ORIGINAL

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

MICHAEL ANTHONY GORDON,
Defendant.

CASE NO: 2015CF-000476-XX
SECTION: F9

SENTENCING ORDER

The Defendant, Michael Anthony Gordon (DOB: 02/15/1980), was indicted by a Grand Jury on February 3, 2015, for the following offenses:

1. First Degree Murder (Patricia Moran).
2. First Degree Murder (Deborah Royal).
3. Burglary With Assault Or Battery (Patricia Moran and/or Deborah Royal).
4. Conspiracy To Commit Armed Robbery.
5. Robbery With A Firearm (Chad O'Brien and/or Richie Soto).
6. Grand Theft (Cash America Pawn Shop).
7. Fleeing Or Attempting To Elude.
8. Attempted Murder In The First Degree (Officer Jeff Moore).
9. Attempted Murder In The First Degree (Officer David Smith).
10. Attempted Murder In The First Degree (Officer Ronald Adams).
11. Attempted Murder In The First Degree (Deputy Sheriff Quintana Rivera).
12. Attempted Murder In The First Degree (Officer Eric Nickels).
13. Attempted Murder In The First Degree (Officer Jorge Gill).
14. Grand Theft (Patricia Moran).
15. Possession Of A Firearm By A Convicted Felon.

On February 6, 2015, the State filed its NOTICE OF INTENT TO SEEK DEATH PENALTY. The Notice was filed pursuant to Rule 3.202, Florida Rules of Criminal Procedure. On March 30, 2016, the State filed its NOTICE OF INTENT TO SEEK DEATH PENALTY AND DISCLOSURE OF AGGRAVATING FACTORS[1]. The Notice was filed pursuant to Rule 3.202, Florida Rules of Criminal Procedure; Sections 921.141(1) and 782.04(1)(b) *Florida Statutes*. On February 20, 2018, the State filed its AMENDED NOTICE TO SEEK DEATH PENALTY AND DISCLOSURE OF AGGRAVATING FACTORS. The Notice was filed pursuant to Rule 3.202, Florida Rules of Criminal Procedure; Sections 921.141(1) and 782.04(1)(b) *Florida Statutes*.

1. This Notice was filed by the State after the case of Hurst v. Florida, __U.S.__, 136 S. Ct. 616, 193 L.Ed.2d 504 (2016) was decided.

Based on the facts and circumstances surrounding the events of January 15, 2015, in addition to the Defendant, the following individuals were also separately indicted:

A. Terrell Lemar Williams (DOB: 03/05/1985). He was charged with the following charges:
   1. First Degree Murder (Patricia Moran).
   2. First Degree Murder (Deborah Royal).
   3. Conspiracy To Commit Armed Robbery.
   4. Robbery With A Firearm.
   5. Grand Theft.
   6. Fleeing Or Attempting To Elude.
   7. Attempted Murder In The First Degree.
   8. Attempted Murder In The First Degree.
   9. Attempted Murder In The First Degree.
   10. Burglary Of A Dwelling.

On October 25, 2018, a jury found Williams guilty as charged and he was sentenced to life in prison without the possibility of parole.

B. Devonere Decan McCune (DOB: 03/02/1992). He is charged with the following offenses:
   1. First Degree Murder (Patricia Moran).
   2. First Degree Murder (Deborah Royal).
   3. Conspiracy To Commit Armed Robbery.
   4. Robbery With A Firearm.
   5. Grand Theft.
   6. Fleeing Or Attempting To Elude.
   7. Attempted Murder In The First Degree.
   8. Attempted Murder In The First Degree.
   9. Attempted Murder In The First Degree.

On December 12, 2019, a jury found McCune guilty of Second Degree Murder for counts one and two (lesser included offenses) and as charged for the remainder of his charges. On January 10, 2020 McCune was sentenced as PRR to multiple life sentences.

C. Jovan Cornelius Lamb (DOB: 04/25/1985). He is charged with the following offenses:
   1. First Degree Murder (Patricia Moran).
   2. First Degree Murder (Deborah Royal).
   3. Conspiracy To Commit Armed Robbery.
   4. Robbery With A Firearm.
   5. Grand Theft.
   6. Fleeing Or Attempting To Elude.
   7. Attempted Murder In The First Degree.
   8. Attempted Murder In The First Degree.
   9. Attempted Murder In The First Degree.
   10. Burglary Of A Dwelling.

The Lamb case is presently scheduled for trial.

First Phase Trial

On January 2, 2019, the defense's oral motion to sever count fifteen was granted.

On January 14, 2019, the first phase of the trial began and the jury was selected on January 23, 2019. On January 29, 2019, the jury was sworn and the presentation of evidence started.

At the conclusion of the State's case in chief, the Court determined that the State failed to present legally sufficient evidence to support count thirteen (Officer Gill). Therefore, a judgment of acquittal was entered as to that count.[2]

On February 12, 2019, the jury returned guilty verdicts as charged in the indictment for counts one through twelve and for count fourteen. The court adjudicated the Defendant guilty for those counts.

On September 27, 2019, the Defendant pleaded guilty to count fifteen pursuant to an agreement with the State. The Defendant was adjudicated guilty and sentenced to fifteen years in Florida State Prison with three years minimum mandatory.

A. The State's Case

The testimony and other evidence presented during the trial established, among other things, that on January 15, 2015, around 5:46 p.m. the Auburndale Police Department responded to Cash America Pawn located at 105 Havendale Boulevard, Auburndale, Polk County, Florida, to investigate a reported armed robbery. Upon arrival at the scene, the employees of the Pawn Shop, Mr. Chad O'Brien and Mr. Richie Soto, reported that three black males have perpetrated an armed robbery. The victims reported that the three suspects wore gloves, hooded jackets and masks to cover their faces. The victims described that one of the suspects was armed with a long gun (rifle), another suspect was armed with a handgun (revolver) and that the third suspect was armed with a crowbar. The two suspects armed with the guns had their guns pointed at the victims and ordered them to stay down on the floor. The suspect with the crowbar went straight to the jewelry glass displays and began to attempt to break the glass with the hope of getting to the jewelry stored within. Upon realizing that the efforts to break the glass were not fruitful, the suspect with the long gun ordered Mr. O'Brien to get up and to unlock the jewelry cases. Mr. O'Brien testified that he was ordered by the suspect with the long gun to **"...get up...get the fuck up...you have keys...get the fuck up and open the case...you have five seconds or I will kill you..."** Mr. O'Brien testified that out of fear for his life he complied with the suspect's demand in a timely fashion. Once the jewelry cases were opened, the suspect with the long gun and the suspect with the crowbar began to empty jewelry cases and stuff their contents into a

2. Officer Gill was with the Haines City Police Department on January 15, 2015 and he was assigned to the Chanler Ridge subdivision to assist in the investigation and the apprehension of the suspects. Officer Gill died before the trial.

large black plastic bag. They amassed the property of Cash America Pawn as if the property was their own. During that time, the suspect with the handgun surveyed the counters and the office areas looking for valuables and he helped himself with such property. It was believed by one of the victims that prior to their departure from the store, the suspect with the handgun yelled "...time...time...we got to go..."

The Pawn Shop was equipped with video surveillance security system. The following is a summary of the evidentiary information that was depicted in the video recordings published during the trial:

a. The arrival of a sport utility vehicle into the parking lot of the Pawn Shop at the time of the robbery.
b. Three suspects exited the vehicle and entered the Pawn Shop.
c. The three suspects wore deceptive garbs to obscure their true identities and were armed as described by Mr. O'Brien and Mr. Soto.
d. The waiting vehicle was occupied by who was later determined to be the fourth suspect who acted as the driver.
e. Upon perpetrating the robbery, the three suspects returned to the waiting vehicle. Upon entering the vehicle, it departed the scene.

One of the stolen jewelry cases was equipped with a tracking device. The device immediately began to transmit detailed information which soon was relayed to law enforcement units in the area. The transmitted information gave locations, path of travel and the speed of the fleeing suspects. Such information along with the activation of the silent alarm by Mr. O'Brien at the beginning stages of the robbery and the 911 call made by Mr. Soto enabled law enforcement to locate the fleeing sports utility vehicle.

Officers Jeff Moore, David Smith and Ronald Adams from the Haines City Police Department located the suspect vehicle. They described it as a General Motors Company Sports Utility Vehicle "Jimmy". The vehicle was further described as maroon in color and that at times it travelled, as it attempted to elude law enforcement at a high rate of speed and in a reckless manner. The officers had their lights and sirens activated as they pursued the fleeing vehicle. Instead of stopping, occupants of the suspect vehicle began to shoot at the police vehicles through the rear glass window of the Jimmy. As the suspect vehicle fled, it entered the Chanler Ridge subdivision located in the Haines City area where it crashed. All four occupants fled the vehicle on foot.

The following is some of the relevant evidence presented at trial regarding the vehicle used to facilitate the commission of robbery and the flight from the scene of the robbery:

a. It was a 1996 General Motors Company "Jimmy". It was red or maroon in color.
b. The vehicle was registered and titled in the Defendant's name. Law enforcement recovered the Defendant's birth certificate, his social security card and some of his mail from within the vehicle.
c. The assigned vehicle's tag had been removed from the vehicle and it was located on the driver's side floorboard.

d. The rear window was shattered as a result of the shots fired at the pursuing police vehicles.
e. Various stolen items were recovered from the vehicle and its vicinity.
f. A handgun (revolver) was recovered from the vehicle.
g. Various spent/empty shell casings were also recovered from the vehicle. Most, if not all, of the casings were PMC 30 carbine (suitable for the rifle).
h. Clothing items including gloves were recovered from the vehicle or its vicinity.

Police activity within the Chanler Ridge subdivision teased the curiosity and concerns of some of the residents of the subdivision causing them to step out of their residences to investigate.

Ms. Caitlyn Campbell and Ms. Bree Foster were some of the residents who stepped outside. They provided the following testimony:

a. On January 15, 2015, they lived in the Chanler Ridge subdivision.
b. Around 5:15 p.m. on the above date, they heard emergency sirens and noticed multiple police cars in and around their subdivision.
c. They resided in the vicinity of 618 Astor Drive, the home of Ms. Patricia Moran (72) and Ms. Deborah Royal (51).
d. As they stood in their garage, they observed a black male near their house.
e. The black male explained that he was one of their neighbors and he pointed to a neighboring house claiming that he lived there.
f. They responded to him that he did not live there as they knew the residents of the house he pointed out.
g. The black male further explained that he had been robbed and that people were shooting at him.
h. The black male ran away in the direction of Astor Drive.
i. Shortly thereafter, they observed some discarded items around their house. The items were subsequently determined to include:
    i. U.S. Carbine Rifle, 30 caliber with a partially loaded magazine. Other evidence presented during the trial established that the Defendant carried or actually possessed the rifle during the robbery of the Pawn Shop. Furthermore, the evidence also established that the rifle was discharged to shoot at officers Moore, Smith and Adams during the police pursuit after the commission of the robbery.
    ii. A black and white Nike shoe. The evidence at trial established that the matching shoe was recovered from within 618 Astor Drive.
    iii. A white Echo Hoodie, a black T-shirt and a black knit cap. The evidence at trial also established that the Defendant wore the hoodie during the robbery.
j. They relayed their encounter with the black male and their observation of the property to law enforcement.

k. Both of them testified that they had observed news coverage of the case and that the coverage included the photos of the four suspects upon their arrests.
l. Ms. Campbell was shown a photo pack and she identified the Defendant as the black male she and Ms. Foster had observed outside of their home on January 15, 2015.
m. Both Ms. Campbell and Ms. Foster testified that, to their knowledge, they have never seen the black male before that day.

Ms. Sandra Cox, who resided at 616 Astor Drive, also stepped out of her residence as a result of hearing sirens and upon seeing the many police cars in her subdivision. As she stepped outside, she expected to see her neighbors from 618 Astor Drive (Ms. Moran and Ms. Royal) to be outside. Once she realized that they were not outside she became alarmed and decided to go to their house and to check on them. She knocked on their door, but they did not answer. She attempted to open their front door, but it was locked. As she was in the process of doing all of that, she heard Ms. Royal scream "...no...no...no...". She testified that Ms. Royal's screams were made "... in a terrifying tone."

Ms. Cox testified that she ran back to her house as quickly as she could. She grabbed her car keys and drove away from her house out of fear. As she was leaving, she called 911 and reported her observations and concerns.

Consequently, some of the police investigators who saturated the Chanler Ridge subdivision with their presence in an effort to apprehend the fleeing suspects converged on 618 Astor Drive and established a perimeter around the residence. Special Agent Dennis Russo testified that he observed suspicious activities within the residence to include two badly injured and motionless females. Their bodies were covered in blood.

As the investigators were contemplating an entry to the residence, they could hear a car engine starting within the garage of the residence. It was at that time when a small blue vehicle exited the garage by crashing through the closed door. As the blue vehicle exited the garage onto Astor Drive, it swerved towards Deputy Sheriff Quintana Rivera (Polk County Sheriff's Office) and Officer Eric Nickels (Haines City Police Department).

A number of the officers (including Deputy Sheriff Rivera and Officer Nickels) fearing for their lives, had to quickly jump out of the path of the fleeing vehicle.

Several of the officers fired their weapons at the fleeing blue vehicle and it crashed a short distance from 618 Astor Drive. The driver was arrested and was identified as the Defendant. The investigators subsequently determined that the blue vehicle belonged to Ms. Moran.

Officer Nicholas Harrison (Haines City Police Department) testified that the Defendant was the only occupant of the vehicle and that as the arresting officers moved in he, the Defendant, stated **"I've been hit. I give up."**

Some of the investigators at the scene entered the residence to discover the badly injured and deceased bodies of Ms. Moran and Ms. Royal. The following is a summary of the observations made by those investigators regarding the scene and the evidentiary items discovered and collected later:

a. The victims suffered multiple stab wounds
b. Blood was found throughout the residence.
c. The hot water was running out of the shower and steam was visible.
d. There were no other persons located within the residence.
e. A knife block was observed on the kitchen counter. It had six slots but only two knives were in the block.
f. A knife handle was recovered from the kitchen floor.
g. A knife blade was recovered from underneath the body of one of the victims.
h. Three additional bloody knives were recovered from the area near the bodies.
i. A pair of gloves was recovered from the area near the bodies. The gloves were identified as the gloves that the Defendant wore during the robbery of the Pawn Shop.
j. A black and white Nike shoe was recovered from the area near the bodies.
k. Bloody clothes were recovered from the washing machine. Witnesses testified that the DNA profiles extracted from the bloody clothes matched the known DNA profiles obtained from the Defendant and from one of the victims.

Sergeant Christopher Katsoulis (Polk County Sheriff's Office) testified that on January 15, 2015, around 7:00 p.m., he came in contact with the Defendant at Haines City Police Department. He observed that the Defendant was bleeding from his injuries. The Defendant told him that a person by the name of Tony Wright was in the house at 618 Astor Drive.

Sergeant Katsoulis also testified that a resident of the Chanler Ridge subdivision identified Tony Wright[3] from a photo pack as a person who was present in the subdivision on January 15, 2015.

Sergeant Sam Bunch (Polk County Sheriff's Office) testified that on January 15, 2015, he came in contact with the Defendant at Lakeland Regional Medical Center after his transport by an ambulance. The Defendant was treated for his injuries. Sergeant Bunch added that the Defendant's injuries were caused by possible gunshot(s) and or dog bite(s). The Defendant told him that he was in pain.

CST Lisa Beote testified that she came in contact with the Defendant on January 15, 2015 at approximately 9:30 p.m. He was in the recovery room at the Lakeland Regional Medical Center. She also testified that she responded to Haines City Police Department and collected the Defendant's clothes. The clothes had blood on them and she recovered $424.00 in cash from the Defendant's pants.

The vast majority of the property stolen by the Defendants during the robbery of the Pawn Shop was recovered by law enforcement.

Dr. Vera Volnikh, the Associate Medical Examiner for District Ten, testified that on January 16, 2015 she performed the autopsy on the remains of Ms. Moran. Dr. Volnikh stated that Ms. Moran suffered a total of fifty-seven wounds, most of which were caused by a sharp instrument such as a knife. The doctor described the injuries as either stab wounds, incised

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3. Two of the victims' neighbors were shown a photo pack that contained the photo of Tony Wright and both identified Wright as the black male that they saw on January 15, 2015 in their neighborhood. One was Ms. Foster, a State witness, and the other was Mr. Ian Wo (a defense witness).

wounds, contusions, abrasions and defensive wounds. She opined that the cause of death was multiple stab and incised wounds and that the manner of death was homicide.

Dr. Stephen Nelson, the Chief Medical Examiner for District Ten, testified that on January 16, 2015 he performed the autopsy on the remains of Ms. Royal. Dr. Nelson testified that Ms. Royal suffered a total of fifty-four wounds to include stab and incised wounds caused by a sharp instrument, abrasions, contusions and defensive wounds. Dr. Nelson opined that the cause of death was multiple stab wounds and the manner of death was homicide.

Defensive wounds are indicative that the victims struggled against their attacker in order to stay alive.

Both doctors testified that the victims were alive when they suffered their injuries.

McCune was arrested shortly before the Defendant's arrest. He was hiding in a grassy area not far from the crashed "Jimmy".

Lamb and Williams were arrested the next morning, on January 16, 2015. They were hiding in the outskirts of the Chanler Ridge subdivision.

B. <u>The Defendant's Case</u>

The defense called two witnesses at the guilt phase. Mr. Ian Lee Wo and Sergeant Gustavo Aguirre (Polk County Sheriff's Office).

1. Mr. Wo testified as follows:
    - i. On January 15, 2015, he resided at the Chanler Ridge subdivision and his residence was located across the street from the residence of Ms. Foster and Ms. Campbell.
    - ii. On that day and upon hearing the sounds of vehicles and sirens, he too came out of his residence to investigate the cause of the commotion.
    - iii. While standing outside, he observed a black male who was walking fast between the neighboring residences.
    - iv. Mr. Wo described the individual as "Stocky and brown skin color…Brown skin. Like African-American complexion."
    - v. He observed the individual for 3-4 minutes during which Mr. Wo recalled that Ms. Foster said something to the individual which caused him to stop.
    - vi. He then observed the black male walking away in the direction of 618 Astor Drive.
    - vii. Hours later, Mr. Wo was interviewed by law enforcement at which time he was shown a photo lineup of 6 photographs.
    - viii. Mr. Wo testified that he identified one of the photographs as the person he saw walking within his neighborhood on that day.

The Defense moved into evidence the photo pack that was shown to Mr. Wo by law enforcement. It was marked and admitted as defense exhibit #1.

2. Sergeant Aguirre testified to the following:
    i. He was tasked with conducting photo lineups with some of the witnesses.
    ii. The lineups were done in an effort by law enforcement to identify the individual who was observed walking on foot within the Chanler Ridge subdivision.
    iii. He showed Ms. Campbell a photo pack (6 photographs) and she identified a photo of the person she saw walking outside of her house on January 15, 2015. Ms. Campbell told him that she was confident of her identification.
    iv. He showed an identical photo pack to Mr. Wo and he also identified the photo of the person he saw walking outside of his house on January 15, 2015. The Sergeant added that the lineups were administered separately and that Mr. Wo was positive of his identification.
    v. The photograph identified by Ms. Campbell and Mr. Wo is a photograph of a person named Tony Wright.

Second Phase Trial

The second phase trial commenced on February 13, 2019 in accordance with Section 921.141, *Florida Statutes*, before the same jury.

The State's Proposed Aggravating Factors

The proposed factors apply to both victims.

1. **Michael Anthony Gordon was previously convicted of another capital felony or a felony involving the use or threat of violence to another person.**
    a. **The crime of First Degree Murder (Patricia Moran or Deborah Royal) is a capital felony.**
    b. **The crimes of: Aggravated Battery with a Firearm (William Jovan Hicks), Battery by Detained Person on Inmate (Rasmes Simeon), Felony Battery/Domestic Battery by Strangulation (Shannon Ruyle Simmons), Robbery with a Firearm (Chad O'Brien and Richie Soto), and Attempted Premeditated First Degree Murder (Jeff Moore, David Smith, Ronald Adams, Quintana Rivera, and Eric Nickels) are all felonies involving the use of violence to another person.**
2. **The First Degree Murder was committed while Michael Anthony Gordon was engaged in a Burglary.**
3. **The First Degree Murder was committed for the purpose of avoiding or preventing a lawful arrest.**
4. **The First Degree Murder was especially heinous, atrocious or cruel.**

The jury unanimously found that the State has established beyond a reasonable doubt the existence of the aggravating factors.

AGGRAVATING FACTORS THAT APPLY TO PATRICIA MORAN AND DEBORAH ROYAL

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

   a. The crime of first degree murder is a capital felony. The Defendant was convicted of two murders arising out of the same criminal episode. The contemporaneous conviction as to one victim supports the finding of the prior violent felony aggravator to the murder of the other victim.

   In Bevel v. State, 983 So.2d 505 (Fla. 2008), the Florida Supreme Court held that:

   > This Court has repeatedly held that "where a defendant is convicted of multiple murders, arising from the same criminal episode, the contemporaneous conviction as to one victim may support the finding of the prior violent felony aggravator as to the murder of another victim." Francis v State, 808 So.2d 110, 136 (Fla. 2001) (citing Mahn v. State, 714 So.2d 391, 399 (Fla. 1998), and Walker v. State, 707 So.2d 300, 317 (Fla. 1997)). In this case, Bevel murdered two victims and attempted to murder a third. Thus, the prior violent felony aggravator was clearly applicable to each count based upon the contemporaneous murder and attempted murder convictions.

   See also Knight v. State, 746 So.2d 423 (Fla. 1998); Stein v. State, 632 So.2d 1361 (Fla. 1994); Pardo v. State, 563 So.2d 77 (Fla. 1990). The prior violent felony aggravator is among the weightiest of the aggravators. Covington v. State, 228 So.3d 49 (Fla. 2017); Hodges v. State, 55 So.3d 515 (Fla. 2010).

   The murder conviction for the death of Ms. Moran aggravates the murder conviction for the death of Ms. Royal. The murder conviction for the death of Ms. Royal aggravates the murder conviction for the death of Ms. Moran.

   b. The crimes of Aggravated Battery with a Firearm (William Jovan Hicks), Battery by Detained Person on Inmate (Rasmes Simeon), Felony Battery/Domestic Battery by Strangulation (Shannon Ruyle Simmons), Robbery with a Firearm (Chad O'Brien and Richie Soto), and Attempted Premeditated First Degree Murder (Jeff Moore, David Smith, Ronald Adams, Quintana Rivera, and Eric Nickels) are all felonies involving the use of violence to another person.

      i. The Defendant's prior conviction for Aggravated Battery with a Firearm (William Jovan Hicks). The evidence at trial established that during an argument with Mr. Hicks and or his friends, the Defendant shot Mr. Hicks in one of his feet and in his opposite leg. The Defendant on or about June 17, 2005 pleaded guilty to the charge and he was convicted of the crime.

      ii. The prior conviction for Battery by Detained person on Inmate (Rasmes Simeon). The evidence at trial established

that during an argument between inmates at the jail the Defendant stabbed Mr. Simeon with a sharp object. Mr. Simeon was not involved in the argument and he suffered a stab wound to his chest and one of his lungs was punctured. On or about August 11, 2006, the Defendant pleaded guilty to the charge which resulted in his conviction.

iii. The Defendant's prior conviction for Felony Battery/Domestic Battery by Strangulation (Shannon Miller)[4]. The evidence at trial established the following: In 2014 the Defendant lived with Ms. Miller and her children. She and the Defendant have a child together. Their daughter is 15 years of age. On the day in question, she heard a commotion between the Defendant and their daughter. When she attempted to intervene, the Defendant struck her with his hand against her face and proceeded to get on top of her. He also began to strangle her. After the fact, she noticed that her daughter had a busted lip and a mark to the back of her neck. On or about February 12, 2016, the Defendant pleaded guilty to the charge resulting in his conviction.

iv. As mentioned above, the jury unanimously found that the State proved the Defendant's guilt beyond a reasonable doubt for the Robbery with a Firearm (Mr. O'Brien and Mr. Soto), and the Attempted First Degree Murder counts (Officers Moore, Adams, Nickels and Deputy Sheriff Rivera).

The Florida Supreme Court on multiple occasions held that the prior violent felony aggravator is an "especially weighty" factor in Florida Sentencing Scheme. See, Knight v. State, 76 So.3d 879 (Fla. 2011); Hildwin v. State, 84 So.3d 180 (Fla. 2011).

2. **The First Degree Murder was committed while Michael Anthony Gordon was engaged in a Burglary.**

The jury unanimously found that the State proved the Defendant's guilt beyond a reasonable doubt for the count of Burglary With Assault Or Battery. The State also established at the trial that the Defendant was the only person who unlawfully entered the victims' residence without their consent.

The commission of the Burglary in this case amounted to a substantial invasion to the privacy that our society and our system of justice afford citizens within their homes.

The Court's analysis and conclusions regarding the applicability of this factor does not include the Defendant's homicidal actions within the victims' residence. In doing so, the Court is mindful of the doubling doctrine.

3. **The First Degree Murder was committed for the purpose of avoiding or preventing a lawful arrest.**

4. Ms. Shannon Miller was previously known as Shannon Ruyle Simmons.

To establish this factor when the murder did not involve a law enforcement officer, the State must prove that the Defendant's requisite intent to prevent his/her arrest must be present in clear or strong terms. In other words, the State must prove beyond a reasonable doubt that the victim was murdered solely for the purpose of eliminating the presence of the witness. In examining the applicability of this aggravating factor the Court considered, among other authorities, Preston v. State, 607 So.2d 404 (Fla. 1992), Rodriguez v. State, 753 So.2d 29 (Fla. 2000) and Wood v. State 209 So.3d 1217 (Fla. 2017).

In its Sentencing Memorandum, the State conceded that the evidence presented at trial supporting the aggravating factor that *The First Degree Murder was committed while Michael Anthony Gordon was engaged in a Burglary* and the instant aggravating factor are considered to be a single aspect of the criminal offenses. The State also conceded that the two mentioned aggravators merge with one another as one factor.

The facts and circumstances in this case, including the conduct of the Defendant lead the Court to conclude that this factor was established beyond a reasonable doubt.

THE AGGRAVATING FACTOR THAT APPLIES TO PATRICIA MORAN ONLY

The First Degree Murder was especially heinous, atrocious or cruel (HAC).

The evidence presented at trial established beyond a reasonable doubt the following matters that are pertinent to this factor:

i. The body of Ms. Moran was lying on the living room floor next to her daughter's body.
ii. Her body was nude or mostly nude.[5]
iii. Four knives were located on the living room floor and one of the knives was broken.
iv. Dr. Volnikh testified that her examination of Ms. Moran's body revealed that she suffered 57 stab wounds. The stab wounds were concentrated to the areas of her upper body.
v. The injuries varied in size, shape and depth.
vi. Some of the injuries were severe and caused serious damage to Ms. Moran's vital organs, face and neck.
vii. The force used to inflict the injuries resulted in breaking some of Ms. Moran's ribs. Ms. Moran also suffered a blunt force trauma to her face which was most likely caused by an object other than a knife.
viii. Some of the injuries to Ms. Moran were classified by Dr. Volnikh as defensive injuries.
ix. The doctor added that most of the injuries were certain to have caused the victim pain and that her death was not instantaneous.

5. There was no evidence to suggest that the element of nudity in this case was attributable to the Defendant's motives or actions.

x. Dr. Volnikh conceded that she could not give an opinion as to when Ms. Moran became unconscious and that she could not provide an opinion regarding the sequence or order of the injuries to Ms. Moran.

The forensic testimony and the photographic evidence lead the Court to conclude that Ms. Moran suffered a violent and painful death at the hands of the Defendant. Furthermore, the evidence reasonably suggests that Ms. Moran's death was the result of deliberate cruelty. Her injuries were all antemortem and some were caused as she attempted to defend her life, which supports the conclusion that she was aware of her impending death.

THE AGGRAVATING FACTOR THAT APPLIES TO DEBORAH ROYAL ONLY

The First Degree Murder was especially heinous, atrocious or cruel (HAC).

The evidence presented at trial established beyond reasonable doubt the following matters that are pertinent to this factor:

i. The body of Ms. Royal was lying on the living room floor next to her mother's body.
ii. Her body was nude or mostly nude[6].
iii. Four knives were located on the living room floor and one of them was broken.
iv. Dr. Nelson testified that his examination of Ms. Royal's body revealed that she suffered 54 stab wounds. The wounds were mainly concentrated to Ms. Royal's upper body.
v. The injuries were different in size, shape and depth and all of the injuries were inflicted while Ms. Royal was alive. Dr. Nelson was unable to render an opinion as to when Ms. Royal became unconscious.
vi. A sharp object was used to inflict the vast majority of the injuries.
vii. Ms. Royal had defensive wounds which is reasonably suggestive that she was alive and struggled against her attacker.
viii. Dr. Nelson could not opine, with specificity, as to how long it took Ms. Royal to die, but he concluded that the attack could have lasted minutes and that the death was not instantaneous.
ix. Dr. Nelson also found that the force used during the attack caused some of Ms. Royal's ribs to break and caused severe damage to some of her vital organs.

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6. There was no evidence to suggest that the element of nudity in this case was attributable to the Defendant's motives or actions.

As mentioned above, the victims' neighbor, Ms. Cox, overheard Ms. Royal scream "...no...no...no...". Ms. Cox described that the screams were uttered "...in a terrifying tone."

The testimony of Ms. Cox is evidence of fear and emotional strain on the part of Ms. Royal and also evidence that support the conclusion that the victim was acutely aware of her impending death and possibly her mother's impending death.

The forensic testimony and the photographic evidence lead the Court to conclude that Ms. Royal suffered a violent and painful death at the hands of the Defendant. Furthermore, the evidence reasonably lead to the conclusion that Ms. Royal's death was the result of deliberate cruelty. Her injuries were all antemortem and some were clearly caused while she was attempting to defend her life.

This Court has considered various authorities while examining the applicability of the HAC aggravating factor to this case. In Aguirre-Jarquin v. State, 9 So.3d 593 (Fla. 2009) the Florida Supreme Court held as follows:

> With respect to the HAC aggravator, this Court has held that "fear, emotional strain, and terror of the victim during the events leading up to the murder may make an otherwise quick death especially heinous, atrocious, or cruel." *James v. State*, 695 So.2d 1229, 1235 (Fla.1997). This Court has also held that "the HAC aggravator focuses on the means and manner in which death is inflicted and the immediate circumstances surrounding the death." *Brown v. State*, 721 So.2d 274, 277 (Fla.1998). Furthermore, "the victim's mental state may be evaluated for purposes of such determination in accordance with a common-sense inference from the circumstances." *Swafford v. State*, 533 So.2d 270, 277 (Fla.1988); *see also Lynch v. State*, 841 So.2d 362, 369 (Fla.2003) ("[T]he focus should be upon the victim's perception of the circumstances...."). And, in *Busia v. State*, 926 So.2d 1203, 1214 (Fla.2006), this Court upheld the finding of the HAC aggravator and stated: "Whether this state of consciousness lasted minutes or seconds, he was 'acutely aware' of his 'impending death[ ].' We have upheld the HAC aggravator where the victim was conscious for merely seconds."

In Preston v. State, 607 So.2d 404 (Fla. 1992) the Florida Supreme Court held as follows:

> Fear and emotional strain may be considered as contributing to the heinous nature of the murder, even where the victim's death was almost instantaneous. *Hitchcock v. State*, 578 So.2d 685, 693 (Fla.1990), *cert. denied*, 502 U.S. 912, 112 S.Ct. 311, 116 L.Ed.2d 254 (1991); *Rivera v. State*, 561 So.2d 536, 540 (Fla.1990); *Adams v. State*, 412 So.2d 850 (Fla.), *cert. denied*, 459 U.S. 882, 103 S.Ct. 182, 74 L.Ed.2d 148 (1982).

The HAC aggravating factor is among the weightiest aggravating factors provided for in Florida's statutory sentencing scheme. See Knight v. State, 76 So.3d 879 (Fla. 2011); Hildwin v. State, 84 So.3d 180 (Fla. 2011).

Doubling

As to the doctrine of doubling that must be considered by the jury when they are engaged in the weighing process, the Court instructed the jury as follows:

> Pursuant to Florida law, the aggravating factors of "the First Degree Murder was committed while Michael Anthony Gordon was engaged in Burglary" and the aggravating factor of "the First Degree Murder was committed for the purpose of avoiding or preventing a lawful arrest" are to be considered to merge because they are considered to be a single aspect of the offense. If you unanimously determine that both of these aggravating factors 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.

The State presented victim impact statements from Justine Clifton, Robert and Linda Vogl, Tiffany Royal, Christopher Royal, Loisann Apple and Marilee Felock. The statements were previously reduced to writing and provided to the defense.

The Defendant's Proposed Mitigating Circumstances

1. **The First Degree Murder was committed while Michael Anthony Gordon was under the influence of extreme mental or emotional disturbance.**
2. **The capacity of Michael Anthony Gordon to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.**
3. **Michael Anthony Gordon suffered from brain damage.**
4. **The existence of any other factors in Michael Anthony Gordon's character, background, or life or the circumstances of the offense that would mitigate against the imposition of the death penalty.**
5. **Michael Anthony Gordon was an accomplice in the First Degree Murder of Patricia Moran or the First Degree Murder of Deborah Royal committed by another person and his participation was relatively minor.**
6. **Michael Anthony Gordon suffered and continues to suffer from toxic stress syndrome.**
7. **Michael Anthony Gordon was not receiving proper psychiatric treatment leading up to January 15, 2015.**
8. **Michael Anthony Gordon was abused and abandoned by his family as a child.**
9. **Michael Anthony Gordon was seen smoking K2 or Spice on January 15, 2015.**

Defense Penalty Phase Testimony

1. Dr. Michele Quiroga. Dr. Quiroga testified as follows:
   a. She has a PhD in clinical psychology and specializes in neuropsychology. She also has a practice in forensic psychology.
   b. She reviewed records from the following sources.

i. Social Security Administration.
ii. Polk County School Board.
iii. Peace River Center.
iv. Bartow Memorial Hospital.
v. Corizon Health.
vi. Lakeland Regional Medical Center.
vii. Winter Haven Hospital.
viii. Winn-Dixie Pharmacy.
ix. Frostproof Jail Records.

c. She conducted diagnostic interviews with the Defendant and met with him about 7-8 times for a total of 24.5 hours.
d. She administered 22 neuropsychological tests to the Defendant.
e. As part of her work in this case, she also interviewed the following members of the Defendant's family:
    i. Mary Gordon, the Defendant's mother.
    ii. Michael Gordon, Sr., the Defendant's father.
    iii. Theresa Gordon, the Defendant's sister.
    iv. Katrina Parker, the Defendant's maternal aunt.
    v. Elizabeth Walter, the Defendant's maternal aunt.
    vi. Demitris Parker, the Defendant's first cousin.
    vii. Fleming Sharpshire, the Defendant's first cousin.
f. Her forensic work in this case led her to conclude the following matters about the Defendant's early childhood development:
    i. At the age of 4 he accompanied his mother who worked in farm producing fields and he was exposed to pesticides.
    ii. He was subjected to corporal punishment and verbal abuse at the hands of his alcoholic father.
    iii. His mother failed to protect him and his sister from the abusive father.
    iv. He witnessed domestic violence perpetrated by his father.
    v. He lacked a positive role model.
    vi. He grew up in an environment where drugs, guns and violence were present.
    vii. The Defendant had a total of 6 years of school education as he withdrew from school during the 7th grade.
g. The Defendant's childhood psychopathology and psychiatric history revealed the following:
    i. The Defendant began to experience mental health problems at the age of 11.
    ii. The Defendant's medical history included sleep disorder during his childhood and multiple brain injuries. At the age of 7 he was hit on the head with a bat. At age 12 he was shot in the head with a BB gun.
    iii. At age 11, he was diagnosed with Post Traumatic Stress Disorder.

iv. At age 14 he suffered from mood swings, experienced hallucinations and paranoia.

h. Dr. Quiroga testified that the Defendant began to drink alcohol at the age of 10 years and began to smoke marijuana at the age of 12 years. He also consumed other drugs including Xanax, Cocaine and K2 (synthetic cannabinoid).

i. The Defendant was not provided the proper treatment for any of his medical and mental health illnesses.

j. Dr. Quiroga made the following diagnostic impressions:

i. Multiple Traumatic Brain Injuries
ii. Borderline Intellectual Functioning
iii. Learning Disorder in Reading
iv. Learning Disorder in Written Expression
v. Learning Disorder in Math
vi. Attention Deficit Hyperactivity Disorder (ADHD)
vii. Post Traumatic Stress Disorder by History
viii. Schizoaffective Disorder, Depressive Type (delusions or hallucinations & major depressive mood disorder)

Dr. Quiroga testified on cross-examination that the records she reviewed in this case also revealed the following:

i. Around the time of his arrest, he was tested for the presence of various drugs in his body. The results showed that he tested positive for marijuana.
ii. Between the ages of 11 and 12 he experienced auditory hallucinations. The voices he heard told him to hurt himself and to hurt others.
iii. After the Defendant's release from Florida State Prison in 2014, he was evaluated by Peace River Treatment Center. Consequently, he began to participate in bimonthly counseling sessions and he was prescribed medications. He continued to participate in counseling and take his medications until January of 2015.
iv. The Defendant told her that he left school when he was in the 9th grade and that he started drinking alcohol at the age of 17 years.

2. Dr. Joseph Chan Sang Wu. Dr. Wu testified to the following:

i. He is a Professor at the University of California Irvine. He specializes in Neurocognitive Imaging, such as PET and MRI brain imaging.
ii. He had published a dozen of articles about the use of PET and MRI scans to analyze and investigate the presence and causes of various neuropsychiatric disorders such as depression, schizophrenia, Alzheimer's, Parkinson's, traumatic brain injury or generalized anxiety disorder.

iii. In this case, he requested that both PET scan and MRI scan of the Defendant's brain be administered.
iv. The MRI scan was not obtained because the Defendant has metal fragments in his head apparently from an old incident during which he was shot with a BB gun.
v. Dr. Wu utilized the PET scan data in this case to assess the Defendant's brain functions. In doing so, he also relied on historical records about the Defendant's background.
vi. Dr. Wu reviewed records that contained interviews of members of the Defendant's family. The records contain information about events that the Defendant had experienced while growing up. Some of the events were described as follows:
    a. The Defendant was physically abused by his father.
    b. When the Defendant was between the age of 11 or 12 years, he was struck on his head with a brick. He was treated at a hospital for his injuries.
    c. At the age of 15, the Defendant was struck on his head with a gun during a robbery.
    d. At the age of 19, the Defendant was a passenger of a vehicle that was involved in an accident. He was treated at a hospital for his injuries.
    e. He was shot in the back of his head with a BB gun when he was younger.
    f. When he was attending school, he was enrolled in special education classes.
    g. The Defendant has a history of using illegal drugs. It was reported that the Defendant smoked K2 prior to and around the time of the events of this case.

Based on his review of the records in this case, Dr. Wu opined that the Defendant's early childhood brain injuries negatively affected his cognitive functions. The brain injuries and the Defendant's environmental factors caused him to act at times in an aggressive and impulsive way. Dr. Wu also added that the Defendant's CAT scan revealed the presence of frontal lobe atrophy (shrinkage) which most likely caused the Defendant to have prolonged cognitive deficits. Such cognitive deficits were likely to have caused the Defendant to make poor decisions and increased his impulsivity.

Dr. Wu stated on cross-examination that he did not see any medical records or police reports describing the head injuries reported as part of the Defendant's clinical history.

3. Dr. Mark P. Rubino. Dr. Rubino testified to the following:

i. He is a medical doctor and board certified in Neurology. He treats patients who suffer from Alzheimer's disease, Parkinson's disease, dementia and head injuries.

ii. He met with the Defendant one time. The meeting took place on May 9, 2018 and lasted 2-3 hours.
iii. He reviewed records of the Defendant's clinical history[7] before and after his meeting with the Defendant.
iv. He administered a neurological examination to the Defendant. The Defendant performed poorly on the examination.
v. He prescribed an MRI of the brain with DTI (Diffused Tensor Imaging) and a PET scan. The MRI with DTI is the preferred tool in cases like this case
vi. The MRI was not administered to the Defendant because he has a metal fragment embedded in his scalp.
vii. The PET scan was admitted on December 17, 2018. Dr. Rubino concluded that the PET scan showed signs of traumatic brain injuries to the Defendant's frontal and temporal lobes and as a result the Defendant had cognitive impairments which could have greatly altered his behavior and actions.

4. Ronald D. McAndrew. He testified to the following:

i. He worked for the Florida Department of Corrections (DOC) for over 20 years.
ii. He worked in various positions within the prison system. He was appointed as a Warden of 3 different prisons.
iii. He is very familiar with the policies and procedures of the DOC.
iv. He testified about the life for inmates who are serving life sentences and for those who are on death row.
v. He testified that inmates serving life sentences are allowed to work within the prison system and to contribute to others. In contrast, inmates on death row are kept in closed custody with no interactions with other inmates and cannot work.
vi. Upon accepting the work on this case, Mr. McAndrew testified that he examined all of the "classification records to include institutional assignments, work history, disciplinary history, medical history and, of course, a personal interview with the offender." He also reviewed the Defendants records from the South County Jail, Polk County, including the stabbing incident that led to the Defendant's sentence of 10 years in prison.
vii. He met with the Defendant on January 4, 2019 and went over the Defendant's disciplinary records with him. He learned

7. The records reviewed by Dr. Rubino were identical to the records reviewed or gathered by other experts in this case.

from the Defendant that he has a good support system. His mom and girlfriend.

viii. He spoke to the Defendant about whether or not the Defendant has any remorse for his behavior over the years. The Defendant said the following:

> "All the time as I think about my past, know I could have done things better. Relationships as a child, my brother, things I did, that was wrong. I could have been more productive. Feeling about doing my life up better. Want to help other people. Not making excuses all the time. Feel I have had about pain that" – oh, "not making excuses all the time and to feel about the pain I caused. Want to help now. Not on drugs now. I feel different. Continue a mental health treatment and to take my medications. I have been through a lot of obstacles, and I can give talks to younger ones about not doing wrong. So easy to get in trouble. Teach others to be positive and helpful. Not hateful person. Want to be a diffuser."

ix. Mr. McAndrew concluded that based on his review of the Defendant's records and after comparing the Defendant to thousands of other offenders that he dealt with over the years he believes if the Defendant is sentenced to life he could make a contribution by working 40-50 hours a week.

5. Dr. Daniel E. Buffington. Dr. Buffington testified to the following:

i. He is on the faculty of the University of South Florida's College of Medicine and the College of Pharmacy. He also has a practice in clinical pharmacology.

ii. Pharmacology is the study of substances and their affect on the human body. It also studies the therapeutic and adverse affects of substances on the human body.

iii. As part of his work on this case he obtained the following records:

> "So I received – what I have is multiple pages of records. They included multiple audio interviews with different parties, the court complaint, other court documents, multiple depositions or statements from individuals, police report, other Polk County records, prior records on Mr. Gordon's youth in terms

of school records, Winter Haven Hospital records from previous care, interview statements for Mr. Gordon. In addition to that, laboratory reports, medical records from Corizon. Corizon is actually the medical service team that provides care in the corrections facility. That's the name of the company that's contracted to do that. Photos, discovery records, multiple Polk County Sheriff's Office reports and supplements to their reports."

iv. During his review of the Defendant's records, Dr. Buffington noted that on May 23, 2014, the Defendant was released from the custody of DOC after serving a 10 year sentence. The records revealed that during his stay in prison, the Defendant received a variety of medications for his psychiatric and medical disorders.

Dr. Buffington opined that on January 15, 2015 the Defendant was experiencing significant cognitive impairments due to pharmacologic effects and complications associated with neurological brain damage and intermittent treatment for his psychiatric conditions. Additionally, the Defendant's use of alcohol and illicit substances adversely contributed to his cognitive functions.

6. Theresa Yolanda Gordon. Ms. Gordon testified as follows:

i. The Defendant is her brother. She is one year older.
ii. Their father used to drink alcohol every day.
iii. She witnessed her father physically abuse her mother.
iv. She witnessed her father hit the Defendant in the back of the head. He did so often.
v. Her father sexually abused her. The abuse started when she was 4-5 years old.
vi. She left the house when she was between 11 and 12 years of age.
vii. She tried to tell her mother about her father's sexual abuse.
viii. She never reported her father's abuse to the police.

7. Dr. Jethro Toomer. Dr. Toomer testified as follows:

i. He is board-certified diplomate of the American Board of Professional Psychology.
ii. Until his retirement in 2010, he was a tenured professor and Director Emeritus of the graduate mental health training program at Florida International University.
iii. For the last 25 years, he had been engaged in the private practice of clinical and forensic psychology.

iv. His area of specialization is the impact of trauma on subsequent fractioning and development.
v. He looked at documents provided by other experts (Dr. Wu, Dr. Rubino and Dr. Quiroga). He also reviewed some depositions.
vi. He interviewed the Defendant's sister (Theresa Gordon), the Defendant's mother (Christine Jones) and the Defendant's aunt (Catherine Parker).
vii. He interviewed the Defendant 3-4 hours.
viii. Dr. Toomer said that the goal of his evaluation was to determine the role of the trauma and its impact on the Defendant's functioning and development. He added that trauma disrupts the individual's normal development.
ix. Dr. Toomer testified that the Defendant's history reflects the manifestation of Toxic Stress Syndrome, a subset of Post Traumatic Stress Syndrome, due to constant pressure in the Defendant's life of stressors/factors such as, deficits in parenting skills, lack of basic needs and adversarial environment which included witnessing violence and being a victim of violence.
x. Dr. Toomer concluded that the presence of the stressors in the Defendant's life affected his ability to move forward and affected his cognitive thinking, his emotions and his behavior.

State's Rebuttal

David Michael Gordon testified in rebuttal. Mr. Gordon's testimony was as follows:

i. He is 70 years old and was born in Jamaica.
ii. He came to live in the Unites States at the age of 24.
iii. He has been married to the Defendant's mother for approximately 40 years.
iv. He and his wife have two children, a daughter and a son (the Defendant).
v. He worked for IMC-Agrico for over 30 years. He retired in 2011.
vi. He always provided his family with a place to live.
vii. When his daughter (Theresa) was 14 or 15 years old she went to live with her aunt in Pennsylvania. She came back after one year and then she moved out of the home.
viii. When the Defendant was 9 or 10 years old he was placed in a facility in Lakeland called Palmview. He stayed there for 3 weeks and he received counseling.
ix. His work insurance paid for the cost of the Defendant's stay at Palmview.

x. He and the Defendant's mother visited the Defendant during the Defendant's stay at Palmview.
xi. When the Defendant was 12 or 13 years old he went to live with his aunt in Pennsylvania. He stayed there for approximately one year.
xii. When the Defendant was serving his 10 year prison sentence he did not visit him but his wife did. During that time, he provided the Defendant with money and spoke to him by phone.
xiii. When the Defendant was released from prison he picked the Defendant up from the bus station in Lakeland. He continued to give the Defendant financial support and gave him a red-colored Jimmy vehicle.
xiv. Mr. Gordon denied the following:
    a. Hitting his son in the head with a closed fist.
    b. Spanking his son with a belt on the behind.
    c. Slapping his son on the face.
    d. Hitting his son with a closed fist.
xv. Mr. Gordon denied touching his daughter, Theresa, inappropriately.

In both sentencing verdicts the jury found that "one or more individual jurors find that one or more mitigating circumstances was established by the greater weight of the evidence."

On February 18, 2019 at the conclusion of the second phase trial, the jury rendered verdicts of death as to each victim.

Spencer[8] Hearing

A Spencer Hearing was scheduled for August 8, 2019. On that date the defense informed the Court that they will not present any evidence. On September 27, 2019, the Court inquired of the Defendant regarding his attorneys' decision pertaining to the Spencer Hearing. The Defendant informed the Court that he concurred with that decision.

On September 27, 2019, the Court also informed the Defendant of his right to allocute[9] to the Court and he indicated that he did not wish to do so.

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

9. Compere v. State, 262 So.3d 819 (Fla. 4DCA 2019).

Sentencing Memoranda

On October 17, 2019, the State submitted its Sentencing Memorandum. The Defendant submitted his on October 18, 2019.

The State's Argument Regarding The Aggravating Factors

The State posits that the Court should assess its aggravating factors great weight. As mentioned above, the State concedes that two of its proposed factors do merge.

The Defendant's Argument Regarding The Aggravating Factors

As to the aggravating factor that *MICHAEL ANTHONY GORDON WAS PREVIOUSLY CONVICTED OF ANOTHER CAPITAL FELONY OR A FELONY INVOLVING THE USE OR THREAT OF VIOLENCE TO ANOTHER PERSON*, the Defendant argues that it deserves little weight.

As to the aggravating factor that *THE FIRST DEGREE MURDER WAS COMMITTED WHILE MICHAEL ANTHONY GORDON WAS ENGAGED IN A BURGLARY*, the Defendant argues that this aggravator should not be given any weight.

As to the aggravating factor that *THE FIRST DEGREE MURDER WAS COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING A LAWFUL ARREST*, the Defendant argues that the Court should find it is inapplicable in this case.

As to the aggravating factor that *THE FIRST DEGREE MURDER WAS ESPECIALLY HEINOUS, ATROCIOUS OR CRUEL*, the Defendant argues that the Court should conclude that it does not apply to the facts of this case.

State's Argument Regarding The Mitigation

As to the Defendant's proposed mitigation, the State posits that should the Court find that any of the mitigating circumstances were established, the Court should accord them little to no weight.

Defendant's Argument Regarding Mitigation

The Defendant urges the Court to accord the presented mitigation great weight.

Analysis In Capital Sentencings

This Court is mandated, pursuant to Section 921.141, *Florida Statutes*, to evaluate all of the aggravating factors and all of the mitigating circumstances when determining the appropriate sentence. This Court presided over the penalty phase trial, considered the evidence presented, observed the demeanor of all witnesses, listened to argument of counsel and reviewed both Sentencing Memoranda. Additionally, this Court has considered various opinions issued by the United States Supreme Court and the Florida Supreme Court concerning the trial court's obligations when making sentencing decisions in capital cases.

In Covington v. State, 228 So.3d 49 (Fla. 2017), the Florida Supreme Court summarized the requirements for a capital sentencing order as follows:

> In Fennie v. State, 855 So.2d 597, 608 (Fla. 2003), we reiterated the Procedural requirements that a trial court must follow in its sentencing order in a capital case. A trial judge must
>
> (1) expressly evaluate in his or her written order each mitigating circumstance proposed by the defendant to determine whether it is supported by the evidence and whether, in the case of nonstatutory factors, it is truly of a mitigating nature; (2) assign a weight to each aggravating factor and mitigating factor properly established; (3) weigh the established aggravating circumstances against the established mitigating circumstances; and (4) provide a detailed explanation of the result of the weighing process.
>
> With regard to a mitigating circumstance, "A trial court may reject a claim that a mitigating circumstance has been proven provided that the record contains competent, substantial evidence to support the rejection". Moreover, in Trease v. State, 768 So.2d 1050, 1055 (Fla. 2000), we receded from our decision in Campbell v. State, 571 So.2d 415, 420 (Fla. 1990), and held that the trial courts may assign no weight to a mitigating factor. In doing so, we recognized that a trial judge "may not preclude from consideration any evidence regarding a mitigating circumstance that is proffered by a defendant in order to receive a sentence of less than death." However, there are circumstances where although a mitigator may be relevant and must be considered by the trial judge because it is generally recognized as a mitigator, the judge "may determine in the particular case at hand that it is entitled to no weight for additional reasons or circumstances unique to that case."

Proportionality

The Florida Supreme Court routinely conducts a qualitative assessment of sentences in capital cases to ensure uniformity in the application of capital sentences and to ensure that death sentences are imposed in the most aggravated and least mitigated cases in which defendants had been convicted of First Degree Murder charge(s).

In Wood v. State, 209 So.3d 1217 (Fla. 2017), the Florida Supreme Court addressed the matter of proportionality and explained:

> This court performs a comprehensive proportionality analysis in cases where the death penalty has been imposed to "determine whether the crime falls within the category of both the most aggravated and the least mitigated of murders, thereby assuring uniformity in the application of the sentence". Silvia v. State, 60 So.3d 959, 973 (Fla. 2011). "The purpose of this Court's proportionality review is to 'foster uniformity in death-penalty law.' " Hernandez v. State, 4 So.3d 642, 672 (Fla. 2009) (quoting Tillman v. State, 591 So.2d 167, 169 (Fla. 1991)). Accordingly, the Court "consider[s] the totality of the circumstances of the case and compare[s] the case to other capital cases." Offord v. State, 959 So.2d 187, 191 (Fla. 2007). "This analysis 'is not a comparison between the number of aggravating and mitigating circumstances.' " Silva, 60 So.3d at 973 (quoting Porter v. State, 564 So.2d 1060, 1064 (Fla. 1990)). "Rather, this entails 'a qualitative review by this Court of the underlying basis for each aggravator and mitigator rather than a quantitative analysis.' " Id. (quoting Urbin v. State, 714 So.2d 411, 416 (Fla. 1998)). "In reviewing the sentence for proportionality, this Court will accept the jury's recommendation and the weight assigned by the trial judge to the aggravating and mitigating factors." Id. Our proportionality review, however, requires considering the totality of the circumstances of the case, not just comparing the number of aggravating factors and mitigating circumstances. Id.; Sliney v. State, 699 So.2d 662, 672 (Fla. 1997).

In McCloud v. State, 208 So.3d 668 (Fla. 2016), the Florida Supreme Court conducted a full proportionality review and examined matters of culpabilities in cases where more than one perpetrator was involved. Such review includes claims previously known as the Tison (Tison v. Arizona, 481 U.S. 137, 107 S. Ct. 1676, 95 L.Ed. 2d 127 (1987)) and the Enmund (Enmund v. Florida, 458 U.S. 782, 102 S. Ct. 3368, 73 L.Ed. 2d 1140 (1982)) claims.

In McCloud, the Supreme Court explained its proportionality assessment and held:

> This Court generally conducts a qualitative assessment of capital cases to ensure that the death penalty is imposed against the most aggravated and least mitigated first-degree murder convictions. Wade v. State, 41 So.3d 857, 879 (Fla.2010) (citing Lebron v. State, 982 So.2d 649, 668 (Fla. 2008)). However, "where more than one defendant is involved, the Court performs an additional analysis of relative culpability guided by the principle that equally culpable co-defendants should be treated alike in capital sentencing and receive equal punishment." Blake v. State, 972 So. 2d 839, 849 (Fla.2007) (quoting Brooks v. State, 918 So.2d 181, 208 (Fla.2005)). If "the circumstances indicate that the defendant is more culpable than a codefendant, disparate treatment is not impermissible despite the fact the codefendant received a lighter sentence for his participation in the same crime." Gonzalez v. State, 136 So.3d 1125, 1165 (Fla.2014) (quoting Brown v. State, 721 So.2d 274, 282 (Fla.1998)).

The Defendant's participation in the instant homicides was not relatively minor. His participation is supportive of the conclusion that he had a culpable mental state as his actions were not the result of provocation, self-defense, justification or excuse. Furthermore, the Defendant's actions are consistent with the conclusion that he acted with indifferent reckless to the lives of the victims. Consequently, this Court finds that the Defendant's involvement was substantial and far from a codefendant who acted as a getaway driver to a robbery.

The evidence presented during the trial strongly supports a reasonable conclusion that the Defendant was the most culpable actor in the events of January 15, 2015. In so concluding, this Court takes the following factors into consideration:

a. The Defendant's vehicle was used to put the events of January 15, 2015 into motion.
b. The Defendant was the first of his codefendants to enter the Pawn Shop.
c. The Defendant played an active role in the perpetration of the robbery.
d. The Defendant was armed with the long gun (the Rifle).
e. The long gun was used to shoot at the police officers who were attempting to stop the Defendant's car.
f. The long gun was recovered from the area where the Defendant was observed by Ms. Foster and Ms. Campbell and next to his shoe.
g. It was the Defendant alone who broke into the victims' residence and it was him alone who killed the victims.
h. After killing the victims, the Defendant stole Ms. Moran's vehicle and on his way out of the victims' garage he continued to resist law enforcement by attempting to inflict further harm to the officers who were attempting to bring the crime spree to a conclusion.

Given the circumstances of this case, given the evidence presented at the trial and given the decisions of the Florida Supreme Court regarding the issues of proportionality, this Court finds that the full proportionality assessment and determination is for the Florida Supreme Court to resolve.

The Court's Findings

As mentioned above, at the conclusion of the penalty phase, the jury unanimously found that:

A. The State established beyond a reasonable doubt the existence of the aggravating factors.
B. The established aggravating factors are sufficient to warrant a sentence of death.
C. One or more jurors found that one or more mitigating circumstances was established by the greater weight of the evidence.
D. The aggravating factors outweigh the mitigating circumstances, and the Defendant should be sentenced to death.

In arriving at its findings, the Court relies on the matters presented during the trial, the sentencing memoranda and the applicable law.

Aggravating Factors

The Court finds that the aggravating factors were proven beyond a reasonable doubt. The Court accords importance and weight to these factors as set for below.

Heinous, Atrocious Or Cruel

The Court assigns this aggravating factor great weight as to the murders of Patricia Moran and Deborah Royal.

The Defendant Was Previously Convicted Of Another Capital Felony
Or Of A Felony Involving The Use Or Threat Of Violence To Another Person

The convictions for the two counts of first degree murder, the contemporaneous convictions for the other charged violent felonies and the established evidence of prior convictions for other violent felonies amounts to a substantial aggravation.

The Court assigns great weight to this aggravating factor.

The Capital Felony Was Committed During The Commission Of A Burglary
And For The Purpose Of Avoiding Or Preventing An Arrest

The Court assigned these two factors, combined, a moderate weight.

Mitigating Circumstances

The Court concludes that the offered mitigating circumstances were for the most part, established by the greater weight of the evidence. The Court further concludes, that the State's rebuttal evidence weakened, in a limited fashion, certain aspects of the mitigation. The Court's assessment of the mitigations is set forth below.

The Defendant Was Under The Influence Of Extreme Mental
Or Emotional Disturbance

The Court finds that the Defendant voluntarily used illegal substances and voluntarily stopped taking his medications as prescribed to him. The court assigns little weight to this circumstance.

The Defendant's Capacity To Appreciate The Criminality Of His Conduct
Or To Conform His Conduct To The Requirements Of Law
Was Substantially Impaired

The Defendant's role during the robbery, during the escape from the robbery, his brief conversation with the victims' neighbors and the statement he made upon his arrest lead the Court to conclude that this circumstance was not established. Therefore, this circumstance deserves no weight.

Brain Damage

The mitigation evidence showed that the Defendant suffers from mental illnesses. Such illness(s) were complicated by his voluntary use of illegal drugs and decisions not to adhere to

instructions of his mental health providers. Accordingly, the Court assigns this circumstance little weight.

Any Other Factors In The Defendant's Character, Background, Or Life Or The Circumstances Of The Offense

The circumstances of this case established that the Defendant was capable of making decisions or choices other than those he made on January 15, 2015. The Court does not find that this circumstance was proven. Therefore, the Court assigns no weight to this circumstance.

The Defendant Was An Accomplice In The Murders And His Participation Was Relatively Minor

The evidence at trial established that the Defendant played a major role in the commission of the robbery and that he was the only perpetrator of the murders. The Court concludes that this circumstance was not established. Therefore, the Court assigns no weight to this circumstance.

The Defendant Suffered From Toxic Stress Syndrome

The evidence presented established the presence of this syndrome due to certain environmental factors in the Defendant's life. The Court assigns moderate weight to this circumstance.

The Defendant Was Not Receiving Proper Treatment

As indicated above, this circumstance was proven but its existence was exacerbated by decisions made by the Defendant. The Court assigns little weight to this circumstance.

The Defendant Was Abused And Abandoned By His Family

The State's rebuttal minimized the evidence presented by the Defendant in support of this circumstance. The Court assigns little weight to this circumstance.

The Defendant Was Smoking K2 Or Spice On January 15, 2015

The testimony of Dr. Buffington in particular established this circumstance. But the use of K2 was done at the Defendant's own volition. This Court assigns little weight to this mitigator.

SENTENCE

Based on the Court's independent review of the evidence and based on the Court's weighing process of the aggravating factors and the mitigating circumstances, the Court

concludes that sufficient aggravators were proven to warrant a sentence of death as to each victim. Furthermore, the court assigns the sentencing verdicts great weight.

The Court would reach the same conclusions even in the absence of the aggravator of avoiding or preventing a lawful arrest.

Therefore, the Defendant is sentenced as follows:

As to count 1, the Defendant is sentenced to **DEATH.**

As to count 2, the Defendant is sentence to **DEATH.**

As to count 3, the Defendant is sentenced to LIFE in prison as PRR.

As to count 4, the Defendant is sentenced to 15 YEARS in prison as PRR.

As to count 5, the Defendant is sentenced to LIFE in prison (with 10 YEARS minimum mandatory) as PRR.

As to count 6, the Defendant is sentenced to 5 YEARS in prison as PRR.

As to count 7, the Defendant is sentenced to 15 YEARS in prison as PRR.

As to counts 8, 9, 10, 11 and 12 the State proved that the victims were police officers. Therefore, as to each of these counts the Defendant is sentenced to LIFE in prison without eligibility for release. He is also sentenced as PRR.

As to count 14, the Defendant is sentenced to 5 YEARS in prison as PRR.

The prison sentences are to run concurrent with one another, and concurrent with the sentence imposed on September 27, 2019 for count 15.

The Defendant is advised that this Judgment and Sentence shall be automatically appealed to the Florida Supreme Court and that the Public Defender of the Tenth Judicial Circuit is appointed to represent him on appeal.

Furthermore, present counsel for the Defendant shall file a Notice Of Appeal with the Florida Supreme Court in a timely fashion.

It is **ORDERED** that Michael Anthony Gordon be taken by the proper authority to the Florida State Prison and for him to be kept there until the date of his execution is scheduled.

DONE AND ORDERED in Chambers, at Bartow, Polk County, Florida, on this 7th day of February, 2020.

JALAL A. HARB
Circuit Court Judge

cc: Kristie Ducharme, Assistant State Attorney
Paul Wallace, Assistant State Attorney
Bjorn E. Brunvand, Esquire
J. Jervis Wise, Esquire