IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR LAKE COUNTY

STATE OF FLORIDA,

VS. CASE NO.: 2017-CF-000379-B

JOSHUA RYAN MCCLELLAN,
DEFENDANT.
_____/

SENTENCING ORDER

THIS CAUSE came before the Court for Sentencing on November 20, 2023. The Defendant was present and represented by Counsel, Frank Bankowitz, Esq. and J. Edwin Mills, Esq. The State was represented by Nicholas Camuccio, Esq. and Gabriel Lozano, Esq.

PROCEDURAL HISTORY

1. On February 28, 2017, JOSHUA RYAN MCCLELLAN was charged by Indictment with Count I – Murder in the First Degree – Combination, for the murder of Rubye James, and Count II – Burglary of a Dwelling While Armed or With Battery.

2. On March 7, 2017, the State of Florida filed a *Notice of Intent to Seek Death Penalty*. The State listed as statutory aggravating factors: 1) The 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 attempting to commit robbery or burglary, §921.141(6)(d), Fla. Stat.; 2) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest, §921.141(6)(e), Fla. Stat.; 3) The capital felony was committed for pecuniary gain, §921.141(6)(f), Fla. Stat.; 4) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification,

§921.141(6)(i), Fla. Stat.; and 5) The victim of the capital felony was particularly vulnerable due to advanced age or disability, §921.141(6)(m), Fla. Stat.

3. The Indictment was amended on May 12, 2017, charging JOSHUA RYAN MCCLELLAN with Count I – Murder in the First Degree – Combination, and Count II – Burglary of a Dwelling While Armed.

4. Jury selection began on August 14, 2023. A jury of 12, and 3 alternates, was sworn on August 17, 2023. The guilt phase began August 21, 2023.

5. On August 23, 2023, the jury returned a verdict of guilt for Counts I and II.

6. The penalty phase began August 29, 2023. Hurricane Idalia closed the Lake County Courthouse on August 30, 2023, and the penalty phase proceeded on August 31, 2023.

7. On September 1, 2023, the jury returned a recommendation of death by a vote of 10-2.

8. A *Spencer* hearing was held on October 4, 2023.

9. The parties submitted their sentencing memoranda after the *Spencer* hearing. The State filed their memorandum and submitted an addendum on October 26, 2023. The defendant submitted his memorandum on October 26, 2023.

## FACTUAL FINDINGS- GUILT PHASE

In the early morning hours of February 7, 2017, Rubye James, 92 years old, spoke on the phone to friends like she did every morning. Ms. James made plans to have lunch with a friend, Carlean Crawford, on February 8, 2017. When another friend, Runette Fulmore, did not receive her customary daily call from Ms. James on February 8, 2017, Ms. Fulmore phoned Ms. Crawford and both women became concerned. It was very uncommon for Ms. James to not speak to either woman every day. Ms. Fulmore and Ms. Crawford both made their way to Ms. James's residence to check on her, and call law enforcement for a well-being check. Ms.

Fulmore was the first to arrive, knocking on the door with no answer. Both women noticed that the front porch looked out of place for the way Ms. James typically kept it; plants were knocked over, there was a lone slipper, and a pair of glasses that appeared to belong to Ms. James. Law enforcement and the fire department arrived and were able to remove the metal bars surrounding the back door to gain entry into Ms. James's residence. Upon entry, it was evident that a crime had occurred, and the residence was cleared and sealed by law enforcement; Ms. James's vehicle was not located on the property.

Within the residence, items were in disarray and blood was present in multiple locations. A gray hooded sweatshirt with blood-like stains was found in the kitchen, belonging to Codefendant, Krystopher Laws. There were dripped blood stains throughout the home, including on the refrigerator and on a juice bottle within the refrigerator. A used band-aid was found in the bathroom. DNA testing shows that this blood came from Codefendant Laws. There were larger, pooled areas of blood, along with drag or swipe marks, which contained two separate sets of shoe impressions. The shoe impression analysis shows the same class characteristics for the shoes recovered later from Mr. McClellan's residence. A handprint, belonging to Codefendant Laws, was found on a mirror in the front foyer of the home.

Ms. James's vehicle was spotted by a resident of the Snow Place apartments in Leesburg at approximately 7:30 a.m. on February 8, 2017. When law enforcement responded to the vehicle, blood was seen on the exterior of the vehicle and Mr. McClellan's folding knife could be seen on the center console. A used band-aid was found in the passenger floorboard; DNA testing showed that this bandage contained Mr. McClellan's blood. DNA from both Ms. James and Codefendant Laws was present on the interior and exterior of the vehicle. In total, the only DNA

evidence connecting Mr. McClellan to the areas searched and collected came from the band-aid located in the vehicle.

Ms. James's body was found in a shallow grave a few hundred feet away from the abandoned vehicle and 150 feet away from Mr. McClellan's residence. Ms. James was found face down in a shallow-dug grave wearing pajama type clothing, wrapped with other items of clothing, and covered with ferns and vegetation. Ms. James's body had multiple abrasions and lacerations, along with incise wounds, some going through her ears. The medical examiner, Dr. Kyle Shaw, noted 12 distinct, separate sharp force injuries to Ms. James, with an additional 6 stab wounds on her back and 2 stab wounds to her buttocks. Ms. James had multiple fractured ribs, a fracture to the thoracic spine, and a small fracture to the front of her neck. Dr. Shaw opined that the cause of Ms. James's death was multiple sharp and blunt force injuries.

Mr. McClellan voluntarily attended an interview with Detective Levi Burns of the Lake County Sheriff's Office on February 10, 2017, at the Leesburg Police Department. During the interview, Mr. McClellan was adamant that he and Codefendant Laws found the vehicle in a parking garage near the Leesburg library in the early morning hours of February 8, 2017. Mr. McClellan stated that the key fob was found on the car, and he and Mr. Laws went on a joyride to Wildwood and Lake Panasoffkee before returning to Leesburg. Mr. McClellan was also adamant that he and Mr. Laws were together all night, beginning at roughly 6:00 p.m., February 7th until some time on February 8th. His story during the interview never wavered. Mr. McClellan stated over and over that he did not hurt Ms. James, and he did not have any knowledge of what Mr. Laws may or may not have done. Mr. McClellan stated that he discarded the key fob off a back road near County Road 44 and US Highway 441. Later the key fob was found in that location and taken into evidence. During a break in the interview, Detective Burns

received word that a latent print comparison from the front foyer mirror placed Codefendant Laws inside Ms. James's residence, and a separate interview occurred with Codefendant Laws. According to Detective Burns, during that interview and after the latent print comparison identified Mr. Laws, Mr. Laws changed his story. Detective Burns informed Mr. McClellan that Mr. Laws' story coincided with evidence already in law enforcement's possession; however, Mr. McClellan remained steadfast in his statements that he did not hurt Ms. James, and he did not know what Mr. Laws may have done. During the interview, Mr. McClellan told law enforcement the location where he disposed of the key fob from the vehicle. A Crime Scene Investigator subsequently went to that location and collected the key fob. Detective Burns testified that after the interview he went to investigate the parking garage, and found no video surveillance footage to corroborate Mr. McClellan's claims. Law enforcement collected clothing and shoes from Mr. Laws and Mr. McClellan, and took pictures of both codefendants, including their hands and any injuries. Mr. McClellan had injuries to his knuckles on both of his hands, and a small injury beneath his right index finger. Codefendant Laws had an injury on his right index finger near the knuckle.

After the interview and arrest of the codefendants, a search was conducted at Mr. McClellan's residence. During that search, a trash can was located outside the residence that contained a green Nike tennis shoe and a plastic bag containing miscellaneous clothing and items within it. These miscellaneous items included two bandanas, a black shoe, black shorts, denim jeans, multicolored tank top, t-shirt, two beanie style knit caps, and boxer briefs. Another green Nike shoe was found on the back porch of Mr. McClellan's residence. Later a shovel head was retrieved from other residents at Mr. McClellan's residence. There was conflicting testimony on where this shovel head was found; Detective Clay Watkins testified that Mr. Mack, romantic

partner of Mr. McClellan's mother, said the shovel head was in the attic; however, Crime Scene Investigator, Jessica Wade, testified that she was told the shovel head was found near the location of Ms. James's body after it was removed. DNA analysis of the items showed a match to Ms. James on multiple items. Codefendant Laws' DNA was also present, or included on other items. Mr. McClellan's DNA was either excluded or indeterminable on all items, but the band-aid found in Ms. James' vehicle.

## FACTUAL FINDINGS – PENALTY PHASE

The State's presentation of evidence for statutory aggravating circumstances was put forth during the Guilt Phase. The majority of Penalty Phase was used for the presentation of mitigating circumstances. Records from Lake County School Board, Leesburg Regional Medical Center, Lifestream Behavioral Center, Department of Children and Families, and the Lake County Jail were relied on by the Defense experts in rendering their opinions, along with face-to-face evaluations of Mr. McClellan.

Dr. Michael Scott Maher opined that Mr. McClellan lacked brain development, having very low overall functioning. Dr. Maher also testified that school records indicated that Mr. McClellan had low intelligence. The school records also pointed to toileting accidents, which Dr. Maher testified supported his opinion that Mr. McClellan had impairments in his brain functioning. Dr. Maher opined that Mr. McClellan's ADHD diagnosis led to impairments of impulse control. Dr. Maher also diagnosed Mr. McClellan with a personality disorder. Dr. Maher noted that Mr. McClellan was very immature for his age, functioning like a 15- or 16-year-old. Dr. Maher opined that Mr. McClellan was suffering from a mental or emotional disturbance at the time of the crime, but that it did not rise to the level of extreme disturbance. Dr. Maher

further opined that Mr. McClellan's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was very limited, but not substantially impaired.

Ms. Sara Collins, Defendant's mother, testified that the Department of Children and Families removed Mr. McClellan and his sister from her home on two occasions for Ms. Collins smoking marijuana. Ms. Collins also testified that when Mr. McClellan was younger, he was very active and never very still. Ms. Collins testified that her son did not do well in school, and that she went to meetings at the school and tried to talk to him; however, her son did not want to, or could not, listen to her. Ms. Collins testified that nothing was clicking for Mr. McClellan. Ms. Collins also testified that Mr. McClellan received disability payments monthly that went toward household expenses. Ms. Collins testified that she thought it was because Mr. McClellan had schizophrenia. Notably, neither Dr. Maher nor Dr. Prichard (discussed below) found a diagnosis for schizophrenia. Ms. Collins further testified that Mr. McClellan never had consistent employment. Ms. Collins also testified about Mr. McClellan's premature birth. Mr. McClellan was 4 lb. 3 oz. at birth, and due to his breathing problems, he was on oxygen in an incubator. Ms. Collins also testified about the relationship between Mr. McClellan and Codefendant Laws. She testified that Mr. Laws was her son's closest friend, that Mr. Laws was staying with them at the time of the murder, and that Mr. McClellan was the follower in that friendship. On cross-examination, Ms. Collins admitted to choking Mr. McClellan once for being disrespectful when he was roughly 14 or 15 years old. Ms. Collins testified that Mr. McClellan went against authority and that lead to mostly verbal conflict between them.

Dr. Micah Johnson discussed the Adverse Childhood Experiences (ACE) Study, and opined that Mr. McClellan scored 9 or 10 out of 10 on the ACES questionnaire. Yet the record does not support such a finding. Mr. McClellan's records show that there were times that he was

physically neglected, leading to Mr. McClellan and his sister being removed from his mother's home on two occasions. There is also corroboration that on a few occasions Mr. McClellan's mother physically struck or abused him, and that his biological parents did not live in the same home. That said, Dr. Johnson made conclusory assessments, without corroboration of self-reporting, that Mr. McClellan was the victim of sexual abuse and that both his parents were incarcerated at some point during his life. Relying on the ACES questionnaire, Dr. Johnson opined that Mr. McClellan's ability to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired, pointing to his mental health issues, and lack of behavioral health services. Yet Mr. McClellan had behavioral health services from 2009 to 2013, according to Lifestream Behavioral Center records.

Dr. Mark Rubino assessed Mr. McClellan for brain and head injuries. Dr. Rubino based his opinion on MRI and CT/PET imaging, along with medical records to support his opinions. Leesburg Regional Medical Center records show that Mr. McClellan was brought in for a seizure episode where his mother found him convulsing on the bathroom floor. Dr. Rubino opined that the seizure incident shows the brain is malfunctioning in some way, but did not have an opinion as to the cause of that malfunction. Dr. Rubino opined that Mr. McClellan has a high likelihood of traumatic brain injury because of two car accidents, one occurring before Mr. McClellan was 10 years old and another that happened in his late teens. Dr. Rubino opined that Mr. McClellan suffered from fetal alcohol disorder, and that he was born prematurely. Dr. Rubino testified that the MRI showed areas on scarring and impairments typically caused by brain injuries and can also be associated with schizophrenia. Dr. Rubino also testified that the CT/PET showed that Mr. McClellan's brain was grossly abnormal, pointing to most of the brain under metabolizing the contrast. Dr. Rubino opined that under metabolization could be caused from being born

premature, head injuries, or being choked by his mother as a child. Dr. Rubino further opined that Mr. McClellan's tone points to traumatic brain injury that could be caused by trauma, anoxia, or premature birth.

Dr. Greg Prichard testified as the State's rebuttal witness. Dr. Prichard opined that the characterization of Mr. McClellan as having low intellect is a mischaracterization. Dr. Prichard testified that Mr. McClellan's intelligence testing scores in the school records showed that he fell within the high borderline (score 76), and average range (score 86). Dr. Prichard opined that Mr. McClellan fits the criteria for a diagnosis of ADHD and mixed personality disorder. Dr. Prichard explained mixed personality disorder as personality characteristics that cause problems while interacting with the world, leading to a person getting in trouble, not following the rules, being defiant, and issues with interpersonal relationships. Dr. Prichard referenced the 82 behavioral referrals that Mr. McClellan received throughout his time in school, which led to 23 out of school suspensions, and Mr. McClellan being placed in behaviorally disabled ESE classes. Dr. Prichard also spoke about the toileting accidents and correlated them to ADHD medication side effects. Dr. Prichard testified that the records support the fact that the side effects subsided after Mr. McClellan stopped taking the medication. Dr. Prichard also testified about significant things within the records from Lake County Jail since Mr. McClellan's arrest, which included 5 instances of "gunning" behavior[1]. Dr. Prichard opined that there are generally two types of individuals that partake in this behavior: a sexual deviant, or a criminally oriented, nonconformist that uses the behavior to assault women from afar. Dr. Prichard further opined that according to Mr. McClellan's history, the latter matches his behavior more, and supports a diagnosis of mixed personality disorder. [redacted]

[1] "Gunning" is a public display of masturbation.

[redacted] Upon questioning on a schizophrenia diagnosis, Dr. Prichard testified that he found no record evidence of such a diagnosis. Dr. Prichard also testified that many of the Defense experts repeated this diagnosis, but opined that it came from Ms. Collin's reasons stated for his disability income.

FACTUAL FINDING – SPENCER HEARING

At the *Spencer* hearing, the Defendant called one witness, Dr. Hyman Eisenstein. Dr. Eisenstein is a clinical psychologist that also works in forensic neuropsychology. Dr. Eisenstein testified that he spent nearly 55 hours with Mr. McClellan since being retained in 2018. Dr. Eisenstein testified that Mr. McClellan's age at the time of the crime was a significant factor that he considered in rendering all of his opinions. Dr. Eisenstein testified that Mr. McClellan's history of ADHD, age, and immaturity support his opinion that Mr. McClellan had a brain development age of a 14 or 15 year old. Dr. Eisenstein also pointed to Mr. McClellan marrying a woman twice his age as a marker of immaturity, especially considering they had nowhere to live, no financial security, and two teenagers to care for. Dr. Eisenstein testified that meeting with Mr. McClellan over five years had given him a better understanding of Mr. McClellan's development; he has matured and developed.

Dr. Eisenstein opined that Mr. McClellan is a follower stemming from the trauma he has sustained throughout his life leaving him anxious, depressed, and timid. Dr. Eisenstein testified that when a situation arises, Mr. McClellan basically freezes and runs away instead of dealing with the situation. Dr. Eisenstein also opined that Codefendant Laws was the leader that night,

noting that Mr. McClellan may have given suggestions of where to go, but Laws made the decisions on what to do and how to do it.

Dr. Eisenstein testified that the cumulative nature of Mr. McClellan's background, [redacted] neurological deficits, and educational deficits lead to his opinion that Mr. McClellan was under the influence of extreme mental or emotional disturbance. Dr. Eisenstein did not find that Mr. McClellan's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of was substantially impaired. Dr. Eisenstein opined that Mr. McClellan's behavior was reactive, that he got into a situation he should not have, and he froze. Dr. Eisenstein also opined that Mr. McClellan was taken by surprise as the burglary unfolded and was forced to take orders given to him by Codefendant Laws. Dr. Eisenstein opined that Mr. McClellan was under Codefendant Laws' dominion or influence at the time. Dr. Eisenstein testified that Mr. McClellan told him that Codefendant Laws said he would kill him if he did not do what he said. Dr. Eisenstein also testified that Mr. McClellan feels horrible about what happened to Ms. James, and that he wishes he was dead and not her. Dr. Eisenstein also opined that because Mr. McClellan's brain was not fully developed, he did not understand the nature and consequences of his actions.

On cross-examination, Dr. Eisenstein testified that various tests administered to Mr. McClellan had results of low average to excellent results. Dr. Eisenstein also testified that during their meetings Mr. McClellan expressed that he told two different stories to law enforcement, but did not provide reasoning for the contradictory stories. Dr. Eisenstein opined that is a classic example of lack of brain development. When the State questioned Dr. Eisenstein on whether someone under the dominion or influence of another would be confrontational and yell, Dr. Eisenstein conceded that it could be important to see the video footage from the law enforcement

vehicle while Mr. McClellan and Codefendant Laws were transported to the jail. However, Dr. Eisenstein had not seen that video.

A video recording of Ms. Collins from February 2, 2021, was moved into evidence and played in open Court. During the recording, Ms. Collins implores Mr. McClellan to take the plea offer of Life in Prison from the State. The State also submitted two videos as rebuttal evidence: Codefendant Laws' interview with Detective Burns prior to arrest, and footage from the patrol car as Mr. McClellan and Codefendant Laws were taken to the Lake County Jail. In Codefendant Laws' interview, he begins by telling a substantially similar story to Mr. McClellan, that the car was found in the parking lot in downtown Leesburg. Laws stated that he was with Mr. McClellan all day on the day of the murder, but was in Eustis at the time of the crime. Once Detective Burns came forward with photos of Laws' hoodie inside Ms. James' house and his palm print found on the mirror near the front door, Codefendant Laws started to change his story. Laws vacillated, at one point saying he had never been inside Ms. James' home then stating he remembers the mirror near the front door, and then back to claiming he was never in her house. Eventually, Laws' answers began to track with what the evidence was laying out at the scene. Again, Laws' story vacillates, at one point stating that he killed Ms. James, and that Mr. McClellan could never do it, to claiming that he did not kill her.

Codefendant Laws cannot be clearly heard in the video from the patrol car, it seems the camera was positioned on the side where Mr. McClellan was placed, and the partition between them obscures Laws' voice the majority of the time. Mr. McClellan's facial expression in the video could be best described as contempt toward Laws. At one point, Mr. McClellan tells Laws this is his fault. Laws then says he did what Mr. McClellan asked him to do. Mr. McClellan angrily responded that he didn't ask him to do a thing. Mr. McClellan then makes statements

about not seeing his wife on his upcoming 20th birthday. Mr. McClellan has many outbursts toward Laws where he yells at him, and Laws is crying. Mr. McClellan gets emotional a few times during the video, stating a few times that he only stole a car.

## JURY RECOMMENDATION

The jury unanimously found that the State had proven five statutory aggravating factors beyond a reasonable doubt: (1) the capital felony was committed while Defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery or burglary; (2) the capital felony was committed for the purpose of avoiding or preventing a lawful arrest; (3) the capital felony was committed for pecuniary gain; (4) the capital felony was committed in a cold, calculated, and premeditated manner, without pretense of moral or legal justification; and (5) the victim was particularly vulnerable due to advanced age or disability. The jury recommended, by a vote of 10-2, that Mr. McClellan should be sentenced to death.

## *ENMUND/TISON* DETERMINATION

Evidence at trial showed that Codefendant Laws did not know Ms. James prior to the murder, nor where she lived. Yet Mr. McClellan was very familiar with Ms. James; he did work for her around the house for a period of time the year prior to the murder. Evidence also shows that there were two sets of shoe prints in the blood throughout Ms. James home. Mr. McClellan owned and had possession of the knife after the murder, which was left in Ms. James's car. Mr. McClellan's DNA was also found on a band-aid inside Ms. James's car after it was discovered by law enforcement. Additionally, Ms. James's body was found within 150 feet of Mr. McClellan's residence. The jury did not find that the murder was an independent act of another. Both Codefendant Laws and Mr. McClellan were major participants in the burglary.

Mr. McClellan and Codefendant Laws left Mr. McClellan's residence in the early morning hours for the purpose of stealing cars, or belongings, evidenced by their clothing, knit caps, and bandanas that were retrieved after the murder. Mr. McClellan told law enforcement as much during his voluntary interview. Mr. McClellan was in possession of the knife that fatally wounded Ms. James. Mr. McClellan led Codefendant Laws to Ms. James's residence. The Court finds that by carrying the knife during the commission of the burglary, Mr. McClellan, at the very least, contemplated that lethal force would be employed and a life could be taken. Therefore, Mr. McClellan was a major participant and acted with reckless indifference to human life.

AGGRAVATING FACTORS

A. ***The capital felony was committed while Defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit burglary. §921.141(6)(d), Fla. Stat.***

This aggravating factor is merged with §921.141(6)(f), that the capital felony was committed for pecuniary gain. A contemporaneous conviction of armed burglary is sufficient to warrant a finding that the murder was committed during the commission of that burglary. *Perry v. State*, 522 So. 2d 817, 820 (Fla. 1988). Mr. McClellan was contemporaneously convicted of Burglary of a Dwelling while Armed. The Court finds this aggravating factor has been proven beyond a reasonable doubt, and gives it great weight.

B. ***The capital felony was committed for the purpose of avoiding or preventing a lawful arrest. §921.141(6)(e), Fla. Stat.***

"To establish the avoid arrest aggravating factor where the victim is not a law enforcement officer, the State must show beyond a reasonable doubt that the sole or dominant

motive for the murder was the elimination of a witness." *Conner v. State*, 803 So. 2d 598, 610 (Fla. 2001). "The mere fact that the victim knew and could identify the defendant, without more, is insufficient to prove this aggravating factor beyond a reasonable doubt." *Geralds v. State*, 601 So. 2d 1157, 1164 (Fla. 1992). "Proof of the requisite intent to avoid arrest and detection must be very strong in these cases." *Jackson v. State*, 502 So. 2d 409,411 (Fla. 1986). It has been established beyond a reasonable doubt that Ms. James knew Mr. McClellan, however, that fact alone is not enough to find this aggravating factor. Codefendant Laws left a sweatshirt inside Ms. James's residence, along with a used juice bottle and band-aid. Mr. McClellan left a used band-aid in Ms. James's vehicle, as well as the murder weapon. Additionally, Ms. James's body was found within 150 feet of Mr. McClellan's residence. These facts undermine a finding that the sole or dominant motive for the murder was to avoid arrest. *See Davis v. State*, 148 So. 3d 1261, 1279 (Fla. 2014). The Court finds that this aggravating factor has not been proven beyond a reasonable doubt.

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

This statutory aggravating factor has merged with §921.141(6)(d) and will not be considered as an additional aggravating factor. *See Cherry v. State*, 544 So. 2d 184, 187 (Fla. 1989).

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

For the cold, calculated, and premeditated aggravating factor to apply, the State must prove beyond a reasonable doubt that: 1) the killing must be the product of cool and calm reflection, unprompted by emotional frenzy, panic, or a fit of rage; 2) the defendant must have

had a prearranged design or careful plan to commit the murder before the incident; 3) the defendant exhibited heightened premeditation; and 4) no pretense of moral or legal justification. *Evans v. State*, 800 So. 2d 182, 192 (Fla. 2001). "This aggravating circumstance pertains specifically to the state of mind, intent, and motivation of the defendant, and involves a much higher degree of premeditation than that required to prove first-degree murder." *Brown v. State*, 143 So. 3d 392, 402 (Fla. 2014). "A plan to kill cannot be inferred solely from a plan to commit, or the commission of, another felony." *Geralds v. State*, 601 So. 2d at 1163. The heightened form a premeditation for CCP can be demonstrated by the manner of killing, such as execution or contract killing. *Hamblen v. State*, 527 So. 2d 800, 805 (Fla. 1988). Premeditation can also be established by examining the circumstances of the killing, which can "be indicated by circumstances showing such facts as advance procurement of a weapon, lack of resistance or provocation, and the appearance of a killing carried out as a matter of course." *Franklin v. State*, 965 So. 2d 79, 98 (Fla. 2007).

It is clear there was premeditation for the burglary; Mr. McClellan and Codefendant Laws walked approximately five miles to Ms. James's residence, and knit caps and bandanas were recovered from Mr. McClellan's residence. However, that premeditation cannot be inferred onto the higher degree of premeditation required for the cold, calculated, and premeditated aggravating factor. Nor is there evidence to show a heightened form of premeditation in the manner of killing. Mr. McClellan did have a knife, but there is no evidence to prove that the knife was procured specifically for the intent of murder. The state of Ms. James's residence shows a reasonable hypothesis that the murder occurred at the spur of the moment and little planning went into it: blood trails throughout most of the home, clothing left by Codefendant

Laws, and the bloody, used juice bottle left inside the refrigerator. The Court finds that this aggravating factor is not proven beyond a reasonable doubt.

E. ***The victim was particularly vulnerable due to advanced age or disability. §921.141(6)(m), Fla. Stat.***

This aggravating factor states that the victim "must not only be of advanced age but must instead be particularly vulnerable due to advanced age." *Francis v. State*, 808 So. 2d 110, 139 (Fla. 2001). This is a fact-intensive determination that requires more than a birth certificate to establish the aggravating factor. *Id.* A significant disparity in age between the defendant and victim is proper to consider. *Woodel v. State*, 804 So. 2d 316, 325 (Fla. 2001). Ms. James was 92 years old at the time of her death. Testimony from close friends show that Ms. James was in good shape for a woman 92 years old. Ms. Runette Fulmore testified that Ms. James had a hip replacement about 10 years before she passed. Ms. Fulmore also testified that due to the hip replacement, Ms. James used a walker when standing or walking for an extended period of time; for instance, going to the grocery store, within the last year of her life. There is also a significant disparity in age between Ms. James and Mr. McClellan. Mr. McClellan was just days away from his twentieth birthday at the time of the murder. Mr. McClellan was over 70 years younger than Ms. James. The Court finds this aggravating factor has been established beyond a reasonable doubt and gives it great weight.

MITIGATING CIRCUMSTANCES

A. ***The defendant has no significant history of prior criminal activity. §921.141(7)a), Fla. Stat.***

"Contemporaneous crimes cannot provide a basis for rejecting the no significant criminal history mitigator." *Gonzalez v. State*, 136 So. 3d 1125, 1163 (Fla. 2014). It is established by the

greater weight of the evidence that Mr. McClellan has no significant history of prior criminal activity. The Court gives this mitigating circumstance some weight.

B. ***The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. §921.141(7)(b), Fla. Stat.***

The Florida Supreme Court has defined this mitigating circumstance as "less than insanity, but more emotion than the average man, however inflamed." *Foster v. State*, 679 So. 2d 747, 756 (Fla. 1996). Elements of planning and concealing actions negate this mitigating circumstance. *Ault v. State*, 53 So. 3d 175, 179 (Fla. 2010). Dr. Eisenstein was the only defense expert to find that this mitigating circumstance applied to Mr. McClellan. Dr. Eisenstein opined [redacted] neurological deficits, and the background of Mr. McClellan had a cumulative effect leading to that opinion. Dr. Johnson did not render an opinion as to this mitigating circumstance. Dr. Rubino opined that his brain scans point to it being very likely that Mr. McClellan would have adverse effects to any type of mental stress. Dr. Maher opined that Mr. McClellan had mental and emotional disturbances, but they were not so severe that it meets the threshold of extreme disturbance. Dr. Maher further opined that he did not see that Mr. McClellan was psychotic or out of touch with reality. Dr. Prichard opined that Mr. McClellan's ADHD diagnosis does not meet the requirements for extreme mental or emotional disturbance. Dr. Prichard further explained that Mr. McClellan's personality disorder is what generated his behavior, not any extreme mental or emotional disturbance, and this personality disorder can sometimes get confused with a mental or emotional disturbance. The evidence supports the findings of Dr. Maher and Dr. Prichard, especially in light of Mr. McClellan's elements of concealing his actions. Mr. McClellan and Codefendant Laws removed Ms. James's body from her home before burying her near Mr. McClellan's home. Also, Mr. McClellan disposed of the

keys to Ms. James's car after the murder. This mitigating circumstance has not been established by the greater weight of the evidence.

C. ***The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor. §921.141(7)(d), Fla. Stat.***

As discussed in the *Enmund/Tison* determination, Mr. McClellan was a major participant in the burglary, and acted with reckless indifference to human life for carrying a knife while walking to Ms. James's residence to commit the burglary. Mr. McClellan was instrumental in he and Codefendant Laws traveling to Ms. James's residence to commit the burglary. Mr. McClellan's knife was the murder weapon. Mr. McClellan assisted in disposing of Ms. James's body after the murder, and clothes worn during the commission of the crime were disposed of at Mr. McClellan's residence. Whether or not Mr. McClellan was the person that fatally stabbed Ms. James, his involvement was not minor. This mitigating circumstance has not been established by the greater weight of the evidence.

D. ***The defendant acted under extreme duress or under the substantial domination of another person. §921.141(7)(e), Fla. Stat.***

Duress refers to external provocation such as imprisonment or the use of force or threats. *Toole v. State*, 479 So. 2d 731, 734 (Fla. 1985). For the second part of this mitigator to apply, domination must be substantial and evidence that a defendant is easily led is insufficient in and of itself. *See Lawrence v. State*, 846 So. 2d 440 (Fla. 2003); *Philmore v. State*, 820 So. 2d 919 (Fla. 2002); *Valdes v. State*, 926 So. 2d 1316 (Fla. 1993). Ms. Collins testified that Mr. McClellan was a follower, but Dr. Prichard testified that school records described Mr. McClellan as charismatic, and his defiant behavior undermines someone being a follower. Additionally, Mr. McClellan was the one that knew Ms. James and where she lived. Dr. Eisenstein testified that

Mr. McClellan told him that Codefendant Laws said he would kill him if he did not comply with orders the night of the murder. This statement is not corroborated by any other evidence. The video footage of the patrol car when Mr. McClellan and Codefendant Laws were transported to Lake County Jail show Mr. McClellan as angry, and it is not apparent that an emotional Laws had substantial domination over Mr. McClellan. The body language of the codefendants during their interviews is telling as well; Laws wailed and tried to make himself as small as possible, curling into a ball on multiple occasions, and Mr. McClellan remained calm for a majority of the interview. Additionally, Mr. McClellan was the only one of the two codefendants that knew Ms. James and where she lived. Mr. McClellan owned the murder weapon. Mr. McClellan made statements that it was their intent that night to steal things when they left the residence. This mitigating circumstance has not been established by the greater weight of the evidence.

E. ***The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. §921.141(7)f), Fla. Stat.***

The Florida Supreme Court has defined this mitigating circumstance as "mental disturbance which interferes with but does not obviate the defendant's knowledge of right and wrong." *Perri v. State*, 441 So. 2d 606, 608 (Fla. 1983). "[A] defendant's purposeful actions after the crime indicating that the defendant was aware of the criminality of his conduct may be sufficient to reject a defendant's claim that this mitigator applies." *Bright v. State*, 299 So. 3d 985, 1006 (Fla. 2020). Three of the defense experts opined that this mitigating circumstance applied to Mr. McClellan, each pointing to either childhood trauma, brain development, or brain injuries. One defense expert and the State's rebuttal expert agreed that this mitigating circumstance is not applicable to Mr. McClellan. The evidence leads the Court to give greater

weight to the opinions of Dr. Maher and Dr. Prichard. After the crime, Mr. McClellan and Codefendant Laws removed the body of Ms. James from her home and buried the body near Mr. McClellan's home. Additionally, Mr. McClellan disposed to the car keys after the murder. Furthermore, Mr. McClellan and Codefendant Laws concocted a false story to tell law enforcement when questioned about the death of Ms. James. These purposeful actions indicate that Mr. McClellan was aware of the criminality of his conduct and could conform his conduct to requirements of law. Therefore, this mitigating circumstance has not been established by the greater weight of the evidence.

F. ***The age of the defendant at the time of the crime. §921.141(7)(g), Fla. Stat.***

Mr. McClellan was days away from turning 20 years old at the time of the murder. "To be accorded any significant weight, [age] must be linked with some other characteristic of the defendant or the crime such as immaturity or senility." *Echols v. State*, 484 So. 2d 568, 575 (Fla. 1985). Mr. McClellan's date of birth is February 18, 1997. The murder occurred in the early morning hours of February 8, 2017. Dr. Maher opined that Mr. McClellan is an immature individual that functions as a teenager. Dr. Eisenstein also opined that Mr. McClellan is very immature, and that his brain development was far behind that of a typical 19 year old. Mr. McClellan's age at the time of the murder has been established by the greater weight of the evidence. The Court gives this mitigating circumstance great weight.

G. ***The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty. §921.141(7)(h), Fla. Stat.***

This statutory mitigating circumstance allows for the consideration of any factors in the defendant's background that would mitigate against the imposition of the death penalty. *Craven v. State*, 310 So. 3d 891, 897 (Fla. 2020). The following catch-all mitigating circumstances were

asserted in Mr. McClellan's October 3, 2022, Amended Notice of Intent to Present Expert Testimony or Mental Health Mitigation, as well as from evidence presented at trial.

a. ***Dysfunctional Family***

[redacted] Ms. Collins also testified about the verbal altercations that occurred inside the home, with one instance of a physical altercation. Mr. McClellan's father did not live with the family unit. Additionally, Mr. McClellan was removed from his mother's care on two occasions. This mitigating circumstance has been established by the greater weight of the evidence. The Court gives this mitigating circumstance some weight.

b. ***Repeated Maternal and Paternal Abandonment***

There is no evidence of abandonment on either the maternal or paternal side of Mr. McClellan. This mitigating circumstance has not been established by the greater weight of the evidence.

c. ***Foster Care***

Mr. McClellan was removed from his mother's home on two occasions. Testimony from trial shows that Mr. McClellan was placed with his father when he was removed from his mother's care on the second occasion. This mitigating circumstance has been established by the greater weight of the evidence and is given slight weight.

d. ***Emotional Deprivation***

Dr. Johnson opined that Ms. Collin's substance abuse negatively affected her emotional availability for Mr. McClellan. Dr. Johnson also opined that Ms. Collins did not make Mr. McClellan feel like he was a priority. Mr. McClellan reported that he felt like a "black sheep" in

the family, and that his father treated his sister differently. This mitigating circumstance has been established by the greater weight of the evidence, and is given slight weight.

e. ***Nutritional Deprivation***

There is no evidence that Mr. McClellan suffered from nutritional deprivation. Records from DCF show that on occasion the home lacked electric and running water, but that Ms. Collins had food and cooked for her children. This mitigating circumstance has not been established by the greater weight of the evidence.

[redacted]

mitigating circumstance has been established by the greater weight of the evidence. The Court gives this mitigating circumstance some weight.

[redacted]

This mitigating circumstance has been established by the greater weight of the evidence. However, the Court does not find it mitigating under the facts, due to the limited nature [redacted]

h. ***Childhood Trauma***

Dr. Johnson opined that Mr. McClellan met 9 out of 10 Adverse Childhood Experiences. Dr. Johnson explained that the ACE study is used to assess childhood trauma. This finding is not credible. Mr. McClellan's parents were not together throughout his life. On a couple occasions Ms. Collins [redacted] This mitigating circumstance has been established by the greater weight of the evidence. The Court gives this mitigating circumstance some weight.

i. ***Remorse***

Dr. Eisenstein testified that Mr. McClellan told him that he felt horrible about what happened to Ms. James, and that he wished he was dead instead of her. This is the only evidence of remorse. The Court finds that this mitigating circumstance has been established by the greater weight of the evidence and gives it slight weight.

j. ***Low Self Esteem***

Dr. Eisenstein opined that Mr. McClellan has a timid nature. Yet no expert opined that Mr. McClellan had low self-esteem. Dr. Prichard opined that Mr. McClellan is not timid, but assertive and aggressive when acting in defiance of authority. Dr. Prichard pointed to the instance when Ms. Collins choked Mr. McClellan after they argued, and he became defiant to her authority as a parent figure. This mitigating circumstance has not been established by the greater weight of the evidence.

k. ***Impoverishment***

Department of Children and Families records show that on multiple occasions Ms. Collins could not afford to keep the utilities on in the residence while Mr. McClellan was growing up. This mitigating circumstance has been established by the greater weight of the evidence. The Court gives this mitigating circumstance some weight.

l. ***Prenatal Drug Use***

[redacted]

circumstance has been established by the greater weight of the evidence. The Court gives this mitigating circumstance slight weight.

m. ***Premature Birth***

Ms. Collins, mother, testified that Mr. McClellan was born prematurely, and spent time in an incubator on oxygen. This mitigating circumstance has been reasonably established by the evidence, but the Court finds it is not mitigating under the facts of the case.

n. ***Major Social Skills Deficits***

No evidence establishes that Mr. McClellan suffered from major social skills deficits. This mitigating circumstance has not been established by the greater weight of the evidence.

o. ***Age and Immaturity (Post-Adolescence)***

Dr. Maher opined that Mr. McClellan suffers from a lack of brain development, pointing to Mr. McClellan's reading records to support that conclusion. Dr. Johnson opined that the level of trauma he found Mr. McClellan suffered is linked to adverse brain development. Dr. Eisenstein spent the most time discussing Mr. McClellan's brain development, and opined that diminished brain development helped to explain Mr. McClellan's immaturity. Dr. Eisenstein

opined that due to Mr. McClellan's background his brain development was that of a typical 14 or 15 year old. Dr. Eisenstein also opined that Mr. McClellan marrying a woman twice his age is another sign of grossly immature behavior. Dr. Eisenstein opined that the union was irresponsible because they had nowhere to live, no financial security, and no job security, as well as Mr. McClellan's wife having two children a few years younger than Mr. McClellan. Dr. Eisenstein further opined that meeting with Mr. McClellan since 2018 allowed him to see him grow in maturity, which points to the brain becoming more fully developed. The Court finds that this mitigating circumstance has been established by the greater weight of the evidence, and gives it great weight.

p. ***Brain Abnormalities***

Dr. Rubino opined that Mr. McClellan has brain abnormalities. Dr. Rubino pointed to the seizure that Mr. McClellan had, along with MRI images and PET scans to come to that conclusion. Dr. Rubino opined that the MRI showed areas of scarring in parts of the brain that are typically impaired by brain injuries—the inferior temporal and frontal lobes. Dr. Rubino also opined the PET scan was grossly abnormal, showing that most of Mr. McClellan's brain was under-metabolizing. Dr. Rubino opined that these abnormalities could come from traumatic brain injury or premature birth. This mitigating circumstance has been established by the greater weight of the evidence. The Court gives this mitigating circumstance some weight.

q. ***Less than Extreme Emotional or Mental Disturbance***

Dr. Maher opined that Mr. McClellan suffered from mental or emotional disturbance, but that it did not meet the criteria for extreme disturbance. Dr. Prichard agreed with Dr. Maher's assessment. Dr. Rubino testified regarding Mr. McClellan's excessive, recreational use of Coricidin HBP Cough & Cold, commonly referred to as Triple C. Dr. Rubino opined that using

Triple C in excess causes euphoria, confusion, delusions, and detachment. This mitigating circumstance has been established by the greater weight of the evidence. The Court gives this mitigating circumstance some weight.

r. ***Good Courtroom Behavior***

Mr. McClellan was well-behaved during all courtroom proceedings. This mitigating circumstance has been established by the greater weight of the evidence. The Court gives this mitigating circumstance slight weight.

s. ***Mr. McClellan's Substance Use***

During his interview with law enforcement, Mr. McClellan admitted to smoking marijuana and using Triple C in the evening prior to he and Codefendant Laws leaving his residence. Mr. McClellan stated that he took 10 pills that day. Dr. Rubino also testified to Mr. McClellan's drug use. Dr. Rubino testified that Mr. McClellan informed him that he began to smoke marijuana at the age of 13, along with recreational use of Triple C. It has been established by the greater weight of the evidence that Mr. McClellan used substances throughout his adolescence and adulthood. The Court gives this mitigating circumstance some weight.

t. ***Lack of Positive Role Models in Immediate Family***

[redacted]

[redacted] Ms. Collins also testified that Mr. McClellan's father was largely absent while Mr. McClellan was growing up. It has been established by the greater weight of the evidence that Mr. McClellan lacked positive role models within his immediate family. The Court gives this mitigating circumstance slight weight.

u. ***Difficulty Making Friends***

Ms. Collins testified that Mr. McClellan had a hard time making friends, and that Codefendant Laws was Mr. McClellan's only friend. Ms. Collins also testified that classmates would sometimes pick on him for being biracial. It has been established by the greater weight of the evidence that Mr. McClellan had difficulty making friends. The Court gives this mitigating circumstance some weight.

v. ***Mother incarcerated***

It has been established by the greater weight of the evidence that Ms. Collins was incarcerated for periods of time during Mr. McClellan's childhood. The Court gives this mitigating circumstance slight weight.

w. ***Mr. McClellan did odd jobs for Ms. Rubye James***

It has been established by the greater weight of the evidence that Mr. McClellan did odd jobs for Ms. James, however, the Court finds that it is not mitigating under the facts of the case.

x. ***Mr. McClellan enrolled in ESE classes***

Dr. Prichard testified about Mr. McClellan's school records and the fact that he was placed in ESE classes. Dr. Prichard opined that Mr. McClellan's placement was for Emotionally Behaviorally Disabled (EBD), and not for learning disabilities. Dr. Eisenstein opined that Mr. McClellan had borderline intellectual functions, but agreed with Dr. Prichard regarding Mr. McClellan's placement in the behavioral program. This mitigating circumstance has been established by the greater weight of the evidence. The Court gives this mitigating circumstance some weight.

y. ***Mr. McClellan's FSIQ is 86***

Dr. Eisenstein administered an IQ test on Mr. McClellan, the result of which was a score of 86. Both Dr. Eisenstein and Dr. Prichard opined that this score is in the low average range. It has been established by the greater weight of the evidence that Mr. McClellan scored 86 on an IQ test. However, the Court does not find Mr. McClellan's IQ score mitigating under the facts of the case.

z. ***Mr. McClellan married a woman 17 years his senior***

As discussed previously, Dr. Eisenstein testified about Mr. McClellan marrying a woman twice his age. This mitigating circumstance has been established by the greater weight of the evidence; however, the Court finds that it is not mitigating under the facts of the case.

CONCLUSION

The jury found that the evidence proved beyond a reasonable doubt the existence of five aggravating factors, and after an independent analysis the Court found two of those aggravating factors proven, and has given them both great weight. The Court further finds that Mr. McClellan was a major participant in the burglary and acted with reckless indifference to human life. The Court further finds that the proven aggravating factors are sufficient to warrant a sentence of death. Through an independent analysis of the purported statutory mitigating circumstances, the Court determines that two statutory mitigating circumstances have been proven by the greater weight of the evidence, along with 26 catch-all mitigating circumstances. The statutory mitigating circumstances were given some and great weight. The catch-all mitigating circumstances ranged from slight, some, and great weights, with four catch-all mitigators found as not mitigating under the facts of the case. The weight of the aggravating factors does not outweigh the mitigating circumstances.

## REASONS FOR NOT ACCEPTING JURY'S RECOMMENDATION

The jury found five aggravating factors were proven beyond a reasonable doubt, however, the Court's independent analysis found two of the aggravating factors. Given the weight of those aggravating factors, and the mitigating evidence presented during the Penalty Phase and *Spencer* hearing, and the subsequent weight given to same, the Court finds that the aggravating factors do not outweigh the mitigating circumstances.

## PRONOUNCEMENT OF SENTENCE

IT IS ORDERED AND ADJUDGED that JOSHUA RYAN MCCLELLAN is hereby sentenced to Life Without the Possibility of Parole for Count I, the Murder of Rubye James. It is further

ORDERED AND ADJUDGED that JOSHUA RYAN MCCLELLAN is hereby sentenced to Life for Count II, Burglary of a Dwelling While Armed. Count II is to run concurrently to Count I, and Mr. McCellan is entitled to receive credit for time served and any gain time earned. It is further

ORDERED AND ADJUDGED that JOSHUA RYAN MCCLELLAN be committed to the custody of the Florida Department of Corrections. It is further

ORDERED AND ADJUDGED that JOSHUA RYAN MCCLELLAN is hereby notified that you have 30 days to appeal the conviction and sentence. Mr. McClellan's trial counsel shall perfect a requested appeal, and the Office of the Public Defender for the Seventh Judicial Circuit is appointed to represent the Defendant for purposes of appeal.

DONE AND ORDERED in open court at Tavares, Lake County, Florida this 20th day of November, 2023.

Heidi Davis

HEIDI DAVIS
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing Order was hand delivered or furnished to the addresses listed below this 20th day of November, 2023 to the following:

Nick Camuccio, Esq., Fifth Judicial Circuit Office of the State Attorney

Frank Bankowitz, Esq., 215 E. Livingston Street, Orlando, Florida 32801, *Counsel for Defendant*

JUDICIAL ASSISTANT/~~DEPUTY CLERK~~