RON DESANTIS
GOVERNOR

June 22, 2023

Warden Donald Davis
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32036-1000

Re: Execution Date for James Phillip Barnes, DC #071551

Dear Warden Davis:

Enclosed is the death warrant that I signed to carry out the sentence for James Phillip Barnes, as well as certified copies of his judgment and sentence. I have designated the week beginning at 12:00 noon on Thursday, August 3, 2023, through 12:00 noon on Thursday, August 10, 2023, for the execution. I have been advised that you have set the date and time of execution for Thursday, August 3, at 6:00 p.m.

This letter is incorporated into and made a part of the death warrant identified above.

Sincerely,

Ron DeSantis
Governor

Enclosures

FILED
2023 JUN 22 PM 1:49
DEPARTMENT OF STATE
TALLAHASSEE, FL

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 717-9249

cc:

Honorable Carlos G. Muñiz
Chief Justice
Supreme Court of Florida
500 S. Duval Street
Tallahassee, Florida 32399

Honorable Jessica Recksiedler
Chief Judge, 18th Judicial Circuit
301 N. Park Avenue
Sanford, FL 32771

Secretary Ricky Dixon
Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500

C. Suzanne Bechard
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Office of the Attorney General
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James Phillip Barnes, DC #071551
Union Correctional Institution
7819 N.W. 228th Street
Raiford, Florida 32026-4000

STATE OF FLORIDA

ASHLEY MOODY
ATTORNEY GENERAL

June 22, 2023

The Honorable Ron DeSantis
Governor
The Capitol
Tallahassee, Florida 32399—0001

RE: James Phillip Barnes

Dear Governor DeSantis:

James Phillip Barnes pled guilty to first-degree murder on May 2, 2006, and waived a sentencing jury, for the April 20, 1988, murder of Patricia "Patsy" Miller in Brevard County, Florida. Barnes was also found guilty of Burglary, two counts of Sexual Battery with Weapon or Force, and Arson. Barnes was sentenced to death for the Miller murder on December 13, 2007, by the trial court.

The Florida Supreme Court, on direct appeal, affirmed Barnes' convictions and sentence of death on February 4, 2010, in *Barnes v. State*, 29 So.3d 985 (Fla. 2010). On May 5, 2010, Barnes filed a petition for writ of certiorari in the United States Supreme Court. On October 4, 2010, the United States Supreme Court denied Barnes' petition. *Barnes v. Florida*, 562 U.S. 901 (2010).

On September 21, 2011, Barnes filed his initial motion for post-conviction relief. That motion was summarily denied by the state trial court on January 23, 2012. The trial court re-entered the order on March 14, 2012, because defense counsel was not served with the initial order. On June 27, 2013, the Florida Supreme Court affirmed the trial court's denial of relief in *Barnes v. State*, 124 So.3d 904 (Fla. 2013).

Barnes filed his initial federal petition for writ of habeas corpus in the U.S. District Court for the Middle District of Florida on October 23, 2013. The federal district court denied the petition on February 8, 2016, and granted a certificate of appealability on one issue. Barnes appealed the district court's denial of his habeas petition to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit affirmed the denial of the petition on April 25, 2018.

Barnes v. Secretary, Fla. Dept. of Corrections, 888 F.3d 1148 (11th Cir. 2018). On January 22, 2019, the United States Supreme Court denied certiorari review. *Barnes v. Jones*, 139 S. Ct. 945, 2019 WL 272001 (Jan. 22, 2019).

The record has been reviewed and there are no stays of execution issued by any court of competent jurisdiction in this cause. Based upon the above-referenced summary of litigation affirming the judgments and sentences of death imposed for first-degree murder, the record is legally sufficient to support the issuance of a death warrant.

Sincerely,

Ashley Moody

Ashley Moody
Attorney General

DEATH WARRANT
STATE OF FLORIDA

WHEREAS, JAMES PHILLIP BARNES, on or about the 20th day of April, 1988, murdered Patricia Miller; and

WHEREAS, JAMES PHILLIP BARNES, on the 13th day of December, 2007, was convicted of first degree murder, sexual battery, armed burglary, and arson, and was sentenced to death for the murder of Patricia Miller; and

WHEREAS, on the 4th day of February, 2010, the Supreme Court of Florida affirmed the convictions and death sentence of JAMES PHILLIP BARNES; and

WHEREAS, on the 27th day of June, 2013, the Supreme Court of Florida affirmed the trial court order denying JAMES PHILLIP BARNES's initial Motion for Postconviction Relief; and

WHEREAS, on the 8th day of February, 2016, the United States District Court for the Middle District of Florida denied JAMES PHILLIP BARNES's federal Petition for Writ of Habeas Corpus, and granted in part and denied in part his Application for Certificate of Appealability; and

WHEREAS, on the 25th day of April, 2018, the United States Court of Appeals for the Eleventh Circuit affirmed the district court's denial of his habeas petition; and

WHEREAS, executive clemency for JAMES PHILLIP BARNES, as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate; and

WHEREAS, attached hereto is a certified copy of the record of the conviction and sentence pursuant to section 922.052, Florida Statutes.

NOW, THEREFORE, I, RON DESANTIS, as Governor of the State of Florida and pursuant to the authority and responsibility vested in me by the Constitution and Laws of

Florida, do hereby issue this warrant, directing the Warden of the Florida State Prison to cause the sentence of death to be executed upon JAMES PHILLIP BARNES, in accordance with the provisions of the Laws of the State of Florida.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capital, this 22nd day of June, 2023.

GOVERNOR

ATTEST:

SECRETARY OF STATE

FILED
2023 JUN 22 PM 1:49
DEPARTMENT OF STATE
TALLAHASSEE, FL

1/37

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA

CASE NO 05-2006-CF-014592-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

v

JAMES PHILLIP BARNES,

Defendant
_____/

FILED IN OPEN COURT
Date 12-13-07 Time 3:00pm
CLERK,
CIRCUIT AND COUNTY COURT
By _____ DC

JUDGMENT AND SENTENCE

The Defendant, James Phillip Barnes, born March 7, 1962, is before the Court for sentencing

The Defendant represented himself pro se throughout this case The Court appointed the Office of the Public Defender as standby counsel and either Assistant Public Defender Phyllis Riewe or Assistant Public Defender Randy Moore were present at all court proceedings Pursuant to Faretta v California, 422 U S 806 (1975) and rule 3 111(d)(3), Florida Rules of Criminal Procedure, the Defendant unequivocally requested to represent himself and knowingly and voluntarily waived his right to counsel At every stage of the proceedings, the Court renewed the offer of assistance of counsel to the Defendant, to which the Defendant knowingly, voluntarily, and unequivocally waived Fla R Crim P 3 111(d)(5)

On May 2, 2006, the Defendant plead guilty to the charged crimes of first degree premeditated murder (Count I), burglary of a dwelling with an assault or battery (Count II), two counts of sexual battery by use or threat of a deadly weapon on a person older than twelve years of age (Counts III and IV), and arson of a dwelling (Count V) Prior to entering his plea, the Court advised the Defendant that the State was seeking the death penalty on the first degree premeditated murder count The Defendant entered an "open plea" and had no agreement with the State

On May 2, 2006, the Defendant waived his right to a jury recommendation and requested that the Court proceed to sentencing without the benefit of the jury's recommendation as to the imposition of life or death on Count I - First Degree Premeditated Murder The Court finds that the Defendant knowingly, freely, and voluntarily chose to forego a jury for the penalty phase The Defendant explained to the Court that he was making a strategic decision to have a judge alone determine his sentence

The Defendant represented himself pro se at the sentencing hearing and specifically chose not to present mitigating evidence or argument at the penalty phase, other than that already placed on the record The Court conducted an extensive colloquy with the Defendant to determine whether the Defendant knowingly and intelligently made this decision The Court finds that the Defendant knowingly, freely, and voluntarily chose not to present mitigating evidence at the penalty phase The Court observed the demeanor of the Defendant and his responses to the Court's questions The Court finds that the

Defendant understood the Court's questions, and the Court finds that the Defendant's answers were responsive and forthright The Court finds the Defendant was competent to make this decision See Ocha v State, 826 So 2d 956, 961 (Fla 2002)

On January 22-26, 2007, the State presented its evidence as to sentencing the Defendant on Count I, first degree premeditated murder

On May 11, 2006, this Court ordered that a comprehensive pre-sentence investigation (PSI) be conducted, and on February 7, 2007, this Court appointed Sam Baxter Bardwell[1] as court counsel to present mitigating evidence to the Court, pursuant to Muhammad v State, 782 So 2d 343, 364 (Fla 2001) and Klokoc v State, 589 So 2d 219, 220 (Fla 1991), since the Defendant refused to present any mitigating evidence on his behalf other than that evidence already placed on the record The Defendant objected to the Court's consideration of the PSI report, however, the Supreme Court of Florida in Muhammad v State, 782 So 2d 343, 363 (Fla 2001) recommended a PSI in every case such as this one, where the Defendant refuses to present mitigation evidence On November 16, 2007, the Court held a hearing at which Mr Bardwell, court counsel, presented alleged mitigating evidence to the Court

This Trial Court is now charged with the responsibility of applying a reasoned judgment as to the appropriate sentence, in light of the totality of circumstances in this case This Court recognizes that the imposition of death is to be reserved for the most aggravated and least mitigated of first-degree

[1] Attorney Sam Bardwell is one of two attorneys on the Eighteenth Judicial Circuit's registry for court-appointed counsel in capital cases in Brevard County

murders Patton v State, 878 So 2d 368, 381 (Fla 2004), Urbin v State, 714 So 2d 411, 416 (Fla 1998), Crook v State, 908 So 2d 350, 357 (Fla 2005)

In this regard, the Court has considered all evidence and testimony presented, the official Court file, argument of counsel, and the applicable elements of aggravation and mitigation set forth in section 921 141(5) and (6), Florida Statutes (1987), as well as the non-statutory mitigating circumstances See Ford v State, 802 So 2d 1121 (Fla 2001), cert denied, 535 U S 1103 (2002) The Court has also considered sentencing memorandums submitted by both the State and appointed court counsel, Mr Bardwell The Defendant refused to submit a sentencing memorandum, despite being offered the opportunity to do so on several occasions by the Court [2] Being fully advised in the premises, this Court makes the following findings of fact and conclusions of law

I FACTS

On April 20, 1988, the Defendant entered through a bedroom window of Ms Patricia "Patsy" Miller's condominium unit number 101 located at the River Oaks Condominiums, 1480 Roosevelt Avenue in Melbourne, Brevard County, Florida The Defendant did not know Ms Miller, he was a stranger to her The Defendant entered Ms Miller's condominium unit with the intent to rape and kill her The Defendant repeatedly raped Ms Miller, placing his penis in both her vagina and anus The Defendant ultimately murdered Ms Miller by manually strangling her with the belt from her bath robe, then hitting her about the head

[2] The Court extended the last offer on Monday December 10 2007 after the Defendant had the opportunity to read the State s memorandum

with a hammer that he had found in her apartment In order to conceal his identity and crime, the Defendant set a fire to Ms Miller's bed upon which the nude, bound, and beaten body of Ms Miller laid

Shortly after 11 00 P M on April 20, 1988, firefighters responded to a fire alarm at the River Oaks Condominiums and found the charred remains of the homeowner, Ms Miller At 11 45 P M , Sergeant Dennis Nichols of the Melbourne Police Department arrived at Ms Miller's apartment after being dispatched there Sergeant Nichols observed Ms Miller's nude body face down on the bed in her master bedroom, with her hands bound behind her back tied with shoe laces There were visible signs of trauma to Ms Miller's head and varying degrees of burns over all of her body Law enforcement officers did not observe any apparent signs of forced entry, although firefighters had already entered the apartment through the front door as well as the rear sliding glass doors Ms Miller's purse had been emptied and the contents left on the kitchen counter Her wallet and its contents were taken and never recovered

The Medical Examiner determined that the cause of Ms Miller's death was blunt force trauma to the head There were also signs of strangulation in the form of soft tissue bleeding around the thyroid muscle, cartilage, and bone and contusions in the base of the tongue The shape of the multiple skull fractures was consistent with the use of a hammer The Medical Examiner determined that Ms Miller's body was set ablaze after she died from blows to her head Sperm was recovered from Ms Miller's vagina and was preserved for possible DNA testing

Within one week of the murder, the police department considered the Defendant as a suspect Sergeant Nichols initially spoke with the Defendant in 1988 about Patricia Miller's murder At that time, the Defendant denied any involvement with the murder and told Sergeant Nichols that he had never been inside Ms Miller's apartment The Defendant denied knowing Ms Miller, although he indicated he may have seen her once in Satellite Beach, Florida The Defendant agreed to give a sample of his blood for possible DNA comparison

In 1988, only restriction fragment length polymorphism (RFLP) DNA testing was available, which required a large amount of DNA and the DNA had to interact with a high molecular weight As a result, there were no DNA leads because the scientific technology was not that advanced at that time

In 1998, the Defendant was serving a life sentence for the 1997 first degree strangulation murder of his wife, Linda Barnes, in Case Number 05-1997-CF-030638-AXXX-XX With advanced DNA testing in 1998, specifically the poly chain reaction (PCR), spermatozoa removed from Ms Miller's vagina was re-submitted for DNA testing and it matched the Defendant Dale Gilmore, a forensic DNA supervisor for Wuesthoff Reference Laboratories, testified that the probability of a random match was 1 in 3 8 million in the Caucasian population, 1 in 28 7 million in the African-American population, and 1 in 82 4 million in the Hispanic population Sergeant Nichols and Agent Goodyear then traveled to the prison to speak with the Defendant regarding the death of Ms Miller, but the Defendant refused to speak to the officers

In 2005, the Defendant who remained incarcerated for life for murdering his wife wrote three letters to Assistant State Attorney Michael Hunt .Mr Hunt represented the State at the Defendant's plea and sentencing proceeding in the case concerning the death of the Defendant's wife, Linda Barnes The Defendant's letters to Mr Hunt are dated October 10, 2005[3], December 7, 2005[4], and December 21, 2005[5] In the October 10, 2005 letter, the Defendant requested an interview at the correctional facility with Sherman Insco, a fellow prison inmate, facilitating the interview The Defendant specifically instructed Insco to ask the questions, while law enforcement officers were present and observed the entire interview

On November 1, 2005, pursuant to the Defendant's request, the Defendant's interview with Insco occurred, which was videotaped by Detective Emil Castrillo of the Melbourne Police Department In that videotaped interview, the Defendant stated that before entering Ms Miller's condominium, he intended to murder her The Defendant stated he entered the condominium unit through a bedroom window The Defendant removed his clothing before entering and left them outside the window The Defendant stated that he entered naked because he did not wanted to bring in any material that would link him to the crime that he was about to commit Once inside, the Defendant armed himself with a knife from the kitchen The Defendant stated that he confronted Ms Miller in the bathroom first, and then took her at knife-point to the bedroom where he first sexually battered her The Defendant then bound her hands behind her back

[3] State s Exhibit 9
[4] State s Exhibit 10
[5] State s Exhibit 11

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with some shoelaces that he had removed from some tennis shoes, tied her feet together, and next sexually battered her again The Defendant stated that he tried to strangle her to death with a belt from her terry cloth robe he found, but was not successful, so he then beat her to death with a hammer that he found inside her bedroom The Defendant stated that he took a bankcard and a bill from her wallet The Defendant collected everything he touched as well as the clothing Ms Miller was wearing and placed them in a bag The Defendant set Ms Miller's bed afire to eliminate evidence and he got dressed The Defendant took the items that he had bagged as well as a window screen that he had removed, and then left He returned to his vehicle which had been parked in a nearby remote area The Defendant threw away the items in the trash at another site The Defendant stated that he was in Ms Miller's apartment for approximately forty-five minutes to one hour

During the interview, the Defendant described with accuracy Ms Miller's physical appearance, the interior of the apartment, specific objects he saw in the apartment, including a bicycle, basket weaving supplies, divorce paperwork, a stethoscope, and over-sized curtains The Defendant also correctly described the positioning of Ms Miller's bed and her body His descriptions of the homicide, the sexual batteries, and the arson were consistent with the evidence

II AGGRAVATING CIRCUMSTANCES

The State argued six statutory aggravators The Court finds that all six aggravators were proven beyond a reasonable doubt, and the Court gives each of them great weight, specifically

1 The Capital Felony was Committed by a Person under Sentence of Imprisonment

Section 921 141(5)(a), Florida Statutes (1987), provides that if the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment, then this qualifies as an aggravating factor for purposes of imposing the death penalty At the time of the murder of Patricia Miller, courts had interpreted this aggravator to include persons on parole Jackson v State, 530 So 2d 269, 273 (Fla 1988), cert denied, 488 U S 1050 (1989)

The State proved this aggravating circumstance beyond a reasonable doubt through documentation as well as the Defendant's admissions During the sentencing hearing, the State introduced into evidence certified copies of documents from the Florida Parole and Probation Commission The "Certificate of Parole" indicates that the Defendant was granted parole on August 28, 1984, and thereafter released on parole with conditions on October 27, 1987 (See State's Exhibit #39) The "Revocation of Parole" document indicates that the Defendant's parole was revoked on September 28, 1988 (See State's Exhibit #40) The murder of Patricia Miller occurred on April 20, 1988, clearly after the Defendant was placed on parole and before the Defendant's parole was revoked

The Defendant also admitted in his statement to Sherman Insco that he was on parole at the time he murdered Patricia Miller

The Court finds this aggravating circumstance has been proven beyond a reasonable doubt The Court gives this aggravator great weight

2 The Defendant was Previously Convicted of Another Capital Felony or a Felony Involving the Use or Threat of Violence to Person

Section 921 141(5)(b), Florida Statutes, provides that an aggravating circumstance is that "[t]he defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person " This aggravating circumstance has been proven to exist beyond a reasonable doubt as the Defendant had been previously convicted of a capital felony The State also introduced into evidence a certified copy of the Defendant's conviction for the first-degree pre-meditated murder of his wife, Linda Barnes, on January 9, 1998, in Case Number 05-1997-CF-030638-AXXX-XX (State's Exhibit Number 38) In addition, the Court heard the testimony of Agent Todd Goodyear of the Brevard County Sheriff's Office regarding the facts of that homicide The Defendant murdered Linda Barnes on December 11, 1997, in Ms Barnes' home The cause of her death was strangulation The Court also heard the audio-taped statement that the Defendant gave to law enforcement when questioned regarding the murder of Linda Barnes shortly after it occurred, wherein the Defendant confessed to killing Linda Barnes by manual strangulation The Defendant was indicted for this murder, plead guilty to the charge, and was sentenced to life in prison

Although the homicide of Linda Barnes occurred after the homicide before this Court, this aggravating circumstance may be proven by a conviction that occurs any time prior to the sentencing on the case before the Court Lecroy v State, 533 So 2d 750, 755 (Fla 1988), cert denied, 492 U S 925 (1989), Correll v State, 523 So 2d 562, 568 (Fla 1986), cert denied, 488 U S 871 (1988),

Francis v State, 808 So 2d 110, 136 (Fla 2001), cert denied, 537 U S 1090 (2002)

The Court gives this aggravator great weight

3 The Capital Felony was Committed while the Defendant was Engaged in the Commission of a Sexual Battery and a Burglary

Section 921 141(5)(d), Florida Statutes, provides that an aggravating circumstance is "[t]he capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempt to commit, any robbery, sexual battery, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb " While committing the capital felony in this case, the Defendant engaged in a burglary and a sexual battery This aggravating circumstance has been proven beyond all reasonable doubt

§ 921 141((5)(d), Fla Stat (1987)

The Defendant pleaded guilty on May 2, 2006, to first-degree premeditated murder, burglary of a dwelling with an assault or battery, and sexual battery by use or threat of a deadly weapon During the plea colloquy, the Defendant made the following statement to this Court

> On April 20, 1988, I broke into Patricia Miller's condominium on Roosevelt Avenue in Melbourne, Florida I raped her twice I tried to strangle her to death I hit her in the head with a hammer and killed her and I set her bed on fire

(5/2/2006 Plea Transcript, pgs 35-36) When asked by the Court if he knew Ms Miller, the Defendant replied, "No, I didn't " (5/2/2006 Plea Transcript, p 36, lines 5–7)

In addition to the statements made in Court during the Defendant's guilty plea, the Defendant made other statements admitting to the contemporaneous perpetration of burglary and sexual batteries In the videotaped statement that the Defendant provided to Inmate Sherman Insco, the Defendant described how he disrobed, and then stealthily entered Patricia Miller's home through a rear window, arming himself with a kitchen knife once inside He stated that he did not know at that time the victim's name He stated that he used a knife to control her He said that he sexually battered her, bound her arms and legs, and then sexually battered her again He thereafter killed her The Defendant rifled through her purse and took her bank card, as well as items that he believed he had touched

In the letter dated December 21, 2005, sent to Assistant State Attorney Michael Hunt, the Defendant provided a detailed account of the burglary and sexual batteries The letter, which the Defendant stipulated in open court that he had handwritten and sent to Mr Hunt, stated in grotesque detail how the Defendant removed his clothing, climbed into Patricia Miller's home through an open back window, armed himself with a knife, and attacked Ms Miller He indicated that she told him to leave and he did not The Defendant described the vaginal and anal sexual batteries perpetrated upon Ms Miller, as well as other crimes

The State also presented other evidence of the sexual batteries Medical Examiner Dr Qaisar testified that Ms Miller's body showed bruising around her anus, consistent with forced penetration There was also semen found in Ms

Miller's vaginal cavity during the original autopsy, and in 1998, the DNA extracted from that semen sample matched the Defendant This evidence, along with the surrounding circumstances of the victim being murdered, her body left nude and bound on the bed and set ablaze evinces the intent and consciousness of wrongdoing on part of the perpetrator

The Court assigns great weight to this aggravator

4 The Capital Felony was Committed for the Purpose of Avoiding or Preventing Lawful Arrest

In order to establish the avoid arrest aggravator for a murder that does not involve a law enforcement officer, the intent to avoid arrest must be very strong Farina v State, 801 So 2d 44, 54 (Fla 2001), cert denied, 536 U S 910 (2002), Rodriguez v State, 753 So 2d 29, 47-48 (Fla), cert denied, 531 U S 859 (2000), Consalvo v State, 697 So 2d 805, 819 (Fla 1996), cert denied, 523 U S 1109 (1998) The evidence must prove that witness elimination was the sole or dominate motive for the killing Id Mere speculation on the part of the State that witness elimination was the dominant motive is insufficient Farina, 801 So 2d at 84, Consalvo, 697 So 2d at 819 However, the State may prove this aggravator with circumstantial evidence without direct evidence of the defendant's thought process Id This aggravating circumstance may be established by a defendant's admission that he killed the victim because he or she could identify him Derrick v State, 641 So 2d 378, 380 (Fla 1994), cert denied, 513 U S 1130 (1995), Trease v State, 768 So 2d 1050, 1055-56 (Fla 2000)

The Defendant committed the murder of Patricia Miller solely or dominantly in order to eliminate her so that she could not identify him as the perpetrator In the Defendant's letter to Assistant State Attorney Michael Hunt, dated December 7, 2005, the Defendant wrote, "I murdered her [Patricia Miller] so [there] would be no witness or complaint against me " Furthermore, in the videotaped statement that the Defendant made to Sherman Insco, the Defendant stated that he knew that he was going to kill Patricia Miller when he entered her residence naked It is clear from the Defendant's statements that his only motive for killing Patricia Miller was to avoid arrest The Defendant never suggested at any other time that he had any other motive for murdering Ms Miller This is direct evidence of the Defendant's thought process which proves the Defendant's sole motive for murdering Patricia Miller was to eliminate her as a witness

While the Defendant's statement is enough to establish this aggravator, the crime scene evidence also showed that the Defendant murdered Ms Miller for the purpose of avoiding or preventing his lawful arrest Ms Miller was bound and helpless at the time the Defendant murdered her The injuries to her head inflicted by an object like a hammer and the fractures to her hyoid bone consistent with strangulation clearly show that the Defendant intended to kill her The amount of force used to inflict these wounds was substantial The nature of these wounds, in addition to the facts that the Defendant made great effort to avoid detection by carefully removing all items from the home that he believed he had touched, by wiping down other areas of the home to eliminate fingerprints, and by setting Ms Miller's body of fire, support the conclusion beyond all

reasonable doubt that the Defendant's dominant motive for Ms Miller's murder was to eliminate her as a witness to his crimes See Willacy v State, 696 So 2d 693, 696 (Fla), cert denied, 522 U S 970 (1997), Swafford v State, 533 So 2d 270 (Fla 1988)

This aggravator was proven beyond a reasonable doubt § 921 141(5)(e), Fla Stat (1987) The Court assigns it great weight

5 Heinous, Atrocious, or Cruel

The heinous, atrocious, or cruel aggravator applies "only in tortuous 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 " Simmons v State, 934 So 2d 1100, 1122 (Fla 2006), cert denied, 127 S Ct 1334, 167 L Ed 2d 80 (2007) The Supreme Court of Florida has defined the heinous, atrocious, or cruel aggravator as follows

> Heinous means extremely wicked or shockingly evil Atrocious means outrageously wicked and vile Cruel means that designed to inflict a high degree of pain with utter indifference to, or even enjoyment of the suffering of others The kind of crime intended to be included as heinous, atrocious, or cruel is one accompanied by additional acts that show that the crime was conscienceless or pitiless and was unnecessarily torturous to the victim

Hall v State, 614 So 2d 473, 478 (Fla), cert denied, 510 U S 834 (1993) This aggravator applies to murders "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 " Card v State, 803 So

2d 613, 624 (Fla 2001) (quoting Brown v State, 721 So 2d 274, 277 (Fla 1998)) This aggravator focuses on the means and manner in which the death was inflicted and the immediate circumstances surrounding the death rather than the state of mind or intent of the defendant Id, see also Rimmer v State, 825 So 2d 304, 328 (Fla), cert denied, 537 U S 1034 (2002) Phrased differently, "the focus should be upon the victim's perceptions of the circumstances as opposed to those of the perpetrator" Schoenwetter v State, 931 So 2d 857, 874 (Fla), cert denied, 127 S Ct 587, 166 L Ed 2d 437 (2006) The uncontested evidence presented to the Court during the sentencing hearing established this circumstance beyond a reasonable doubt

The Defendant stated that he was in Ms Miller's apartment for approximately forty-five minutes to an hour During this time, he threatened her with a knife to obtain her submission Upon first confronting Ms Miller, the Defendant had a knife and told her that he was going to rape her, no doubt causing immediate terror in her mind She asked the Defendant not to hurt her He then sexually battered Ms Miller multiple times, including, as described by the Defendant, digital penetration of her vagina and anus, penile penetration of her vagina, anus, and mouth, and oral contact with her vagina

The medical evidence corroborates sexual batteries by the Defendant as well His sperm is found in the victim's vaginal cavity and her anus was bruised at or near her time of death in a manner consistent with forced anal penetration Dr Qaisar testified that the anal sexual assault occurred when Ms Miller was alive and would have been very painful to her The Defendant bound Ms Miller's

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hands and legs prior to her death, rendering her immobile and helpless Dr Qaisar testified that the blanching, hemorrhage, and abrasions on Ms Miller's wrists indicated that the ligatures were on her wrists while she was alive

During the extensive sexual batteries of Ms Miller, she asked the Defendant not to hurt her She asked the Defendant not to ejaculate inside of her, and she begged him not to penetrate her anally, all of which the Defendant did regardless Throughout the sexual batteries, the Defendant threatened Ms Miller with the knife, advising her at one point that he would stab her to death if she hurt him The acts perpetrated on Ms Miller would have taken a considerable amount of time, and is consistent with the Defendant's approximation of forty-five to sixty minutes

The Defendant then attempted to strangle Ms Miller, but failed to kill her by this means The Defendant stated that he tried to strangle her for about forty-five seconds Ms Miller was conscious at the time the Defendant began to strangle her The Medical Examiner, Dr Qaisar testified that Ms Miller's cricoid cartilage of the larynx and hyoid bone were fractured, consistent with strangulation Dr Qaisar testified that a large amount of force was needed to inflict those fractures, especially in persons in their forties, like Ms Miller Dr Qaisar opined that Ms Miller would have experienced great pain for ten to twenty seconds before she lost consciousness

The Defendant thereafter bludgeoned Ms Miller to death Multiple blows were inflicted Dr Qaisar described the injuries to Ms Miller's head as follows

> She has multiple blows to the head with the large and multiple complex lacerations on the skull and fracture of bones with inward

movement of the bone, and also laceration and multiple contusions to the brain substance and also pulpifaction of the brain substance

Ms Miller's skull was broken, which was caused by a severe degree of force Dr Qaiser explained that the injuries to Ms Miller's head were consistent with the use of a hammer and he opined that she was alive when she was bludgeoned The cause of her death was the blunt force trauma inflicted with the hammer Ms Miller was alive at the time of the bludgeoning, but it is unclear if she was conscious

The sexual batteries of Patricia Miller were perpetrated in a manner that was wicked, vile, and shockingly evil and unnecessarily tortuous to the victim The Defendant was naked when he initially attacked her, and he engaged her in conversation immediately, advising her that he was going to rape her This undoubtedly created a great deal of emotional stress and fear in the mind of Ms Miller The Defendant thereafter sexually battered Ms Miller extensively, threatening her with a knife He bound her so that she was helpless to resist, causing further terror He thereafter sexually battered her again, telling her that he would stab her to death if she did not cooperate He strangled her with the belt of her own robe in an initial unsuccessful attempt to take her life She knew he was going to kill her for the duration of her conscious state, and she was unable to resist due to being bound and overpowered by the Defendant Patricia Miller suffered, over a period of time, a terrifying ordeal culminating in a horrifying death at the Defendant's hands

The Supreme Court of Florida has held on numerous occasions that strangulation perpetrated upon a conscious victim involves foreknowledge of

death, extreme anxiety and fear, and that this method of killing is one to which the fact of heinousness is applicable Huggins v State, 889 So 2d 743, 770 (Fla 2004), cert denied, 545 U S 1107 (2005), Overton v State, 801 So 2d 877, 901 (Fla 2001), cert denied, 535 U S 1062 (2002), Sochor v State, 580 So 2d 595, 603 (Fla 1991) (quoting Tompkins v State, 502 So 2d 415, 421 (Fla 1986)), *vacated on other grounds,* 504 U S 527 (1992), Ocha v State, 826 So 2d 956, 963 (Fla 2002), James v State, 695 So 2d 1229, 1235 (Fla), cert denied, 522 U S 1000 (1997), Castro v State, 644 So 2d 987, n 3 (Fla 1994), Bowles v State, 804 So 2d 1173, 1178 (Fla 2001), cert denied, 536 U S 930 (2002) The Supreme Court of Florida has further noted that "[o]ur case law establishes that strangulation creates a prima facie case for [HAC] " Overton v State, 801 So 2d 877, 901 (Fla 2001), cert denied, 535 U S 1062 (2002) (citing Orme v State, 677 So 2d 258, 263 (Fla 1996), Hitchcock v State, 578 So 2d 685, 692 (Fla 1990) ("[S]trangulations are nearly per se heinous "))

Since it is the impact on the victim and the victim's state of mind that courts look to in determining the existence of this factor, the fear and emotional strain leading up to even a quick death may be considered Sexual battery perpetrated on a victim prior to death has also supported findings of the especially heinous, atrocious, or cruel aggravator See Banks v State, 700 So 2d 363, 366-67 (Fla 1997), cert denied, 523 U S 1026 (1998), Swafford v State, 533 So 2d 270, 279 (Fla 1988), Preston v State, 607 So 2d 404, 409-10 (Fla 1992), cert denied, 507 U S 999 (1993)

The Florida Supreme Court held that this aggravating circumstance applies to murders "that evince extreme and outrageous depravity as exemplified either by a 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) The crime must be both conscienceless or pitiless and unnecessarily tortuous to the victim Richardson v State, 604 So 2d 1107, 1109 (Fla 1992) The Defendant's actions in this case evince clearly the Defendant's lack of conscience or pity, as well as his complete and utter indifference to the suffering of Patricia Miller

This aggravator can be applied to murders committed during the course of a felony and it is not impermissible to find that both of these aggravating circumstances exist The aggravating circumstance of especially heinous, atrocious, or cruel focuses on the impact to the victim while the aggravating circumstance of committing the murder during the course of a felony focuses on whether it was committed during an enumerated felony and therefore, it is not impermissible doubling to find both aggravators exist in certain factual scenarios such as this one Banks v State, 700 So 2d 363 (Fla 1997), cert denied, 523 U S 1026 (1998)

This Court finds that the facts and circumstances surrounding and leading up to the eventual death of Patricia Miller prove beyond a reasonable doubt that the murder of Patricia Miller was especially heinous, atrocious, or cruel, and the Court gives this aggravator great weight § 921 141(5)(h), Fla Stat (1987)

6 Cold, Calculated, and Premeditated

The terms "cold," "calculated," and "premeditated," have been specifically defined by the courts "Cold" means "calm, cool reflection, not an act prompted by emotional frenzy, panic, or fit of rage " Richardson v State, 604 So 2d 1107, 1109 (Fla 1992) "Calculated" means the defendant had a "careful plan or prearranged design to commit the murder " Rogers v State, 511 So 2d 526, 533 (Fla 1997), cert denied, 484 U S 1020 (1988) "Premeditated" means a "heightened premeditation," which has been further defined as more than that required to provide first degree murder, and as "deliberate ruthlessness " Jackson v State, 648 So 2d 85 (Fla 1994), Walls v State, 641 So 2d 381, 388 (Fla 1994), cert denied, 513 U S 1130 (1995) "Pretense of moral justification" refers to any claim that, although "insufficient to reduce the charge to a lesser degree of murder, nevertheless rebuts the cold and calculating nature of the homicide " Banda v State, 536 So 2d 221, 225 (Fla 1988), cert denied, 489 U S 1087 (1989)

The Court finds that Patricia Miller's murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification The uncontradicted evidence presented at the sentencing hearing supports the finding of this aggravating circumstance

In the videotaped statement that the Defendant made in November 2005, while he was imprisoned, the Defendant states that he planned to sexually batter and kill Patricia Miller before entering her home In his letter to Assistant State

Attorney Michael Hunt dated December 21, 2005, the Defendant writes that he went there to kill his victim

In the Defendant's detailed recounting of the murder, he stated unequivocally that he went there to murder Ms Miller and that it was not an afterthought The Defendant maintained control and worked calmly and coolly towards his goal throughout the entire time that he was in the victim's home, which was approximately forty-five to sixty minutes The murder was carried out in a brutal and ruthless manner The Defendant failed at his first attempt to take her life by strangulation He then obtained an item from Ms Miller's home, a hammer, and proceeded to strike her in the back of the head four to five times The Defendant continued to strike Ms Miller after he knew she was dead, not because he was in a frenzy or fit of rage, but with a plan to confuse law enforcement and prevent matching of the wound to any specific type of weapon Even after the murder, the Defendant maintained his calm as he proceeded to clean the crime scene and destroy evidence that he was there No inference can be made from any of the evidence before this Court that the Defendant was acting under a pretense of moral or legal justification, particularly in light of the Defendant's own recounting, in which he stated that the victim submitted to him and that she did not fight him

It is legally permissible for this Court to find this circumstance along with the aggravating circumstance of especially heinous, atrocious, or cruel, as this aggravator looks at the Defendant's state of mind, while the especially heinous, atrocious, or cruel aggravator considers the Defendant's acts in carrying out the

murder Jackson v State, 530 So 2d 269 (Fla 1988) The Court may also find this aggravator to exist along with the aggravating circumstance of the murder being committed for the purpose of avoiding or preventing a lawful arrest or effecting and escape from custody, as long as there are distinct facts to support each circumstance In Rodriguez v State, 753 So 2d 29 (Fla), cert denied, 531 U S 859 (2000), the Court held that avoiding arrest goes to the motive of the crime, rather than the manner in which it was done In the case at bar, the evidence shows that although the Defendant's dominant motivation for killing Patricia Miller was witness elimination, the Defendant planned the rape and murder of Ms Miller carefully, from the selection of Ms Miller as a victim (a woman living alone in the condominium complex), to planning the timing (when neighbors would not likely be home), to the stealthy entry into the home, lying in wait for the victim in her home, then proceeding to carry out his plan of rape and murder and evidence destruction in a goal-oriented manner

The State has proven beyond a reasonable doubt that the homicide was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification The Court gives this aggravator great weight

III MITIGATING CIRCUMSTANCES

Although the Defendant freely and voluntarily waived the presentation of mitigating evidence other than that already placed on the record, this Court must consider and weigh any mitigating evidence in determining the appropriate sentence Accordingly, this Court has considered and weighed any and all

mitigation presented during the course of the penalty phase, the Pre-Sentence Investigation Report, and the sentencing hearing

In Ford v State, 802 So 2d 1121, 1134-1135 (Fla 2001), cert denied, 535 U S 1103 (2002), the Court described the procedure that a trial court should follow in considering mitigating circumstances

> When a court is confronted with a factor that is proposed as a mitigating circumstance, the court first must determine whether the factor is mitigating in nature A factor is mitigating in nature if it falls within a statutory category or otherwise meets the definition of a mitigating circumstance The court next must determine whether the factor is mitigating under the facts in the case at hand If a proposed factor falls within a statutory category, it necessarily is mitigating in any case in which it is present If a factor does not fall within a statutory category but nevertheless meets the definition of mitigating circumstance, it must be shown to be mitigating in each case, not merely present If a proposed factor is mitigating under the facts in the case at hand, it must be accorded some weight, the amount of weight is within the trial court's discretion

A STATUTORY MITIGATING CIRCUMSTANCES

There are two possible statutory mitigating circumstances present in this case The Court will address each one in detail separately In considering alleged mitigating evidence the Court must decide if "the facts alleged in mitigation are supported by the evidence," if those established facts are "capable of mitigating the defendant's punishment, i e , may be considered as extenuating or reducing the degree of moral culpability for the crime committed," and if "they are of sufficient weight to counterbalance the aggravating factors " Rogers v State, 511 So 2d 526, 534 (Fla), cert denied, 484 U S 1020 (1988) The

decision as to whether a mitigating circumstance has been established is within the Trial Court's discretion

1 The Defendant was under the Influence of Extreme Mental or Emotional Disturbance

Dr William Riebsame, an expert in forensic psychology, reviewed over 2,000 pages of materials in performing his evaluation of the Defendant The Defendant declined to cooperate, therefore, the evaluation was based solely on records These records included a PSI with psychological evaluations dating back to 1971, police reports regarding the murder, the Defendant's statements to law enforcement, letters written by the Defendant, the Defendant's records from the Department of Corrections, Brevard County Jail records, and the Defendant's school records Dr Riebsame indicated that he was confident in his opinions, because of the wealth of information he received on the Defendant from over the years The doctor indicated that there was a statistical likelihood that the Defendant suffers from a frontal lobe injury, as there is a correlation between brain injury and psychopathic behavior However, the doctor could not definitely state the Defendant had such an injury because the Defendant refused medical testing to confirm this diagnostic impression

Dr Riebsame testified that the Defendant was a psychopath, and that his personality disorders were persistent and consistent throughout his life He opined that the Defendant had cocaine dependency, an antisocial personality disorder and a personality disorder not otherwise specified, with borderline and narcissistic characteristics Dr Riebsame's opinion was based partially upon his

knowledge of the Defendant's past medical history and upon considering that he was born prematurely to a mother who smoked and drank alcohol during her pregnancy Dr Riebsame noted that studies conducted on biological twins have supported a genetic component to these mental disorders, and further noted that the Defendant's twin sister has also exhibited anti-social personality disorder behaviors The doctor testified that the Defendant exhibited symptoms of an antisocial personality disorder from a young child, continuing through adolescence and into adulthood The criteria for the diagnosis of psychopathy was found in the Defendant's history of antisocial behavior, his lack of conscience and empathy, his aggressiveness, his violence and quick temper, and his predatory behavior, among others The doctor testified that a violent social environment in childhood can aggravate personality disorders, and the records establish that the Defendant grew up in a violent home without love or support from his family The PSI history also reveals that mental health issues were also found in the Defendant's relatives Michael, the Defendant's brother, committed suicide His maternal grandmother was institutionalized for mental illness at an early age and never released His younger sister, Beth Catron, attempted suicide as a teenager, and she was also a self-mutilator The Defendant's twin sister, Jeannice Deggendorf, had drug issues also

Dr Riebsame testified that the Defendant is an individual with an extreme mental disorder The Court accepts the testimony of Dr Riebsame, and finds that this mitigator has been established by a preponderance of the evidence The Court assigns slight weight to this mitigator See Perez v State, 919 So 2d

347, 374-75 (Fla 2005) (upholding trial court's decision to assign slight weight to the mental disturbance mitigating circumstance because there was no showing that Perez was unable to conform his behavior to the requirements of the law), cert denied, 126 S Ct 2359 (2005)

2 The Capacity of the Defendant to Appreciate the Criminality of his Conduct or to Conform his Conduct to the Requirements of the Law was Substantially Impaired

The Court finds that this mitigator was not established The evidence presented clearly establishes the controlled, planned nature of this crime from start to finish Although the Court finds by a preponderance of the evidence, the Defendant was under the influence of an extreme mental disturbance, the Court finds that the Defendant was not substantially impaired to the extent that he did not have the capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law The Court assigns no weight to this mitigator

B NON-STATUTORY MITIGATING CIRCUMSTANCES

A defendant is allowed great latitude in presenting evidence which he feels constitutes non-statutory mitigating circumstances When addressing mitigating circumstances, the trial judge must expressly evaluate in its written order each mitigating circumstance proposed by the defendant to determine whether it is supported by the evidence and whether, in the case of non-statutory factors, it is truly of a mitigation nature Rogers v State, 511 So 2d 526 (Fla 1987), cert denied, 484 U S 1020 (1988), Campbell v State, 577 So 2d 932 (Fla 1991) The resolution of factual conflicts is solely the responsibility and duty

of the trial judge Gunsby v State, 574 So 2d 1085, 1090 (Fla) cert denied, 502 U S 843 (1991) The Court notes that the "catch-all" non-statutory mitigator was not a part of the sentencing phase when this crime was committed However, consideration of these factors is required by Hitchcock v Dugger, 481 U S 393 (1986) The following non-statutory mitigating circumstances were considered by the Court in this case

1 **The Defendant came forward and revealed his involvement in the unsolved crime** In 1988, the Defendant was interviewed by law enforcement and he denied any knowledge or involvement in Ms Miller's murder In 1998, DNA evidence linked the Defendant to Ms Miller's sexual battery and murder For reasons not made clear, law enforcement did not act on this new information In 2005, the Defendant initiated, indirectly and directly, contact with law enforcement and did voluntarily provide a videotaped confession to the murder as well as several written admissions These acts by the Defendant prompted the 2006 indictment by the grand jury in this case

This mitigator was established by the greater weight of the evidence Although the Defendant did ultimately step forward and admit his involvement in these crimes, this non-statutory mitigator is given little weight by the Court The Defendant did not come forward to admit his involvement until there was already DNA evidence linking him to the crimes

2 **The Defendant took responsibility for his acts** The Defendant "has accepted moral responsibility, offered no excuses or defenses, entered a plea and appears ready to accept appropriate punishment, including death " This

mitigator was established by the greater weight of the evidence Although the Defendant has taken responsibility for his actions, this non-statutory mitigator is given little weight by the Court

3 **The Defendant has expressed remorse for his actions** There is no evidence in the record of this case to support a finding of this mitigating circumstance In fact, the Defendant has indicated in court and in his taped statement to Sherman Insco that his acceptance of responsibility for the sexual batteries and the killing of Patricia Miller has to do with the Defendant's religious beliefs rather than an sincere sense of guilt or actual remorse This mitigator was not established by the greater weight of the evidence

4 **The Defendant was under the influence of a mental or emotional disturbance** Court counsel asserts that if the Defendant's mental or emotional disorders are not "extreme" enough to qualify as a statutory mitigator, they are of sufficient significance to be considered a non-statutory mitigator The Court has already found this factor established as a statutory mitigator and assigned it slight weight

5 **The Defendant has experienced prolonged drug abuse** Dr Riebsame testified that based on the records he reviewed the Defendant has been a lifelong drug abuser of various drugs There was no evidence that the Defendant was under the influence of any drugs at the time of Ms Miller's murder Most of the "prolonged drug abuse" occurred after the 1988 murder of Ms Miller This mitigator was established by the greater weight of the evidence This Court assigns it little weight

6 **The Defendant did not have the benefit of a loving relationship with his mother** The record suggests that the Defendant's mother used him as a scapegoat, and blamed the Defendant for problems/conflicts with his other siblings, even when he was not the one at fault This mitigator was established by the greater weight of the evidence, and the Court assigns it little weight

7 **The Defendant did not have the benefit of a loving relationship with his father** The records establish that the Defendant was beaten by his father, with a belt and fists His sister indicated that the father would have a "blanket party," for the Defendant, wherein the father would envelop the Defendant in a blanket then beat him through the blanket The father would then hand the belt to the siblings and have them take turns hitting the Defendant If the father deemed that insufficient force was being applied by the siblings, he would take the belt back and hit all the harder Various documents indicate that the father admitted physically punishing his son The records reveal that the Defendant had a very unhappy childhood with constant strife and dissension This mitigator was established by the greater weight of the evidence, and the Court assigns it little weight

8 **The Defendant was sexually abused as a child** The records indicate that the Defendant reported that he was sexually molested by a man who lived next door when he was young and in retaliation, the Defendant set the man's house on fire " At age fifteen, the Defendant moved in with Chuck Vitale, who was a "suspected homosexual" who took in runaway boys The Defendant's mother reported that the Defendant received money from Vitale, more money

than could be explained by the Defendant performing odd jobs His father was unhappy with the Defendant's and Vitale's relationship, and his sister stated she was convinced that Vitale was paying the Defendant for sexual acts This mitigator was established by the greater weight of the evidence, and the Court assigns it slight weight

9 **Due to aging, the Defendant is a diminishing threat** Dr Riebsame testified that research has shown that by the time psychopaths reach their forties, they become less problematic to society, possibly due to a decline in testosterone The doctor testified that as they get older, psychopaths can show less aggressiveness, less impulsiveness, less change in mood, and appear to be less psychopathic The Defendant's history actually suggests otherwise, in that the Defendant committed the murder of Ms Miller in 1988, when he was twenty-six years of age Nine years later, at the age of thirty-five, the Defendant murdered is wife, Linda Barnes Although nine years had passed, the Defendant remained a danger and a threat to society and killed again The Court finds this mitigating circumstance has not been proven by the greater weight of the evidence

10 **The Defendant has taken steps to improve himself** According to the PSI, the Defendant completed ninth grade Since then, the Defendant has earned a high school diploma, some college credits, and serves as a "certified legal assistant " The Court finds this mitigating circumstance has been proven by the greater weight of the evidence This non-statutory mitigator is given little weight by the Court

11 **The Defendant is a functional and capable person and has demonstrated by his actions and participation in this case that he has sufficient intelligence and capabilities to contribute to society** The Court finds this mitigating circumstance has been proven by the greater weight of the evidence This non-statutory mitigator is given little weight by the Court

IV CONCLUSION

The Court finds that the State of Florida has established beyond and to the exclusion of every reasonable doubt, the existence of six statutory aggravating factors (1) the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment, (2) the Defendant was previously convicted of another capital felony or a felony involving the use or threat of violence to a person, (3) the capital felony was committed during the commission of multiple sexual batteries and a burglary, (4) the capital felony was committed for the purpose of avoiding or preventing lawful arrest, (5) the murder was heinous, atrocious, and cruel, and (6) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification

The Court considered the mitigators as detailed above All of the mitigators combined are insufficient in weight to counter balance the six aggravating factors which have been proven beyond a reasonable doubt and for which this Court assigned great weight The alternative sentence available to this Court on Count I is life imprisonment without the possibility of parole until the Defendant has served twenty-five years of his sentence This is not adequate

punishment for this crime, particularly in light of the fact that the Defendant is already serving a life sentence for another murder The Court further finds that each of the six aggravating factors standing alone outweigh all of the mitigating circumstances combined This case involves a cold, deliberate murder committed in a heinous, atrocious, and cruel manner The senseless, brutal, and tortuous killing of Patricia Miller in her home calls for nothing less than a death sentence Under this specific set of circumstances, the Court finds the sentence of death to be appropriate

V SENTENCE

JAMES PHILLIP BARNES, having been given the opportunity to be heard and show legal cause why judgment and sentence should not now be imposed and to offer matters in mitigation, and no legal cause having been shown to preclude imposition of sentence, you are hereby

ADJUDGED guilty of the crime of First Degree Murder for the unlawful killing of Patricia "Patsy" Miller, perpetrated by you from a premeditated design or intent to effect the death of Patricia "Patsy" Miller It is therefore

ORDERED

1 That the sentence of this Court is that you shall be **PUT TO DEATH** in the manner and means provided by law MAY GOD HAVE MERCY ON YOUR SOUL

2 You are hereby adjudged guilty of Count II – Burglary of a Dwelling with an Assault or Battery, a first degree felony punishable by imprisonment for a term of years not exceeding life As a result of this crime, you are committed to

the custody of the Sheriff of Brevard County, Florida, to be delivered to him to the custody of the Department of Corrections of Corrections to be confined for life This sentence shall be served consecutively to the sentence imposed on Count I

3 You are hereby adjudged guilty of Count III – Sexual Battery by Use or Threat of a Deadly Weapon, a life felony As a result of this crime, you are committed to the custody of the Sheriff of Brevard County, Florida, to be delivered to him to the custody of the Department of Corrections of Corrections to be confined for life This sentence shall be served consecutively to the sentence imposed on Count II

4 You are hereby adjudged guilty of Count IV – Sexual Battery by Use or Threat of a Deadly Weapon, a life felony As a result of this crime, you are committed to the custody of the Sheriff of Brevard County, Florida, to be delivered to him to the custody of the Department of Corrections of Corrections to be confined for life This sentence shall be served consecutively to the sentence imposed on Count III

5 You are hereby adjudged guilty of Count V – Arson of a Dwelling, a felony of the first degree As a result of this crime, you are committed to the custody of the Sheriff of Brevard County, Florida, to be delivered to him to the custody of the Department of Corrections of Corrections to be confined for thirty (30) years imprisonment This sentence shall be served consecutively to the sentence imposed on Count IV

6 The composite term of all sentences imposed for the Counts specified in this order shall run concurrently with any active sentence being served

7 YOU HAVE AN AUTOMATIC APPEAL TO THE SUPREME COURT OF FLORIDA FROM THIS JUDGMENT OF GUILT AND THE SENTENCE THIS COURT HAS IMPOSED § 921 141(4), Fla Stat (1987) You are entitled to the assistance of an attorney in preparing and filing your appeal Upon a showing that you are entitled to an attorney at the expense of the State one will be appointed for you

DIRECTIONS TO THE CLERK OF THE COURT, SHERIFF, AND COURT REPORTER

8 The Clerk of the Court shall file and record this judgment and sentence and shall prepare six certified copies of this record of conviction and sentence of death and the Sheriff of Brevard County shall send one copy of this record to the Governor of the State of Florida § 922 052, Fla Stat The Defendant is hereby remanded to the custody of the Sheriff of Brevard County, Florida, who is directed to deliver the Defendant and the second certified copy of this conviction and sentence to the custody of the Department of Corrections to await issuance by the Governor of a warrant commanding the execution of this sentence of death § 922 111, Fla Stat

9 The Clerk of the Court shall forthwith furnish the third certified copy of this judgment to the court reporter, who is directed as expeditiously as possible to transcribe the notes of all proceedings in this case and to certify the corrections of the notes and of the transcript, duly certified, and to file two copies of such with the Clerk of this Court

10 The Clerk of this Court shall forthwith furnish the fourth certified copy of this judgment to the Defendant's counsel on appeal (the Office of the Public

Defender) and the fifth certified copy of this judgment to the Attorney General of the State of Florida, and the sixth certified copy to the Defendant

11 This judgment of conviction and sentence of death being subject to automatic review pursuant to section 921 141(4), Florida Statutes, the Clerk of Court is hereby directed to prepare a complete record on appeal of all parts of the original record, papers and exhibits, proceedings and evidence and two copies thereof, and after certification by the sentencing court, the Clerk shall transmit the entire original certified record to the Clerk of the Supreme Court of Florida for automatic review and serve one copy thereof upon the Attorney General of the State of Florida, one copy to the Defendant, and one copy thereof upon the Office of the Public Defender for appeal

12 The Defendant having been adjudged insolvent for purposes of appeal, the State of Florida shall pay the costs of such transcripts and copies and the filing fee on appeal

DONE AND ORDERED at the Moore Justice Center, Viera, Brevard County, Florida, this 13 day of December 2007

Lisa Davidson

LISA DAVIDSON
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I do hereby certify that copies of this Order have been provided by ~~U S Mail to~~ **Sue Garrett, Esq , and Susan Stewart, Esq , Assistant State Attorneys, Office of the State Attorney,** 2725 Judge Fran Jamieson Way, Building D, Viera, Florida 32940, **James Barnes, pro se,** d o b 3/7/1962, Brevard County Detention Center, 860 Camp Road, Cocoa, Florida 32927, and **J Randall Moore, Assistant Public Defender, Standby Counsel** for the Defendant, 2725 Judge Fran Jamieson Way, Building E, Second Floor, Viera, Florida 32940, **Sam Baxter Bardwell, Esq , Court-Appointed Counsel,** 503 South Palm Avenue, Titusville, Florida 32796 by hand-delivery on December 13, 2007

Deputy Clerk
Moore Justice Center
2825 Judge Fran Jamieson Way
Viera, Florida 32940

STATE OF FLORIDA, COUNTY OF BREVARD
I HEREBY CERTIFY that the foregoing is a true copy of the original filed in this office and may contain redactions as required by law.
SCOTT ELLIS, Clerk of the Circuit Court
Date 11/8/2019 By

1/6

BAR CODE LABEL

Case # 05 2006-CF 014592-AXXX-XX
Document Page # 181

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CFN 2007283088 OR BK 5831 Page 8357,
Recorded 12/14/2007 at 11 31 AM Scott Ellis Clerk of Courts Brevard County
Pgs 6

☒ IN THE CIRCUIT COURT EIGHTEENTH JUDICIAL CIRCUIT BREVARD COUNTY, FLORIDA
☐ IN THE COUNTY COURT BREVARD COUNTY FLORIDA

DIVISION		CASE NUMBER
☐ CIVIL ☒ CRIMINAL ☐ JUVENILE ☐ TRAFFIC	☒ JUDGMENT ☐ JUDGMENT/ORDER OF PROBATION ☐ JUDGMENT/ORDER OF COMMUNITY CONTROL	05 2006 CF 14592 XXX XX A
PLAINTIFF STATE OF FLORIDA vs	DEFENDANT JAMES PHILLIP BARNES First Middle Last Suffix OBTS NO 050134667	FILED IN OPEN COURT This 13 day of Dec 2007 at ____ M CLERK OF COURTS BY ____ DC

☐ PROBATION VIOLATOR
☐ COMMUNITY CONTROL VIOLATOR
☐ RETRIAL
☐ RESENTENCE
☐ AMENDED AS TO ____
☐ VICTIM IS A MINOR

Court was opened with the Honorable L JAMESON presiding, and in attendance
State Attorney S GARRETT, Trial Clerk JAMESON
Court Reporter BEDDOW On ____
The defendant, JAMES PHILLIP BARNES being personally before the court represented by PRO SE the attorney of record, and having

☐ Been tried and found guilty ☐ by jury ☐ by court of the following crime(s)
☒ Entered a plea of guilty to the following crime(s)
☐ Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE
II	Burglary of Dwelling WAS ARMED	810.02.2.B	1F
III + IV	Sexual Battery By use of Great Force	794 011.3	1F
V	Arson of a Dwelling	806.01 1A	1F

☐ THE ☐ PROBATION ☐ COMMUNITY CONTROL PREVIOUSLY ORDERED IN THIS CASE IS REVOKED
☐ THE PRIOR ADJUDICATION OF GUILT IN THIS CASE IS CONFIRMED
and no cause having been shown why the defendant should not be adjudicated guilty
☐ IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD
☒ IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s)
☐ and having been convicted or found guilty of or having entered a plea of nolo contendre or guilty regardless of adjudication to attempts or offenses relating to sexual battery (ch 794) lewd and lascivious conduct (ch 800) or murder (s 782 04) aggravated battery (s 784 045) burglary (s 810 02) carjacking (s 812 133) or home invasion robbery (s 812 135) or any other offense specified in section 943 325 the defendant shall be required to submit blood or other biological specimens

DONE AND ORDERED BREVARD COUNTY FL	JUDGE	DATE 12-13-07

LAW 172
Rev 12/2005

DISTRIBUTION ORIGINAL COURT FILE [ ] DEFENDANT [ ] PROBATION & PAROLE [ ] SHERIFF
[ ] DEFENSE ATTORNEY/PD [ ] STATE ATTORNEY [ ] DEPT OF CORRECTIONS(2)

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BAR CODE LABEL

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PTY D-1
Event Code 5637

☒ IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT
BREVARD COUNTY FLORIDA
☐ IN THE COUNTY COURT BREVARD COUNTY FLORIDA

CASE NUMBER
05 2006CF-14597-XXX XX

DIVISION
☐ CIVIL
☒ CRIMINAL
☐ TRAFFIC

FINGERPRINTS OF DEFENDANT
OBTS NUMBER 050113466 7

FILED IN OPEN COURT
This _____ day of _____
20____ at _____M

PLAINTIFF
STATE OF FLORIDA
vs

CLERK OF COURTS
BY _____DC

JAMES PHILLIP BARNES

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	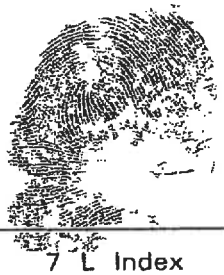			
6 L Thumb	7 L Index	8 L Middle	9 L Ring	10 L Little
				

Fingerprints taken by AL WELLS # 523 (name) DEPUTY (title)

I HEREBY CERTIFY that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant JAMES PHILLIP BARNES and that they were placed thereon by the defendant in my presence in open court this date

DONE AND ORDERED BREVARD COUNTY FLORIDA

_____ JUDGE

DATE 12-13-07

LAW 148
Rev 12/2006

PAGE ____ OF ____

3

RESERVED FOR RECORDING

DEFENDANT	SENTENCE	CASE NUMBER
JAMES PHILLIP BARNES First Middle Last Suffix		05 2006 CF-14592 A XXX XX

(AS TO COUNT(S) II, III, IV)

The defendant being personally before this court accompanied by the defendant's attorney of record, _____ pro se _____ and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence and to show cause why the defendant should not be sentenced as provided by law and no cause being shown,

☐ and the court having on _____ (date) deferred imposition of sentence until this date

(Check applicable provision)

☐ and the court having previously entered a judgment in this case on _____ (date) now resentences the defendant

☐ and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control

IT IS THE SENTENCE OF THE COURT that

☐ The defendant pay a fine pursuant to section 775 083, Florida Statutes plus a 5% surcharge pursuant to section 938 04 Florida Statutes as indicated on the Fine/Costs/Fee Page

☒ The defendant is hereby committed to the custody of the Department of Corrections

☐ The defendant is hereby committed to the custody of the Sheriff of Brevard County, Florida

☐ The defendant is sentenced as a youthful offender in accordance with section 958 04 Florida Statutes

TO BE IMPRISONED (check one unmarked sections are inapplicable)

☒ For a term of natural life

☐ For a term of _____

☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order

IF SPLIT SENTENCE complete the appropriate paragraph

☐ Followed by a period of _____ on ☐ probation ☐ community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in the order entered herein

☐ However after serving a period of _____ imprisonment in the Department of Corrections the balance of the sentence shall be suspended and the defendant shall be placed on ☐ probation ☐ community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of ☐ probation ☐ community control set forth in the order entered herein

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms

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RESERVED FOR RECORDING

DEFENDANT	SENTENCE	CASE NUMBER
JAMES PHILLIP BARNES First Middle Last Suffix		05 2006 CF-14592 A XXX-XX

(AS TO COUNT(S) V)

The defendant being personally before this court, accompanied by the defendant s attorney of record pro se and having been adjudicated guilty herein and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence and to show cause why the defendant should not be sentenced as provided by law and no cause being shown

☐ and the court having on _____ (date) deferred imposition of sentence until this date

(Check applicable provision)

☐ and the court having previously entered a judgment in this case on _____ (date) now resentences the defendant

☐ and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control

IT IS THE SENTENCE OF THE COURT that

☐ The defendant pay a fine pursuant to section 775 083 Florida Statutes plus a 5% surcharge pursuant to section 938 04 Florida Statutes as indicated on the Fine/Costs/Fee Page

☒ The defendant is hereby committed to the custody of the Department of Corrections

☐ The defendant is hereby committed to the custody of the Sheriff of Brevard County Florida

☐ The defendant is sentenced as a youthful offender in accordance with section 958 04 Florida Statutes

TO BE IMPRISONED (check one unmarked sections are inapplicable)

☐ For a term of natural life

☒ For a term of 30 yrs

☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order

IF SPLIT SENTENCE complete the appropriate paragraph

☐ Followed by a period of _____ on ☐ probation ☐ community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in the order entered herein

☐ However after serving a period of _____ imprisonment in the Department of Corrections the balance of the sentence shall be suspended and the defendant shall be placed on ☐ probation ☐ community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of ☐ probation ☐ community control set forth in the order entered herein

In the event the defendant is ordered to serve additional split sentences all incarceration portions shall be satisfied before the defendant begins service of the supervision terms

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RESERVED FOR RECORDING

DEFENDANT		CASE NUMBER
JAMES PHILLIP BARNES First Middle Last Suffix OBTS NO	OTHER PROVISIONS	05 2006 CF 14592 XXX XX A

(AS TO COUNT ~~II~~, ~~III~~, ~~IV~~, V

☐ RETENTION OF JURISDICTION

The Court retains jurisdiction over the defendant pursuant to section 947 16(3) Florida Statutes (1983)

☒ JAIL CREDIT

It is further ordered that the defendant shall be allowed a total of 597 days credit for time incarcerated before imposition of this sentence

☒ Consecutive/Concurrent AS TO OTHER COUNTS

It is further ordered that the sentence imposed for this count shall run ☒ consecutive to ☐ concurrent with (check one) the sentence set forth in count _____ of this case above Count II to Count I, Count III to Count II, Count IV to Count III, Count V to Count IV

☒ Consecutive/Concurrent AS TO OTHER CONVICTIONS

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run ☐ consecutive to ☒ concurrent with ☒ any active sentence being served ☐ specific sentences _____

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Event Code 6709
Party Type D1

DEFENDANT	SIGNATURE PAGE	CASE NUMBER
JAMES PHILIP BARNES First Middle Last Suffix		05 2006CF14592A XXX XX

In the event the above sentence is to the Department of Corrections the Sheriff of Brevard County Florida is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within thirty days from this date with the clerk of this court and the defendant s right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency

In imposing the above sentence, the court further recommends _____

_____

_____

_____

_____

THE COURT HEREBY ORDERS THE DEFENDANT

☐ released on Probation Report to Probation ☐ within 24 hours ☐ within 72 hours of release by_____ m on _____, 20___

☐ released on Community Control Report to Community Control ☐ within 24 hours ☐ within 72 hours of release

☒ remanded to the Brevard County Detention Facility

☐ discharged/released,

☐ to be released to a representative of _____ only

DONE AND ORDERED BREVARD COUNTY, FLORIDA	_____ JUDGE	DATE 12-13-07

STATE OF FLORIDA, COUNTY OF BREVARD
I HEREBY CERTIFY that the foregoing is a true copy of the original filed in this office and may contain redactions as required by law.
SCOTT ELLIS, Clerk of the Circuit Court
Date 11/8/2019 By _____

CIRCUIT COURT CLERK BREVARD COUNTY, FLORIDA

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