IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA

CASE NO.: CF06-1864
DIVISION: 56

STATE OF FLORIDA

vs.

NORMAN BLAKE MCKENZIE,
Defendant.
_____/

SENTENCING ORDER

This matter is before this Court for resentencing on two counts of First Degree Murder. After considering the evidence adduced at the recent penalty phase, the jury's verdicts, the evidence presented at the *Spencer*[1] hearing, the arguments of counsel, the memoranda submitted by the parties, and the applicable law, the Court finds as follows:

I. PROCEDURAL HISTORY

On October 17, 2006, a St. Johns County Grand Jury indicted the Defendant on two counts of First Degree Murder for the October 4, 2006 murders of Randy Peacock (Count I) and Charles Johnston (Count II). [DIN 7][2] At the conclusion of the guilt portion of the trial, on August 21, 2007, a jury found the Defendant guilty

[1] *Spencer v. State*, 615 So.2d 688 (Fla. 1993).
[2] References to the Clerk's docket are identified by Docket Identification Number ("DIN") followed the applicable entry number. *E.g.* [DIN 1].

of both counts of First Degree Murder. [DIN 103,104] The same jury returned for a penalty phase and on August 23, 2007, recommended by a vote of 10 to 2, that the Defendant be sentenced to death for each count. On October 19, 2007, the presiding judge followed the jury's sentencing recommendation and sentenced the Defendant to death for each count of First Degree Murder.

The Florida Supreme Court subsequently affirmed the Defendant's convictions and death sentences. *McKenzie v. State*, 29 So.3d 272 (Fla. 2010), *cert. denied* 562 U.S. 854 (2010). The Defendant subsequently moved for post-conviction relief pursuant to Rules 3.850 and 3.851, Fla. R. Crim. P. [DIN 253], which was denied on March 8, 2012 [DIN 268]. The Florida Supreme Court affirmed the denial of the Defendant's motion for post-conviction relief. *McKenzie v. State*, 153 So.3d 867 (Fla. 2014).

In 2016, the United States Supreme Court held Florida's capital sentencing scheme unconstitutional because the judge, rather than a jury, made the necessary findings of fact regarding the existence of aggravating factors to impose a death sentence. *Hurst v. Florida,* 577 U.S. __, 136 S. Ct. 616, 621 (2016). Thereafter, the Florida Supreme Court held that before a judge may consider imposing a death sentence, the jury "must unamiously and expressly find all the aggravating factors that were proven beyond a reasonable doubt." *Hurst v. State,* 202 So.3d 40, 57 (Fla. 2016). In addition, the Florida Supreme Court determined a jury must

unanimously find the aggravating factors are sufficient to impose a death sentence and outweigh the mitigating circumstances, and a jury's determination that death is the appropriate sentence must be unanimous. *Id.* The Florida Supreme Court subsequently held that the *Hurst* rulings apply retroactively only to those defendants whose death sentences became final after the issuance of the opinion in *Ring v. Arizona*, 536 U.S. 584 (2002). *See Asay v. State*, 210 So.3d 1 (Fla. 2016) *cert. denied* __ U.S. __, 138 S.Ct. 41 (2017); *Mosely v. State*, 209 So.3d 1248, 1283 (Fla. 2016).

The Defendant's 2007 death sentences previously rendered in this case became final after the decision in *Ring*. Therefore, on January 9, 2017, the Defendant filed his First Successive Motion to Vacate Judgment of Conviction and Sentences [DIN 320], based in part on the *Hurst* decisions. Accordingly, on June 19, 2017, this Court entered an order vacating the Defendant's death sentences. [DIN 333] The State did not appeal that order. This case was subsequently scheduled for a new penalty phase for a jury to determine the appropriate sentences for the First Degree Murder convictions.

The new penalty phase was commenced on August 26, 2019. The penalty phase was conducted in accordance with Fla. Stat. §921.141(2019). On August 29, 2019, the jury returned its penalty phase verdicts unanimously finding the

Defendant should be sentenced to death for the First Degree Murders of Randy Peacock and Charles Johnston.

A *Spencer* hearing took place on November 22, 2019. The parties submitted their Sentencing Memoranda to the Court on December 6, 2019. [DIN 525, 526]

Following the *Spencer* hearing and shortly before the imposition of today's sentencing, the Florida Supreme Court rendered its opinion in *State v. Poole*, ____So.3d____, 45 Fla. L. Weekly S41a (Fla. Jan. 23, 2020), in which it partially receded from *Hurst v. State, supra.* In *Poole*, our Supreme Court concluded the United States and Florida Constitutions are not offended by imposition of a death sentence following a non-unanimous jury verdict that death is the appropriate sentence. The Court in *Poole* confirmed that portion of *Hurst v. State,* requiring a unanimous jury finding, beyond a reasonable doubt, of the existence of statutory aggravating factors. Because the jury in the original penalty phase in this case did not expressly and unanimously determine, beyond a reasonable doubt, the existence of all the statutory aggravating factors found by the original trial judge to exist, this resentencing is appropriate.

II. FACTS

The evidence established that on October 5, 2006, Flagler Hospital employees Perry Privette and Julie Aubrey became concerned when Randy Peacock, a respiratory therapist at the hospital, didn't report to work. Privette and

Aubrey drove to the home Peacock shared with Charles Johnston. Upon their arrival, they noticed Peacock's vehicle wasn't there. Privette and Aubrey checked the exterior of the home and eventually entered the home where they found Peacock's body on the kitchen floor in a pool of blood. Privette and Aubrey immediately left the residence and called the St. Johns County Sheriff's Office ("SJSO"). When deputies from SJSO arrived, they secured the scene and subsequently located Charles Johnston's body in a shed on the property. Law enforcement found a bloody hatchet inside the shed where Johnston's body was found. A large knife was found in the sink in the kitchen where Peacock's body was found. Deputies observed a gold SUV in the driveway that was registered to the Defendant and immediately began efforts to locate him.

The Defendant subsequently had an encounter that same day with Citrus County deputies and was taken into custody. Randy Peacock's wallet was recovered from one the Defendant's pockets and Charles Johnston's wallet was located in a vehicle the Defendant operated prior to his capture. The Defendant spoke with SJSO deputies on two separate occasions during which he confessed to the murders of Peacock and Johnston.

The Defendant told deputies he went to the victims' residence on October 4, 2006, looking for money. When he first arrived, only Peacock and his neighbor were present; however, Johnston later arrived at the residence. At some point

Peacock went into the house. The Defendant asked Johnston for a hammer and a piece of wood, telling Johnston he wanted the items so he could knock dents out of his SUV. Johnston was unable to locate a hammer so he gave the Defendant a hatchet to use. The Defendant and Johnston walked to the shed to locate a piece of wood where the Defendant struck Johnston in the head with the blade side of the hatchet. Johnston fell to the floor. The Defendant went back to the residence where Peacock was in the kitchen cooking. The Defendant proceeded to strike Peacock in the head multiple times with the hammer side of the hatchet. Peacock fell to the floor.

The Defendant returned to the shed where he observed Johnston was still alive. The Defendant then struck Johnston again in the head with the blade side of the hatchet. The Defendant took Johnston's wallet and left the hatchet in the shed. The Defendant then returned to the kitchen in the house where he found Peacock was still alive. The Defendant grabbed a large kitchen knife and stabbed Peacock multiple times. The Defendant then put the knife in the kitchen sink, took Peacock's wallet and car keys, and left the area in Peacock's car. The Defendant was captured the following day in Citrus County after fleeing from police.

The autopsy of Randy Peacock revealed the cause of his death was the stab wounds inflicted by the Defendant, with a contributory cause of blunt-force trauma to the head. The autopsy also revealed Peacock suffered multiple burns, consistent

with the Defendant's statement to deputies that after he struck Peacock in the head with the hatchet, Peacock's arms fell into the pot on the stovetop before he fell to the floor. The stab wounds Peacock suffered were consistent with the knife found in the kitchen sink and the blunt-force trauma to Peacock's head was consistent with having been struck with the hammer side of the hatchet, as the Defendant described to deputies. The autopsy of Charles Johnston revealed his cause of death was extensive head trauma due to four "chop" wounds. Johnston's head trauma was consistent with having been struck multiple times with the blade side of the Hatchet, as described by Defendant to deputies.

As explained above, the jury in the first trial found the Defendant guilty of two counts of First Degree Murder, which was affirmed by the Florida Supreme Court. A different jury was empaneled for the recent resentencing penalty phase. At the conclusion of the recent penalty phase, the jury unanimously found the appropriate sentences for Counts I and II is death.

Fla. Stat. §921.141(3)(a)2 provides that "[i]f the jury has recommended a sentence of Death, the Court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death." Thus, the Court will discuss its findings regarding its consideration of each aggravating

factor found by the jury and all mitigating circumstances, as they pertain to Counts I and II, the weight to be assigned to each, and the sentence for each.

III. COUNT I (FIRST DEGREE MURDER OF RANDY PEACOCK)

A. AGGRAVATING FACTORS

At the recent penalty phase, the State relied on five aggravating factors for Count I, for which it had given the defense notice.[3] Pursuant to the directives of the United States Supreme Court in *Hurst v. Florida*, *supra.*, and Fla. Stat. §921.141(2), the jury was instructed that in order to find the existence of an aggravating factor it must unanimously determine the aggravating factor has been proven beyond a reasonable doubt. At the conclusion of the recent penalty phase, the jury unanimously found the State had proven each of the five aggravating factors asserted for Count I beyond a reasonable doubt. The aggravating factors unanimously found by the jury to exist beyond a reasonable doubt have been considered by this Court and are discussed below.

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[3] At the original penalty phase, the State relied on four aggravating factors which the Court found to exist: (1) the Defendant was previously convicted of another capital felony or a felony involving the use or threat of violence to the person; (2) the capital felony was committed while the Defendant was engaged in the commission of, or attempted commission of, a robbery; (3) the capital felony was committed for pecuniary gain; and (4) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. Prior to the recent penalty phase, the State gave notice to the defense that it intended to rely on an additional aggravating factor: that the capital felony was especially heinous, atrocious, or cruel. [DIN 438]. The defense moved to preclude the State from proceeding on this additional aggravating factor. [DIN 448] The Court denied the Defendant's motion and allowed the State to proceed on the five alleged aggravating factors. [DIN 467]

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

Part of the basis for this aggravating factor, as it pertains to Count I, is the Defendant's contemporaneous conviction for the murder of Charles Johnston (Count II). It is well-established that contemporaneous convictions for capital or violent felonies on different victims may be considered. *Bevel v. State*, 983 So.2d 505 (Fla. 2008); *King v. State*, 390 So.2d 315 (Fla. 1980); *Pardo v. State*, 563 So.2d 77 (Fla. 1990); *Stein v. State*, 632 So.2d 1361 (Fla. 1994); *Francis v. State*, 808 So.2d 110 (Fla. 2002).

In addition to the contemporaneous murder conviction, it was also established during the recent penalty phase that the Defendant had previously been convicted of nine prior violent felonies:

State of Florida v. Norman McKenzie, Case No.: 1984-3709CF (Broward County, Florida); November 8, 1984
Kidnapping and Robbery

State of Florida v. Norman McKenzie, Case No.: 1990-19206CF10 (Broward County, Florida); May 28, 1991
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2006-CF005259-A (Alachua County, Florida); May 10, 2007
Attempted Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2006-CF-005261-A (Alachua County, Florida); May 10, 2007
Kidnapping with a Firearm

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-00532-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-000585-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-000586-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 42-2006-CF-004213-A (Marion County, Florida); March 6, 2007
Carjacking while Armed

In addition to the Judgment and Sentences received into evidence from these prior violent felonies, during the recent penalty phase, testimony was received from the victims of many of these prior violent felonies, including Charles McGuire who was the victim from the 1991 Broward County robbery conviction; Clarice Polczynski, Amanda Hughes, Chantel Wilson and Marquette Frederick, who were the victims from the 2007 Alachua County robbery and attempted robbery convictions; Larry Van who was the victim from the 2007 Marion County carjacking conviction; and Ceasar Saldana who was an investigating detective from the 2007 Alachua County kidnapping conviction.

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.1 in the Jury's Verdict As To Sentence On Count I) This Court agrees with the jury's finding regarding this aggravating factor.

The Florida Supreme Court has explained that the "prior violent felony" aggravating factor is one of the "most weighty in Florida's sentencing calculus." *Sireci v. Moore,* 825 So.2d 882, 887 (Fla. 2001). This is particularly the case here, where the Defendant not only killed Randy Peacock, but also murdered Charles Johnston, and had previously been convicted of nine other violent felonies. This Court gives this aggravating factor VERY GREAT WEIGHT.

ii. The capital felony was committed while the defendant was engaged, . . . , in the commission of . . . robbery. Fla. Stat. §921.141(6)(d)

During the recent penalty phase the State introduced the Defendant's two recorded statements made to SJSO detectives. During his initial statement made the day after the murders, the Defendant told detectives he went to the victims' residence in order to steal money from the victims so he could get more drugs. After attacking the victims, the Defendant took their wallets, money and credit cards. The Defendant also took Randy Peacock's SUV. When arrested in Citrus County the day after the murders, the Defendant was found in possession of Randy Peacock's wallet, and Charles Johnston's wallet was found in a vehicle the Defendant had operated that day.

Although the State did not charge the Defendant with robbery, it was proved beyond a reasonable doubt during the recent penalty phase that the murder of Randy Peacock was committed while Defendant was engaged in the commission of a robbery. *See* Fla. Stat. §812.13(1).

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.2 in the Jury's Verdict As To Sentence On Count I) This Court agrees with the jury's finding regarding this aggravating factor. This Court gives this aggravating factor GREAT WEIGHT.

iii. The capital felony was committed for pecuniary gain. Fla. Stat. §921.141(6)(f)

As discussed above, the State proved beyond a reasonable doubt during the recent penalty phase that the Defendant went to the victims' residence to steal money from them. Likewise, as discussed above, the Defendant took the victims' wallets, money and credit cards, as well as Randy Peacock's SUV.

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.3 in the Jury's Verdict As To Sentence On Count I) This Court agrees with the jury's finding regarding this aggravating factor. However, the Court recognizes that this aggravating factor merges with the preceding aggravating factor that the murder was committed while the Defendant was engaged in the commission of a robbery. *See Griffin v. State,* 820 So.2d 906, 915 (Fla. 2002). Accordingly, during the recent penalty phase, the jury was instructed

> Pursuant to Florida law, the aggravating factors of *the murder was committed during the course of a Robbery* and *the murder was committed for financial gain* are considered to merge because they are considered to be a single aspect of the offense. If you unanimously determine that the aggravating factors of *the murder was committed*

> *during the course of a Robbery* and *the murder was committed for financial gain* have both been proven beyond a reasonable doubt, your findings should indicate that both aggravating factors exist, but you must consider them as only one aggravating factor.

Likewise, although this Court finds this aggravating factor was established, because it merges with the aggravating factor that the murder was committed during the commission of a robbery, these two aggravating factors will be considered as one and no added weight is given to this aggravating factor.

iv. The capital felony was especially heinous, atrocious, or cruel. Fla. Stat. §921.141(6)(h)

The Florida Supreme Court has held this aggravating circumstance would apply "only in torturous murders—those that evince extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another." *Chesire v. State*, 568 So.2d 908, 912 (Fla. 1990); *Robertson v. State*, 611 So.2d 1228, 1232 (Fla. 1993); *Rogers v. State,* 783 So.2d 989, 994 (Fla. 2001); *Barnhill v. State*, 834 So.2d 836, 849-50 (Fla. 2002). For this aggravating factor to apply, the crime must be both conscienceless or pitiless and unnecessarily torturous to the victim. *Nelson v. State*, 748 So.2d 237, 245 (Fla. 1999). The Florida Supreme Court has stated this aggravating factor "focuses on the means and manner in which the death was inflicted and the immediate circumstances surrounding the death, where a victim experiences the torturous anxiety and fear of impending death; thus, the trial court

[and jury] considers the victim's perceptions of the circumstances as opposed to those of the perpetrator." *Allred v. State*, 55 So.3d 1267 (Fla. 2010). Together with a prior violent felony conviction, the Florida Supreme Court has expressed the heinous, atrocious, or cruel aggravating factor as "the most weighty in Florida's sentencing calculus." *Sireci, supra.*

According to the Defendant, in his statement to detectives, he came up behind Randy Peacock and struck him in the head with the blunt side of the hatchet. During the recent penalty phase, testimony was received from Dr. Predrag Bulic, chief medical examiner for St. Johns County.[4] Dr. Bulic testified that Mr. Peacock suffered three to four blunt force injuries to the back of his head, consistent with the blunt side of the hatchet. Dr. Bulic testified these blows to Mr. Peacock's head would have been painful if he was conscious. According to the Defendant in his statement to detectives, Mr. Peacock was conscious after these blows, since he struggled with Mr. Peacock when he returned to the residence after attacking Mr. Johnston in the shed.

According to the Defendant, in his statement to detectives, after he struck Mr. Peacock in the head, Mr. Peacock fell into what he was cooking on the stovetop. Dr. Bulic testified that Mr. Peacock's autopsy revealed burns to his

[4] The autopsy of Randy Peacock was performed by Dr. Steiner, who is deceased. Dr. Bulic reviewed the autopsy reports and photographs from Dr. Steiner's autopsy of Mr. Peacock and rendered his opinions regarding Mr. Peacock's injuries.

hands and arms, consistent with the Defendant's statement about Mr. Peacock falling into the pot on the stovetop. Dr. Bulic testified that Mr. Johnston would have been in extraordinary severe pain from those burns.

After the Defendant's initial attack of Mr. Peacock, he left him to go out to the shed to encounter Mr. Johnston again. While gone, Mr. Peacock remained in the kitchen suffering from the blows to his head and burns to his body. The Defendant then returned to the kitchen where, according to the Defendant's statement to detectives, he found Mr. Peacock upright and conscious. Because the Defendant no longer had the hatchet which he had left in the shed, he grabbed a large knife and repeatedly stabbed Mr. Peacock. Dr. Bulic described the six stab wounds to Mr. Peacock. Dr. Bulic explained how the stab wounds would have been very painful to Mr. Peacock, and while not immediately fatal, because he did not receive immediate emergency medical care, Mr. Peacock died shortly thereafter from the stab wounds.

Despite the earlier hatchet attack, according to the Defendant, Mr. Peacock was conscious and alive when the Defendant returned to the residence and inflicted multiple stab wounds to Mr. Peacock. The Defendant described to detectives how Mr. Peacock was fighting for his life while Defendant was stabbing him to death.

At the recent *Spencer* hearing, Defendant testified Mr. Peacock was "not conscious to the world around him," when the Defendant returned to the residence

after the initial blows to Mr. Peacock with the hatchet. The Court finds Defendant's statements to detectives shortly after the murder, explaining how Mr. Peacock was conscious and fighting for his life at that point, more credible than Defendant's recent testimony given 13 years later.

The Florida Supreme Court has found the heinous, atrocious, or cruel (HAC) aggravating factor to apply in numerous circumstances where a victim suffered numerous stab wounds while conscious and alive. *See e.g. Matthews v. State*, 124 So.3d 811 (Fla. 2013); *Aguirre-Jarquin v. State*, 9 So.3d 593 (Fla. 2009); *Simmons v. State*, 934 So.2d 1100 (Fla. 2006); *Schoenwetter v. State*, 931 So.2d 857 (Fla. 2006); *Perez v. State*, 919 So.2d 347 (Fla. 2006); *Cox v. State*, 819 So.2d 705 (Fla. 2002); *Francis v. State*, 808 So.2d 110, 134-35 (Fla. 2002); *Pittman v. State*, 646 So.2d 167, 172-73 (Fla. 1994); *Davis v. State*, 620 So.2d 152, 153 (Fla. 1993).

The murder of Randy Peacock, in which he initially received multiple blunt force blows to his head and burns, but remained alive while the Defendant left to kill Mr. Johnston, only to have the Defendant return and repeatedly stab Mr. Peacock while he was conscious and fighting for his life, was particularly torturous supporting this aggravating factor.

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.4 in the Jury's Verdict As To Sentence On Count

I) This Court agrees with the jury's finding regarding this aggravating factor. Considering the facts and circumstances supporting this aggravating factor, as elicited during the recent penalty phase, this Court gives this aggravating factor GREAT WEIGHT.

v. *The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. Fla. Stat. §921.141(6)(i)*

The Florida Supreme in *Baker v. State*, 71 So. 3d 802 (Fla. 2011) explained the cold, calculated, and premeditated aggravating factor (CCP) as follows:

> Whether the CCP aggravator applies in a given case is subject to a four-part test: (1) The killing must have been the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); and (2) the defendant must have had a careful plan or prearranged design to commit murder before the fatal incident (calculated); and (3) the defendant must have exhibited heightened premeditation (premeditated); and (4) there must have been no pretense of moral or legal justification.

Id. at 818-19 (citing *Lynch v. State,* 841 So.2d 362, 371 (Fla.2003)).

The CCP aggravating factor has been described by the Florida Supreme Court as "one of the weightiest aggravators in Florida's statutory sentencing scheme." *McKenzie,* 29 So. 3d at 287; citing *Morton v. State*, 995 So.2d 233, 243 (Fla. 2008).

In the instant case, the killings were the product of cool and calm reflection, rather than an act prompted by emotional frenzy, panic, or a fit of rage. Shortly after the murders, the Defendant told detectives that he went to the victims'

residence with the intent to rob and kill them. During that interview, the Defendant told detectives he went to the residence to steal money and was telling himself "I don't have to do my parents." He told detectives he wanted to get the killing over quickly which is why he asked Mr. Johnston for a large hammer and a piece of wood under the guise that he was going to use it to repair dents in his vehicle.[5] In response to that request, Mr. Johnston handed Defendant the hatchet that would be used to kill him and attack Mr. Peacock. The Defendant then coolly and calmly followed Mr. Johnston to the shed, where Mr. Johnston was looking for a piece of wood, when the Defendant struck Mr. Johnston in the head with the hatchet. The Defendant told detectives that after he struck Mr. Johnston in the head with the hatchet, Mr. Johnston fell to the ground. Defendant told detectives this concerned him because he was afraid a deaf woman who lived nearby might feel a vibration. The Defendant then coolly and calmly walked to the residence where he came up behind Mr. Peacock and struck him multiple times in the head with the hatchet. The Defendant then calmly returned to the shed where he observed Mr. Johnston still alive and proceeded to strike him again with the blade

[5] Defendant testified at the recent *Spencer* hearing that he didn't go to the victims' residence to steal their money, but he went to get money they owed him for work he previously did on the victims' residence. Additionally, Defendant testified that he asked Mr. Johnston for a hammer with the intent to actually repair the dents in his vehicle. Defendant acknowledged during his recent *Spencer* hearing testimony that he gave a different account of his intentions when he spoke with detectives shortly after the murders. The Court finds the Defendant's statements made to detectives shortly after the murders, regarding his intention to rob and kill the victims, is much more credible than the testimony he gave at the recent *Spencer* hearing 13 years after the murders.

side of the hatchet. The Defendant then calmly returned to the kitchen of the residence where he found Mr. Peacock alive and proceeded to stab him multiple times. Defendant explained to detectives that he stabbed Mr. Peacock in certain parts of his body to assure Mr. Peacock would die from the wounds.[6] Defendant also told detectives that when he returned to the house to stab Mr. Peacock, he was careful to make sure Mr. Peacock was placed on the ground, rather than letting him fall to the ground, so the deaf neighbor wouldn't feel any vibration. After stabbing Mr. Peacock, Defendant rinsed off the knife and placed it in the sink. After killing the victims, the Defendant went through the residence looking for Mr. Peacock's wallet. He stole the victims' wallet, money and credit cards, and took Mr. Peacock's vehicle.

From the time the Defendant first arrived at the residence, when only Mr. Peacock and a neighbor were present, until he killed the victims, a few hours had passed. The Defendant made sure to wait until the neighbor left and Mr. Johnston arrived, before he executed his calculated plan to kill the victims and steal their belongings. Additionally, heightened premeditation was demonstrated by the substantial amount of time the Defendant reflected on his plan while present at the

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[6] Defendant testified at the recent *Spencer* hearing that the reason he stabbed Mr. Peacock upon his return to the residence was because he knew, due to the earlier blows he inflicted with the hatchet, that Mr. Peacock would be rendered a "vegetable" and he didn't want Mr. Peacock to live that way. Defendant never gave this explanation to detectives 13 years earlier when he confessed to the murders.

residence and waiting for the opportune time to execute that plan. Lastly, there clearly was no pretense of moral or legal justification for the killings.

The jury unanimously determined that the State established this aggravating factor beyond a reasonable doubt. (Question A.5 in the Jury's Verdict As To Sentence On Count I) This Court agrees with the jury's finding regarding this aggravating factor. Considering the facts and circumstances supporting this aggravating factor as elicited during the trial in this case, this Court gives this aggravating factor GREAT WEIGHT.

vi. Conclusion – Aggravating Factors

Following the jury's unanimous determination of the existence of the aforementioned aggravating factors beyond a reasonable doubt, the jury was asked whether the aggravating factors are sufficient to warrant a possible sentence of death. The jury unanimously found the aggravating factors are sufficient to warrant a death sentence. (Section B in the Jury's Verdict As To Sentence On Count I) This Court has likewise considered the aggravating factors unanimously found by the jury to exist and agrees with the jury's finding, determining the aggravating factors are sufficient to warrant a death sentence. Thus, the Court will next consider the mitigating circumstances.

B. MITIGATING CIRCUMSTANCES

During the recent penalty phase, the jury considered physical evidence introduced by the defense and heard testimony from Tammy Kimbell, a former friend of the Defendant; Dr. Stephen Bloomfield, a psychologist; and Dr. Susan Skolly-Danzinger, an expert in toxicology and pharmacology. In rebuttal, the State presented the testimony of Dr. William Meadows, a psychologist.[7] The jury was instructed on the mitigating circumstances and that mitigating circumstances need only be established by the greater weight of the evidence. The jury stated in its verdict that one or more of the individual jurors found that one or more mitigating circumstance was established by a greater weight of the evidence.[8] (Section C in the Jury's Verdict As To Sentence On Count I)

Additionally, the Court considered further evidence of mitigating circumstances during the *Spencer* hearing. At the *Spencer* hearing, the Court heard testimony from the Defendant and Dr. Skolly-Danzinger. The Court also received a letter from Claudia Goeke.[9]

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[7] The State also introduced victim impact testimony during the recent penalty phase, and submitted additional victim impact letters at the *Spencer* hearing. The Court is not considering the victim impact evidence in its analysis of the aggravating factors and mitigating circumstances.

[8] The verdict forms for the penalty phase did not require the jurors to list the specific mitigating circumstances found or to provide the jury's vote as to the existence of mitigating circumstances, as set forth by the Florida Supreme Court. *In re: Standard Criminal Jury Instructions in Capital Cases*, 244 So.3d 172 (Fla. 2018).

[9] The Defendant refers to Ms. Goeke as his spouse. In her letter dated January 7, 2019, Ms. Goeke refers to herself as the Defendant's fiancé.

The mitigating circumstances set forth by the Defendant, as instructed by the Court during the recent penalty phase of the trial, as well as those set forth during the *Spencer* hearing and in Defendant's Sentencing Memorandum, are discussed below.

i. The First Degree Murder was committed while Defendant was under the influence of extreme mental or emotional disturbance.

The fact a defendant was intoxicated or under the influence of narcotics can support the establishment of this mitigating circumstance. *Hollsworth v. State*, 522 So.2d 348, 354 (Fla. 1988). During the recent penalty phase Tammy Kimball testified regarding the Defendant's extensive drug use around the time of the murders. Dr. Bloomfield testified regarding the Defendant's long-standing substance abuse and opined that due to the Defendant's extensive drug use at the time of the incident, he believes Defendant was under the influence of extreme mental or emotional disturbance at that time. During the recent penalty phase and *Spencer* hearing, Dr. Skolly-Danzinger likewise testified regarding the Defendant's long-standing drug abuse and its effects on the human body. Dr. Skolly-Danzinger also opined that Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders. The Defendant's statements to detectives shortly after the crime describing his drug addiction and his activities to get money for drugs, including the murders in this case and the string of robberies in the days leading up to the murders, corroborated the opinions of Drs. Bloomfield and

Skolly-Danzinger. The State's rebuttal witness Dr. Meadows opined that he does not believe the Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders.

This Court finds that the greater weight of the evidence established the Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders due to his significant drug use. The Court gives this mitigating circumstance MODERATE WEIGHT.

ii. The capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

Evidence that a defendant was "strung out" on drugs at the time of a murder can support the establishment of this mitigating circumstance. *Williams v. State*, 37 So.3d 187, 204-05 (Fla. 2010). As discussed above, Ms. Kimball testified regarding the Defendant's excessive drug use around the time of the murders. Drs. Bloomfield and Skolly-Danzinger both further opined that the Defendant's ability to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was substantially impaired due to his drug use. Dr. Skolly-Danzinger opined that particularly with cocaine addiction, of which Defendant suffered, users lose control and seek the drug out regardless of the consequences. The State's rebuttal witness Dr. Meadows opined the Defendant's ability to

appreciate the criminality of his conduct and to conform his conduct to the requirements of law was not substantially impaired.

During the recent *Spencer* hearing, the Court received testimony from the Defendant and Dr. Skolly-Danzinger on how the Defendant's drug use and addiction adversely affected his behavior at the time of the murders. The Defendant testified that prior to the murders he had been on a drug binge for eight to nine days without sleep.

This Court finds that the greater weight of the evidence established the Defendant's ability to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was substantially impaired. However, the Court notes that while the Defendant may have been impaired, he appreciated that killing Randy Peacock and Charles Johnston was wrong, as demonstrated in his statements to detectives and his attempts to avoid capture the day after the murders. The Court gives this mitigating circumstance SLIGHT WEIGHT.

iii. Defendant's childhood was chaotic.

Dr. Bloomfield opined the Defendant had a rather chaotic childhood which included first using marijuana at age five, beginning to use harder drugs at age ten, and his parents divorcing when he was age eight. Dr. Skolly-Danzinger testified regarding the Defendant's early childhood drug use, including inhalants by age 11, and having no boundaries growing up. The State's rebuttal witness Dr. Meadows

rejected the claim that the Defendant had a chaotic childhood. Dr. Meadows indicated the Defendant described to him a happy childhood with great parents and no reports of physical or sexual abuse.

This Court finds the greater weight of the evidence established this mitigating circumstance that the Defendant had a chaotic childhood. The Court gives this mitigating circumstance SLIGHT WEIGHT.

iv. Defendant and his siblings experienced a lack of adequate supervision after the divorce of his parents.

Both Drs. Bloomfield and Skolly-Danzinger testified that Defendant experienced a lack of supervision and a lack of boundaries after the divorce of his parents at age eight. After his parents divorced, Defendant would steal food for his family and became a chronic drug user at a young age. This Court finds that the greater weight of the evidence established this mitigating circumstance that the Defendant and his siblings experienced lack of adequate supervision after the divorce of his parents. The Court gives this mitigating circumstance VERY SLIGHT WEIGHT.

v. Defendant started huffing from spray cans at the age of 11 years old.

Drs. Bloomfield and Skolly-Danzinger testified the Defendant told them he began "huffing" inhalants at the young age of 11. These mitigation experts testified regarding the detrimental effects this has on the human body, including

brain development. This was part of the Defendant's long-standing drug abuse. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

vi. Defendant had an early and chronic abuse and dependency on alcohol and drugs.

Drs. Bloomfield and Skolly-Danzinger testified at the recent penalty phase that the Defendant began using and abusing drugs at a very early age. According to the Defendant's statements to these mitigation experts, he began using marijuana at age five, methamphetamine at age 10, and inhalants or "huffing" at age 11. Defendant told these experts that drug use became a daily thing for him beginning at age 12. The Defendant testified at the recent *Spencer* hearing that his drug use progressed to injecting drugs around age 16. The defense mitigation experts testified regarding the detrimental effects this early and chronic drug use would have on brain development. The State's rebuttal expert testified that he doubted the veracity of the Defendant's very early drug use.

This Court finds that the greater weight of the evidence established this mitigating circumstance that Defendant had early and chronic abuse and dependency on alcohol and drugs. The Court gives this mitigating circumstance SLIGHT WEIGHT.

vii. Defendant had a cocaine dependency relapse starting in July 2006 up to and after the crimes at bar.

According to the Defendant in his statement to detectives, he was addicted to cocaine and had a relapse in 2006. This was corroborated by the Defendant's mitigation experts and the State's rebuttal witness who all testified the Defendant suffered from a substance abuse disorder. Tammy Kimball's testimony likewise corroborates this mitigating circumstance by her testimony regarding the Defendant's cocaine use around the time of the murders. Defendant testified at the recent *Spencer* hearing that his relapse began in July 2006.

This Court finds that the greater weight of the evidence established this mitigating circumstance that Defendant had a cocaine dependency relapse starting in July 2006 up to and after the murders. The Court gives this mitigating circumstance SLIGHT WEIGHT.

viii. Defendant consistently used a voluminous amount of cocaine from July to October of 2006.

As discussed above, according to the Defendant's mitigation experts and Tammy Kimball, the Defendant was consistently using a significant amount of cocaine after his relapse in 2006 up to the time of the murders and his arrest. The Defendant would ingest cocaine in different ways including intravenously. The Defendant testified at the recent *Spencer* hearing that around the time of the murders he was spending approximately $1000 a day to support his drug addiction, and leading up the day of the murders he had been on a drug binge for eight or nine days without sleep.

This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

ix. Defendant cooperated with law enforcement at the time of his arrest.

Hours after he was taken into custody, the Defendant gave a statement to SJSO Detective Tim Rollins and Georgia investigator Jennings. The Defendant freely spoke with these investigators and described the murders of Mr. Peacock and Mr. Johnston. A few months later, the Defendant gave another statement to Detective Rollins and SJSO Detective Timothy Burres. Again, the Defendant freely spoke with these detectives and described the murders. While the Defendant cooperated with these investigators, the Court also notes that the day after the murders, when law enforcement officers sought to capture the Defendant, he led Citrus County deputies on a vehicular pursuit, and after crashing the vehicle he was operating, fled into a nearby body of water before being captured by police.

This Court finds that the greater weight of the evidence established this mitigating circumstance that the Defendant cooperated with law enforcement at the time of his arrest. The Court gives this mitigating circumstance SLIGHT WEIGHT.

x. Defendant admitted to the murders of Randy Peacock and Charles Johnston.

As discussed above, the Defendant freely admitted to detectives, on two occasions, that he murdered Mr. Peacock and Mr. Johnston. The Defendant's admissions to police were instrumental in securing his own convictions. At the recent *Spencer* hearing, the Defendant again admitted committing the murders and expressed remorse for killing Randy Peacock and Charles Johnston. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance MODERATE WEIGHT.

xi. Defendant has artistic ability.

During the recent penalty phase the defense admitted into evidence drawings or paintings created by Defendant since he has been in prison. During closing argument, defense counsel displayed the Defendant's art work to the jury. This Court finds Defendant's art work impressive and he clearly possesses artistic ability. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xii. Defendant was an assistant superintendent for EMJ that built Cobblestone Village in St. Augustine.

During the recent penalty phase, it was established the Defendant worked as a construction assistant superintendent for EMJ prior to committing the murders. The Defendant played a key role in the construction of the Cobblestone Village

shopping center in St. Augustine. At the recent *Spencer* hearing, Defendant testified that he worked in the construction industry since age 15. The Defendant progressed from a construction worker to a project supervisor. In addition to being a project supervisor for EMJ on the Cobblestone Village project, Defendant also worked with Johnson, Graham and Malone Construction, and worked on numerous projects in North Florida. While working in the construction industry, Defendant also volunteered to help build the Able Charter School for special needs children.

The Defendant was obviously good at his occupation; however, his drug abuse and criminal activity caused him to be unable to continue. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xiii. Defendant impacted the life of Claudia Goeke in a positive way while in prison.

During the recent *Spencer* hearing, the Court received a letter from Claudia Goeke, who Defendant refers to as his spouse. Ms. Goeke described her relationship with Defendant and how he helped her overcome physical and mental struggles. Ms. Goeke credits Defendant with saving her life.

The Court finds the greater weight of the evidence supports this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xiv. A prior jury did not unanimously find that Defendant should be sentenced to death

Defendant raised this proposed mitigating circumstance for the first time in his Sentencing Memorandum. As discussed above, in 2007 a jury recommended Defendant be sentenced to death by a vote of 10-2. The death penalties subsequently imposed in 2007 were vacated for the reasons set forth above.

The Florida Supreme Court has repeatedly explained that mitigating circumstances are limited to a defendant's character or record or the circumstances of the crime. *Campbell v. State*, 679 So.2d 720, 725 (Fla. 1996); *Johnson v. State,* 660 So.2d 637, 646 (Fla. 1995). The prior jury's 2007 10-2 death penalty recommendation is not relevant to this Defendant's character or record or circumstances of the murders; therefore, it is not considered a mitigating circumstance and is afforded NO WEIGHT.

C. WEIGHING AGGRAVATING FACTORS AND MITIGATING CIRCUMSTANCES

At the conclusion of the recent penalty phase trial, the jury unanimously found that the aggravating factors that were proven beyond a reasonable doubt outweighed the mitigating circumstances, thus making the Defendant eligible for a death sentence for Count I. (Section D of the Jury's Verdict As To Sentence on Count I)

Following the recent penalty phase trial and *Spencer* hearing, this Court independently considered and weighed the aggravating factors unanimously determined by the jury to exist beyond a reasonable doubt and the mitigating

circumstances established by the greater weight of the evidence. This Court has assigned the weight it feels each of the established aggravating factors and mitigating circumstances is due. This Court finds that the aggravating factors in this case far outweigh the mitigating circumstances; therefore, as the jury determined, the Court likewise determines the Defendant is eligible for a sentence of death for Count I of the Indictment.

D. SENTENCE COUNT I

Fla. Stat. §921.141(3)(a)2 provides that "[i]f the jury has recommended a sentence of Death, the Court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death." This Court recognizes it is not bound by the jury's verdict that death is the appropriate sentence, and may impose a life sentence if it feels that is appropriate. Not every person found guilty of first degree murder should receive a death sentence. A death sentence must be "reserved for only the most aggravated and the least mitigated first degree murders." *Urbin v. State*, 714 So.2d 411,416 (Fla. 1998). This is such a case.

After carefully and independently considering those aggravating factors determined by the jury to exist, and all the mitigating circumstances, this Court agrees with the jury's unanimous finding that the Defendant should be sentenced to

death for Count I. Based on the authority vested in this Court, it is the sentence of this Court on Count I of the Indictment, for the First Degree Murder of Randy Peacock, that the Defendant Norman Blake McKenzie is adjudicated guilty of said offense and sentenced to Death in a manner prescribed by law.

IV. COUNT II (FIRST DEGREE MURDER OF CHARLES JOHNSTON)

This Court has separately considered the evidence presented at the recent penalty phase, the *Spencer* hearing, the arguments of counsel, and the memoranda of the parties, to determine the appropriate sentence for the Defendant's conviction on Count II of the Indictment for the murder of Charles Johnston, as follows.

A. AGGRAVATING FACTORS

At the recent penalty phase, the State likewise relied on five aggravating factors for Count II. At the conclusion of the recent penalty phase, the jury unanimously found the State had proven each of the five aggravating factors asserted for Count II beyond a reasonable doubt. The aggravating factors unanimously found by the jury to exist beyond a reasonable doubt have been considered by the Court and are discussed below.

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

Part of the basis for this aggravating factor, as it pertains to Count II, is the Defendant's contemporaneous conviction for the murder of Randy Peacock (Count

I). As discussed above, contemporaneous convictions for capital or violent felonies on different victims may be considered.

In addition to the contemporaneous conviction for the murder of Randy Peacock, as detailed above, it was also established during the recent penalty phase that Defendant had previously been convicted of nine prior violent felonies:

State of Florida v. Norman McKenzie, Case No.: 1984-3709CF (Broward County, Florida); November 8, 1984
Kidnapping and Robbery

State of Florida v. Norman McKenzie, Case No.: 1990-19206CF10 (Broward County, Florida); May 28, 1991
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2006-CF005259-A (Alachua County, Florida); May 10, 2007
Attempted Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2006-CF-005261-A (Alachua County, Florida); May 10, 2007
Kidnapping with a Firearm

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-00532-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-000585-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 01-2007-CF-000586-A (Alachua County, Florida); May 10, 2007
Robbery

State of Florida v. Norman McKenzie, Case No.: 42-2006-CF-004213-A (Marion County, Florida); March 6, 2007

Carjacking while Armed

Again, in addition to the Judgment and Sentences received into evidence from these prior violent felonies, during the recent penalty phase, testimony was received from the victims of many of these prior violent felonies and the investigating detective from the 2007 kidnapping conviction.

With regard to Count II, the jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.1 in the Jury's Verdict As To Sentence On Count II) This Court agrees with the jury's finding regarding this aggravating factor.

As discussed above, the Florida Supreme Court has explained that the "prior violent felony" aggravating factor is one of the "most weighty in Florida's sentencing calculus." *Sireci, supra.* This is particularly the case here, where the Defendant not only killed Charles Johnston, but also murdered Randy Peacock, and had previously been convicted of nine other violent felonies. This Court gives this aggravating factor VERY GREAT WEIGHT.

ii. The capital felony was committed while the defendant was engaged, . . . , in the commission of . . . robbery. Fla. Stat. §921.141(6)(d)

Again, during the recent penalty phase the State introduced the Defendant's two recorded statements made to SJSO detectives. During his initial statement made the day after the murders, the Defendant told detectives he went to the victims' residence in order to steal money from the victims so he could get more

drugs. After attacking the victims, the Defendant took their wallets, money, credit cards, and Randy Peacock's SUV. When arrested in Citrus County the day after the murders, the Defendant was found in possession of Randy Peacock's wallet, and Charles Johnston's wallet was found in a vehicle the Defendant had operated that day.

Although the State did not charge the Defendant with robbery, it was proved beyond a reasonable doubt during the recent penalty phase that the murder of Charles Johnston was committed while Defendant was engaged in the commission of a robbery. *See* Fla. Stat. §812.13(1).

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.2 in the Jury's Verdict As To Sentence On Count II) This Court agrees with the jury's finding regarding this aggravating factor. This Court gives this aggravating factor GREAT WEIGHT.

iii. The capital felony was committed for pecuniary gain. Fla. Stat. §921.141(6)(f)

As discussed above, the State proved beyond a reasonable doubt during the recent penalty phase that the Defendant went to the victims' residence to steal money from them. Likewise, as discussed above, the Defendant took the victims' wallets, money and credit cards, as well as Randy Peacock's SUV.

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.3 in the Jury's Verdict As To Sentence On Count

II) This Court agrees with the jury's finding regarding this aggravating factor. However, the Court recognizes that this aggravating factor merges with the preceding aggravating factor that the murder was committed while the Defendant was engaged in the commission of a robbery. *Griffin, supra.*.

Although this Court finds this aggravating factor was established, because it merges with the aggravating factor that the murder was committed during the course of a robbery, these two aggravating factors will be considered as one and no added weight is given to this aggravating factor.

iv. The capital felony was especially heinous, atrocious, or cruel. Fla. Stat. §921.141(6)(h)

As explained above, this aggravating circumstance would apply "only in torturous murders—those that evince extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another." *Chesire, supra.*; *Robertson, supra.*; *Rogers, supra.* For this aggravating factor to apply, the crime must be both conscienceless or pitiless and unnecessarily torturous to the victim. *Nelson, supra.* This aggravating factor "focuses on the means and manner in which the death was inflicted and the immediate circumstances surrounding the death, where a victim experiences the torturous anxiety and fear of impending death; thus, the trial court [and jury] considers the victim's perceptions of the circumstances as opposed to those of the perpetrator." *Allred, supra.* Together with a prior violent felony

conviction, the Florida Supreme Court has expressed the heinous, atrocious, or cruel aggravating factor as "the most weighty in Florida's sentencing calculus." *Sireci, supra.*

According to the Defendant, in his statement to detectives, he asked Charles Johnston for a hammer and piece of wood under the guise that he desired to bang out some dents in his SUV. The Defendant told the detectives he was hoping to get a large hammer to facilitate the killings.[10] Mr. Johnston was not able to locate a hammer to give Defendant, but gave him a hatchet since it had a blunt hammer-like side. The Defendant then followed Mr. Johnston to a shed behind the residence, as Mr. Johnston was trying to find a piece of wood for the Defendant to use. When they got to the shed, the Defendant told detectives he struck Mr. Johnston one or two times with the blade side of the hatchet and Mr. Johnston fell to the ground. According to the Defendant, Mr. Johnston was still alive after the initial hatchet attack in the shed. The Defendant then left the shed, leaving Mr. Johnston alive on the floor, and went to the residence where he attacked Mr. Peacock. After the initial attack of Mr. Peacock, the Defendant returned to the shed with the hatchet to steal Mr. Johnston's watch. The Defendant told detectives when he returned to the shed he noticed Mr. Johnston was still alive and trying to

[10] As discussed above, at the recent *Spencer* hearing, the Defendant testified he sought the hammer with the intent to actually repair the dents to his vehicle. The Court finds the Defendant's statements made to detectives shortly after the murders much more credible than the version provided in his testimony 13 years later.

get up from the floor, so he struck him again with the blade side of the hatchet in the front of his head and took Mr. Johnston's wallet. The Defendant told detectives he believed Mr. Johnston might have survived the hatchet attack had he called an ambulance for him, which he did not do. Defendant then left the hatchet in the shed and returned to the residence where he proceeded to stab Mr. Peacock to death.

During the recent penalty phase, Dr. Predrag Bulic also testified about the injuries and cause of death to Mr. Johnston.[11] Dr. Bulic testified that Mr. Johnston suffered four "chop" wounds to his head, consistent with being attacked by the hatchet recovered by police, which resulted in a fractured and crushed skull and extensive brain hemorrhaging. Dr. Bulic testified that if Mr. Johnston was not immediately knocked out he would have suffered extensive pain. Because the Defendant told detectives that Mr. Johnston was alive after the first attack in the shed, and was trying to get up when Defendant returned to the shed, the evidence has established Mr. Johnston was conscious, and therefore, in significant pain after the initial hatchet attack. Likewise, Mr. Johnston would have experienced great emotional strain, fear and terror after being attacked by Defendant with a hatchet, only to have to confront his attacker again minutes later.

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[11] As with the autopsy of Randy Peacock, Charles Johnston's autopsy was also performed by Dr. Steiner, who is deceased. Dr. Bulic reviewed the autopsy reports and photographs from Dr. Steiner's autopsy of Mr. Johnston and rendered his opinions regarding Mr. Johnston's injuries.

The jury unanimously found this aggravating factor had been proven beyond a reasonable doubt. (Question A.4 in the Jury's Verdict As To Sentence On Count II) This Court agrees with the jury's finding regarding this aggravating factor. Considering the facts and circumstances supporting this aggravating factor, as elicited during the recent penalty phase, this Court gives this aggravating factor GREAT WEIGHT.

v. *The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. Fla. Stat. §921.141(6)(i)*

As discussed above, the cold, calculated, and premeditated aggravating factor (CCP) has been explained as follows:

> Whether the CCP aggravator applies in a given case is subject to a four-part test: (1) The killing must have been the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); and (2) the defendant must have had a careful plan or prearranged design to commit murder before the fatal incident (calculated); and (3) the defendant must have exhibited heightened premeditation (premeditated); and (4) there must have been no pretense of moral or legal justification.

Baker, 71 So.3d at 818-19.

The CCP aggravating factor has been described by the Florida Supreme Court as "one of the weightiest aggravators in Florida's statutory sentencing scheme." *McKenzie,* 29 So.3d at 287.

As detailed above, in the instant case, the killings were the product of Defendant's cool and calm reflection, rather than an act prompted by emotional

frenzy, panic, or a fit of rage. After his arrest, the Defendant told detectives that he went to the victims' residence with the intent to rob and kill them. Defendant told detectives he wanted to get the killing over quickly so he asked Mr. Johnston for a large hammer and a piece of wood under the guise that he was going to use it to repair dents in his vehicle. In response to that request, Mr. Johnston handed Defendant the hatchet that would soon be used to kill Mr. Johnston and attack Mr. Peacock. The Defendant then coolly and calmly followed Mr. Johnston to the shed, where Mr. Johnston was looking for a piece of wood, when the Defendant struck Mr. Johnston in the head with the hatchet. The Defendant told detectives that after he struck Mr. Johnston in the head with the hatchet, Mr. Johnston fell to the ground, which concerned him because he was afraid a deaf woman who lived nearby might feel a vibration. The Defendant then coolly and calmly walked to the residence where he came up behind Mr. Peacock and struck him multiple times in the head with the hatchet. The Defendant then calmly returned to the shed where he observed Mr. Johnston still alive and proceeded to strike him again with the blade side of the hatchet. The Defendant then calmly returned to the kitchen of the residence where he found Mr. Peacock alive and proceeded to stab him multiple times. Defendant also told detectives that when he returned to the house to stab Mr. Peacock, he was careful to make sure Mr. Peacock was placed on the ground, rather than letting him fall to the ground, so the deaf neighbor wouldn't

feel any vibration. After stabbing Mr. Peacock, Defendant rinsed off the knife and placed it in the sink. After killing the victims, the Defendant went through the residence looking for Mr. Peacock's wallet. He stole the victims' wallet, money and credit cards, and took Mr. Peacock's vehicle.

From the time the Defendant first arrived at the residence, when only Mr. Peacock and a neighbor were present, until he killed the victims, a few hours had passed. The Defendant made sure to wait until the neighbor left and Mr. Johnston arrived, before he executed his calculated plan to kill the victims and steal their belongings. Additionally, heightened premeditation was demonstrated by the substantial amount of time the Defendant reflected on his plan while present at the residence and waiting for the opportune time to execute his plan. Lastly, there clearly was no pretense of moral or legal justification for the killings.

The jury unanimously determined that the State established this aggravating factor beyond a reasonable doubt. (Question A.5 in the Jury's Verdict As To Sentence On Count II) This Court agrees with the jury's finding regarding this aggravating factor. Considering the facts and circumstances supporting this aggravating factor as elicited during the trial in this case, this Court gives this aggravating factor GREAT WEIGHT.

vi. Conclusion – Aggravating Factors

Following the jury's unanimous determination of the existence of the aforementioned aggravating factors beyond a reasonable doubt, the jury was asked whether the aggravating factors are sufficient to warrant a possible sentence of death on Count II. The jury unanimously found the aggravating factors are sufficient to warrant a death sentence. (Section B in the Jury's Verdict As To Sentence On Count II) This Court has likewise considered the aggravating factors unanimously found by the jury to exist and agrees with the jury's finding, determining the aggravating factors are sufficient to warrant a death sentence on Count II. Thus, the Court will next consider the existence of mitigating circumstances.

B. MITIGATING CIRCUMSTANCES

As discussed above, during the recent penalty phase, the jury considered physical evidence introduced by the defense and heard testimony from Tammy Kimbell, Dr. Bloomfield, and Dr. Skolly-Danzinger. In rebuttal, the State presented the testimony of Dr. Meadows. The jury was instructed on the mitigating circumstances and that mitigating circumstances need only be established by the greater weight of the evidence. The jury stated in its verdict that one or more of the individual jurors found that one or more mitigating circumstance was established by a greater weight of the evidence. (Section C in the Jury's Verdict As To Sentence On Count II)

Additionally, the Court considered further evidence of mitigating circumstances during the recent *Spencer* hearing. At the *Spencer* hearing, the Court heard testimony from the Defendant and Dr. Skolly-Danzinger.

The mitigating circumstances set forth by the Defendant, as instructed by the Court during the recent penalty phase of the trial, as well as those set forth during the *Spencer* hearing and in Defendant's Sentencing Memorandum, are the same as those discussed above as they pertain to Count I; however, because they are also being considered by this Court to determine the appropriate sentence for Count II, they are discussed again below.

i. The First Degree Murder was committed while Defendant was under the influence of extreme mental or emotional disturbance.

As discussed above, during the recent penalty phase Tammy Kimball testified regarding the Defendant's extensive drug use around the time of the murders. Dr. Bloomfield testified regarding the Defendant's long-standing substance abuse and opined that due to the Defendant's extensive drug use at the time of the incident, he believes Defendant was under the influence of extreme mental or emotional disturbance at that time. Dr. Skolly-Danzinger testified at the penalty phase and *Spencer* hearing regarding the Defendant's long-standing drug abuse, its effects on the human body, and that Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders. The Defendant's statements to detectives shortly after the crime, describing his drug

addiction and his activities to get money for drugs, including the murders in this case and the string of robberies in the days leading up to the murders, corroborated the opinions of Drs. Bloomfield and Skolly-Danzinger. The State's rebuttal witness Dr. Meadows opined that he does not believe the Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders.

This Court finds that the greater weight of the evidence established the Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders due to his significant drug use. The Court gives this mitigating circumstance MODERATE WEIGHT.

ii. The capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

As discussed above, Ms. Kimball testified at the penalty phase trial regarding the Defendant's excessive drug use around the time of the murders. Drs. Bloomfield and Skolly-Danzinger both further opined the Defendant's ability to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was substantially impaired due to his drug use. Dr. Skolly-Danzinger opined that particularly with cocaine addiction, of which Defendant suffered, users lose control and seek the drug out regardless of the consequences. The State's rebuttal witness Dr. Meadows opined the Defendant's ability to appreciate the criminality of his conduct and to conform his conduct to the

requirements of law was not substantially impaired. At the *Spencer* hearing, the Defendant described his drug use, which included a eight to nine day drug binge without sleep immediately prior to the murders.

This Court finds that the greater weight of the evidence established the Defendant's ability to appreciate the criminality of his conduct and to conform his conduct to the requirements of law was substantially impaired. However, the Court notes that while the Defendant may have been impaired, he appreciated that killing Mr. Peacock and Mr. Johnston was wrong, as demonstrated in his statements to detectives and his attempts to avoid capture the day after the murders. The Court gives this mitigating circumstance SLIGHT WEIGHT.

iii. Defendant's childhood was chaotic.

As previously discussed, Dr. Bloomfield opined that Defendant had a rather chaotic childhood, which included first using marijuana at age five, beginning to use harder drugs at age 10, and his parents divorcing when he was age eight. Dr. Skolly-Danzinger testified about the Defendant's early childhood drug use, including inhalants by age 11, and having no boundaries growing up. The State's rebuttal witness Dr. Meadows rejected the claim that the Defendant had a chaotic childhood. Dr. Meadows indicated the Defendant described to him a happy childhood.

This Court finds that the greater weight of the evidence established this mitigating circumstance that the Defendant had a chaotic childhood. The Court gives this mitigating circumstance SLIGHT WEIGHT.

vi. Defendant and his siblings experienced a lack of adequate supervision after the divorce of his parents.

Drs. Bloomfield and Skolly-Danzinger testified that Defendant experienced a lack of supervision and a lack of boundaries after the divorce of his parents at age eight. After his parents divorced, Defendant stole food for his family and became an early chronic user of drugs. This Court finds that the greater weight of the evidence established this mitigating circumstance that the Defendant and his siblings experienced lack of adequate supervision after the divorce of his parents. The Court gives this mitigating circumstance VERY SLIGHT WEIGHT.

v. Defendant started huffing from spray cans at the age of 11 years old.

As discussed above, the Defendant's mitigation experts testified the Defendant told them he began "huffing" inhalants at the young age of 11. These mitigation experts testified regarding the detrimental effects this has on the human body, including brain development. This was part of the Defendant's long-standing drug abuse. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

vi. Defendant had an early and chronic abuse and dependency on alcohol and drugs.

As discussed above, the Defendant's mitigation experts testified at the recent penalty phase the Defendant began using and abusing drugs at a very early age. According to the Defendant's statements to the mitigation experts, he began using marijuana at age five, methamphetamine at age 10, and inhalants at age 11. Defendant told the experts that drug use became a daily thing for him beginning at age 12. Defendant testified at the recent *Spencer* hearing that he began injecting drugs around age 16. The defense experts testified regarding the adverse effects this early and chronic drug use has on brain development. The State's rebuttal expert testified that he doubted the veracity of the Defendant's very early drug use.

This Court finds that the greater weight of the evidence established this mitigating circumstance that Defendant had early and chronic abuse and dependency on alcohol and drugs. The Court gives this mitigating circumstance SLIGHT WEIGHT.

vii. Defendant had a cocaine dependency relapse starting in July 2006 up to and after the crimes at bar.

According to the Defendant in his statement to detectives, he was addicted to cocaine and had a relapse in 2006. The Defendant testified to this as well at the recent *Spencer* hearing. This was corroborated by the Defendant's mitigation experts and the State's rebuttal witness who all testified the Defendant suffered

from a substance abuse disorder. Tammy Kimball's testimony likewise corroborates this mitigating circumstance by her testimony regarding the Defendant's cocaine use around the time of the murders.

This Court finds that the greater weight of the evidence established this mitigating circumstance that Defendant had a cocaine dependency relapse starting in July 2006 up to and after the murders. The Court gives this mitigating circumstance SLIGHT WEIGHT.

viii. Defendant consistently used a voluminous amount of cocaine from July to October of 2006.

As discussed above, according to the Defendant's mitigation experts and Tammy Kimball, the Defendant was consistently using a significant amount of cocaine after his relapse in 2006 up to the time of the murders and his arrest. The Defendant would ingest cocaine in different ways including intravenously. The Defendant testified at the recent *Spencer* hearing that around the time of the murders he was spending approximately $1000 a day to support his drug addiction, and leading up the day of the murders he had been on a drug binge for eight or nine days without sleep.

This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

ix. Defendant cooperated with law enforcement at the time of his arrest.

Hours after his arrest, the Defendant gave a statement to detectives where he freely spoke and described the murders of Mr. Peacock and Mr. Johnston. A few months later, Defendant gave another statement to detectives where he again freely spoke about the murders. While the Defendant cooperated with investigators, the Court also notes that the day after the murders, when law enforcement officers sought to capture the Defendant, he led Citrus County deputies on a vehicular pursuit, and after crashing the vehicle he was operating, fled into a nearby body of water before being captured by police.

This Court finds that the greater weight of the evidence established this mitigating circumstance that the Defendant cooperated with law enforcement at the time of his arrest. The Court gives this mitigating circumstance SLIGHT WEIGHT.

x. Defendant admitted to the murders of Randy Peacock and Charles Johnston.

As discussed above, the Defendant freely admitted to detectives, on two occasions, that he murdered Mr. Peacock and Mr. Johnston. The Defendant's admissions to police were instrumental in securing his own convictions. During the recent *Spencer* hearing, the Defendant again admitted to committing the murders and expressed remorse.

This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance MODERATE WEIGHT.

xi. Defendant has artistic ability.

During the recent penalty phase the defense admitted into evidence and displayed art work created by Defendant since he has been in prison. This Court finds the art work impressive and the Defendant clearly possesses artistic ability.

This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xii. Defendant was an assistant superintendent for EMJ that built Cobblestone Village in St. Augustine.

During the recent penalty phase it was established the Defendant worked as a construction assistant superintendent working for EMJ prior to committing the murders. The Defendant played a key role in the construction of the Cobblestone Village shopping center in St. Augustine. At the recent *Spencer* hearing, Defendant testified that he worked in the construction industry since age 15. The Defendant progressed from a construction worker to a project supervisor. In addition to being a project supervisor for EMJ on the Cobblestone Village project, Defendant also worked with Johnson, Graham and Malone Construction, and worked on numerous projects in North Florida. While working in the construction

industry, Defendant also volunteered to help build the Able Charter School for special needs children. The Defendant was obviously good at his occupation; however, his drug abuse and criminal activity caused him to be unable to continue. This Court finds that the greater weight of the evidence established this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xiii. Defendant impacted the life of Claudia Goeke in a positive way while in prison.

During the recent *Spencer* hearing, the Court received a letter from Claudia Goeke. Ms. Goeke described her relationship with Defendant and how he helped her overcome physical and mental struggles. Ms. Goeke credits Defendant with saving her life.

The Court finds the greater weight of the evidence supports this mitigating circumstance. The Court gives this mitigating circumstance SLIGHT WEIGHT.

xiv. A prior jury did not unanimously find that Defendant should be sentenced to death

Defendant raises this proposed mitigating circumstance for the first time in his Sentencing Memorandum. As discussed above, in 2007 a jury recommended Defendant be sentenced to death by a vote of 10-2. The death penalties subsequently imposed in 2007, were vacated for the reasons set forth above.

Mitigating circumstances are limited to a defendant's character or record or the circumstances of the crime. *Campbell, supra,*; *Johnson, supra.* The prior jury's

2007 10-2 death penalty recommendation is not relevant to this Defendant's character or record or circumstances of the murders; therefore, it is not considered a mitigating circumstance and is afforded NO WEIGHT.

C. WEIGHING AGGRAVATING FACTORS AND MITIGATING CIRCUMSTANCES

At the conclusion of the penalty phase, the jury unanimously found that the aggravating factors that were proven beyond a reasonable doubt outweighed the mitigating circumstances, thus making the Defendant eligible for a death sentence for Count II. (Section D of the Jury's Verdict As To Sentence on Count II)

Following the recent penalty phase and *Spencer* hearing, this Court independently considered and weighed the aggravating factors unanimously determined by the jury to exist beyond a reasonable doubt and the mitigating circumstances established by the greater weight of the evidence. The Court assigned the weight it feels each of the established aggravating factors and mitigating circumstances are due.

The Court finds that the aggravating factors in this case far outweigh the mitigating circumstances; therefore, as the jury determined, the Court likewise determines the Defendant is eligible for a sentence of death for Count II of the Indictment.

D. SENTENCE COUNT II

"If the jury has recommended a sentence of Death, the Court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death." Fla. Stat. §921.141(3)(a)2. This Court recognizes it is not bound by the jury's verdict that death is the appropriate sentence, and may impose a life sentence if it feels that is appropriate. Not every person found guilty of first degree murder should receive a death sentence. A death sentence must be "reserved for only the most aggravated and the least mitigated first degree murders." *Urbin, supra.* This is such a case.

After carefully and independently considering those aggravating factors determined by the jury to exist, and all the mitigating circumstances, this Court agrees with the jury's unanimous finding that the Defendant should be sentenced to death for Count II. Based on the authority vested in this Court, it is the sentence of this Court that on Count II of the Indictment, for the First Degree Murder of Charles Johnston, the Defendant Norman Blake McKenzie is adjudicated guilty of said offense and sentenced to Death in a manner prescribed by law.

V. CONCLUSION

A. The sentences imposed by the Court herein shall run concurrent with each other.

B. All statutory fees and costs are imposed.

C. NORMAN BLAKE MCKENZIE, is hereby committed to the custody of the Florida Department of Corrections where he shall be held until such time he is put to death in accordance with Florida law for Counts I and II.

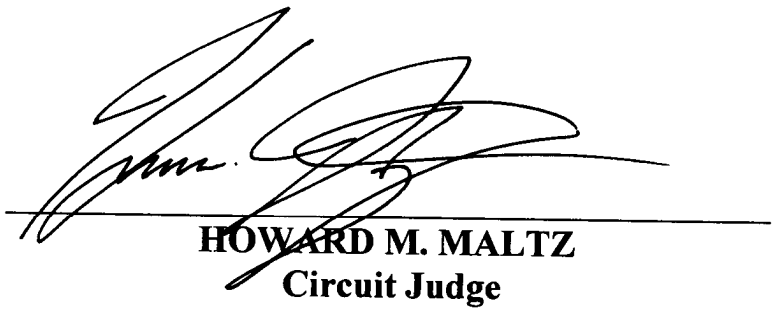
D. The Sheriff of St. Johns County, Florida, is hereby ORDERED to deliver NORMAN BLAKE MCKENZIE to the Florida Department of Corrections at the facility designated by the Florida Department of Corrections, together with a copy of the judgment and sentence, and all other documents specified by Florida law.

E. NORMAN BLAKE MCKENZIE is advised of his right to appeal this sentence to the Florida Supreme Court by filing a Notice of Appeal within 30 days of this date with the Clerk of Court. NORMAN BLAKE MCKENZIE is further advised that he has the right to be represented by counsel on his appeal. The Court appoints the Office of Regional Conflict Counsel for the Fifth District to represent the Defendant on Appeal.

ORDERED and ADJUDGED in open court this 14th day of February, 2020, at the Richard O. Watson Judicial Center, 4010 Lewis Speedway, St. Augustine, St. Johns County, Florida.

I, Howard M. Maltz, Circuit Judge of the Seventh Judicial Circuit of Florida, certify that the original sentencing order has been contemporaneously filed with

the Clerk of the Circuit Court for St. Johns County, Florida, at the time of pronouncement of sentence.



HOWARD M. MALTZ
Circuit Judge

Copies to:

Junior Barrett, Esq. – Defense counsel
Kenneth M. Hamburg, Esq. – Defense counsel
K. Mark Johnson, Assistant State Attorney
Jennifer L. Dunton, Assistant State Attorney
St. Johns County Sheriff's Office