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IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR OKEECHOBEE COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

MICHAEL LAWRENCE WOODBURY,

Defendant.
_____/

FELONY DIVISION
CASE NO. 472018CF000164A

SENTENCING ORDER

THIS CAUSE came before the Court for sentencing upon the Defendant's entry of a plea of Guilty to the charge of First Degree Murder. Pursuant to Florida Statute 921.141, the Court conducted a separate sentencing proceeding to determine whether the Defendant should be sentenced to death or life imprisonment. This hearing (penalty phase) was held before the trial jury. After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury unanimously found that four (4) aggravating factors exist. No member of the jury found that any mitigating circumstance was established. The jury unanimously found that the Defendant should be sentenced to death. The Court conducted a separate hearing pursuant to Florida Statute 921.141(3), known as a *Spencer* hearing, to consider each aggravating factor found by the jury and all mitigating circumstances which the Defendant presented at any point during the trial, penalty phase, or *Spencer* hearing. 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. The historical background of the case, the facts of the case, the findings of the jury, and the findings and of the Court are set forth below.

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HISTORICAL BACKGROUND OF THE CASE:

On March 13, 2018, the Defendant, Michael Lawrence Woodbury, was indicted for First Degree Murder by the Okeechobee County Grand Jury for the death of Antoneeze Haynes. The date of the alleged murder was September 22, 2017. The offense location was at the Okeechobee Correctional Institution, located in Okeechobee County, Florida.

On March 15, 2108 a first appearance hearing was conducted by Judge Jerald Bryant. The judge found probable cause and upon the Defendant requesting not to be appointed an attorney, the judge conducted a *Faretta* inquiry. The judge determined that the Defendant made a knowing and voluntary decision to represent himself. The judge appointed the Office of the Public Defender, Nineteenth Judicial Circuit, to act as stand-by counsel.

On March 22, 2018, the State filed its Notice of Intent to Seek the Death Penalty, citing four aggravating factors which the State intended on proving.

On March 23, 2018, the undersigned judge was assigned by the Chief Judge of the Nineteenth Judicial Circuit to preside over this case. The undersigned judge has met the legal requirements to preside over a death penalty case in the State of Florida.

On April 12, 2018 (mailed on April 9, 2018), the Defendant filed a pro se Demand for Speedy Trial. The Court proceeded in compliance with speedy trial requirements. On April 12, 2018, the Court set a hearing on the demand and issued an order to transport the Defendant from the Florida State Prison to Okeechobee County. The hearing was set on April 16, 2018.

On April 16, 2018, the Court conducted a *Faretta* inquiry and again determined that the Defendant was making a knowing and voluntary decision to represent himself and that he was competent to make that decision. The Court granted the Defendant's request to proceed pro se. The Court again appointed the Office of the Public Defender as stand-by counsel. This pro-se representation continued throughout the entire proceeding with the Court conducting the *Faretta*

inquiry more often than at each critical phase. The Defendant was arraigned by the Court. The Defendant entered a plea of not guilty and requested a trial by jury. The Court informed the Defendant of the effect of the demand for speedy trial. The Defendant understood and continued to demand speedy trial. The State, the Defendant, and the Court had a lengthy discussion of the discoverable items which would be supplied and when they would be provided.

On April 16, 2018 the following additional orders were issued:

1) The trial was set for May 14, 2018.
2) A motion hearing was scheduled on May 4, 2018 for any motions which may be filed by the Defendant.
3) The clerk of court was ordered to summons enough jurors to obtain 300 potential jurors to appear on May 7, 2018. On that date the judge would give each potential juror a copy of a questionnaire and briefly explain to them the schedule.
4) The State was directed to prepare a questionnaire for the potential jurors and to provide the proposed questionnaire to the Court and the Defendant prior to the hearing date of May 4, 2018, at which time it would be finalized by the parties.
5) The Defendant inquired as to a jury consultant and the Court advised the Defendant that if he wished to have that issue addressed he should file a motion.
6) The Defendant was advised to file any motions to object to any evidence on or before April 25, 2018.
7) The State was ordered to supply a "hard copy" of all discovery, including color copies of any photographs, and to supply a "thumb drive/zip drive" with all audio and video recordings to the Defendant prior to his being transported back to the Florida State Prison.
8) Any additional discovery which would relate to a penalty phase, if it were necessary, was ordered to be given to the Defendant on May 4, 2018.
9) Inquiry was made by the Court as to obtaining clothing for the Defendant to wear at trial, the Defendant asked to wear his prison uniform.

On May 4, 2018, the Court conducted a *Faretta* inquiry and again granted the Defendant's request to proceed pro se. The Court confirmed that the Defendant did not file any motions. The Defendant stated that he has witnesses which he would like to call, therefore the Court ordered that he make a list and provide the list to a particular Sergent who would be in the jail to receive the list on May 5, 2018 and that the clerk of court would issue subpoenas for the witnesses. The Defendant waived any right to have any DNA tested, if there was any. The Defendant acknowledged receipt of the State's notice of intent to seek the death penalty. The Defendant waived his right to obtain any experts regarding mitigation evidence, including mental health. The parties jointly stipulated to a statement (admonition) to be read by the judge to the prospective jurors. The Defendant accepted all of the remaining discovery, which could be used in the penalty phase of the trial, in open court. The Defendant requested and approved of editing portions of the video which the State was going to offer into evidence. The Defendant was given the opportunity to propose any additional edits of the video by marking the written transcript of the audio portion of the video/audio recording and providing the marked transcript to a particular Sergent on or before Monday, May 7, 2018. The Defendant restated that he wished to be dressed in his prison uniform during the trial.

On May 7, 2018, the Court addressed the prospective jury by reading the statement which was stipulated to by the parties on May 4, 2018. The questionnaires, which were also stipulated to, were provided to the jurors.

On May 14, 2018, the Court conducted a *Faretta* inquiry and again granted the Defendant's request to proceed pro se. Jury selection began.

On May 15, 2018, the Court conducted an abbreviated *Faretta* inquiry and asked if the Defendant continued to represent himself and the Defendant said he did. Jury selection continued.

On May 16, 2018, the Court conducted an abbreviated *Faretta* inquiry and asked if the Defendant continued to represent himself and the Defendant said he did. The Jury selection was completed and the Jury was sworn in.

On May 17, 2018, the Court conducted a *Faretta* inquiry and again granted the Defendant's request to proceed pro se. The openings and evidence portion of the trial began.

On May 18, 2018, the Court conducted an abbreviated *Faretta* inquiry and asked if the Defendant continued to represent himself and the Defendant said he did. The trial continued on May 19, 2018 and May 20, 2018.

On May 21, 2018, the Court began to conduct a *Faretta* inquiry, however the Defendant made a motion to not conduct the inquiry at the time, as he felt the State and the Court were infringing on his Constitutional right to represent himself. The Court granted the motion, after an abbreviated inquiry. On May 21, 2018, after the presentation of evidence, including the testimony of the Defendant, but just prior to the State's cross-examination of the Defendant, and before the jury would have deliberated, the Defendant entered a guilty plea to First Degree Murder. The Court conducted another *Faretta* inquiry and again granted the Defendant's request to proceed pro se. A plea form was utilized and the Court determined after a complete colloquy that the plea was entered knowingly and voluntarily, with a full understanding by the Defendant of his rights. It should be noted that the Defendant had mentioned that he was thinking, as early as during the April 16, 2018 hearing, about entering a plea. The jury was excused with instructions to return for the penalty phase. The State requested and the Court appointed a mental health expert to conduct a comprehensive mental health evaluation and the Court ordered a presentence investigation.

On July 23, 2018, the Court conducted a *Faretta* inquiry and again granted the Defendant's request to proceed pro se. The penalty phase commenced. Before the jury began deliberating, the Defendant waived any argument or factual support for mental health mitigation. The Court inquired as to the Defendant's decision and the Court found that his waiver was based upon fact and that the Defendant's waiver was freely and voluntarily made.

On July 24, 2018, the jury found that four aggravating factors were proven beyond a reasonable doubt and the jury unanimously found that the aggravating factors warranted a possible sentence of death. No juror found that any mitigating circumstances exist. The jury found that

the aggravating factors that were proven beyond a reasonable doubt outweigh the mitigating circumstances. The jury voted 12-0, unanimously, in finding that the Defendant should be sentenced to death.

On September 21, 2018, the Court conducted a *Faretta* inquiry and again granted the Defendant's request to proceed pro se. The Court conducted a *Spencer* hearing. The Court made it clear to the Defendant that this was his opportunity to provide any information to the Court which he thought would assist in the Court's determination as to follow the jury's finding that the Defendant should be sentenced to death or for the Court to override that finding and impose a sentence of life imprisonment.

The Defendant testified to five things which he wanted the Court to be aware of. Those items are fully discussed below in the mitigation section. The Court ensured that the Defendant had nothing else to say before proceeding further.

The State asked questions regarding any mental health issues. Additionally, the State requested that the Court inquire again into the Defendant's waiver of any mental health mitigation. Although the situation in this case was different, the Court inquired of the Defendant and stand-by counsel according to the procedure set forth in *Koon v. Dugger*, 619 So.2d 246 (Fla. 1993). It is well established that a competent defendant may waive the right to present mitigation during the penalty phase of a capital trial. *Russ v. State*, 73 So.3d 178 (Fla. 2011). In *Koon*, the Florida Supreme Court set forth a three part procedure when a defendant waives his right to present mitigating evidence. First, the counsel must inform the Court on the record of the defendant's decision. In this case, the Defendant represented himself and he did make that decision and he did inform the Court. Second, the counsel must indicate whether, based on his investigation, he reasonably believes there is mitigating evidence that could be presented and what the evidence would be. In this case, the State called the stand-by counsel to inquire as to these issues. The stand-by counsel, Stanley Glenn, testified that he did not investigate any mental mitigation defense due to his stand-by status. He did review Dr. Sesta's report and did answer any questions which the Defendant had. He stated that the Defendant understood that he could pursue any potential

mental health mitigation issues, that the Defendant did have the report, and that the Defendant made a knowing decision not to pursue any mental health mitigation. On cross-examination of Mr. Glenn, the Defendant asked if it was true that the Defendant did not pursue any potential mental health issues because he "had a strategy" and had a "story lined up for the jury." Mr. Glenn agreed. The Defendant stated it was a strategic decision. Third, the Court should require the defendant to confirm on the record that his counsel (again in this case he represented himself) has discussed the matters with him and that the defendant still wished to waive presentation of potential penalty phase evidence. The Court did so and the Defendant stated that "I told you in the very beginning that I had no plans to go that route."

The Court also made findings consistent with the Florida Supreme Court decision of *Muhammad v. State*, 782 So.2d 343 (Fla. 2001). As noted in *Russ, Id.*, "Mitigating evidence must be considered and weighed when contained 'anywhere in the record to the extent it is believable and uncontroverted'." *Russ* continues in stating "[h]owever, we have repeatedly explained, 'if a defendant elects not to submit proof of mitigating circumstances, the trial court is not required to accept potential mitigating circumstances as proven based on defense counsel's proffer of evidence.'" In *Muhammad*, the Court stated "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." In this case, this Court finds that, based upon the entire record, there is no indication that there is the probability of significant mitigation. While there is no indication in the record, the Court also has the benefit of its own observation of the Defendant who conducted himself through all of the proceedings in an appropriate manner, showing intelligence and strategic forethought. Additionally, the Defendant was always respectful to the Court, the Court personnel, the attorneys, the potential jurors, the jury, and the witnesses. The State submitted a sentencing memorandum to the Court and to the defense prior to sentencing.

On September 21, 2018, at the conclusion of the *Spencer* hearing, the Court inquired if there was any legal reason why the case cannot proceed to sentencing. The Defendant did not object. The State did not object. The Court took a recess to review the sentencing memorandum provided by the State. The Court pronounced its sentence.

THE FACTS OF THE CASE:

On September 22, 2017, while an inmate in the Okeechobee Correctional Institution, the Defendant repeatedly cut, severely beat, held the victim hostage, tortured, and threatened to kill his cellmate Antoneeze Haynes. The assault lasted in excess of three hours. The cutting of the victim was done with the use of a razor blade and/or a homemade blade. The beating was accomplished with the use of a pad-lock, in the Defendant's hand or while in a laundry bag (to assist in increasing the force with which it would impact the victim). The victim was unable to escape as he was in a locked and barricaded prison cell. It appears that the victim never had the opportunity to get himself out of his bunk to provide any defense. The Defendant had pushed the prison cell door off the track and inserted paper in the track to make it extremely difficult and time consuming for the prison guards to open the door. The prison guards were able to speak with the Defendant, who continued the attack until armed response team officers were ready to extract the Defendant from the barricaded cell. Prior to the forcible extraction, the Defendant eventually complied with the guard's requests to remove the barriers and permit the guards to open the cell door. The multiple lacerations, fractures to the skull and parts of the victim's body, as well as other injuries inflicted by the Defendant resulted in the victim's death. Two hours of the incident were recorded on video, which showed the view of the cell door, the Defendant, and the guards. The video continued through the extraction, where the victim was seen laying face down on his bunk covered in blood, with vast amounts of blood on the wall and bunk area. The autopsy photographs included the injuries over the victim's body and the severe damage to the top of the victims skull where the lock was used to decimate the top of the skull. No other person had access to the cell or was in the cell other than the victim and the Defendant during the entire attack. The Defendant was questioned and admitted to the beating. During the Spencer hearing the Defendant stated that the victim tried to rape him and then the victim *"got the business."*

The Defendant made a knowing and a voluntary decision to exercise his Constitutional right to represent himself in this matter. The Court did appoint stand-by counsel to be available to the Defendant if he at any time desired to have counsel represent him. Two death penalty experienced attorneys from the Office of the Public Defender were by the Defendant's side

during the entire trial and at least one of the attorneys was present at the *Spencer* hearing and Sentencing. There were 12 motion hearing days, trial days, or sentencing hearing days in this matter where the Defendant came to Court. The Court conducted 13 different inquires as the Defendant's choice to represent himself. There were 9 full *Faretta* inquiries (these at the start of a phase of the case) and 4 abbreviated *Faretta* inquires (these during the phase of a trial, although not required). The Defendant was fully aware of his right to counsel, the advantages and disadvantages of self-representation, and the fact that an appointed attorney was without cost. The Defendant is competent to make that decision. The Defendant was not being coerced into the decision. The Defendant regularly was opposed to being questioned on the issue, as he believed it to be harassment of the exercising of his fundamental and Constitutional right to represent himself. The Court advised the Defendant that if at any moment he changed his mind and desired counsel he should tell his stand-by counsel, stand-up, or raise his hand to get my attention and the he would have counsel. At no point did the Defendant ever waiver on his decision.

FINDINGS OF THE JURY:

The Jury, after hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, deliberated and rendered a penalty phase verdict unanimously finding that the following aggravating factors were established by the State beyond a reasonable doubt:

1. Section 921.141(6)(a) - The capital felony was committed by a person previously convicted of a felony and under sentence imprisonment or placed on community control or on felony probation.

2. Section 921.141(6)(b) – The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

3. Section 921.141(6)(h) – The capital felony was especially heinous, atrocious, or cruel.

4. Section 921.141(6)(i) – The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral of legal justification.

The Jury, after hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, deliberated and rendered a penalty phase verdict unanimously finding that the aggravating factors are sufficient to warrant a possible sentence of death.

The Jury, after hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, deliberated and rendered a penalty phase verdict finding that no single individual juror found that one or more mitigating circumstance was established by the greater weight of the evidence.

The Jury, after hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, deliberated and rendered a penalty phase verdict unanimously finding that the aggravating factors that were proven beyond a reasonable doubt outweigh the mitigating circumstances established.

The Jury, after hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, deliberated and rendered a penalty phase verdict stating that "[h]aving unanimously found that at least one aggravating factor has been established beyond a reasonable doubt, that the aggravating factors are sufficient to warrant a sentence of death, and the aggravating factors outweigh the mitigating circumstances, we the jury unanimously find that Michael L. Woodbury should be sentenced to death."

FINDINGS AND CONSIDERATION BY THE COURT:

AGGRAVATING CIRCUMSTANCES

The Court hereby finds that the following aggravating factors have been found by the jury to be proven beyond a reasonable doubt and that the Court also finds that the evidence fully supports the finding of all four of the findings, beyond a reasonable doubt.

1. **Section 921.141(6)(a) - The capital felony was committed by a person previously convicted of a felony and under sentence imprisonment or placed on community control or on felony probation.**

The crime occurred while the Defendant was an inmate in the Okeechobee Correctional Institution, serving a sentence of three (3) life sentences for three (3) counts of First Degree Murder from the State of New Hampshire. See Penalty Phase Exhibits 5 and 8. The crime occurred in a cell of the Okeechobee Correctional institution. There is no doubt of these facts and they are proven beyond any reasonable (or any) doubt. Great weight is assigned to this factor.

2. **Section 921.141(6)(b) – The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.**

The evidence during the penalty phase proves beyond a reasonable doubt that the Defendant has been convicted of the following 3 capital felony crimes or 6 felonies involving the use or threat of violence to the person. [i](endnote)

1) Armed Robbery. On November 30, 1994, the Defendant committed armed robbery of Karen's Variety Store in Windham, Maine. The Defendant entered a plea to the charge and was sentenced to 7 years in the Department of Corrections (suspended after 2 years) followed by 4 years of probation. See Penalty Phase Exhibit 1.

2) Robbery. On October 29, 1996, the Defendant committed a robbery of Carlene Rowe in Cumberland County, Maine. See Penalty Phase Exhibits 6 and 7.

3) Robbery. On November 7, 1996, the Defendant committed a robbery of Alexandra Wentworth in Cumberland County, Maine. See Penalty Phase Exhibits 6 and 7.

4) Robbery. On November 8, 1996, the Defendant committed a robbery of Barbara Pruitt in Cumberland County, Maine. See Penalty Phase Exhibits 6 and 7.

5) Attempted Armed Robbery. On December 16, 1996, the Defendant committed attempted armed robbery of M&R discount Cards in Pasco County, Florida. The Defendant entered a plea to the charge and was sentenced to 66 months in the Department of Corrections. See Penalty Phase Exhibit 9.

6) Armed Robbery. On December 17, 1996, the Defendant committed armed robbery of a Barnett Bank in Pasco County, Florida. The Defendant entered a plea to the charge and was sentenced to 66 months in the Department of Corrections. See Penalty Phase Exhibit 9.

7) First Degree Murder. On July 2, 2007, the Defendant committed the crime of First Degree Murder for the killing of James Walker in a military surplus store in Conway, New Hampshire. The Defendant was sentenced to Life imprisonment in the Department of Corrections. See Penalty Phase Exhibit 5.

8) First Degree Murder. On July 2, 2007, the Defendant committed the crime of First Degree Murder for the killing of William Jones in a military surplus store in Conway, New Hampshire. The Defendant was sentenced to Life imprisonment in the Department of Corrections. See Penalty Phase Exhibit 5.

9) First Degree Murder. On July 2, 2007, the Defendant committed the crime of First Degree Murder for the killing of Gary Jones in a military surplus store in Conway, New Hampshire. The Defendant was sentenced to Life imprisonment in the Department of Corrections. See Penalty Phase Exhibit 5.

Additionally, the Defendant admitted during the penalty phase that he did commit the 3 murders and that he is serving 3 life sentences as a result of the crimes. There is no doubt that this factor has been proven beyond any reasonable doubt. Great weight is assigned to this factor.

3. Section 921.141(6)(h) – The capital felony was especially heinous, atrocious, or cruel. An aggravating factor exists if the "capital felony was especially heinous, atrocious, or cruel."

The words in this factor are defined. "Heinous" means extremely wicked or shockingly evil. "Atrocious" means outrageously wicked and vile. "Cruel" means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. The jury instruction includes that "[t]he kind of crime intended to be included as especially heinous, atrocious, or cruel is one accompanied by additional acts that show that the crime was conscienceless or pitiless and was unnecessarily torturous to the victim.

The Florida Supreme Court has stated that the homicide must not be a crime of passion, but must be meant to be deliberately and extraordinarily painful. *Porter v. State*, 564 So. 2d 1060 (Fla. 1990). The finding of HAC must consider the ordeal of the victim. *Copeland v. State*, 457 So. 2d 1012 (Fla. 1984). The effect upon the victim must be considered in determining the existence of HAC, along with a finding that the victim was tortured either physically or emotionally by the killer. *Clark v. State*, 443 So. 2d 973 (Fla. 1983) and *Cook v. State*, 542 So. 2d 964 (Fla. 1989). The length of time that elapsed from the time the attack started until death is a fact that holds considerable weight when analyzing this aggravator. *Banks v. State*, (700 So. 2d 363 (Fla. 1997) (HAC upheld where 10 year old victim was brutally raped for 20 minutes before the defendant shot her to death); *Wyatt v. State*, 641 So 2d 1336 (Fla. 1994) (HAC upheld where the victims were acutely aware of their impending deaths because they were abused for 20 minutes prior to being shot in the kneeling position); *Cave v. State*, (HAC upheld where victim was taken at gunpoint from a store and pled for her life during the 15 minute ride to isolated area where she was then stabbed and shot to death).

Dr. Shanedelle Norford of the District Nineteen Medical Examiner's Office testified during the guilt phase that the victim suffered the following injuries:

1) At least 21 lacerations and abrasions to the face and skull;
2) Dislocated mandible;
3) Hemorrhages to both eyes;
4) Multiple abrasions and lacerations to the torso and back;
5) Multiple abrasions and lacerations to the arms, legs, and feet;
6) Multiple broken fingers, which were consistent with someone bending the finger backwards and touching the knuckle.

Dr. Norford found that the victim died as a result of blunt force trauma and suffered tremendously. Her testimony was corroborated by multiple crime scene photos and a video of the crime that recorded the Defendant's barbaric and pitiless actions. [ii]

The facts of this case show that 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. Former Corrections Officer David Ramos even testified that he saw the defendant methodically break some of the victim's fingers by bending them backward so that each fingertip touched the corresponding knuckle. The Defendant's post-*Miranda* statement to investigators in penalty phase Exhibit 11 corroborate the testimony of the medical examiner. In Clip 4, the Defendant was asked the question, *"How long do you think it took to torture this guy?"* The Defendant's immediate response was to laugh for almost 10 seconds and then to state, *"Well, I was getting tired...I broke the padlock [on him]...I started off with soft flesh to give him pain..."*. The Defendant's intent was to torture the victim and eventually inflict death.

There is overwhelming evidence that supports the jury's finding of the HAC aggravator in this case. Great weight is assigned to this aggravating factor.

4. Section 921.141(6)(i) – The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral of legal justification.

To support the cold, calculated and premeditated (CCP) aggravator, a jury/court must find that (1) the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage, (2) the defendant had a careful plan or prearranged design to commit murder before the fatal incident, (3) the defendant exhibited heightened premeditation, and (4) the defendant had no pretense of moral or legal justification. *Jackson v. State*, 648 So. 2d 85 (Fla. 1994). Heightened premeditation is required and can be demonstrated by the manner of the killing, but the State must show that the defendant planned or prearranged to commit the crime of murder before the crime began. *Rogers v. State*, 511 So. 2d 526 (Fla. 1987). *See also, Hamblen v. State*, 527 So. 2d 800 (Fla. 1988); *Thompson v. State*, 565 So. 2d 1311 (Fla. 1990). Such a plan exists when the facts show a particularly lengthy, methodic, or involved series of atrocious events or a substantial period of reflection and thought by the defendant. *Preston v. State*, 444 So. 2d 939 (Fla. 1984). The following addresses each element of the aggravator:

"Cold" - In order to prove this element, the State was required to prove that the murder was the product of a cool and calm reflection by the defendant, and not an act of emotional frenzy or panic or a fit of rage. *Walker v. State*, 957 So. 2d 560, 581 (Fla. 2007). A review of the case law suggests that "coldness" can most easily be defined by what it is not. Coldness is <u>not</u> demonstrated where the defendant is highly emotional instead of contemplative. *Thompson v. State*, 565 So. 2d 1311 (Fla. 1990)(emphasis added). *See also, Santos v. State*, 591 So. 2d 160 (Fla. 1991)(a murder is not "cold" where the acts were prompted by "wild emotion"). A murder is not "cold" where part of the defendant's motivation is to rob the victim. *Nibert v. State*, 508 So. 2d 1 (Fla. 1987). *See also, Gore v. State*, 599 So. 2d 978 (Fla. 1992). A murder is not "cold" where the defendant was motivated by jealousy and depression and did not show analytical thinking prior to the killing. *Mahn v. State*, 714 So. 2d 391 (Fla. 1998). Likewise, evidence of a defendant's extensive cocaine usage at the time of the premeditated murder can negate the coldness element to this aggravator. *White v. State*, 616 So. 2d 21 (Fla. 1993). *But see, Evans v. State*, 800 So. 2d 182 (Fla. 2001);

Guardado v. State, 965 So. 2d 108 (Fla. 2007)(both standing for the proposition that an emotionally disturbed defendant, or a defendant who is a chronic drug abuser, can still have the ability to make a "careful plan to commit murder").

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.[iii] 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 during the penalty phase, in which he volunteered during his testimony to the jury that if the 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.

"Calculated" - In order to prove this element, the Florida Supreme Court has held that the "calculated" element to this aggravator has been established in cases where a defendant arms himself in advance, kills execution-style, and has time to coldly and calmly decide to kill. *Bell v.*

State, 699 So. 2d 674, 677 (Fla. 1997)(defendant announced that he intended to kill the victim and purchased a gun for that purpose). *See also*, *Eutzy v. State*, 458 So. 2d 755 (Fla. 1984)(CCP upheld where defendant procured gun in advance, victim was shot once in the head execution-style, and there were no signs of a struggle); *See also, Eaglin v. State*, 19 So. 3d 835, 948 (Fla. 2009)(In plotting their escape, inmate co-defendants stated that "they would kill any bitch that got in their way." The inmates then procured a sledgehammer and killed two guards.). The hallmarks of CCP include "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." *Williams v. State*, 37 So. 3d 187, 196 (Fla. 2010) citing *Franklin v. State*, 965 So. 2d,79, 98 (Fla. 2007). *See also, Swafford v. State*, 533 So. 2d 270 (Fla. 1988), *cert. denied*, 489 U.S. 1100, 109 S. Ct. 1578 (1989)(same).

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 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 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 witnesses 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.

"Premeditated" - The third element of the CCP aggravator is that the defendant committed the murder with a plan involving heightened premeditation. Such a plan exists when the facts show a particularly lengthy, methodic, or involved sense of atrocious events or a substantial period of reflection and thought by the defendant. *Preston v. State*, 444 So. 2d 939 (Fla. 1984). The advance procurement of a weapon and vast amounts of ammunition, the reloading, the lack of resistance or provocation, and the appearance of a killing carried out as a matter of course are all indications of heightened premeditation. *Cruse v. State*, 588 So. 2d 983 (Fla. 1991).

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. [iv]

The murder of Antoneeze Haynes was committed by the Defendant with heightened premeditation.

"No Pretense of Moral or Legal Justification" - The final element of the CCP aggravator is that the defendant did not have a pretense of moral or legal justification in committing the homicide. "Pretense of moral or legal justification" means any claim or excuse that, though insufficient to reduce the degree of homicide, nevertheless rebuts the otherwise cold and calculating nature of the homicide. *Banda v. State*, 536 So. 2d 221 (Fla. 1988). An example of a fact pattern where the State failed to prove this element was a case where the victim made constant and believable threats of violence towards the defendant. *Christian v. State*, 550 So. 2d 450 (Fla. 1989).

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 that 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 officers David Ramos and Kurt Sanders. The intent of the Defendant in offering each exhibit is corroborate 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 that 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.

The four elements necessary to establish that this aggravating factor are met and the State has proven this aggravator beyond a reasonable doubt. Great weight to this aggravating factor.

MITIGATING CIRCUMSTANCES

The Court will address all possible mitigating circumstances set forth in Florida Statute 921.141(7), which are set forth below:

1. The defendant has no significant history of prior criminal activity.

This possible mitigating circumstance was not argued by the Defendant, nor does it factually apply. As discussed herein, the Defendant has 9 prior convictions for capital felony crimes or felonies involving the use or threat of violence to the person.

2. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

The Defendant did not present any expert testimony, offer any testimony, or offer any exhibits to establish this mitigating circumstance. The Defendant did testify that he had been previously diagnosed with bi-polar disorder at the age of 18. During the *Feretta* inquiry on April 16, 2018, the Defendant testified that he has had some doctors diagnosis him with bi-polar disorder and others have said he did not have bi-polar disorder. He said that he personally had doubts about the diagnosis. There is evidence that he has been medicated for the disorder since the incident. The Defendant testified that the disorder did not cause him to engage in the actions of September 22, 2017. The State requested that the Court appoint a mental health expert to examine the Defendant and to review the records of the Defendant. That report was admitted by the Court into evidence and was reviewed by the Court at the *Spencer* hearing. Dr. Sesta diagnosed the Defendant with bi-polar disorder and some degree of Schizophrenia. Nothing contained in the report or the Pre-Sentence Investigation shows any probability of significant mental health mitigation as it relates to the mental state at the time of the offense or even at this time. The Defendant never claimed that he was under the influence of extreme mental or emotional disturbance at the time the offense was committed. Dr. Sesta, in his evaluation report, never raises the issue that the Defendant 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 that you must defend yourself from being abused. He said that other inmates will mistake *"kindness for weakness."* The Defendant said that he went *"berserk"* on the victim.

In order to establish this mitigating circumstance a defendant must show that the mental disturbance is one which "interferes with but does obviate the defendant's knowledge of right and wrong." *Duncan v. State*, 619 So.2d 279 (Fla. 1993). In *State v. Dixon*, 283 So.2d 1 (Fla. 1973), 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." There is evidence in this case that the Defendant was upset, emotionally inflamed, and angry. There is no evidence that the Defendant's emotional state was anywhere close to the level of obviating his knowledge of right and wrong. He had the mental capacity to choose a weapon, to barricade the door to avoid interference from the guards, to incapacitate the victim, to ask for a *"white shirt"* to discuss his surrender, to react by striking the victim repeatedly when he felt the guards were going to try to enter the cell, to have the victim move to show he was still alive, to hide the razor blade in his mouth when extracted, to strike the victim nearly 50 times with a lock, to cut lacerations in the victim in multiple locations, and to generally torture the victim over a near four hour period. During the time period, the Defendant was able to negotiate the terms of his release, while defending his actions in telling Officer Ramos that the victim was a "punk" (gay) and that the victim made him do this. The Defendant told Officer Wright, during the attack, "that was your fault" when the Defendant struck the victim because the officer did something the Defendant did not like. The Defendant surrendered only after seeing the armed extraction team ready to take action. The Court finds no <u>competent</u> evidence in the record which supports this mitigating circumstance, however will assign minimal weight to the mitigating circumstance, as the Court cannot say there is no evidence of emotional disturbance.

3. **The victim was a participant in the defendant's conduct or consented to the act.**

This possible mitigating circumstance was not argued by the Defendant, nor does it factually apply.

4. **The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.**

This possible mitigating circumstance was not argued by the Defendant, nor does it factually apply.

5. **The defendant acted under extreme duress or under the substantial domination of another person.**

This possible mitigating circumstance was not argued by the Defendant, nor does it factually apply.

6. **The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.**

This possible mitigating circumstance was not argued by the Defendant, nor does it factually apply. As the facts could remotely relate to this mitigating circumstance, the findings above for extreme mental or emotional disturbance would apply.

7. **The age of the defendant at the time of the crime.**

This possible mitigating circumstance was not argued by the Defendant, nor does it factually apply. The Defendant was 41 years old at the time of the crime.

8. The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

The Defendant raised the defense and explanation to his actions as being a result of a reaction to the sexual advance of the victim toward the Defendant. Although there are factual issues which cast doubt on this claim (namely that the Defendant barricaded and secured the door, that there was severe injury to the back of the victim's skull, that the victim was face down prone on his bunk, and that nearly all of the massive amount of blood was at the head area of the victim's bunk or that it flowed to the floor from there – indicating the victim never was out of his bunk), the Court will accept that the claim may be possibly partially correct (or at least that the Defendant may think it so) for the purpose of the issue of mitigation. The Court will find that the mitigation is reasonably established and will assign minimal weight to the mitigation.

The Defendant did not raise the issue of his having been diagnosed with bi-polar disorder as a defense to the crime or as a mitigating circumstance. However, there is proof in the record that the Defendant has been diagnosed with and is medicated for the disorder. The Court will find that the mitigation is reasonably established and will assign little weight to the mitigation.

The Defendant did not raise the issue of his being diagnosed with some degree of Schizophrenia. The Defendant may not have even known this diagnosis prior to Dr. Sesta's finding in the mental health examination ordered by the Court. However, there is proof in the record that the Defendant has been diagnosed with the disorder. The Court will find that the mitigation is reasonably established and will assign minimal weight to the mitigation

The Defendant, at the *Spencer* hearing raised five issues which he felt the Court should consider.

i. The Defendant stated that the Prosecutor, Ashley Albright "lied" to him about the fact that the statement the Defendant gave in the prison in the morning after the incident was being recorded. The Defendant stated that he asked Mr. Albright if the recording

was being recorded and the Defendant testified that Mr. Albright said "no." The interview/confession was being recorded. The Defendant questioned the integrity of the Prosecutor. He also said that he was forced out of the shower to be brought to the interview. The issue of the appropriateness of the possible mis-information is not a mitigating circumstance as to the crime or the Defendant's background. No weight is assigned.

ii. The Defendant stated that the Defendant's Constitutional rights were infringed by his limited ability to review the audio/video recordings. The issue of the Defendant's difficulties in reviewing the audio/video recordings based primarily on the Defendant's choice to represent himself in the case is not a mitigating circumstance as to the crime or the Defendant's background. On April 16, 2018, at the hearing on the demand for speedy trial, the Court, the Defendant, and the State had a lengthy discussion on the delivery of all discovery. At that time the Defendant stated *"I don't need the video, I know what's on the video, I don't need the video, I waive the video, I know what's on the video, I know it's bad, I know what's going on with that."* The Court inquired as to what the Defendant would like with regard to audio and video recordings, the Defendant stated *"I waive that off of discovery, I do not need the audio or video recordings."* The Court advised the Defendant that he had an absolute right to view those. The Defendant said *"yes sir."* When the Court advised what the Defendant would then receive, the Defendant said *"How about you just give it to me and if they let me look at it FSP, then great, if not, great."* The recordings were provided to the Defendant. No weight is assigned.

iii. The Defendant stated that the witnesses who testified to the clothing the inmates in the Okeechobee Correctional Institution wear when the go to sleep had lied. The disagreement with the testimony of a witness or witnesses is not a mitigating circumstance as to the crime or the Defendant's background or participation in the crime. No weight is assigned.

iv. The Defendant stated that the Defendant himself was *"stupid"* to not present mental health evidence. He stated that there are *"significant mental health"* issues. The Defendant noted that Major Gatto said he was "erratic" and "acting crazy." The Court inquired as to what mental health issues the Defendant believed there was. The Defendant stated that there was the Bi-Polar diagnosis, but "no other serious other issues." The Defendant stated during the *Spencer* hearing that there was no mental health issue as to the incident, but that he was not thinking correctly in confessing. He stated that at that time he only confessed because he wrongly thought, at that time, that he wanted the death penalty. The issue as to a mental or emotional disturbance was discussed above. The Court will assign little weight to this mitigating circumstance.

v. The Defendant stated that the practical side of the imposition of the death penalty should result in the Court not imposing the death penalty. The Defendant stated on a couple of occasions during the case that *"by the time Florida executes all of the cop killers, child killers, women killers, and other worse people on death row,"* (paraphrasing) that he will die of old age before being executed. The practical issues of imposition of the penalty is not a mitigating circumstance as to the crime or the Defendant's background or participation in the crime. No weight is assigned.

SUMMARY OF AGGRAVATING FACTORS AND MITIGATING CIRCUMSTANCES:

FINDING 1: There exists at least one (actually 4) aggravating factor which was proven by the State beyond a reasonable doubt. See above.

FINDING 2: Any one of the aggravating factors are sufficient to warrant the death penalty to be imposed.

FINDING 3: The aggravating factors outweigh the mitigating circumstances. See discussion above.

JUDGMENT AND SENTENCE:

As to the charge of First Degree Murder of Antoneeze Haynes in the Indictment, the Court adjudicates Michael Lawrence Woodbury guilty of that First Degree Murder and sentences him to death.

IT IS ORDERED that Michael Lawrence Woodbury be taken by the proper authority to the Florida Department of Corrections, to be housed there until the date his execution is set.

IT IS FURTHER ORDERED that on such time as scheduled by the Governor of the State of Florida, that Michael Lawrence Woodbury be put to death.

IT IS FURTHER ORDERED that court costs of $395.00, costs of prosecution of $200.00, and a $20.00 Crime Stoppers fee is assessed as a civil judgment. Credit time served of 365 days is ordered. The Defendant is to be fingerprinted and a DNA sample is ordered to be obtained.

The Defendant was fingerprinted in open court. The Defendant was notified in open court and here again that the judgment and sentence are subject to automatic review by the Florida Supreme Court. The Defendant was further advised that he has the right to the assistance of counsel in the filing and preparation of his appeal. The Court in open court at the conclusion of sentencing announced the appointment of the Office of the Public Defender to represent the Defendant.

DONE AND ORDERED within 30 days of the oral pronouncement made on September 21, 2108, in chambers in Fort Pierce, Florida, on September 27, 2018.

SHERWOOD BAUER
CIRCUIT COURT JUDGE
NINETEENTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above order has been served either by eservice or U.S. Mail as indicated to the following persons, on September 27, 2018.

Copies to:

Michael Lawrence Woodbury
DC#124356, Florida State Prison

Ashley Albright
Office of the State Attorney
AAlbright@sao19.org

Stanley Glenn and Shane Manship
Office of the Public Defender
Stanley.Glenn@pd19.org

Wendy DeTroia

By: Wendy DiTroia
Judicial Assistant

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[i] The general facts of the capital felony and of the felony involving the use or threat of violence to the person are as follows: (much of the body of this note is taken from the Sentencing memorandum by the State, the Court finds the facts to be as the evidence supports)

November 30, 1994 Armed Robbery of Karen's Variety's Store - At the penalty phase, Susan Anderson testified that on November 30, 1994 she was working at Karen's Variety Store located in Windham, Maine, when a white male wearing a red ski mask entered her store, pointed a gun at her, and told her and the other employees to lay on the floor and then threw a Burger King bag in their general direction, which landed on the floor. Mrs. Anderson was ordered to take all of the money from the cash register, which totaled between $200.00 and $300.00, and then give it to the robber. She did so immediately. Ms. Anderson described to the jury the fear that she felt when the robber pointed the gun at her.

Captain James Boudreau of the Windham (ME) Police Department, who was the lead investigator on the case, testified that the Burger King bag was collected and sent to the F.B.I for analysis. As explained by F.B.I. Forensic Examiner Heather Fosher, the bag contained a palm print that was identified as belonging to Michael Woodbury.

The defendant subsequently entered a plea to the crime and was released on probation after serving 2 years in the Maine Department of Corrections[i].

3 Robberies Identified in State's Penalty Phase Exhibits 3 & 6 - The State proved that the defendant was convicted of three (3) more robberies when it introduced State's penalty phase exhibit 6, which is a certified copy of judgment and sentence along with State's penalty phase exhibit 3, which is a certified copy of the

corresponding Indictment[i]. Count 1 of the Indictment alleges that a woman named Carlene Rowe was the victim of a robbery in Cumberland County, Maine that occurred on October 29, 1996. Count 2 alleges that Alexandra Wentworth was the victim of a robbery in Cumberland County, Maine that occurred on November 7, 1996. And Count 3 alleges that Barbara Pruitt was the victim of a robbery that also occurred in Cumberland County, Maine on November 8, 1996.

A close examination of both of these documents shows that the name of the defendant is "Michael Woodbury" but incorrectly states the date of birth as March 24, 1978. In order to prove that this defendant was convicted of these robberies, the State elicited the testimony of Detective Dale LaFlam, a fingerprint analyst with forty (40) years of experience. He compared the fingerprint card found on State's penalty phase exhibit 6 (the judgment and sentence) to State's penalty phase exhibit 10, which is the personally-known fingerprint card of the defendant. The fingerprints matched.

The judgment and sentence was also compared to State's penalty phase Exhibit 7, which is the Crime and Time letter from the Maine Department of Corrections. Similar to Florida's Crime and Time letter (State's penalty phase Exhibit 8), this document contains a photograph of the defendant, his date of birth, his fingerprints, a list of his criminal convictions (including the names of the crimes along with case numbers) from the State of Maine, and his incarcerative history that shows his entry and exit dates from the prison system. Not surprisingly, the documents match.

It should also be noted that not only does State's penalty phase Exhibit 6 contain a photograph of the defendant, but the fingerprint card on the same exhibit contains his correct date of birth. It was thus proven that the defendant's dates of birth on both the Indictment and judgment and sentence are merely scrivener's errors. This conclusion was then corroborated by the defendant's own testimony during cross-examination that he did, in fact, commit all of the crimes that were proven during the State's case-in-chief.

Attempted Armed Robbery of M & R Discount Cards - The State called Deborah Friss during the penalty phase who testified that on December 16, 1996 she was working in her family-owned card and gift shop named M&R Discount Cards, which was located in Pasco County, Florida. A young, white male entered and brandished a gun and a knife to Mrs. Friss' brother, Edgar Perez, who obtained a box cutter and attempted to defend himself. Mr. Perez also told Mrs. Friss to "get the gun!" Mr. Perez then chased the robber out of the store. Mrs. Friss was clear in her testimony that she was in fear of both her life and her brother's life when the robber brandished the weapons.

Armed Robbery of Barnett Bank - On December 17, 1996—the very next day following the attempted robbery of M&R Discount Cards—a white male armed with a gun walked into a Barnett Bank located in Pasco County, Florida. Kristina Scranton (now known as Kristina Orey[i]), a pregnant 19 year-old, was the on duty bank teller at the time, and was approached by the white male who raised his shirt and showed her that he was carrying a gun in the waistband of his trousers. Mrs. Orey quickly gave him almost $4,000.00 in cash. Similar to the previous victims, Mrs. Orey described to the jury the fear that she felt during the bank robbery.

The defendant was quickly identified as a suspect by Detective Charles May of the Pasco County Sheriff's Office. After a brief interview, the defendant gave a post-*Miranda* confession to the attempted armed robbery of M&R Discount Cards and also to the armed robbery of Barnett Bank.

The State also introduced State's penalty phase Exhibit 9, which is a composite exhibit that contains certified copies of judgments and sentences for both of these crimes[i]. The defendant was sentenced to a

total of 66 months in the Florida Department of Corrections for these crimes. He was then returned to the Maine Department of Corrections where he served the rest of his sentence for violations of probation from all of the previously discussed robbery convictions.

Triple Homicide in Conway, New Hampshire - State's penalty phase exhibit 7 shows that the defendant was released from the Maine Department of Corrections on May 4, 2007. The State then proved that only 59 days later, on July 2, 2007, the defendant murdered James Walker, William Jones, and Gary Jones at a military surplus store located in Conway, New Hampshire. In order to eliminate any residual prejudice that may flow from the introduction of evidence of these previous homicides, the State did not introduce crime scene photos or videos, and also did not introduce autopsy photos of any of the victims. Instead, the State called Dr. Jenny Duvall who testified that James Walker died as a result of 2 gunshot wounds to the back of the head and that William Jones died from 2 gunshot wounds to the head and 1 gunshot wound to the chest. Dr. Marguerite DeWitt also testified that Gary Jones died as a result of 1 gunshot wound to the head. As stated *supra*, this procedure that consists of calling the medical examiner(s) in lieu of introducing more graphic and prejudicial testimony has been approved by the Florida Supreme Court in *Waterhouse v. State*, 596 So. 2d 1008, 1017 (Fla. 1992) and *Lockhart v. State*, 655 So. 2d 69, 73 (Fla. 1995).

Detective Steve Rowland of the New Hampshire State Police provided a general description of the homicide scene and then testified that the defendant confessed to the homicides immediately after he was apprehended[i]. To corroborate all of this testimony, the State introduced penalty phase Exhibit 5, which are judgments and sentences of three counts of First Degree Murder

[ii] The crime scene photos, autopsy photos, and video evidence in this case are gruesome. To fully appreciate the depravity of this defendant's actions, a reviewing court should take care to examine the evidence firsthand, as the jury and the trial court has done.

[iii] State's penalty phase Exhibit 11.

[iv] At various parts throughout both the video of the crime as well as the Defendant's recorded interview with law enforcement, the Defendant can be heard telling the officers that his father was dying of cancer. The Defendant later admitted to the jury that he lied, that his father was not dying of cancer, and that he was "in perfect health."

[v] The fact that the Defendant introduced this evidence and also testified to the jury is critical because it shows that the Defendant did present mitigation evidence on his own behalf. This alleviates both the State's and the trial court's obligation to present mitigation evidence for the defendant pursuant to the dictates *of Koon v. Duggar*, 619 So. 2d 246, 249 (Fla. 1993), *Barnes v. State*, 29 So. 3d 1010, 1026 (Fla. 2010), *Klokoc v. State*, 589 So. 2d 219 (Fla. 1991) and *Muhammad v. State*, 782 So. 2d 343, 363-64 (Fla. 2001). In *United States v. Davis*, 285 F.3d 378, 384-85 (5th Cir.2002), *cert. denied*, 537 U.S. 1006 (2002), the Fifth Circuit

held that it is reversible error to appoint special mitigation counsel where the mitigation evidence presented by counsel directly contradicts the evidence or approach undertaken by the defendant himself. The Court noted that while society's interest in a full and fair capital proceeding is "noble, it cannot be squared with [the defendant's] self-representation right. *Faretta* teaches us that the right to self-representation is a personal right. It cannot be impinged upon merely because society, or a judge, may have a difference of opinion with the accused as to what type of evidence, if any, should be presented in a penalty trial." *Davis*, 285 F.3d at 384. This Court went beyond what is required under *Faretta*. This Court asked all required questions, but went further to make certain that the Defendant actually understood all of the questions. The Court engaged the Defendant in discussion to ensure that his decision was and remained a knowing, voluntary, and informed decision. The Defendant's competency to understand was never in question.