. 3.111(d)(2); *Hill v. State*, 688 So. 2d 901, 905 (Fla.

1996). Mental competence plays a role in this part of the rule[15] — but only to the extent necessary to show that the defendant understands the proceedings. *See Godinez v. Moran*, 509 U.S. 389, 401 n.12 (1993).

Finally, the trial court must ascertain whether the defendant suffers from a

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[15] Unlike other waiver inquiries, a *Faretta* inquiry is not an all or nothing affair (i.e., a defendant keeps "X" or waives "X"). Competing Sixth Amendment rights are involved. To the extent that Rule 3.111(d)(2) requires a "thorough inquiry … into both the accused's comprehension of [the] offer [of counsel] and the accused's capacity to make a knowing and intelligent waiver," that "*thorough*" inquiry may interfere with a defendant's right of self-representation. (Emphasis added.) *See generally State v. Gethers*, 480 A.2d 435, 440 (Conn. 1984) ("Nothing more intricate than a voluntary and intelligent waiver of counsel is required of an accused to exercise his right to defend himself in person."). Consequently, the inquiry into the defendant's "mental capacity" should be limited to that necessary to determine whether the defendant understands the nature of the proceedings. *See Godinez v. Moran*, 509 U.S. 389, 401 n.12 (1993). Any additional probing runs the risk of delving into issues of technical competence. *See generally Hooks v. State*, 236 So. 3d 1122, 1130 (Fla. 1st DCA 2017), *reh'g denied*, (Feb. 28, 2018), *review dismissed*, No. SC18-594, 2018 WL 1870413 (Fla. Apr. 19, 2018), and *review granted*, No. SC18-1106, 2018 WL 4616392 (Fla. Sept. 4, 2018); *but see Aguirre-Jarquin*, 9 So. 3d at 602. While some courts may view a thorough inquiry as an additional layer of protection, these types of judicially-imposed (as opposed to constitutionally required) protections can interfere with a defendant's ability to exercise his Sixth Amendment right of self-representation. *See Indiana v. Edwards*, 554 U.S. 164, 186-87 (2008) (Scalia, J., dissenting) ("[T]he dignity at issue is the supreme human dignity of being master of one's fate rather than a ward of the State–the dignity of individual choice."); *see also State v. Bowen*, 698 So. 2d 248, 250 (Fla. 1997); *Hooks*, 236 So. 3d at 1129; *but see Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948). When balancing the right to counsel with the right of self-representation, a court does not enjoy an "obligation to deny a request for self-representation unless the defendant was sufficiently aged, educated, and literate, to handle self-representation" (i.e., any judicially-imposed protections regarding "mental capacity" are satisfied); rather, a court must permit a mentally competent defendant the *opportunity* to represent himself provided he makes a knowing and intelligent waiver of the right to counsel. *Hooks*, 236 So. 3d at 1126-27 (emphasis added).

"severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself or herself." Fla. R. Crim. P. 3.111(d)(3); *see also Indiana v. Edwards*, 554 U.S. 164 (2008).

***Faretta* and its progeny**

In *Faretta v. California*, 422 U.S. 806, 835 (1975), the United States Supreme Court stated as follows:

> When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently forgo those relinquished benefits. *Johnson v. Zerbst*, 304 U.S., at 464-65, 58 S. Ct., at 1023. Cf. *Von Moltke v. Gillies*, 332 U.S. 708, 723-724, 68 S. Ct. 316, 323, 92 L .Ed. 309 (plurality opinion of Black, J.). Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open. *Adams v. United States ex rel. McCann*, 317 U.S., at 279.

Further, in *Godinez v. Moran*, 509 U.S. 389 (1993), the United States Supreme Court discussed *Faretta* inquiries in more detail. The Court stated that the competency standard for pleading guilty or waiving the right to counsel was the same as the competency standard for standing trial and not a higher standard. *Id*. at 389-390. The court noted that the competency, which is required of a defendant seeking to waive the right to counsel, is the competence to waive the right, not the competence to represent himself. *Id*. at 399. The Court stated:

> In *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), we held that a defendant choosing self-representation must do so "competently and intelligently," *id*., at 835, 95 S. Ct., at 2541, but we made it clear that the defendant's "technical legal knowledge" is "not relevant" to the determination whether he is competent to waive his right to counsel, *id*. at 836, 95 S. Ct. at 2541, and we emphasized that although the defendant 'may conduct his own defense ultimately to his own detriment, his choice must be honored," *id*., at 834, 95 S. Ct., at 2541.

*Id*. at 400.

The Court indicated that whether a defendant was permitted to represent himself required a two-part inquiry. *Id*. at 401. First, the trial court had to establish that a defendant was competent. Second, the trial court had to determine whether his waiver of counsel was knowing and voluntary. *Id*. at 401-2.

The court then explained in a footnote as follows:

> The focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the *ability* to understand the proceedings. *See Drope v. Missouri*, supra, 420 U.S., at 171, 95 S. Ct., at 903 (defendant is incompetent if he "lacks the *capacity* to understand the nature and object of the proceedings against him"). The purpose of the "knowing and voluntary" inquiry, by contrast, is to determine whether the defendant actually does understand the significance and consequences of a particular decision and whether the decision is uncoerced. See *Faretta v. California*, supra, 422 U.S., at 835, 95 S. Ct., at 2541 (defendant waiving counsel must be "made aware of the dangers and disadvantages of self-representation, so that the record will establish that knows what he is doing and his choice is made with eyes open (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279, 63 S. Ct. 236, 242, 87 L. Ed. 268 (1942)); *Boykin v. Alabama*, 395 U.S., at 244, 89 S. Ct., at 1712 (defendant pleading guilty must have understanding of what the plea connotes and of its consequence").

*Id*. at 401 n.12. (italics in original).

The court further stated, "[w]e do not mean to suggest, of course, that a court is required to make a competency determination in every case in which a defendant seeks to plead guilty or to waive his right to counsel. As in any criminal case, a competency determination is necessary only when a court has reason to doubt the defendant's competence. *Id*.; *see also Drope v. Missouri, supra,* 420 U.S. 162, 180-181; *Pate v. Robinson,* 383 U.S. 375, 385, (1966).

In *Hooks v. State,* 236 So. 3d 1122 (Fla. 1st DCA 2018), the court recognized that rule 3.111(d)(3) (1973) indicated as follows:

> No waiver shall be accepted where it appears that the defendant is unable to make an intelligent and understanding choice because of his mental condition, age, education, experience, the nature or complexity of the case, or other factors.

*Hooks*, 236 So. 3d at 1125. Two years after this rule was effective, the United States Supreme Court decided *Faretta*, which recognized that a criminal defendant has the right to self-representation. However, Florida courts had ruled that a trial court must make a specific inquiry on the record "relating to the defendant's age, ability to read and write, education, and other factors, before a waiver of counsel was deemed sufficient. *Id*. at 1126.

In *State v. Bowen,* 698 So. 2d 248 (Fla. 1997), this Court addressed the "tension" between the decision in *Faretta* and Rule 3.111(d). *Bowen*, 698 So. 2d at 1126. The *Bowen* court reversed a case in which the trial court refused to accept the defendant's waiver of counsel due to his education being insufficient, stating that a

citizen could not be denied the right to represent himself because he only had a high school diploma. This Court went on to say, "it is within the defendant's rights, if he or she so chooses, to sit mute and mount no defense at all." *Bowen*, 698 So. 2d at 251.

Ultimately the rule was amended to reflect as follows:

> Regardless of the defendant's legal skills or the complexity of the case, the court shall not deny a defendant's unequivocal request to represent him or herself, if the court makes a determination of record that the defendant has made a knowing and intelligent waiver of the right to counsel.

Fla. R. Crim. P. 3.111(d)(3) (1998).

**The Mental Competency Waive Counsel Must Be Analyzed with the Mental Competency to Stand Trial**

"A defendant is competent to stand trial if he or she 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.'" *In re Amendments to Fla. Rule of Crim. Proc. 3.111*, 17 So. 3d 272, 273 n.2 (Fla. 2009) (quoting *Dusky v. United States*, 362 U.S. 402 (1960)). Fifteen years after deciding *Dusky*, the United States Supreme Court iterated the same standard, stating that it "has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." *Drope v. Missouri*, 420 U.S.

162, 171 (1975).

Under Rule 3.211, competency to stand trial requires the ability to appreciate what is going on, assist court-appointed counsel, behave appropriately in court, and testify coherently. Fla. R. Crim. P. 3.211(a)(2). Although the defendant is the one on trial, this standard focuses heavily on counsel — or more specifically, the ability of the defendant to assist counsel in counsel's important role. *See Edwards*, 554 U.S. at 174.

In *Indiana v. Edwards*, 554 U.S. 164 (2008), the United States Supreme Court examined, from the perspective of mental competence, the impact of the defendant's choice to waive counsel and proceed *pro se*. The majority opinion implicitly recognizes that a trial is more than just a single moment in time; it is a dynamic proceeding that can last days, weeks, months, or even years. Over that period of time, a defendant's mental health can change in significant ways. *See Edwards*, 554 U.S. at 175. Consequently, competency to proceed *pro se* requires a higher level of mental functioning than simple competence to proceed. Therefore, the standard for competency to proceed *pro se* may be higher, simply because it is ongoing, than the standard for competency to stand trial, plead guilty, and/or waive the right to counsel. *See id.* at 177. Just how much higher remains unclear, as *Edwards* fails to define the standard for competency to proceed *pro se*. *See generally United States v. McKinney*, 737 F.3d 773, 776-77 (D.C. Cir. 2013).

In *Edwards*, the Court suggests that competency to proceed *pro se* requires the ability "to carry out the basic tasks needed to present his own defense without the help of counsel." *Edwards* 554 U.S. at 175-76. Yet, the majority opinion fails to list those "basic tasks." *See id.* at 189 (Scalia, J., dissenting). While a parenthetical citation includes a series of "trial tasks," the majority never adopts that list as the official list of "basic tasks" necessary for competency to proceed *pro se*. *But see Loor v. State*, 240 So. 3d 136, 139 n.1 (Fla. 3d DCA 2018), (citing *Edwards*, 554 U.S. at 176.) Declining an invitation to provide more concrete guidance, *Edwards* rejected *Indiana's* suggestion that competency to proceed *pro se* includes the ability to "communicate coherently with the court or a jury." *Edwards*, 554 U.S. at 178. Unfortunately for courts and practitioners, the majority opinion does not clearly articulate the new standard for competency to proceed *pro se*. *See generally id.* at 189 (Scalia, J., dissenting).

In *Edwards*, the majority identifies a mental competency "gray area" — something higher than *Dusky* but lower than "mental fitness for another legal purpose." *Edwards* at 172. Within that "gray-area," the Court suggests that trial courts should observe defendants and use their discretion to make "fine-tuned mental capacity decisions." *Id.* at 177. Thus, while competency to proceed *pro se* is something higher than the *Dusky* standard to stand trial, the precise boundaries of the gray area remain unclear. Ultimately, competency to proceed *pro se* is something

more than the ability to understand the nature of proceedings and assist counsel, but something less than the mental (not technical) capability to effectively organize a defense, file motions, participate in *voir dire*, introduce evidence, examine witnesses, lodge objections, and communicate with the judge and jury.

Here, Appellant argues that once his bipolar disorder was disclosed, the trial court should have engaged in an invasive inquiry into his mental health despite the fact the court had not been presented with any reason to competency. Contrary to Appellant's argument, a defendant can represent himself even if he suffers from or previously suffered from mental illness. As noted by the United States Supreme Court, in *Godinez v. Moran*, 113 S. Ct. 2680 (1993), a competency determination is not needed in every case in which a defendant desires to waive counsel; rather, it is only necessary when a trial court has reason to doubt a defendant's competence. *Id*. at 401. In the instant case, had Appellant presented with a severe mental illness which prevented him from conducting trial proceedings by himself, it would have been appropriate for the trial court to change standby counsel's role and/or to have ordered a competency hearing. *See Indiana v. Edwards*, 554 U.S. 164, 177-178 (2008) ("We consequently conclude that the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by

counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.)

The trial court conducted *Faretta* colloquies with Woodbury twelve separate times. The trial court made factual findings that Woodbury was competent to waive counsel after each of those exchanges. (R 276-80). Further, the trial court repeatedly noted that Woodbury was acting appropriately, conducting himself properly, and generally performing well. (T 497-8; 996; 1168-70; 1386; 1393-5; 1459). Noting that *Edwards* suggested "something less" than the ability to perform specific courtroom tasks, Woodbury far surpasses that standard. *Edwards*, 554 U.S. at 177. Woodbury organized a defense and tactically presented evidence to support the theory that Mr. Haynes had behaved in a sexually assaultive manner. Woodbury filed a demand for discovery, a demand for a speedy trial, and requested specific jury instructions. Woodbury questioned potential jurors, argued against bias or prejudice when he believed it suited him, and struck jurors when appropriate. Throughout the trial Woodbury questioned witnesses, objected when necessary, and spoke clearly and appropriately to the judge and the jury. Woodbury made cohesive legal arguments to the court, and consistently consulted with his standby counsels. In fact, in an incredibly clever move, Woodbury took the stand in his own defense, put forward his version of events, and then pled guilty thereby avoiding cross

examination. Further, Woodbury had intelligent discussions with the court about the presentation of mitigation evidence, insisting the court rule that enough mitigation evidence had been presented to avoid the State stepping in and assuming that role. Woodbury also intentionally avoided mental health mitigation, not only because it contradicted his defense, but also because it would have subjected him to an evaluation with a mental health expert chosen by the State. Here, there was nothing at all to suggest to the court that Woodbury was incompetent or suffering from a severe mental illness. In fact, looking at Woodbury's unequivocal demand to proceed pro se, coupled with his trial performance, it was the exact opposite; he was lucid, focused, strategic, and goal oriented. Thus, the trial court had no grounds to deny Woodbury his right to proceed pro se or to demand a competency evaluation and to do so would have been error.

Astonishingly, Appellant now asks this Court to rely on the post-conviction report provided by Dr. Sesta. This is inappropriate. Not only did the trial court not have this report at the time of Appellant's many waivers of counsel, more importantly, none of the information in Dr. Sesta's report can be independently verified because when Appellant waived his right to mental health mitigation, he ensured that a second evaluation with a state psychiatrist would never occur. Further, according to standby counsel, Woodbury intentionally waived mitigation specifically so he would not be subjected to this independent evaluation. This leaves

Appellant in a position to, post-conviction but pre-sentence, offer as much self-serving and unverified information as he sees fit. As it stands, Dr. Sesta himself notes that his report is based largely on what he was told by Woodbury himself.[16] To rely on this dubious report generally would be incautious; to hold the trial court responsible, in hindsight, to predict what Woodbury would disclose once convicted is ludicrous.

Throughout his trial, Woodbury consistently made the type of "fine-tuned mental capacity decisions" discussed in *Edwards*. This Court should grant deference to the record and to the determination of the trial judge who explicitly and repeatedly declared Appellant's requests to proceed pro se were unequivocal, as well as knowing and intelligent. Further, Appellant never appeared to be suffering from a severe mental illness which would have rendered him incapable of conducting trial proceedings. The trial court did not abuse its discretion when it found, twelve

[16] It is troubling that Appellant places such emphasis on Dr. Sesta's conclusions considering Dr. Sesta was not present for any of the trial or sentencing hearing nor was he able to review the trial transcripts. It would seem that for Dr. Sesta to come to a reliable medical opinion regarding Woodbury's mental state during court proceedings, there would have to be a comprehensive review of the trial record. As this is lacking, it appears that Dr. Sesta guessed about Woodbury's mental state while in court. Further, Dr. Sesta indicates he interviewed Appellant on June 19, 2018. (R 568). During trial, which began on May 14, 2018, Appellant indicated he had been on medication for nine months. (T 1731). This means Woodbury had been medicated for approximately ten months by the time Dr. Sesta interviewed him. This is contrary to Dr. Sesta's written report which indicates, "[a]t the time of trial, the defendant had just recently re-initiated pharmacotherapy…" (R 591).

separate times, that Appellant was competent to waive his right to counsel. There was no error.

## ISSUE II: APPELLANT WAS COMPETENT TO STAND TRIAL AND THE COURT DID NOT ABUSE ITS DISCRETION WHEN IT DID NOT REQUIRE A COMPETENCY EVALUATION.

Appellant contends the trial court reversibly erred in failing to order, *sua sponte*, an evaluation to determine Appellant's competence. This claim is meritless because the trial court did not have reasonable grounds to believe that Appellant was not competent to proceed, thus it did not have the legal authority to order an evaluation. A trial court's "competency determination must be based on all relative evidence, and the decision will stand absent an abuse of discretion." *Gill v. State*, 14 So. 3d 946, 960 (Fla. 2009) (quoting *Boyd v. State*, 910 So. 2d 167, 187 (Fla. 2005)). *See also Tanzi v. State*, 964 So. 2d 106, 114 (Fla. 2007) (this Court "recognize[s] and honor[s] the trial court's superior vantage point in assessing the credibility of witnesses and in making findings of fact") (citation omitted). The competency requirements to plead guilty and to stand trial are the same. The standard requirement was promulgated by the United States Supreme Court in *Dusky v. United States*, 362 U.S. 402 (1960). *See Gill*, 14 So. 3d at 959 (*accord Godinez v. Moran*, 509 U.S. 389 (1993) (defendant's competence to plead guilty is measured no higher than the standard set forth in *Dusky*)). Florida Statutes § 916.12(1) codifies the *Dusky* standard and provides:

> A defendant is incompetent to proceed within the meaning of this chapter if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.

Fla. Stat. § 916.12(1) (2010). A defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Gill v State*, 14 So. 3d 946, 959 (Fla. 2009) (quoting *Dusky v. United States*, 362 U.S. 402 (1960)).

"Generally…the trial court has no independent obligation to hold a competency hearing if there is nothing to alert the court that the defendant may lack competency." *Blackmon v. State*, 32 So. 3d 148, 150 (Fla. 4th DCA 2010). A criminal defendant must only be examined for competency during a material stage of a criminal proceeding "if the trial court 'has reasonable ground to believe that the defendant is not mentally competent to proceed.'" *Wall v. State*, 238 So. 3d 127, 140 (Fla. 2008) (quoting Fla. R. Crim. P. 3.210(b)). However, once a defendant has been deemed competent to proceed, that "presumption of competence continues throughout all subsequent proceedings." *Wall*, 238 So. 3d at 140 (quoting *Dessaure v. State*, 55 So. 3d 478, 482-83 (Fla. 2010)).

A trial court is not required to order a competency evaluation *sua sponte*, where the trial judge did not have a reasonable belief that defendant was incompetent

to proceed. *See Barnes v. State*, 124 So. 3d 904, 912 (*sua sponte* competency determination not required and conclusively refuted by the record which showed the defendant said or did nothing to provide reasonable grounds to believe he was incompetent to proceed); *Wickham v. State*, 124 So. 3d 841, 861-82 (Fla. 2013) (trial court not required to *sua sponte* order competency determination where defendant was evaluated and found competent to stand trial, trial counsel did not request a separate competency hearing and nothing occurred during the trial process to cause the court to question competency).

The instant case is comparable to *Barnes*. There the defendant disclosed a prior mental diagnosis to the court, but also was "intelligent, understood court procedure, and was completely capable of representing himself." *Barnes*, 124 So. 3d at 912. Also similar are the specifics of the *Faretta* inquires and Barnes's and Woodbury's behaviors in court. In *Barnes*, this Court noted that the defendant filed and argued motions, lodged objections and comported himself well in court. Barnes also appeared alert and knowledgeable and made clear that he understood the consequences of self-representation and of entering a guilty plea. *Id*. at 913. In fact, the trial judge in *Barnes* made comments similar to the trial judge here, specifically remarking on Barnes's demeanor and competence in his presentation. *Id*.

Equally applicable here is the reasoning from *Card v. Singletary*, 981 F.2d 481, 487-88 (11th Cir. 1992), upon which this Court relied in *Barnes*, noting, "[n]ot

every manifestation of mental illness demonstrates incompetence to stand trial; rather, the evidence must indicate a present inability to assist counsel or understand the charges." *Barnes*, 124 S. 3d at 913. In the instant case, because competency never appeared to be an issue, the court was not required to order a formal competency evaluation and did not abuse its discretion by granting Appellant's demand to proceed pro se. Appellant's mental health history and current medication status alone do not negate his competency. *See Nelson v State*, 43 So. 3d 20 (Fla. 2010) (a prior suicide attempt and administration of powerful antipsychotic drugs did not create a reasonable doubt as to competency or render defendant incompetent to proceed).

In *Drope v. Missouri*, 420 U.S. 162 (1975), cited by Appellant, the information concerning petitioner's suicide attempt during the trial, when considered together with the psychiatric information available prior to trial and the testimony of his wife at trial, all of which the trial court failed to give proper weight, created a sufficient doubt of petitioner's competence to stand trial and required further inquiry. *Id*. at 179. This is inapposite to the facts here where Appellant behaved appropriately, was properly medicated, and at no time indicated any confusion about the process or his rights. *Drope* does not support Appellant's claims.

Appellant seems to generally argue that a mental health diagnosis equals incompetency to stand trial, yet this is not supported by any legal theory, and in fact is controverted by the holdings of *Card*, *Barnes*, and *Nelson*. Simply, the court here

did not have *any* grounds to believe the Appellant was not competent, let alone *reasonable* grounds. Instead, these facts and holdings support the State's argument that the trial court in this case did not abuse its discretion by not questioning Woodbury's competency. The facts in the record show (1) Appellant appeared competent to proceed and enter a guilty plea, despite his history of bipolar disorder; (2) his standby counsels neither challenged nor raised concerns about his competency; (3) Appellant never acted unusually or inappropriately in the courtroom; (4) the trial court had many opportunities to observe his demeanor and behavior; (5) Appellant always responded intelligently and appropriately to the trial court and to his standby counsels; (6) Appellant exhibited rational thought through the proceedings; and (7) the trial court had no reasonable basis or bona fide doubt as to Appellant's competency. Therefore, the trial court did not abuse its discretion by not questioning Appellant's competency to proceed.

**ISSUE III: WOODBURY'S GUILTY PLEA WAS KNOWING, INTELLIGENT, AND VOLUNTARY.**

In Woodbury's challenge to the acceptance of his plea, he focuses on sufficiency of the evidence, a claim of self-defense, the waiver of a possible defense, and his bipolar disorder. A review of the record shows that the trial court made a sufficient inquiry into Woodbury's change of plea, and that there was substantial competent evidence for the finding that the plea was knowing, voluntary and

intelligent when it was entered. Likewise, Woodbury's challenge to the sufficiency of the evidence, the element of premeditation, and bipolar condition as a bar to the entry of a plea are refuted from the evidence in the record.

**Woodbury was competent to enter a plea of guilt**

Appellant claims he was not competent to have entered a guilty plea to first-degree murder in violation of his due process rights. IB 70. Woodbury further argues that mental health issues precluded him from perceiving and understanding the proceedings accurately, prevented his ability to enter a knowing, intelligent and voluntary plea and waiver. IB 76-77. These arguments are meritless because Appellant appeared in court routinely and remained committed to proceeding pro se. Appellant presented no signs of any mental illness, and was determined competent to enter a knowing, intelligent, and voluntary guilty plea based on the trial court's thorough colloquy before accepting that guilty plea. The court followed proper procedures to ensure that Appellant's constitutional rights were protected. Therefore, this Court should affirm Appellant's conviction and sentence.

This Court's review of a capital defendant's guilty plea to first-degree murder focuses on the knowing, intelligent and voluntary nature of the plea. *Barnes v. State*, 29 So. 3d 1010, 1020 (Fla. 2010). The plea is scrutinized to ensure that the defendant was made aware of the consequences of his plea, was apprised of the constitutional rights being waived and pled voluntarily guilty. *See Winkles v. State*, 894 So. 2d 842,

847 (Fla. 2005). Where a history of mental illness is present and competency evaluations were conducted, this Court must look at Appellant's competency "as it bears on [his] ability to enter a knowing, intelligent and voluntary plea." *Gill v. State*, 14 So. 3d 946, 959 (Fla. 2009).

Upon accepting a guilty plea, the trial court must carefully inquire into the defendant's understanding of the plea, ensuring the plea was intelligent and voluntary. *Sanchez-Torres v. State*, 130 So. 3d 661, 668 (Fla. 2013) (quoting *Koenig v. State*, 597 So. 2d 256, 258 (Fla. 1992)). As the *Godinez* Court stated, the *Dusky* standard "has a modest aim: It seeks to ensure that [defendants have] the capacity to understand the proceedings and to assist counsel." *Godinez*, 509 U.S. at 402. *See also Wall v. State*, 238 So. 3d 127, 140-41 (Fla. 2018). The trial court is required to hold a hearing "only where the court 'has reasonable ground to believe that the defendant is not mentally competent to proceed.'" *Rodgers v. State*, 3 So. 3d 1127, 1132 (Fla. 2006) (quoting Fla. R. Crim. P. 3.210(b)).

Appellant points to Woodbury's bipolar disorder to support the contention that the court should not have accepted Appellant's guilty plea. IB 76. However, Appellant had appeared in court repeatedly and always was prepared, behaved appropriately, and responded to the court in a manner which showed his understanding not only of the process, but also evidenced a consistent trial strategy. Nothing about this behavior suggests Appellant was incompetent. On the contrary,

it shows a high level of sophistication; knowledge regarding the trial procedure; understanding of the evidence, the process, and his rights; and a rational and factual understanding of the charges he faced. In fact, contradicting any claim there was a lack of understanding, Appellant, with an obvious plan in place, told the jury his version of events, and then at the conclusion of his direct testimony, announced to them that he would be pleading guilty. (T 1364). Once the jury was excused, Woodbury made it clear that he had elected to plead guilty at this specific point so he could avoid cross examination. (T 1383-84).

**The entry of the guilty plea**

Here, the court indicated it would go through the form with Woodbury and provided him a copy of a standard plea form. (T 1366; R 182-185). The judge also said he would fill in the form for Woodbury, but that they would need to go through it line by line, that Woodbury should ask any questions he might have, and that he would be given all the time he needed to look over the completed form. (T 1366).

The trial court first asked Woodbury if he understood he was entering a plea of guilt to the crime of first-degree murder. Appellant answered that he did. (T 1366). The trial court then confirmed Woodbury's name, age, educational level, that he could read and write, and that he understood English. (T 1367). The judge then established that Woodbury was not under the influence of drugs or alcohol and was taking medication only for his bipolar disorder, confirming that the medication did

not affect his ability to understand. (T 1367). In fact, the judge went so far as to ask, "[a]nd are you having any side effects or difficulty understanding what I'm stating or what anyone else is stating today in court?" *Id*. Appellant stated, "[n]ot at all, sir." *Id*. The judge confirmed that Woodbury understood that the charged crime of first-degree murder had a penalty of life in prison[17] and potentially the death penalty and that the court could only employ one of those two options. Specifically, the court stated that the form would be worded as follows, "[t]his is an open plea, there is no agreement. I understand the Court can only sentence me to either life imprisonment or the death penalty." (R 182). Again, Woodbury indicated that he understood. (T 1368).

The court turned to section 12 of the standard form which discussed mental illness, noting that Woodbury had to choose an option. The court had the following exchange with Appellant:

> THE COURT: All right. Now in paragraph 12 that's on the blank form that you have in front of you, there's a couple choices. One is "I have never been found to be insane or incompetent or admitted to or committed to a mental health facility and have never been a patient in a hospital for mental illness, disease, or defect."
> MR. WOODBURY: Yes. I've been hospitalized several times.
> THE COURT: Okay. Then let's check the next one. So I'm indicating then that "I was previously found to be insane or incompetent or admitted to or committed to a mental health facility, or I have been treated for mental health issues," is that correct?

[17] The court followed up on this later in the colloquy and informed Woodbury that the mandatory minimum sentence was life in prison and the maximum was the death penalty. Appellant acknowledged that he understood. (T 1395).

> MR. WOODBURY: Yes, sir
> THE COURT: Okay. And that diagnosis, I think you indicated, was bipolar?
> MR. WOODBURY: Yes, sir.
> THE COURT: And your treatment was when you were 18 years of age?
> MR. WOODBURY: Yes, sir. But –
> THE COURT: Initially, I should say.
> MR. WOODBURY: Yes, sir.
> THE COURT: Treatment initially at 18 years of age, on medication at this time. And would it be fair to say that with regard to any medication, you've been on and off over the years?
> MR. WOODBURY: That's correct, sir.
> THE COURT: All right. And for the record, I would go a little bit further in that. But in the penalty phase, I'm sure there's a lot more discussions that's going to take place with regard to that, so that's good enough for me right now.
> MR. WOODBURY: Yes, sir.

(T 1271-1372).

In paragraph 13, the court told Woodbury that he would be admitting that he was guilty of the charge and Woodbury indicated that he understood. Next, the court again discussed Woodbury's right to an attorney, telling him that he had the "right to be represented by a lawyer at every stage of the legal proceeding, and that if you cannot afford a lawyer, one will be appointed to represent you. Do you understand that?" Woodbury again answered that he did. (T 1371). The court then continued with this issue, stating:

> THE COURT: Now with regard to the questions, and we had a little bit of discussion about 45 minutes ago, with the *Faretta* Inquiry or all of those questions, do you understand that you are waiving your right to an attorney in this case?
> MR. WOODBURY: Absolutely, sir.
> THE COURT: And even with this entry of a plea, I'm going – going

> through it with you, but I can't give you legal advice. A lawyer can give you legal advice on what a lot of these things may mean or the effects of it. I'm not allowed to do that. I just need to make sure you understand it.
> So do you want to have a lawyer, at least for the purposes of going through this plea form?
> MR. WOODBURY: Not at all, sir.
> THE COURT: Okay. And you understand one would be appointed to you for free?
> MR. WOODBURY: Yes, sir.

(T 1371-1372).

The judge next informed Woodbury he was waiving his rights to a jury trial; giving up the right to a jury trial to determine his guilt or innocence; and the right to call witnesses on his behalf and confront those witnesses called against him. (T 1372). The trial court also informed Appellant he was giving up the right to testify. After some discussion about whether he could be cross-examined, Appellant stated, "I am giving up my right to make the State prove me guilty by presenting evidence beyond a reasonable doubt." (T 1373). The court also went through sections 15(f) – (h) outlining the appeal rights retained and waived. Again, Woodbury indicated he understood. Further, Appellant indicated no person had promised or threatened him into entering a plea and that nobody had tricked or talked him into a plea. (T 1375).

The court once again returned to Woodbury's wish to proceed unrepresented.

> THE COURT: Twenty-seven, now in this particular case, it does – it's really your discussion with me, but I'm about to give you the opportunity to talk to your standby counsel so I'll read it anyhow.
>
> You have discussed this case and everything in this document with your

> standby attorney, or attorneys, and you are satisfied with the representation – so I'll call it the advice that the standby attorneys have given you – you have told your attorneys the facts and circumstances known to you about the charges, and your attorney has explained the contents – and for the record, I'm not going to scratch this out – but so far I'm the one who have read the contents of this plea to him. If he has any questions, he can ask standby counsel – that you have no questions and you understand what you are doing, that you wish to enter a plea, not have a trial or hearing in this case, and you offer your plea freely, voluntarily, with a full understanding of all matters and the information in this case, the indictment, and in this document?
> MR. WOODBURY: Yes, sir.

(T 1380-81). The State then asked some questions and Appellant conferred with his standby counsel. (T 1381). The State asked the court to go through the *Faretta* inquiry prior to accepting Appellant's plea of guilt. (T 1386). The court then conducted a full colloquy, with Appellant again indicating that he understood and didn't have any questions. (T 1388-93). The State asked the judge to make a record regarding Appellant's competence, and the court did, with the following exchange occurring:

> THE COURT: But I do believe that your – that your ability to understand, you're obviously intelligent and you have been able to handle yourself in court, whether it's questioning or just behavior or being – being able to ask your standby counsel. Even asking to do so, you've been polite, you've been courteous, and I think your behavior has been, compared to all the other pro se people in the past, actually better than them combined.
> MR. WOODBURY: Thank you, sir.

(T 1386). Woodbury then asked for five minutes to confer with his standby counsel. *Id*. The trial court found that there was a factual basis for Appellant's plea and that

it was entered into freely and voluntarily with a knowing and intelligent waiver of rights and consequences. (T 1396).

The trial court properly informed Appellant of the rights he was foregoing and of the consequences of his plea. The record supports that Appellant knowingly and voluntarily entered his plea, and the trial court properly accepted it. *Brant v. State*, 21 So. 3d 1276, 1288-89 (Fla. 2009); *Winkles*, 894 So. 2d at 847. Additionally, it is clear that Appellant had discussed this plea with his standby counsel and made a tactical decision that it was in his best interest to enter a guilty plea in the hopes of avoiding cross examination and obtaining a life sentence. (T 1381; 1384-85). *See Tanzi v. State*, 964 So. 2d 106, 121 (Fla. 2007) (finding plea knowing and voluntary where defendant understood consequences of plea, understood he could still face death penalty, was not coerced or promised anything, and trial court found that defendant elected to follow strategy recommended by trial counsel).

While Woodbury was pro se through the trial and plea process, he at all times had two separate standby counsels present and consulted with them routinely before and during the trial and during the plea colloquy. (T 1386; 1639). Though Appellant's standby counsels were not mental health experts, they worked closely with him, observed his behaviors and understanding of the proceedings, and perceived his competence. The United States Supreme Court in *Drope v. Missouri*, 420 U.S. 162, 177, n.13 (1975), highlighted defense counsel's role in competency

issues. *Drope* explained, a lawyer's representations concerning a client's competence is "unquestionably a factor which should be considered" in making a competency determination because the attorney is the one with "the closest contact with the defendant." *Id.* (citation omitted). The exchanges between Mr. Glenn and Mr. Manship and Appellant reflect a healthy working relationship with both counsels. At no point did either attorney indicate Appellant lacked understanding of the process. Woodbury's responses to the court's questions demonstrate that he was competent to enter a knowing and voluntary waiver.

Following the court's exchange with Appellant, the plea to first-degree murder was tendered and the trial court conducted a lengthy and thorough colloquy, as set forth, *supra*, at 16. The colloquy is further evidence that Appellant made a knowing, intelligent and voluntary decision. The trial court asked baseline, as well as detailed and in-depth questions, which fully informed Appellant of the constitutional and procedural rights he would be waiving if the guilty plea was accepted. *Id.* The court ensured Appellant's understanding of the totality of the proceedings and confirmed that he knew the consequences of his guilty plea. *Id.* Further, the trial court reinforced that his plea was only one part of the process and that the penalty phase would still occur, resulting in a possible death penalty or life sentence. *Id.* Appellant's responses to the trial court were appropriate and gave no indication that he did not understand that he could be sentenced to death or that he

lacked appreciation of the charges against him. Appellant was fully aware of the consequences of his guilty plea. The court's observations of Appellant led to its valid determination that a formal competency hearing was not necessary.

**ISSUE IV: THE TRIAL COURT PROPERLY RENEWED THE OFFER OF COUNSEL TO WOODBURY AT ALL CRITICAL STAGES OF THE PROCEEDING.**

The trial court was under no obligation to offer counsel to Appellant other than at each critical stage of the proceeding. Appellant argues that the offer to appoint counsel should have been renewed at the beginning of the change of plea and at the beginning of the defense case. IB 77. This argument must fail as there is no formal requirement that a criminal defendant be offered an attorney at those specific junctures. Further, as Woodbury had standby counsel present and available for consultation at each stage of the proceeding, this claim is especially meritless. Here, Woodbury was adamant from his very first appearance that he would proceed pro se. During his first appearance, when asked if he was certain he did not want an attorney to be appointed, Woodbury responded with, "[a]bsolutely positive, sir." (S 1931). A *Faretta* inquiry was conducted ten times prior to Woodbury pleading guilty. Each time Woodbury remained resolute that he understood but wished to proceed pro se. Appellant even objected that he was being harassed by the court requiring him to go through the *Faretta* warnings so frequently. (T 176-177).

The necessity of renewing the offer of counsel depends on whether

intervening crucial stages occur after the initial offer and is not controlled by the passage of time between the initial offer and a subsequent crucial stage. *See Monte v. State*, 51 So. 3d 1196, 1200 (Fla. 4th DCA 2011). While the trial judge did not conduct a *Faretta* inquiry prior to filling in the guilty plea form with Woodbury, it was conducted prior to the court's acceptance of that plea. (T 1388-93). Further, the judge encouraged Woodbury to speak with his standby counsels prior to entry of the plea. (T 1388). Woodbury did so. (T 1381; 1396; 1398). This Court noted in *Knight v. Florida*, 770 So. 2d 663, 670 (Fla. 2000), "[S]tandby counsel is a constant reminder to a self-representing defendant of his right to court-appointed counsel at any stage of the proceeding."

Appellant next asserts that the failure to conduct *Faretta* warnings immediately prior to the presentation of Woodbury's case was error. This argument also has no merit. On May 21, 2018 at the beginning of the day, the court conducted a *Faretta* inquiry and found Woodbury competent to waive counsel. (T 1294-95). During this inquiry the judge reminded Woodbury that he had standby counsels present to step in as trial counsel in the event Woodbury changed his mind about proceeding pro se. (T 1295). Then, immediately prior to the presentation of the defense case, at the State's request, the court began to conduct a second *Faretta* hearing noting:

> "I'm going to go ahead and grant the State's request because I'm not sure whether transitioning from the State's presentation of the evidence

> to the Defense presentation of the evidence is a different critical point. I think at the beginning of trial it probably is.
>
> But just to be safe, I've got to ask you these questions again, with regard to you representing yourself, and I will go through them relatively quickly, but certainly if you want me to – hold on one second, he's talking to his standby.

(T 1325). Appellant was then placed under oath and immediately objected to having to go through the warnings again, stating "I have a constitutional right to represent myself, and this has rose to the level of harassment." (T 1327). Over Woodbury's objection, the court began to conduct a *Faretta* inquiry. (T 1328). At this point Woodbury asked the court if he could take five or ten minutes to answer each question posed by the court. (T 1328; 1330). Understanding Woodbury's intention was to be difficult, the court attempted to placate Woodbury, telling him he could take as much time as he needed and that there would not be a time limit. (T 1329-30). Woodbury reiterated his belief that "[t]hey're (the State) just doing it for harassment." (T 1329). This exchange continued with the trial court ultimately finding that Woodbury had made a valid request to waive the *Faretta* inquiry. The court then found Woodbury competent to waive his right to counsel. (T 1331-32).

"Under the invited-error doctrine, a party may not make or invite error at trial and then take advantage of the error on appeal." *Goodwin v. State*, 751 So. 2d 537, 544 n.8 (Fla. 1999); *see also Terry v. State*, 668 So. 2d 954, 962 (Fla. 1996). This doctrine applies equally to a pro se defendant. Woodbury cannot demand the trial

court cease its *Faretta* colloquy and then cry foul when the court grants the request.

Moreover, this is not a critical stage of the proceeding as there was no intervening process. The court conducted a *Faretta* inquiry at the beginning of the trial. The court properly found that Woodbury was competent to waive his right to counsel. The presentation of the defense is still a part of the trial and is not a separate "critical stage". *See, e.g., Knight v. State*, 770 So. 2d 663 (2000).

Appellant's comparison to *United States v. Novaton*, 271 F.3d 968 (11th Cir. 2001) is disingenuous. The *Novaton* analysis centered on a defendant's involuntary absence from trial and whether there were violations of the confrontation and due process clauses when court continued without his presence. To compare a criminal defendant's involuntary absence which resulted in him missing significant portions of his own trial is not on point with a criminal defendant who refuses to participate in a single *Faretta* inquiry, especially when that defendant made a specific request to forgo the hearing and when there was no intervening component of trial.

The instant case is similar to *Knight* in that both defendants indicated their current answers to the courts' questions would be the same as they had been in the past; both defendants went through a *Faretta* hearing at the beginning of the trial; and, perhaps most critically, both defendants had standby counsel present and consistently relied upon them. *Knight*, 770 So. 2d at 670. Not only did the trial court properly conduct *Faretta* hearings at each critical stage of the proceeding, Woodbury

also had standby counsel present in court as a constant reminder that he could at any time request the assistance of counsel. There was no error.

**ISSUE V: THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ALLOWING APPELLANT TO WAIVE MENTAL HEALTH MITIGATION AND IT PROPERLY CONSIDERED THE MENTAL HEALTH MITIGATION CONTAINED IN THE TRIAL RECORD.**

Whether a trial court has properly allowed a criminal defendant to waive the presentation of mitigation evidence is reviewed for abuse of discretion. *Spann v. State*, 857 So. 2d 845, 854 (Fla. 2003). It is well established that a competent defendant may waive his right to present mitigating evidence in the penalty phase. The colloquies and Appellant's interactions with the court clearly show that he knowingly and intelligently waived presentation of mental health mitigation evidence.

**Waiver of mental health mitigation**

At the start of the penalty phase on July 23, 2018, the trial court, consistent with previous practice, and over Appellant's objection, conducted another thorough *Faretta* colloquy. (T 1471-85). The trial court advised Appellant of (1) the right to representation by legal counsel; (2) the advantages of having an attorney represent him; (3) the disadvantages of proceeding pro se; (4) that the jury would decide a sentence of life in prison or death; (5) the four aggravators listed by the State; (6) the possible mitigators; and, (7) the right to mental health mitigation. *Id*. This Court has

noted, "[i]n the field of criminal law, there is no doubt that 'death is different,' but, in the final analysis, all competent defendants have a right to control their own destinies." *Hamblen v. State*, 527 So. 2d 800, 804 (Fla. 1988).

As a pro se defendant, Appellant had the right to choose his penalty phase strategy. Here, Appellant never wavered in his intent to avoid mental health mitigation. After the guilt phase was complete, it was the State who requested a mental health expert be appointed. (T 1424). During the status hearing on June 28, 2018, when asked if he would be presenting any mental health evidence, Woodbury stated, "None whatsoever." (T 1435-36). Woodbury requested the court find his mitigation threshold satisfied, obviously understanding that it would be incumbent upon the State to present evidence if mitigation were completely waived. Woodbury noted his strategy did not involve mental health issues, and asked:

> I guess what my question is, sir, what exactly is the threshold that I have to meet? Because most of the mitigation evidence that I feel for this crime has been presented already by me by basically telling the jury in so many words that they – this man tried to sexually assault me and I killed him. You see what I'm saying?
>
> That's my story line, I don't want to – I don't want to really mess that up with oh, he was a bad kid.

(T 1452). Appellant confirmed this strategy repeatedly, remaining firm in his position that he did not want a mental health expert involved. (T 1480; 1505; 1719-20; 1868-69). It is also obvious that Woodbury intentionally invoked this strategy so the State could not have its own mental health expert involved. According to standby

counsel Glenn, he and Woodbury discussed how a Rule 3.202 evaluation could be avoided.[18] (T 1869). The record is clear that Woodbury intentionally avoided any mental health mitigation because it would detract from his claim that Haynes tried to rape him. (T 1869; 1877).

**The mitigation evidence in the record was considered**

Appellant next argues that the trial court erred by not considering all of the mitigation evidence available in the record. In *Farr v. State*, 621 So. 2d 1368, 1369 (Fla. 1993), this Court stated that "mitigating evidence *must* be considered and weighed when contained anywhere in the record, to the extent it is believable and uncontroverted." In this case, Appellant argues that the court erred by not considering mitigation evidence contained in a "report" authored by Dr. Sesta which was submitted prior to sentencing.

The trial court did not err when it determined Dr. Sesta's report was not mitigating. This Court in *Campbell v. State*, 571 So. 2d 415, 419-20 (Fla. 1990), established relevant standards of review for mitigating circumstances: Whether a mitigating circumstance has been established by the evidence in a given case is a question of fact and subject to the competent substantial evidence standard, and the weight assigned to a mitigating circumstance is within the trial court's discretion and subject to the abuse of discretion standard. *See also Trease v. State*, 768 So. 2d 1050,

[18] Mr. Glenn was referencing Florida Rule of Criminal Procedure 3.202.

1055 (Fla. 2000) (receding in part from *Campbell* and holding that, although a court must consider all the mitigating circumstances, it may assign "little or no" weight to a mitigator); *Kearse v. State*, 770 So. 2d 1119, 1134 (Fla. 2000) (observing that whether a particular mitigating circumstance exists and the weight to be given to that mitigator are matters within the discretion of the sentencing court).

Here, although Dr. Sesta declared in his report that "[d]efendant has a chronic history of severe and persistent mental illness that presents with periods of mania and psychosis, including hallucinations, paranoid delusions and thought disorder, which have been contributory to his violent offenses," this evidence is certainly not believable and uncontroverted. As previously noted, Appellant made the strategic decision not to present evidence regarding mental health because it would confuse his trial strategy and open the door to a second evaluation. The State most certainly would have attacked the credibility of any mental mitigation presented by Dr. Sesta, thus, because this evidence is not "believable and uncontroverted," and was never presented by Appellant during the penalty phase, the trial court was under no obligation to consider it in mitigation.

The record unequivocally demonstrates that Appellant not only understood the proceedings, but that he had a definitive plan in place. As such, there is no basis upon which to find that the trial court abused its discretion in finding Appellant knowingly, intelligently and voluntarily waived presentation of mental health

mitigation. Further, the court appropriately considered any believable and uncontroverted mitigation evidence in the record.

**ISSUE VI:THE FINDING OF CCP WAS PROPER.**

Woodbury challenges the finding of the CCP aggravator.[19] In Issue VI he asserts there was insufficient evidence that the killing "was a product of cool and calm reflection or that there was no pretense of moral or legal justification." IB 95. The state disagrees.

Four factors are required to prove the CCP aggravator: (1) the killing was a product of cool calm reflection and not an act prompted by emotional frenzy, panic or a fit of rage (cold); (2) the defendant had a careful plan or prearranged design to commit the murder before the fatal incident (calculated); (3) the defendant exhibited heightened premeditation (premeditated); and (4) the defendant had no pretense of or moral or legal justification. *See Eaglin v. State*, 19 So. 3d 935, 947 (Fla. 2009); § 921.141.(6)(i), Fla. Stat. (2017). The focus of the CCP aggravating circumstance "is

[19] Whether an aggravator exists is a factual finding reviewed under the competent, substantial evidence test. When reviewing aggravating factors on appeal, this Court in *Alston v. State*, 723 So. 2d 148, 160 (Fla. 1998), reiterated the review standard, noting that it "is not this Court's function to reweigh the evidence to determine whether the State proved each aggravating circumstance beyond a reasonable doubt—that is the court's job. Rather, our task on appeal is to review the record to determine whether the court applied the right rule of law for each aggravating circumstance and, if so, whether competent substantial evidence supports its finding," quoting *Willacy v. State*, 696 So. 2d 693, 695 (Fla. 1997). *See Williams v. State*, 967 So. 2d 735, 764 (Fla. 2007); *Boyd v. State*, 910 So. 2d 167, 191 (Fla. 2005); *Gore v. State*, 784 So. 2d 418, 432 (Fla. 2001).

the manner of the killing, not the target." *Oliver v. State*, 214 So. 3d 606, 616 (Fla. 2017) (quoting *Doorbal v. State*, 837 So. 2d 940, 961 (Fla. 2003)). *See also Campbell v. State*, 159 So. 3d 814, 830 (Fla. 2015) (CCP aggravator centers on the manner in which the defendant executed the crime.) Legally sufficient evidence supporting a CCP finding includes advance procurement of a weapon, lack of resistance or provocation and the appearance of a killing carried out as a matter of course. *See Campbell*, 159 So. 3d at 830.

There is no question this murder was cold, calculated, and premeditated based on Woodbury's actions and admissions. Although Woodbury later claimed that Mr. Haynes had touched his penis, Appellant never mentioned this in the statement he gave directly after the murder. Moreover, this claim is refuted by Appellant's own statements that the victim appeared to be confused about the randomness of the act. (State's video exhibit 11, Clip 5). Appellant also admitted that he "enjoyed' torturing and killing Mr. Haynes. (State's video exhibit 11, Clip 2).

Woodbury gathered the weapons he had previously cached, barricaded the cell door, and incapacitated Mr. Haynes. Such deliberate planning to make and use such weapons and to prevent people from entering the cell was not a random thought which occurred while Woodbury was in an emotional frenzy or rage. Further, Woodbury did not begin his attack until rounds were complete and a particular "incompetent" corrections officer was on duty. (State's video exhibit 11, Clip 3).

After this, Woodbury engaged in a nearly four hour long, tortuous assault of Mr. Haynes.

Ample evidence also demonstrates that Woodbury's conduct was premeditated, as established by the advance planning of Haynes's murder. Woodbury obtained and sharpened the piece of metal in advance. He gathered the lock and the laundry bag and/or sock in order to create a greater amount of force when he struck the victim. He put on his boots to ensure the greatest damage was caused when he kicked Mr. Haynes. Finally, he barricaded the door. (State's video exhibit 11). Although Woodbury claims that he had been touched by Mr. Haynes and this is what triggered the assault, Woodbury also refers to Haynes starting a Christian prayer circle with other inmates in order to steal money from them, which shows prior animosity toward the victim. These are thin justifications for the murder, however, and are thoroughly negated by his careful and deliberate actions leading up to the attack.

This Court has upheld the application of the CCP aggravator in similar cases: *Doty v. State*, 170 So. 3d 731, 737 (Fla. 2015) (CCP assigned great weight where killing of a fellow inmate was planned and the victim was tied up); *Gill v. State*, 14 So. 3d 946, 963 (Fla. 2009) (CCP upheld where defendant had a longstanding plot in place, gathered weapons in advance, had time to abandon the plan but did not, and murdered cell-mate who offered no resistance); *Williamson v. State*, 511 So. 2d 289, 293 (Fla. 1987) (inmate defendant's argument that if he had not murdered fellow

inmate, the victim would have killed someone else was rejected as a pretense of moral justification); *Tai A. Pham v. State*, 70 So. 3d 485, 498 (Fla. 2011) (legal sufficiency for CCP found where defendant procures murder weapon and killing carried out as a "matter of course"); and *Cox v. State*, 819 So. 2d 705, 723-24 (Fla. 2002) (CCP found in inmate stabbing victim to death for allegedly stealing from defendant).

With respect to CCP, this Court has stated:

> In order to establish the CCP aggravator, the evidence must show that the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold), and that the defendant had a careful plan or prearranged design to commit murder before the fatal incident (calculated), and that the defendant exhibited heightened premeditation (premeditated), and that the defendant had no pretense of moral or legal justification.
>
> ... While "heightened premeditation" may be inferred from the circumstances of the killing, it also requires proof beyond a reasonable doubt of "premeditation over and above what is required for unaggravated first-degree murder." ... The "plan to kill cannot be inferred solely from a plan to commit, or the commission of, another felony." ... However, CCP can be indicated by the circumstances if they point to such facts as advance procurement of a weapon, lack of resistance or provocation, and the appearance of a killing carried out as a matter of course.

*Philmore v. State*, 820 So. 2d 919, 933 (Fla. 2002) (quoting *Farina v. State*, 801 So. 2d 44, 53-54 (Fla. 2001)).

In assessing the CCP aggravator, the court cited *Jackson v. State*, 648 So. 2d 85 (Fla. 1994) for the proper standard. Addressing the "cold" element, the court relied

on *Walker v. State*, 957 So. 2d 560, 581 (Fla. 2007) and found:

> Clips of the defendant's videotaped, post-Miranda interview that were played during the penalty phase establish that the Defendant has a very cold and reasoned basis for the Defendant to believe his actions are fully justified and appropriate. In Clip 2 of the State's penalty phase Exhibit 11, the defendant made statements to investigators which include that '*[the homicide] was the most brutal beat-down imaginable;" "I was so happy to kill someone again;" "I enjoyed torturing [the victim]*. During another video, Exhibit 1, the defendant can be heard singing the lyrics of a heavy metal song, beating the defendant with a lock tied to a laundry bag, and taunting the victim as he lay helpless and incapacitated on his bunk. At one point during the homicide, the defendant screamed to his victim, *"I know it hurts. It's called torture! Welcome to the House of Pain! It actually exists, it's on the ninth level of Hell! I used to run it!"* The Defendant's actions during the homicide and his post-Miranda statements are consistent with his sworn testimony to the jury that if he victim *"came back to life, I would kill him again."*
>
> The murder of Antoneeze Haynes was motivated by a deliberate and cold series of acts that occurred over a 3 hour period of time. As discussed earlier, the Defendant tortured the victim for more than 3 hours by whipping him with a combination lock tied to a laundry bag to increase the force in which it would impact the victim), cutting the victim over his body with a razor blade and/or homemade knife, kicking the victim while wearing boots, and beating the victim with his fists and elbows. At any moment the Defendant could have stopped torturing the victim prior to his death and surrendered to the corrections officers. He did not. The actions of the Defendant were "cold" within the meaning of the CCP aggravator.

(R 289-290) (footnotes omitted).

Moving to the "calculated" element, the court properly relied on the standard set forth *Bell v. State*, 699 So. 2d 674, 677 (Fla. 1997), to conclude that the State had satisfied this element. In so finding, the court stated:

> The Defendant's plan to murder Antoneeze Haynes appears to have been calculated to inflict as much pain as possible to the victim, to delay or inhibit the guards from interfering, and while best preserving the Defendant's [sic] his own immediate protection. Physical evidence that was collected from the crime scene unmistakably proves that the Defendant procured several weapons in advance that were used in the homicide. State's guilt phase Exhibits [sic] 64 is a combination lock that was used to beat the victim to death, guilt phase Exhibit 65 is a piece of sharpened metal, and guilt phase Exhibit 68 is a sharpened needle. The Defendant was seen by witness David Ramos, Corrections Officer Angel Castro, and Major Frank Gatto using one or all of these weapons during the homicide. Guilt phase Exhibit 65 is a homemade weapon with a sharpened edge.
>
> In Clip 1 of State's penalty phase Exhibit 11, the Defendant told the investigators during the post-Miranda interview that he waited to kill the victim until a certain corrections officer was working because he considered her to be incompetent. He then stated that as he tied his work boots, he told the victim that he was going to give him a *"fighting chance to defend himself."* The defendant explained in Clip 3 of Exhibit 11 that he placed paper in the track mechanism of the cell door in order to barricade it and prevent entry from the corrections officers. His explanation was confirmed and corroborated by the testimony of Major Frank Gatto who stated that the door was, in fact, barricaded exactly the way it was described by the Defendant. During Clip 5 of Exhibit 11, the Defendant stated that he knew that he was going to *"kill this dude if the corrections officers play games."* He also told the victim at least 3 times that he had better *"fight for your life because I'm coming to kill you."* The victim appeared to be *"confused at the randomness of the attack."* When asked if he enjoyed murdering the victim, the defendant replied, *"Of course I enjoyed it."*
>
> The Defendant armed himself before the attack, executed the victim in a planned attack, barricading the door to give himself time to execute his plan, and methodically tortured the victim to the point of death. The Court cannot imagine a set of facts, short of dismemberment, which could inflict more pain and suffering than the facts of this case.

(R 291-92). Applying the standard set forward in *Bell*, the court properly

determined that the defendant's behavior was "calculated" within the parameters of the CCP aggravator.

Next, moving to the "premeditated" requirement, the court relied upon *Preston v. State*, 444 So. 2d 939 (Fla. 1984) when it ruled that this component had been satisfied, stating:

> In Clip 2 of State's penalty phase Exhibit 11, the Defendant stated that he killed the victim, "*Premeditatedly*." Later in the same clip, the Defendant stated that after he learned that the victim started a Christian prayer circle with other inmates in order to steal money, *"I was like, you're mine, now."* The Defendant later stated in Clip 5 of Exhibit 11, that he told the corrections officers that if they failed to do what the Defendant instructed them to do, then the Defendant was *"going to kill this dude."* These statements are confirmed and corroborated by State's Guilt Phase Exhibit 1, which is the video that recorded the homicide, where the Defendant can be heard telling the corrections officers that he would kill the victim unless the Department of Corrections sent him back to New Hampshire to facilitate a visit with his father.
>
> The murder of Antoneeze Haynes was committed by the Defendant with heightened premeditation.

(R 292) (footnotes omitted).

Lastly, when discussing the final element of the CCP aggravator, "No pretense of Moral or Legal Justification," the court relied on *Banda v. State*, 536 So. 2d 221 (Fla. 1988), which discussed a situation of proper rebuttal of the otherwise cold and calculating nature of the crime. In its analysis, the trial court stated:

> In this case the Defendant testified that the victim made a sexual advance towards him when he touched his penis while he was asleep. He also stated the victim was fully clothed, which the Defendant understood to be a sign that the victim was preparing for combat and that the Defendant

> would be the target. The Defendant also introduced defense penalty phase exhibits 1 and 2, which are incident reports from former corrections officer David Ramos and Kurt Sanders. The intent of the Defendant in offering each exhibit is corroborate [sic] the Defendant's testimony that the victim made a sexual advance towards him at some point that night. *v* The Defendant basically claims that he was defending himself against an unwanted assault by the victim.
>
> The claim is refuted by many things which are factually set forth in this order. In particular by the Defendant's own statements. He told investigators on the day of the homicide, in Clip 5 of State's penalty phase Exhibit 11, that the reason he killed the victim was because "the bloodlust was upon me." As stated earlier in this order, it is fair to infer from the evidence that the defendant's motivation for the killing was not self-defense but enjoyment. The Defendant told investigators on several occasions throughout State's penalty phase exhibit 11 that he enjoyed the torture and killing of the victim. These statements all serve to discredit the Defendant and undermine his claim that he was defending himself.

(R 293).

CCP is established from the fact that Woodbury targeted Mr. Haynes with the intention of gaining control of the situation in order to negotiate a particular result. Woodbury barricaded himself and the victim in the cell for over three hours, beating and torturing Mr. Haynes the entire time. What is more, is that often this torture was predicated on behavior that originated outside of the cell, meaning it was unrelated to anything Mr. Haynes had said or done. Woodbury planned this attack long in advance by assembling and gathering his weapons, putting on his boots, barricading the cell, and waiting for a particular corrections officer. This Court has affirmed CCP findings where there had been a planned, motivated attack as was Woodbury's

murder of Mr. Haynes. *See Philmore v. State*, 820 So. 2d 919, 933 (upholding CCP finding where defendant went in search of a female victim to carjack); *Mason v. State*, 438 So. 2d 374, 379 (Fla. 1983) (finding CCP where defendant broke into victim's home, armed himself with her kitchen knife, and attacked/killed sleeping victim).

Woodbury cites to *Richardson v. State*, 604 So. 2d 1107 (Fla. 1992) and *Cannaday v. State*, 620 So. 2d 165 (Fla. 1993) to support his argument that his actions were not "cold", but instead emanated from emotion. However, the State disproved the notion that Woodbury's attack occurred when Mr. Haynes made a sexual advance. Despite the fact that Woodbury testified about the alleged touching, the State's interview clips made it clear that the attack on Mr. Haynes was to satisfy Woodbury's "bloodlust" and that the murder was a deliberate and planned event that ended only when the extraction team was about to enter the cell.

Woodbury also relies on *Nelson v. State*, 748 So. 2d 237 (Fla. 1999), to support the assertion that Woodbury had a legal or moral justification for his behavior. IB 97. This argument should fail for the same reasons as the above claim – Appellant's contention that Mr. Haynes touched him was disproved by a significant amount of other evidence which proved that the assault and murder were unrelated to Mr. Haynes conduct.

However, even if the CCP aggravator is stricken, any error would be harmless

because there is no reasonable possibility that it would have affected Appellant's sentence. *Middleton v. State*, 220 So. 3d 1152, 1172 (Fla. 2017). Three remaining aggravators which were each given great weight, would still have supported imposition of the death penalty.[20] Even so, there is competent, substantial evidence to support the finding that the CCP aggravator was proven beyond a reasonable doubt, thus this claim should be denied.

**ISSUE VII: THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING AND CONSIDERING THE PRE-SENTENCE REPORT.**

Appellant argues that the PSI prepared by Department of Corrections' (DOC) probation officer Kristi DeGroat "reads like it was written like a prosecutor," and violated the dictates of *Muhammad* and Florida Rule of Criminal Procedure 3.710.[21] IB 100. Appellant further asserts that the PSI was biased as DeGroat recommended that Woodbury receive a death sentence. A trial court's admission of a PSI is reviewed for abuse of discretion. *Robertson v. State*, 187 So. 3d 1207, 1214 (Fla. 2016). The State submits that not only did Appellant fail to preserve this issue for

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[20]HAC, PVF and that the killing occurred while Appellant was serving three life sentences.

[21] Following *Muhammad*, this Court amended Rule 3.710 and required the Department of Corrections to prepare a comprehensive PSI when the defendant refuses to present mitigating evidence. *See* Amendments to the Florida Rules of Criminal Procedure, 886 So. 2d 197 (Fla. 2004) (giving examples of things the PSI should include, such as, mental health problems, school records, and relevant family background).

appellate review, but also that this claim is without merit.

Despite the fact that Appellant presented sufficient mitigation, and a presentence report was not required by Rule 3.710(b), the court ordered that one be completed. (T 1407). This was done to protect Appellant and to give him the opportunity to disclose any other relevant mitigating evidence. The court pointed out to Appellant that even if the jury came back "12-0 for death, then it's up to me whether it's death or life…I still have a decision to make. So the more information I have, the better it is. Okay?" (T 1410). Woodbury indicated he understood the process and that someone from the State would be conducting the interview. *Id*.

The rule requires the report to be "comprehensive" and include such matters as "previous mental health problems, (including hospitalizations), school records, and relevant family background." *See Fitzpatrick v. State*, 900 So. 2d 495, 524 (Fla. 2005). In *Muhammad v. State*, 782 So. 2d 343 (Fla. 2001), the defendant waived the presentation of all mitigating evidence before the jury and this Court reversed his sentence and remanded for resentencing because the trial judge gave great weight to the jury recommendation. Expressing concern that the defendant would again waive his right to present mitigating evidence, this Court set forth a policy requiring the preparation of a PSI in every case where the defendant does not challenge the imposition of the death penalty and refuses to present mitigation evidence. *Id*. at 363-64. This Court stated:

> To be meaningful, the PSI should be comprehensive and should include information such as previous mental health problems (including hospitalizations), school records, and relevant family background. In addition, the trial court could require the State to place in the record all evidence in its possession of a mitigating nature such as school records, military records, and medical records. Further, if the PSI and the accompanying records alert the trial court to the probability of significant mitigation, the trial court has the discretion to call persons with mitigating evidence as its own witnesses.

*Id*.

Appellant also complains that the PSI prepared by DeGroat "was not meaningful as it lacked a comprehensive summary of Woodbury's mental health history and contained highly inflammatory opinions…", and because the PSI was completed by DOC, it "causes concern whether a DOC officer can provide a PSI constituting a comprehensive and unbiased source of information…" IB 99-100. Appellant does not identify the requirement that the PSI be "unbiased," but implies that such is a requirement of Rule 3.710(b). Obviously, as the Department of Corrections is the only statutorily authorized agency allowed to prepare a PSI, there can be no method of avoiding situations where DOC prepares a PSI in cases involving crimes against inmates or crimes committed by inmates while in DOC custody. Furthermore, section 921.131(1)(l) states that the PSI shall contain "[t]he views of the person preparing the report as to the offender's motivations and ambitions and an assessment of the offender's explanations for his or her criminal activity." In this case, DOC Officer DeGroat complied with Florida statutory law by

giving her views of Woodbury's motivations and explanations for his criminal activity.

Appellant further complains that DeGroat's recommendation that Woodbury be sentenced to death is a violation of *Robertson v. State*, 187 So. 3d 1207 (Fla. 2016), however this wasn't the holding of *Robertson*. In fact, what *Robertson* said was that "the inclusion of a sentencing recommendation in the report does not render [it] invalid". *Id*. at 1216. However, with respect to the PSI containing a sentencing recommendation, *Robertson* references the Committee Note contained in Florida Rule of Criminal Procedure 3.710(b). Actually, while the Committee Note in Rule 3.710 states that DOC "*should* not recommend a sentence" in the PSI when a defendant refuses to present mitigating evidence, Florida Statutes, section 921.231 mandates that the PSI contain a recommendation as to disposition by the court. *See* § 921.231(1)(o), Fla. Stat. (2012).

Neither Woodbury nor his standby counsel ever raised objections to the alleged deficiencies in the PSI or to DeGroat's recommendation after having reviewed the report. (T 1878; 1895). Accordingly, based on his failure to object to the use of the PSI at the penalty phase, Woodbury has waived any objections to the PSI. *See McKenzie v. State*, 153 So. 3d 867, 883, (Fla. 2014) (stating that defendant waived any deficiencies with the PSI when he failed to inform the trial court that information was missing from the report); *Barnes v. State*, 29 So. 3d 1010, 1026

(Fla. 2010) (finding that defendant's complaint regarding the PSI was not preserved by objection below).

Finally, even if this Court were to determine that the PSI in this case was deficient or that DOC should not have recommended a sentence, any error is harmless. First, there is nothing more than a passing comment in the record to show the trial judge ever considered the PSI. Next, the trial judge was well-aware that any recommendation by DOC was not binding on the court, and as DeGroat stated in the PSI, "[s]hould the State present a compelling enough case, along with the information contained herein, this department will stand behind the decision of the courts and the unanimous vote of the jury…" Likewise, the court was fully aware of all of Woodbury's potential mitigating evidence contained in Dr. Sesta's report, which discussed Woodbury's history of mental health issues, prior history in the penal system and his claim of sexual assault. Even assuming, *arguendo*, that the lower court was obligated to treat the mental health diagnosis contained in the report as "believable and uncontroverted," any error in not considering this evidence was harmless.[22] The substantial aggravators in this case clearly outweigh the slight mitigation evidence. *See Bowles v. State*, 804 So. 2d 1173 (Fla. 2001) (finding that

[22] Mitigating evidence must be considered and weighed when contained anywhere in the record, to the extent it is believable and uncontroverted. *E.g., Santos v. State,* 591 So. 2d 160 (Fla.1991); *Campbell v. State,* 571 So. 2d 415 (Fla.1990); *Rogers v. State,* 511 So. 2d 526 (Fla.1987).

aggravators of HAC, CCP, robbery-pecuniary gain and on probation at time of murder "patently overwhelm[ed]" the mitigation of abusive childhood, history of alcoholism, absence of father figure, and lack of education).

Even if the PSI here were deficient, any error was harmless. Appellant was serving three life sentences at OCI when he violently tortured and murdered his cellmate. The trial court found four aggravators applicable to the murder.[23] These aggravators patently overwhelm any possible issue with the PSI.

**ISSUE VIII: THE STATUTORY MITIGATOR REGARDING EXTREME MENTAL OR EMOTIONAL DISTURBANCE WAS PROPERLY REJECTED.**

Woodbury challenges the court's rejection the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. Woodbury asserts that because the trial court used the language "obviates knowledge of right and wrong" in its sentencing order instead of "interferes" with the knowledge of right and wrong, that the court erred in rejecting this statutory mitigator. The rejection of a statutory mitigator is reviewed for abuse of discretion. *Ault v. State*, 53 So. 3d 175, 187 (Fla. 2000).

The State disagrees with Appellant's assertion. The analysis offered by the court in rejecting the statutory mitigation is supported by substantial, competent evidence.

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[23] The aggravating factors were: killing was committed by a person previously convicted of a felony and under a sentence of imprisonment; PVF; CCP; and, HAC. R 284-293.

However, even if the claimed mitigation should have been found, the sentencing decision would not have been different; thus, any alleged error was harmless beyond a reasonable doubt.

This Court in *Campbell v. State*, 571 So. 2d 415 (Fla. 1990), established the relevant standards of review for mitigating circumstances: 1) whether a circumstance is truly mitigating in nature is a question of law and subject to *de novo* review; 2) whether a mitigator has been established is a question of fact and subject to the competent, substantial evidence test; and 3) the weight assigned to a mitigator is within the judge's discretion.[24] *See Kearse v. State*, 770 So. 2d 1119, 1134 (Fla. 2000); *Trease v. State*, 768 So. 2d 1050, 1055 (Fla. 2000) (receding in part from *Campbell* and holding an established mitigator may be assigned "little or no" weight); *Mansfield v. State*, 758 So. 2d 636 (Fla. 2000) (explaining court may reject

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[24] Whether a mitigator is established lies with the judge and "[r]eversal is not warranted simply because an appellant draws a different conclusion." *Sireci v. State*, 587 So. 2d 450, 453 (Fla. 1991); *Stano v. State*, 460 So. 2d 890, 894 (Fla. 1984). Resolution of evidentiary conflicts is the trial court's duty; "that determination should be final if supported by competent, substantial evidence." *Id*. Under the competent, substantial evidence standard of review, the appellate court pays overwhelming deference to the trial court's ruling, reversing only when the trial court's ruling is not supported by competent and substantial evidence. If there is any evidence to support those factual findings, the lower tribunal's findings will be affirmed. When it comes to facts, trial courts have an institutional advantage. Trial courts can observe witnesses, hear their testimony, and see and touch the physical evidence. *Guzman v. State*, 721 So. 2d 1155, 1159 (Fla. 1998) (sitting as fact finder, the trial judge has the superior vantage point to see and hear the witnesses and judge their credibility). An appellate court's review of questions of fact is, therefore, very limited.

mitigator provided record contains competent substantial evidence to support rejection); *Alston v. State*, 723 So. 2d 148, 162 (Fla. 1998); *Bonifay v. State*, 680 So. 2d 413, 416 (Fla. 1996); *Nibert v. State*, 574 So. 2d 1059, 1061 (Fla. 1990) (finding judge may reject claimed mitigator if record contains competent substantial evidence to support decision).

"A trial court has broad discretion in determining the applicability of a particular mitigating circumstance, and this Court will uphold the trial court's determination of the applicability of a mitigator when supported by competent substantial evidence." *Id.; see also Foster v. State*, 679 So. 2d 747, 755 (Fla.1996) ("As long as the court considered all of the evidence, the trial judge's determination of lack of mitigation will stand absent a palpable abuse of discretion.").

Here, when rejecting statutory mitigation, the trial court reviewed the testimony of Appellant and each of the witnesses who testified about Appellant's behavior at the time of the murder. In addition to noting that Appellant failed to offer any expert testimony to support his claim, the court also noted that Dr. Sesta made no mention of Appellant's mental state during the murder. (R 294). While the State acknowledges there does appear to be a scrivener's error in the sentencing memorandum where the trial court omitted the word "not", it is clear the court applied the appropriate standard, thus the reasoning is not undermined. Despite the aforementioned omission, the court properly quoted the standard outlined in *State v.*

*Dixon*, 283 So. 2d 1 (Fla. 1973), noting that "the Florida Supreme Court explained that extreme mental or emotional disturbance as used in section 921.141(6)(b), is interpreted as 'less than insanity but more than the emotions of an average man, however inflamed." (R 295). In its rejection, the court focused on the statements of Woodbury himself noting:

> The Defendant never claimed that he was under the influence of extreme mental or emotional disturbance at the time the offense was committed…The Defendant remained consistent in his statements and testimony that he was touched in a potentially sexual manner by the victim and that the Defendant "reacted to his attempt" and that he "gave him the business." The Defendant stated that in prison you are on your own and you must defend yourself from being abused. He said that other inmates will mistake "kindness for weakness." Defendant said he went "berserk" on the victim.

*Id*.

The court did consider Dr. Sesta's report, but nonetheless, found it did not support statutory mitigation as nothing in it made any reference to Appellant's mental state either when he committed the murder or at the time of sentencing. (R 294). This lack of evidence, along with Woodbury's own testimony, is substantial, competent evidence supporting rejection of statutory mental mitigation.

Although the trial court gave little weight to the existence of emotional disturbance because of the absence of any evidence that it caused Woodbury's actions on the night of the murder, the sentencing order clearly reflects that the trial court considered the evidence and weighed it accordingly. The fact that Woodbury

disagrees with the trial court's conclusion does not warrant reversal. *See James v. State*, 695 So. 2d 1229, 1237 (Fla. 1997) (noting that "[r]eversal is not warranted simply because an appellant draws a different conclusion").

This case can be compared to *State v. Philmore*, 820 So. 2d 919 (Fla. 2002), though in the instant case the State could not offer its own mental health expert. In *Philmore*, a defense expert testified that the defendant suffered from a psychotic disturbance as well as a possible brain injury and posttraumatic stress disorder. *Id*. The State's expert found no credible evidence that the defendant suffered from psychosis or brain damage but agreed that the defendant suffered from an antisocial personality disorder. *Id.* After considering the testimony, the trial court concluded that "[t]he facts and circumstances of the homicide indicate a coherent and well thought out plan....There simply is no record evidence to suggest the defendant was under the influence of extreme mental or emotional disturbance at the time of commission of the homicide." *Id*. Thus, the rejection of the mental mitigator was upheld. *Id*. at 937; *see also Walls v. State*, 641 So. 2d 381, 391 & n. 8 (Fla. 1994) (noting that "[r]easonable persons could conclude that the facts of the murder are inconsistent with the presence of the two mental mitigators" and that "[a] debatable link between fact and opinion relevant to a mitigating factor usually means, at most, that a question exists for judge and jury to resolve"). Similarly, here, the facts show an element of planning - Woodbury gathered weapons, sharpened his prison knife,

barricaded the cell, and waited for a specific officer to be on duty. The facts of the murder are inconsistent with a claim that Woodbury was under the influence of an extreme mental or emotional disturbance.

However, to the extent the court should have found the extreme mental or emotional disturbance mitigator, this alleged error is harmless as it would not have resulted in a life sentence for the homicide had the mitigator been found. *See Lebron v. State*, 982 So. 2d 649, 661 (Fla. 2008) (applying harmless error test when evaluating erroneous finding of aggravation or mitigation); *Morris v. State*, 811 So. 2d 661, 667 (Fla. 2002) (holding error surrounding court's mitigation finding was harmless beyond a reasonable doubt); *Barwick v. State*, 660 So. 2d 685, 695-96 (Fla. 1995) (applying harmless error test regarding mitigation).

First, this was a horrible homicide with very weighty aggravation including capital felony committed by a person previously convicted of a felony and under a sentence of imprisonment, previous conviction of another capital offense, committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification, and HAC.[25] This Court has affirmed death sentences with less

[25] *See Offord v. State*, 959 So. 2d 187, 191 (Fla. 2007) (noting HAC is weighty aggravator described "as one of the most serious in the statutory sentencing scheme."); *Rivera v. State*, 859 So. 2d 495, 505 (Fla. 2003) (finding HAC and prior violent felony aggravators are weighty); *Sireci v. Moore*, 825 So. 2d 882, 887-88 (Fla. 2002) (affirming prior violent felony and HAC are two of the "most weighty" factors in the "sentencing calculus.")

aggravation and more mitigation. *See Singleton v. State*, 783 So. 2d 970 (Fla. 2001) (upholding sentence with prior violent felony and HAC aggravators and substantial mitigation, including extreme mental/emotional disturbance, impaired capacity to appreciate criminality/conform conduct to the law, age, under the influence of alcohol and possibly medication at time of offense, mild dementia, and attempted suicide); *Spencer v. State*, 691 So. 2d 1062, 1066 (Fla. 1996) (affirming sentence with prior violent felony and HAC outweighing extreme mental/emotional disturbance; impaired capacity to appreciate criminality/conform conduct; drug/alcohol abuse; paranoid personality; sexual abuse; honorable military record; good employment; and ability to function in structured environment).

Next, the court found that any of the aggravators alone outweighed the proven mitigation in this case. (R 25). Hence, even adding statutory mental mitigation,[26] which is undermined by Woodbury's own statements about the murder, into the mix of the proven aggravation and mitigation,[27] a life sentence would not have been the result.[28] This Court has affirmed the death sentence in such situations. *Cf. Francis*

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[26] Even if the statutory mitigators were found proven, they need not be given much if any weight, *Trease*, 768 So. 2d at 1055 (holding established mitigator may be assigned "little or no" weight).

[27] The court assigned minimal weight to the mitigator of extreme mental or emotional disturbance and little weight to Woodbury's claim of bipolar disorder. (R 297; 299).

[28] *Cf. Hitchcock v. State*, 991 So. 2d 337, 358 (Fla. 2008) (rejecting ineffectiveness claim based on finding "the extremely weighty aggravation in this case would outweigh the mitigation, even if Dr. Toomer had specifically opined that the

*v. State*, 808 So. 2d 110, 140 (Fla. 2001) (distinguishing cases where trial court completely failed to consider or find uncontroverted mental mitigation from those which could be affirmed because consideration was given to mitigation, but court found the mitigator was unproved); *Smith v. State*, 407 So. 2d 894, 902 (Fla. 1981) (declining to remand for resentencing where court considered mental mitigation, but found testimony did not compel application of mitigators).

There is no evidence to support extreme mental or emotional disturbance. However, even if the extreme mental or emotional disturbance mitigator was applied, the outcome of this case would not have been different or resulted in a life sentence, given the gravity of the aggravators.

**ISSUE IX: THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY EXCLUDING APPELLANT'S PROPOSED JURY INSTRUCTION ON MERCY.**

In his ninth point, Woodbury argues that the trial court erred in denying his proposed jury instructions on mercy. A trial court's denial of special jury instructions is reviewed for abuse of discretion. *See Hudson v. State*, 992 So. 2d 96, 112 (Fla.

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statutory mental health mitigating factors were applicable. The trial court found four aggravating circumstances in this case: (1) Hitchcock committed the crime while he was under a sentence of imprisonment; (2) the crime was committed while Hitchcock was engaged in the enumerated felony of sexual battery; (3) the crime was committed for the purpose of avoiding or preventing a lawful arrest; and (4) the crime was HAC. Given this substantial aggravation, our confidence in his death sentence is not undermined by counsel's failure to solicit Dr. Toomer's opinion regarding the statutory mitigating factors.")

2008). This Court has repeatedly ruled that the standard jury instructions are sufficient. The trial court acted within its discretion to deny Woodbury's proposed special instruction. *E.g.*, *Kilgore v. State*, 688 So. 2d 895 (Fla. 1996); *Ferrell v. State*, 653 So. 2d 367, 370 (Fla. 1995); *Gamble v. State*, 659 So. 2d 242, 246 (Fla. 1995).

In addition to the standard jury instructions being offered by the court, Woodbury proposed the addition of the following:

> - You must consider whether the aggravating factor or factors you have found to be established in this case sufficiently outweigh the mitigating factor or factors you have found to have been established before you may consider imposing a sentence of death. However, regardless of your findings as to aggravating and mitigating circumstances, you are neither compelled nor required to recommend a sentence of death. You may always consider mercy in making this determination.
>
> - Regardless of your prior findings, the law never compels nor requires any juror to return a sentence of death. You may always consider mercy in making this determination. Mercy itself is sufficient to justify a sentence other than death.

(R 554). Importantly, Woodbury simply submitted the proposed instructions to the court. He did not offer any argument in support of the need for them and stated only that they came from the Federal jury instructions and "from the imaginations of my standby counsel." (T 1636-7).

In declining to offer either of the instructions and instead using the standard packet, the trial court noted that the jury is instructed that they may contemplate any

information in front of them with respect to mercy, noting, "the jury can consider anything that it wants to with regard to whether the mitigators outweigh any aggravators that may or may not be proven…So, if they feel sorry for you, they're allowed to do that I think." (T 1716).

The instructions proposed by Woodbury were not required to ensure the consideration of mitigating factors. The "failure to give special jury instructions does not constitute error where the instructions given adequately address the applicable legal standards." *Coday v. State*, 946 So. 2d 988, 994 (Fla. 2006) (quoting *Stephens v. State*, 787 So. 2d 747, 755 (Fla. 2001)). The court did not abuse its discretion in excluding Woodbury's proposed jury instructions.

**ISSUE X: THE TRIAL COURT DID NOT COMMIT FUNDAMENTAL ERROR BY READING THE STANDARD JURY INSTRUCTIONS DURING THE PENALTY PHASE.**

Appellant claims that *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Perry v. State*, 210 So. 3d 630 (Fla. 2106), require the trial court to instruct the jury that they must make findings beyond a reasonable doubt regarding whether the aggravators were sufficient to justify the death penalty and whether those aggravators outweighed the mitigators. IB at 115. Since neither *Hurst* nor *Perry* require the jury to make findings beyond a reasonable doubt as to sufficiency and weighing, there was no error in the jury instructions and this claim should be denied. Further, this claim was waived at trial because the defense affirmatively agreed to the jury instructions at issue.

"Fundamental error is waived under the invited error doctrine because 'a party may not make or invite error at trial and then take advantage of the error on appeal.'" *Universal Ins. Co. of North America v. Warfel*, 82 So. 3d 47, 65 (Fla. 2012) (*citing Sheffield v. Superior Ins. Co.*, 800 So. 2d 197, 202 (Fla. 2001)). Here, after jury instructions were given, the judge confirmed both parties accepted the jury instructions. (R 1616; 1691;1634-35).[29]

Under the Sixth Amendment[30] the only finding a capital sentencing jury must make beyond a reasonable doubt is whether a given aggravator is proven. Further, there is no requirement that capital juries make findings beyond a reasonable doubt as to whether the aggravation is sufficient to justify the death penalty or whether the aggravation outweighs the mitigation. Thus, the trial court did not err in instructing the jury during sentencing and this claim should be denied.

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[29] As previously noted, Woodbury requested, and the court denied, a jury instruction on mercy, but this is unrelated to his current argument.

[30] There are also no Eighth Amendment concerns. The Eighth Amendment requires that "States must give narrow and precise definition to the aggravating factors that can result in a capital sentence." *Roper v. Simmons*, 543 U.S. 551, 568 (2005). The State of Florida has a list of sixteen aggravating factors enumerated in the statute. Fla. Stat. § 921.141(6). These aggravating factors have been deemed sufficient to impose the death penalty by virtue of their inclusion in the statute. Any one of these aggravating factors is sufficient to cause a defendant to be eligible to receive a sentence of death. Thus, if one of these enumerated aggravating factors has been proved beyond a reasonable doubt, any Eighth Amendment concerns have been satisfied.

**ISSUE XI: THE DEATH SENTENCE IS PROPORTIONAL.**

In his final issue on direct appeal, Appellant argues that this Court cannot conduct its proportionality review because not all available mitigating evidence was presented below. Additionally, Appellant again argues that the court should have appointed counsel, over Appellant's specific demand to proceed pro se, to present mental health mitigation. Finally, Appellant argues that the trial court erred by not considering all mitigating evidence available on the record. Because these claims lack merit, this Court should affirm the trial court's sentence of death.

Contrary to Appellant's claim, this Court is capable of conducting its proportionality review. This Court's proportionality review does not involve a recounting of aggravating factors versus mitigating circumstances, rather, it compares the case to similar defendants, facts and sentences. *Tillman v. State*, 591 So. 2d 167 (Fla. 1991). In conducting the proportionality review, this Court compares the case under review to others to determine if the crime falls within the category of both (1) the most aggravated, and (2) the least mitigated of murders. *Almeida v. State*, 748 So. 2d 922, 933 (Fla. 1999).

A review of the aggravating and mitigating evidence established in the instant case demonstrates the proportionality of the death sentences imposed. As previously discussed, the substantial aggravating factors in this case greatly outweigh the slight mitigation found by the trial court. A review of other death penalty cases establishes

that Appellant's death sentences are proportionate.

Significant is that Appellant did not waive the presentation of mitigation evidence in the instant case. Rather, Appellant presented exactly the testimony he wished; first through the corrections officers and then through Appellant himself, who testified before the jury during both the guilt and penalty phases of the trial. During the penalty phase, standby counsel Glenn informed the trial court that he had discussions with Appellant about what was contained in the discovery packet and that the mitigation could be "significant." (T 1865). The trial judge questioned Appellant about his desire not to present this type of mitigation evidence and Appellant told the court "[n]o sir. I mean, I've been telling the jury the same thing the whole time. I don't want to – I don't want to tell them something different now. I don't want to start – going in a different direction. I like – I like where the case is now. (T 1719-20). This is consistent with Appellant's position throughout the trial as he had previously told the court, "That's my story line, I don't want to – I don't want to really mess that up with oh, he was a bad kid." (T 1452).

It is obvious that Appellant intentionally avoided mental mitigation to avoid being examined by a mental health professional retained by the State, specifically asking the trial court to rule that he had presented enough mitigation to avoid the court appointing counsel for him. (T 1480; 1505; 1719-20; 1868-69).

This case involves a gruesome murder committed by an inmate over a period of more than three hours, amounting to nothing less than torture. Further, Appellant was serving three life sentences for three previous first-degree murder convictions. Appellant fails to argue that available mitigation in his case outweighed the four aggravators found. Instead, Woodbury now claims error because the very evidence he refused to offer, evidently because it conflicted with his trial strategy, is not in the record for consideration.

Here, Appellant's death sentence is proportionate when compared to other cases. The State points to the following cases where this Court has found the death penalty proportionate. Two cases, *Gill* and *Doty*, are substantially similar to Appellant's case in underlying facts, procedural history, proven aggravators and applied mitigators.

In *Gill*, this Court found the death sentence was proportionate despite the defendant's history of mental illness. *See Gill*, 14 So. 3d at 965-66. Gill strangled his cellmate and pled guilty to first-degree murder. He waived a sentencing jury and the trial court considered mitigation on his behalf. *Id.* at 950, 952. Three strong aggravators were found in Gill's case, including the felony was committed by a person under a sentence of imprisonment, PVF and CCP. Two statutory mitigating factors were found, including Gill committed the murder under extreme emotional distress or mental disturbance and his ability to appreciate the criminality of his act

was impaired. *Id.* at 956-57. Nonetheless, Gill's death sentence was proportionate. *Doty* is much like Appellant's case where the defendant was sentenced to death after pleading guilty to the killing of a fellow inmate. *See Doty*, 170 So. 3d at 733. Doty planned the murder, procured the weapon and laid in wait to attack the victim. *Id.* at 734. Doty lured the victim into a room, tricked him into allowing his hands to be tied, and then choked and stabbed him repeatedly. *Id.* Doty's trial court found three aggravators including PVF, that the capital felony was committed while under a sentence of imprisonment and CCP, and assigned great or very great weight. *Id.* at 744. The aggravators were weighed against seven nonstatutory mitigators, including a history of significant mental health issues. *Id*. After weighing the three aggravators and mitigation presented, this Court determined the death sentence was proportionate. *Id.* at 745.

In addition to *Doty* and *Gill*, this Court has found other capital cases and death sentences proportionate involving inmate on inmate murders, as well as the same or similar aggravators and mitigators. *See Kilgore v. State*, 688 So. 2d 895 (Fla. 1996) (holding death sentence for prison inmate proportionate in stabbing death of fellow inmate, findings of two aggravating factors (under sentence of imprisonment and PVF) and two statutory mitigating factors (extreme mental or emotional disturbance and capacity to conform was substantially impaired)); *Rogers v. State*, 2019 WL 4197021 (Fla. Sept. 5, 2019) (holding death sentence for killing of fellow inmate

was proportionate in light of weightiest aggravation and weak mitigation, where 3 of the weightiest aggravators and 49 non-statutory mitigators found); *Rodgers v. State*, 3 So. 3d 1127, 1133 (Fla. 2009) (finding death sentence proportionate even though trial court found "substantial mitigation exists," defendant had history of mental illness and sexual abuse, but also found two serious aggravators (CCP and PVF)); *Wall v. State*, 238 So. 3d 127 (Fla. 2018) (death sentence after guilty plea proportionate upon finding of HAC, CCP and PVF aggravators, despite defendant's history of mental illness from a young age, numerous diagnoses and abuse). Woodbury's death sentence is proportional.

## CONCLUSION

Based upon the foregoing, the State requests respectfully this Court affirm Michael Woodbury's conviction and death sentence.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed with the Court and a copy of it has been served to Mara C. Herbert, Assistant Public Defender, and Paul Edward Petillo, Assistant Public Defender, Office of the Public Defender, 421 Third Street, West Palm Beach, FL 33401 this 2nd day of December, 2019.

## CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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