IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, IN AND FOR LEE COUNTY, FLORIDA **CRIMINAL ACTION**

STATE OF FLORIDA,
Plaintiff,

v. CASE NO. 19-CF-568

WADE STEVEN WILSON,
Defendant.
_____/

SENTENCING ORDER

THIS CAUSE comes before the Court on a sentencing hearing held on August 27, 2024, pursuant to §921.141(3) Fla. Stat. Assistant State Attorneys Sara Miller and Andreas H. Gardiner appeared on behalf of the State of Florida. The Defendant, Wade Steven Wilson, was present with attorneys Kevin Shirley and Lee Hollander. This Court has jurisdiction.

A. PROCEDURAL BACKGROUND

1. A grand jury indictment was filed on November 19, 2019, charging Defendant with first degree murder of Kristine Melton, grand theft of a motor vehicle, battery, first degree murder of Diane Ruiz, burglary of a dwelling, and first degree petit theft.

2. The State filed a notice of intent to seek the death penalty on December 3, 2019, listing four aggravating factors for each of the two counts of first degree murder.

3. Defendant was appointed attorneys Kevin Shirley and Lee Hollander to represent him in this case.

4. Jury selection began on June 3, 2024 and the guilt phase of the trial began on June 10, 2024. On June 12, 2024, the jury found Defendant guilty as charged.

5. The penalty phase began on June 24, 2024. On June 25, 2024, the jury found that three of the four alleged aggravating factors had been proven beyond a reasonable doubt on the

first degree murder of Kristine Melton. The jury found that all four aggravating factors had been proven beyond a reasonable doubt for the murder of Diane Ruiz.

6. The jury recommended a sentence of death for the murder of Kristine Melton by a vote of 9-3 and for the murder of Diane Ruiz by a vote of 10-2. The Court ordered a pre-sentence investigation.

7. A hearing pursuant to *Spencer v. State*, 615 So.2d 688 (Fla. 1993), was held on the morning of August 27, 2024. During the *Spencer* hearing, Defendant presented additional evidence of the effects of past head injuries on his brain.

8. After the *Spencer* hearing, final sentencing was held in the late afternoon of the same day, after the Court had an opportunity to review and consider all additional evidence. This order is entered subsequently to the *Spencer* hearing.

B. FACTS OF THE CASE

9. At approximately 10:00 p.m. on October 6, 2019, Kristine Melton and her best friend Stephanie Johnson[1] left Melton's duplex apartment in Cape Coral and took an Uber car to Buddha, a bar and nightclub located in Fort Myers. Johnson testified that towards the end of the night, a man approached them and introduced himself as "JR." This man was actually Wade Wilson, the defendant in this case. Johnson described "JR" as "friendly" and "charming"; his appearance and behavior did not raise any "red flags" for them. Defendant said that a friend of his wanted to meet her and the two women joined the two men drinking. They believed that Defendant and his "friend," a man named Jayson Shepard, were at the bar as a pair of friends, similar to how Melton and Johnson went to the bar that night together. However, Shepard had

[1] Stephanie Johnson has since married and is now known as Stephanie Salus. Her name as of 2019 is used in this order.

just met Defendant earlier that night. Shepard testified that Defendant appeared to be normal, average person and there did not appear to be anything "off" about him.

10. Around 2:00 a.m., the bar closed. Johnson testified that she, Melton, Defendant and Shepard got into a Dodge Hellcat; she assumed it was Shepard's car because he got into the driver's seat. In reality, the car was owned by Defendant's girlfriend. Defendant had tossed the keys to Shepard because he did not know how to drive a stick shift. Defendant's girlfriend, Melissa Montanez, testified that she had asked Defendant to carry her keys for her while they were at the bar that night. When Defendant wanted to leave and go to Shepard's house, she refused, because she did not want to go to the house of an unknown person. Without receiving permission to take Montanez's car, he left with Shepard, Melton and Johnson, effectively abandoning Montanez at the bar. Montanez got a ride to a friend's house, where she slept on the couch for the night.

11. Defendant, Shepard, Melton and Johnson drove to Shepard's house in Montanez's Dodge Hellcat. They went to Shepard's bedroom, where Defendant and Melton began to have sex. Johnson and Shepard went into the backyard but they did not have sex. Over the next several hours, Melton and Defendant came in and out of the bedroom. The group drank alcohol, smoked marijuana and did cocaine; Johnson was not sure if any other drugs were consumed while at Shepard's house. Shepard denied giving anyone any drugs. Johnson testified that the sexual encounters between Melton and Defendant appeared to be consensual and there were still no "red flags" regarding his behavior.

12. After about two hours, Shepard told the others that it was time for them to leave because his mother did not want them at the house anymore. Defendant, Johnson and Melton got back into the Dodge Hellcat to leave, with Defendant in the driver's seat. However, Defendant

did not know how to drive a stick shift car, so it stalled in the road in front of Shepard's house. Johnson got out of the car and told Melton that they would call an Uber ride to go home. Notably, Defendant accidentally left his cell phone at Shepard's house.

13. The Uber car drove Defendant, Melton and Johnson back to Melton's duplex in Cape Coral. They arrived back around 6:00 a.m. on October 7, 2019. Johnson told Melton that she needed to leave to take her son to school and Melton said that was okay and she'd talk to her tomorrow. Johnson testified that everything seemed normal when she left and she had no concerns about Melton's safety. Johnson dropped her son off at school and arrived at work around 10:30 a.m. She attempted to text Melton in the early afternoon and tried to call her after leaving work, but received no response. Later on, after Johnson learned of Melton's passing, she gave a statement to police. She selected Defendant's photograph out of a photo line-up as the man she knew as "JR."

14. Melton owned a black Nissan Versa. Because she and Johnson took an Uber ride to the bar, it had been sitting in her driveway for the entire night of October 6 through the morning of October 7. Security camera footage from the area around Melton's home showed that around 7:10 a.m., the black Nissan Versa left the duplex.

15. Around 8:00 a.m., Melissa Montanez agreed to meet Defendant, her boyfriend, outside of her business, Mila's Spa, which is located in Fort Myers. Defendant had been attempting to call and text her earlier in the morning from a phone number that was not his usual phone number. Montanez was angry with Defendant for taking her car and abandoning her at the bar the previous night. Montanez's friend, Amy Slobodzian, drove her to Mila's Spa to meet Defendant.

16. When Defendant arrived outside Mila's Spa, he was driving an unknown black car, instead of Montanez's Dodge Hellcat. Montanez walked up to the driver's side window of the car to speak to Defendant. She demanded to know where her Dodge Hellcat was and for Defendant to return it to her. Defendant insisted that Montanez get into the car with him to talk, but Montanez refused. Defendant then attempted to pull Montanez into the car through the open window. Montanez fought back and eventually fell backwards, which prompted Defendant to get out of the car. The car was not in park and began to roll backwards, nearly hitting Montanez.

17. Defendant then began to batter Montanez, pulling and ripping her clothes, beating her in the face, ripping out her hair extensions, and dragging her up the outdoor stairwell of the Mila's Spa building. Montanez testified that she thought Defendant was going to throw her over the railing of the second floor of the building, but she feared that if she got in Defendant's car, she would never be seen again. It should be noted that Montanez is approximately 5'2" tall and weighs 125 pounds and Defendant is approximately 6'6" tall and over 200 pounds.

18. Defendant had threatened Amy Slobodzian that if she exited her car to help Montanez, he would kill her. She called 911 instead. Additionally, the battery happened in broad daylight and quickly caught the attention of other people in the area, resulting in at least one additional 911 call. Eventually, Montanez managed to get away from Defendant and run back down the outdoor stairwell, where someone from one of the nearby businesses allowed her inside and locked the door. At this point, Defendant got back into the unknown black car and drove away. After Defendant fled the scene, Montanez and Slobodzian met with the police who responded to the 911 calls. Later, while driving back to Cape Coral, Slobodzian spotted Montanez's Dodge Hellcat parked along a street off of McGregor Boulevard in Fort Myers. She notified law enforcement that she found Montanez's missing car.

19. On the same day as the theft of Melton's vehicle and the battery against Montanez, a woman's purse was found sitting in the parking lot of Hector A. Cafferata Jr. Elementary School in Cape Coral. A parent who discovered the purse while picking up his daughter turned it in to the front office as a lost item. The school resource officer, Tyler Whidden, found identification inside the purse indicating that it belonged to a woman named Diane Ruiz. Staff at the school searched their records to determine if she was the parent of a student at the school, but they did not find her in their records. Officer Whidden was able to find a phone number for Diane Ruiz but there was no answer when he called the number. Her address was nearby, so Officer Whidden traveled to the home and met with her son, Brandon Cuellar. Ruiz was supposed to be at work at the Moose Lodge, which was very close to the elementary school and was less than a 10 minute walk away from her home. On most days, a friend would drive Ruiz to work, but the friend was not available to drive her on October 7, 2019, so she walked instead. Ruiz's son was not sure when she left that morning, but said it was sometime between 9:30 a.m. and 11:00 a.m. However, when Officer Whidden visited the Moose Lodge, he learned that Ruiz had never shown up for work. Officer Whidden returned to Ruiz's home, at which point her family asked to have her reported as missing.

20. Elsewhere in Cape Coral, on the morning of October 7, 2019, Patrick Power was sitting on the back lanai of his home with his wife in the early afternoon. From his backyard, he observed a car in an empty lot. He watched the car pull forward and back out one time. He had never seen a car in the empty lot before and did not see who was driving the car. He did not think to call the police but decided he would walk over to the lot later to see what the car was doing. However, he eventually forgot about it. About three days later, he saw numerous police vehicles

in the empty lot with crime scene tape around the area and he contacted police to tell them about what he saw three days earlier.

21. During this time, law enforcement was searching for Defendant as part of its investigation into the battery of Melissa Montanez. Sometime around noon, Montanez attempted to convince Defendant to meet her in the parking lot of Joe's Crab Shack, which was close to Mila's Spa. When Defendant arrived, still driving the black Nissan vehicle, police were already there. Officer Tim McCormick encountered Defendant and identified him through his driver's license. However, Defendant soon became uncooperative and ignored commands for him to stay on the scene while Officer McCormick waited for his partner to arrive. During a later statement to police, Defendant said that he had already killed Ruiz when he drove to Joe's Crab Shack to see Montanez. Officer McCormick attempted to follow him, but there was too much traffic, and he did not have authorization to pursue the vehicle at high speeds because Defendant was only suspected of misdemeanor battery at this time.

22. In the afternoon on October 7, 2019, Joshua Lukitsch was working at his business, Mateo's Graphics, located in Cape Coral. Defendant, whom Lukitsch knew through a friend, drove up to the business in a black car and approached Lukitsch in the parking lot. Defendant was wearing sweatpants, without a shirt or shoes, and he had blood on him. Lukitsch and Defendant went into the Mateo's Graphics building to talk. Defendant asked Lukitsch for help to buy a plane ticket or bus ticket so that he could leave town because he had killed people and had rolled someone up in a carpet. His demeanor was "frantic" and he was pacing back and forth. Lukitsch testified that he heard that Defendant had a physical altercation with his girlfriend earlier that day; he told Defendant that if that's what happened, it could be worked out. However, Defendant reiterated that he had "killed people." While Lukitsch did not initially believe what

Defendant was saying, he started to believe his story and became scared about what Defendant could do to him. He told Defendant that he would be right back because he needed to pick up an employee, but this was an excuse to leave. He drove to another building nearby and called 911 to report everything that Defendant said.

23. After police arrived, Lukitsch returned to the Mateo's Graphics building with police to help them search the premises, but Defendant was no longer there. The black car that Defendant had arrived in was still in the parking lot. Blood could be seen inside around the front passenger seat and seatbelt. There was front damage to the car. When the license plate was checked, it was discovered that the car did not belong to Defendant, but to a woman named Kristine Melton. Believing that the trunk of Melton's car could possibly contain a body, officers decided to break the front driver's side window to open the trunk. The trunk was empty. Melton's car was secured as a crime scene and later towed to the Cape Coral Police Department for storage.

24. Sergeant Charles Caruso became involved in the investigation of Defendant's assault on Montanez. At this point, law enforcement knew that Defendant had been making calls to Montanez from Melton's phone, which was found inside the vehicle. He checked several locations searching for Melton but could not find any information about her whereabouts. Finally, around 4:00 p.m., he went to her duplex home in Cape Coral. When nobody answered the front door, law enforcement breached the door with a ram. Inside, officers discovered a large "bundle" on the floor near the doorway to the bedroom. The bundle was composed of bedsheets, a mattress pad and a foam cover. It was tied together using articles of clothing. When one of the sheets was pulled back, Sgt. Caruso saw a human leg and realized that there was a body inside

the bundle. Law enforcement immediately left the residence, cleared and secured the scene, and called for a homicide investigator.

25. A forensic technician responded to the crime scene at Melton's residence to take photographs and collect evidence. As the technicians slowly untied the clothing items used to tie up the bundle, they photographed and packaged each item. They discovered that Melton's wrists had been tied with a white scarf. A curtain rod with a red stain on it was found within the "bundle" next to the body.

26. During the day on October 7, 2019, Defendant's biological father, Steven Testasecca, received a phone call from Defendant. Defendant told him that he needed help because he had done something he could not take back. Testasecca was at work at the time of this phone call and told Defendant to call back around dinner. Following this call, a detective called Testasecca looking for Defendant and asked him to help police get in contact with Defendant. Defendant called again around dinner time. During the second call, he told his father that he "did something," that two people were gone who could not come back, and that "I'm a killer." Defendant did not appear to be remorseful during this call. Testasecca did not take these statements seriously, describing Defendant as "a good storyteller" who only ever called him when he needed money or help.

27. Defendant called his father a third time around 10:00 p.m. For this call, Testasecca put Defendant on speakerphone and his wife listened to the conversation as it was happening. During this call, Defendant said that he met a girl at a bar and went to her house, and when she fell asleep, "I choked that bitch." Defendant told his father that he rolled the body up and was going to put it in her car's trunk but couldn't lift her. Defendant said he left her there and took her car. Defendant also told his father that he saw a second woman walking down the

street and he stopped to ask her for directions. She got into the car with him and he reached over and choked her while driving. Defendant said that after he choked her, he looked for a place to dump her body, but when he took her out of the car he realized she was still breathing. Defendant said that he got back into the car and "ran her over 'til she looked like spaghetti." Defendant felt that he did a good job with hiding the second woman's body and he didn't believe it would be found.

28. Testasecca testified that while Defendant was recounting his crimes, he sounded "excited," like he wanted Testasecca to feel the way he felt. Defendant appeared to be proud of what he did and did not express any remorse. While he initially wanted to help his son and felt conflicted about handing him over to the police, he felt that Defendant was going to kill someone again if he didn't turn him in. Defendant had told him that he was in a house that he had broken into but Testasecca did not know the address of this house. He was able to get the address from Defendant by telling him that he would call an Uber ride for him. His wife, who had been texting details of the conversation to detectives, provided the address to law enforcement. Testasecca stayed on the phone with Defendant and was still talking to him when the U.S. Marshalls showed up to arrest him. He encouraged Defendant to turn himself in, which he did.

29. The homeowner of the burglarized home, Fannie Amlin, testified that she and her husband had flown from Cape Coral to Ohio earlier that morning. At the time she left her house, it was in order, the doors were locked, and she had not given anyone permission to stay at the house. They had to spend about $250.00 to replace a broken window. Defendant had also drank alcoholic beverages out of the refrigerator, costing about $15.00. A backpack and some of her husband's clothing were found on the kitchen counter; these items were not there when she left the house.

30. Dr. Noelia Hernandez performed an autopsy on Kristine Melton's body on October 8, 2019. Melton was observed to have bruises on her neck and left side of her face and chin. She had small abrasions scattered over her torso and extremities, including an abrasion on her right hand. Some of her artificial nails were broken or torn off. The bruises indicated that Melton had suffered blunt force trauma to her neck and left side of her face. The internal exam showed that Melton had extensive internal injuries indicative of blunt force trauma. She had bruising on both sides of her skull beneath her scalp and her brain was swollen, indicating that she suffered blunt force trauma to the head which did not immediately kill her. She had an injury to the transverse portion of her colon, her liver and her bladder, indicating blunt force trauma to her stomach. Bruising to her lungs indicated blunt force trauma to her chest. While she had some injuries to her vagina and anus, they were of the kind that could be caused by rough consensual sex.

31. Melton also had injuries indicating that she had been strangled. She had hemorrhaging to the subcutaneous areas of her neck and petechia under her scalp. Her eyes had hemorrhage injuries, which may have been a large collection of petechia caused by asphyxiation. The medical examiner concluded that Melton died from asphyxia caused by compression to her neck, but could not say how long she was conscious before passing out. However, Dr. Thomas Coyne, who was present for Melton's autopsy and who later conducted the autopsy of Ruiz, testified that it generally takes about 15-20 seconds for a person to pass out from strangulation.

32. Two days after Melton's body was found and Ruiz was reported missing, Sergeant Justin DeRosso was working in a two-man unit with another officer because his car was being serviced. During some free time, they casually decided to check an undeveloped area of Cape Coral for the missing woman. The undeveloped area, which was in the vicinity of where

Ruiz went missing, was planned to be a housing development, but after roads were put in, the project was canceled and the lots had been sitting empty since then. Sergeant DeRosso, his partner, and a third officer driving in a second car, drove around the perimeter of a lake in the undeveloped area and saw a vulture circling a wooded area to the east. They drove over to the empty lot and as they pulled into it and began to turn, Sergeant DeRosso recognized a body lying on the ground in the woods. It was beneath some vegetation approximately 30-40 feet from the road and would not have been visible from the road. The officers immediately taped the area off and advised detectives over radio that they had found a body. Forensics technicians arrived to take photographs and collect evidence.

33. The body was in an advanced state of decomposition and the face was not recognizable. It was identified as the body of Diane Ruiz by tattoos. She was wearing the same clothing from when she left to walk to work at the Moose Lodge. The body was missing a shoe, but the shoe was located nearby.

34. Dr. Thomas Coyne conducted the autopsy of Diane Ruiz. He noted that the body was in an advanced state of decomposition and that portions of her nose and ears were missing due to animal scavenging. However, it was still clearly visible that her nose had been broken. Additionally, she had a laceration below her left breast. Ruiz had bruising on the back of her left forearm, her left upper arm, her left hand, and her upper right arm. Although the body was beginning to decompose and the skin was discolored as a result, Dr. Coyne could tell that the bruising on her arms was not caused by decomposition because the bruises were also reflected underneath her skin. The fourth finger on her left hand was broken. He testified that these injuries were consistent with Ruiz attempting to defend herself.

35. Ruiz had many significant internal injuries. There was a hemorrhage on the right side of her neck, within the fat and muscle issue. The thyroid cartilage in her throat was fractured on both sides and the hyoid bone was fractured on the left side. Dr. Coyne testified that "far greater than 10-15 pounds" of pressure was required to fracture these internal areas of her neck. Injuries of this type are common in strangulation cases. Dr. Coyne testified that Ruiz would have been conscious for 15-20 seconds before passing out from strangulation. Prior to that moment, she would have been conscious and aware of what was happening.

36. Moreover, eleven of her ribs were broken, with fractures located on both the back and the front of the ribs. The fractures were caused by a significant compressive force on Ruiz's torso and the injuries were consistent with an automobile driving over her body. She also had injuries to the back of her neck and the cervical region of her spine, causing hemorrhaging; these injuries were likely inflicted by the same compressing force that broke her ribs.

37. Dr. Coyne could not tell the order in which all of the injuries were inflicted on Ruiz. He further noted that the neck injury was so severe that she could not have survived it. She also would not have been able to breathe normally with eleven broken ribs. However, because the injuries caused hemorrhaging, Ruiz had to still be alive when they occurred, because there would not be any hemorrhaging if she was already dead.

38. Forensic testing was performed on numerous items of evidence in relation to both murders. The knots of the bedding and clothing items used to wrap Melton's body had DNA on them that matched to both Melton and Defendant. The curtain rod had Melton's DNA on the end that was stained and both Melton's and Defendant's DNA was on the handle. The bloodstains inside Melton's car were swabbed and tested for DNA and were found to match Diane Ruiz.

Both Ruiz's cell phone and Melton's cell phone were found in the car. Ruiz's nametag from her work uniform was also in Melton's car.

39. Three days after Defendant's arrest, he told an officer at the Lee County Jail that he wanted to speak to the detectives. Master Corporal Nick Jones and Detective Jason Hicks traveled to the jail to take a post-Miranda statement from Defendant. Defendant told the officers that "I'll show you where it's at," in reference to Diane Ruiz's body, but in exchange he wanted "some french fries and a burger." After being told that it wasn't that simple, Defendant went on to fully confess to the murders of both women. He stated that he picked Ruiz up after asking her to show him how to get to the local high school. He said that "I was going to drop her off, but I knew in my mind I wasn't going to drop her off." When she tried to get out of the car, he grabbed her and "choked her out until she couldn't breathe anymore," but she "wasn't fully dead yet." Defendant said that Ruiz's purse fell out of the car when he was choking her. Defendant stated that he drove to a "random" area to dispose of her body, but she "came back to life three or four times. I mean, she was a fighter, that's for sure, I'll give her that." He "pushed her out of the car and she tried to get up and I ran her over with the car, and I ran her over maybe like 10 times, 10-20 times, her head, her body, I ran it over with the vehicle 'til she was not moving anymore and everything was just disfigured, her whole body, and she couldn't get up 'cause she was dead for sure. And then I left."

40. Strangely, Defendant claimed that he had consensual anal sex with Ruiz. There was no evidence that Defendant and Ruiz had anal sex, whether consensual or non-consensual, and this claim does not fit into the timeline of events established by the other evidence. This claim by Defendant appears to be braggadocio, as he boasted to the officers that "I used my charm on her to stay in the car and then we had sex, consensual… And this is what I do with

women, you know, I use my charm, use my good looks. That's what I did with the first girl. And that's how I got in her head and look what happened to her, same story, same story, because I just use my looks and I'm wrong for that."

41. Defendant's claim that he had run Ruiz over "10-20 times" also does not comport with the state of the body when it was found or the testimony of Patrick Power. This too appeared to be an attempt by Defendant to boast or inflate the facts.

42. Defendant further stated that when he killed Ruiz, he was "on a rampage at this point" and "was on drugs." He stated that after he fled Mateo's Graphics, he was hiding in some palm trees across the street and watched the police search the building for several hours. Eventually, he left and broke into Fannie Amlin's home, where he called his father and was eventually arrested.

43. Regarding the murder of Kristine Melton, Defendant told the officers that he met her at a bar and "went up to her, bagged her," further bragging about how charming he is with women. He stated that they went to a "dude's house" and had consensual sex. After they returned to Melton's home and Johnson left, he and Melton continued to have sex, and "then I killed her." He said that after he wrapped Melton up, he got in her car and went to see his girlfriend, Melissa Montanez, at Mila's Spa. Defendant claimed that he would never kill his girlfriend because he loves her; however, strangely, he also said that the only reason he didn't kill Montanez because there was "too many people around" and that "I probably would kill her, you know what I mean, given the chance." After he left Mila's Spa, he returned to Cape Coral, and he thought to himself, "You know what, I've already done it once, I'm going to do it again." It was at this point that he decided to randomly choose Diane Ruiz off the street and kill her.

44. The only justification or explanation offered by Defendant for his actions was that Jayson Shepard "kept giving him so many drugs" while he was at his house. He said that he thought he was doing cocaine, but asserted it was not cocaine and must have been "like bath salts or flakka because it just made me lose my fucking mind." Defendant said that Melton's killing was not prompted by anything; rather, he blamed it entirely on the fact that he was "on drugs." He told officers that "when I'm sober I'm actually like a decent guy. When I [do drugs] I become the devil."

C. TESTIMONY AND EVIDENCE

45. The following findings are based on the evidence presented by the State and Defendant at the *Spencer* hearing and their closing arguments supporting and opposing a death sentence. The Court also considered of all aggravating factors and mitigating circumstances as required by §921.141(3) Fla. Stat.

46. The defense presented the testimony of Dr. Mark Rubino, a medical doctor board certified in neurology. Dr. Rubino administered several tests on Defendant to determine his mental status and cognitive abilities. He testified that during the testing, Defendant was "paranoid" about the police watching what he was doing. During the testing, Defendant was unable to draw a cube or an accurate clock face. He also showed horizontal nystagmus in his eyes, "cog wheeling" in the movement of his right arm, and reduced reflexes in his arms and legs. Dr. Rubino interpreted these results as showing some degree of brain impairment, although "cog wheeling" is also present in people who take or have taken anti-psychotic medication. On cross-examination, Dr. Rubino testified that he was not certified to conduct the testing he administered on Defendant.

47. After the testing, Dr. Rubino ordered several brain scans of Defendant, including an MRI, DTI and CT scans. Dr. Rubino testified that the brain scans indicated that the ventricles on the left and right side of Defendant's brain were asymmetrical and unusually small. Dr. Rubino testified that the scans showed atrophy to the brain around the amygdala and hippocampus, which are part of the limbic system and help control emotions and memory. His opinion was ultimately that Defendant had a brain injury, based on the scans and his reported past accidents. He believed that the crimes in this case are evidence of Defendant's brain impairment. Dr. Rubino testified that based on the brain injury, Defendant's behavior was predictable, in the sense that he was more likely to commit the crimes in this case.

48. The State called Dr. Thomas Coyne in rebuttal. Dr. Coyne testified during the trial, as one of the medical examiners who autopsied the victims in this case. He testified that he is board certified in anatomical pathology, including brain injuries and brain trauma. He testified that his conclusion, after looking at Defendant's brain scans, was that his brain was completely normal and there was no evidence of significant brain trauma. He testified that there was no asymmetry in Defendant's ventricles because, if one looks closely at the scans, they were done when the brain was not level, so the two sides look different due to being at slightly different angles. Moreover, Defendant's brain shows none of the other symptoms or signs that one would expect if his ventricles were actually asymmetrical. He further testified that there was no evidence of any atrophy or injury in Defendant's frontal lobe or limbic system. He testified that Defendant's nystagmus and "cog wheel" movement could be caused by other things, including drug use. He further testified that one cannot predict a person's behavior based on the presence of a brain injury alone, because there are too many other variables. Similarly, drug use cannot be

used to predict behavior because of the significance of many other variables. He testified that a normal brain can still be impulsive, easily frustrated, and negatively affected by street drugs.

49. Under Fla. Stat. §921.141(8), the Court finds that the State provided evidence of the existence of at least one (1) of the aggravating factors described in §921.141(6).

D. IMPOSITION OF A SENTENCE OF EITHER LIFE IMPRISONMENT WITH THE POSSIBILITY OF PAROLE AFTER 25 YEARS OR DEATH

50. The following analysis applies to the Court's consideration of all aggravating factors and mitigating circumstances presented in this case:

1. Has the aggravating factor(s) asserted by the State been found to exist and proven beyond a reasonable doubt?
2. Does the aggravating factor(s) sufficiently support the imposition of a sentence of death?
3. Does the aggravating factor(s) proven beyond a reasonable doubt outweigh the mitigating circumstances reasonably established by the evidence to warrant the imposition of a sentence of death?

51. The Court has reviewed the record, has heard the evidence presented in both the guilt phase and the penalty phase, has reviewed the sentencing memorandum from the State, the evidence presented at the *Spencer* hearing, and has reviewed the pre-sentence investigation. The defense made oral argument at the end of the *Spencer* hearing, which the Court considers in lieu of a written sentencing memorandum. After carefully considering the foregoing, the Court finds as follows.

E. JURY RECOMMENDATION

52. As noted *supra*, the jury's verdict was that the Defendant be sentenced to death. The jury recommended death by a vote of 9-3 for the murder of Kristine Melton and by a vote of 10-2 for the murder of Diane Ruiz. Accordingly, the Court assigns great weight to the jury's verdict.

F. AGGRAVATING FACTORS

53. The capital felony was committed by a person previously convicted of a felony and was under sentence of community control or on felony probation at the time of the offense. Fla. Stat. 921.141(6)(a). The jury found that this aggravating factor was proven beyond a reasonable doubt with regard to both counts of first degree murder. The record shows that prior to the events of this case, Defendant was convicted of Trafficking in Stolen Property and False Information to a Pawnbroker in Palm Beach County. He received a sentence of two years of probation for these felonies. The probation sentence was imposed on September 18, 2019, less than a month before the homicides in this case. The Court received into evidence certified rolled fingerprints, a certified copy of the convictions, and testimony from a fingerprint analyst confirming the fingerprints on the Palm Beach County case matched Defendant's. The Court finds the elements of this aggravating factor were proven beyond a reasonable doubt for both murders. The Court assigns this aggravating factor great weight.

54. The defendant was previously or contemporaneously convicted of another capital felony or of a felony involving the use or threat of violence to the person. Fla. Stat. 921.141(6)(b). A felony "involving the use or threat of violence" refers to life-threatening crimes in which the defendant comes in direct contact with a victim. *Lewis v. State*, 398 So.2d 432 (Fla. 1981). Convictions that, on their face, constitute a crime involving violence can be used to establish this aggravating factor. *Mann v. State*, 420 So.2d 578 (Fla. 1982).

55. Defendant was convicted of the murder of one victim contemporaneously with the murder of the other victim. Contemporaneous violent felony convictions qualify for this aggravating factor. *Francis v. State*, 808 So. 2d 110, 136 (Fla. 2001); *LeCroy v. State*, 533 So.2d 750 (Fla. 1988); *King v. State*, 390 So.2d 315 (Fla. 1980). The jury found that this aggravating factor was proven beyond a reasonable doubt with regard to both counts of first degree murder.

The Court finds the elements of this aggravating factor were proven beyond a reasonable doubt for both murders. The Court assigns this aggravating factor great weight.

56. The capital felonies were especially heinous, atrocious, and cruel ("HAC"). Fla. Stat. 921.141(6)(h). "Heinous" means extremely wicked or shockingly evil; "atrocious" means outrageously wicked and vile; and "cruel" means designed to inflict "a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others." *State v. Dixon*, 283 So.2d 1, 9 (Fla. 1973). The HAC aggravator applies to conscienceless or pitiless crimes which are unnecessarily torturous to the victim. *Baker v. State*, 71 So.3d 802, 820 (Fla. 2011). Fear, emotional strain, and terror inflicted on the victim prior to death qualifies a murder as heinous, atrocious, and cruel. *Id.* at 821. "[I]n order to support a finding of this aggravator, 'the evidence must show that the victim was conscious and aware of impending death.'" *Williams v. State*, 37 So.3d 187 (Fla. 2010) (quoting *Douglas v. State*, 878 So. 2d 1246 (Fla. 2004)). "The victim's mental state may be evaluated in accordance with common-sense inferences from the circumstances." *Lynch v. State*, 841 So.2d 362, 369 (Fla. 2003). Evidence of defensive wounds indicates that the victim was conscious and aware of impending death. *Bright v. State*, 299 So. 3d 985, 1003 (Fla. 2020). Strangulation creates a "prima facie case" for this aggravating factor. *Orme v. State*, 677 So.2d 258, 263 (Fla. 1996).

57. For the murder of Kristine Melton, the jury found that this aggravating factor was proven beyond a reasonable doubt. The record shows that Kristine Melton was severely beaten and battered prior to being suffocated to death. The evidence indicated that Defendant used a curtain rod to inflict blows on Melton. She had defensive wounds and several artificial nails were broken or torn off. She was struck on both sides of her head, causing brain swelling that could only have occurred if she were still alive at the time she was battered. Kristine Melton had

defensive wounds and blunt force injuries to her face and parts of her body unrelated to being smothered, indicating that a struggle occurred before she was murdered. While Dr. Coyne testified that he could not say whether Melton was conscious at the time she was suffocated, the totality of the evidence indicates that she was conscious and aware at the time Defendant battered and strangled her. She was alert and aware during the beating, and once Defendant started to strangle her, would have been alert and aware for at least another 15 seconds.

58. Even when a victim dies quickly, if they are conscious of their attacker and aware of their impending death, the HAC aggravator applies. *Jones v. State*, 695 So. 2d 1229 (Fla. 1997). *See also Tompkins v. State*, 502 So.2d 415, 421 (Fla. 1986) ("[I]t is permissible to infer that strangulation, when perpetrated upon a conscious victim, involves foreknowledge of death, extreme anxiety and fear, and that this method of killing is one to which the factor of heinousness is applicable.").

59. For the murder of Diane Ruiz, the jury found that this aggravating factor was proven beyond a reasonable doubt. The record shows that Diane Ruiz was conscious and aware she was being suffocated at the time of her death. Moreover, Defendant attempted to suffocate her multiple times, but she kept regaining consciousness. She would have been conscious for at least 15 seconds each time she was strangled. Furthermore, she attempted to fight off her attacker, as evidenced by the defensive injuries to her hands and arms and her broken nose. Finally, and most horrifyingly, Diane Ruiz was actively attempting to flee from Defendant's attacks at the time Defendant ran her over with Melton's vehicle, breaking all but one of her ribs and inflicting life-ending injuries to her neck and cervical spine. When Defendant recounted these events to his father later that day, he was excited about what he had done and expressed no remorse. There is no doubt whatsoever that Diane Ruiz was "conscious and aware of impending

death" and that Defendant's killing of Ruiz shows "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." *Guzman v. State*, 721 So. 2d 1155, 1159-60 (Fla. 1998).

60. The Court finds the elements of this aggravating factor were proven beyond a reasonable doubt for both murders. The Court gives this aggravating factor great weight.

61. The capital felonies were homicides committed in a cold, calculated, and premeditated manner ("CCP") without any pretense of moral or legal justification. Fla. Stat. 921.141(6)(i). In order to establish this aggravating factor, the evidence must show that: 1) The killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage; 2) Defendant had a careful plan or prearranged design to commit murder before the killing; 3) Defendant exhibited heightened premeditation; and 4) Defendant had no pretense of moral or legal justification. *Franklin v. State*, 965 So.2d 79, 98 (Fla. 2007).

62. The jury found that this aggravating factor was proven beyond a reasonable doubt for the murder of Diane Ruiz. The record shows that Defendant returned to Cape Coral after killing Kristine Melton and battering Melissa Montanez, whom he would have murdered if the battery had not been witnessed by so many bystanders. He drove around in Cape Coral and decided that because he had already murdered one woman, he may as well murder another woman. Defendant bragged to officers how he is good at using his good looks and charms to manipulate women. He lured Diane Ruiz to enter his car by pretending to need directions. He immediately knew that he was not going to let her go and was going to kill her. He strangled her in Melton's vehicle, and when she regained consciousness several times, repeatedly strangled her over again. When he drove to the undeveloped lot to dispose of what he thought was a body, he discovered that she was still alive. In order to finally kill her, he pushed her out of the car and

drove over her body at least one time, but according to him, multiple times. He told officers that he knew she was dead and did not need to get out of the car to check whether he had finally killed her. Defendant was so confident that Ruiz's body would never be found that when he decided to confess, he felt that he would have to actually travel with law enforcement to the scene of the killing in order to show them where the body was.

63. These facts are totally inconsistent with a finding that the murder was committed following a moment of panic or rage or that Defendant did not reflect on his actions before killing. The manner in which Defendant decided to kill another person, for essentially no reason, after luring her into his car, and then repeatedly attempted to end her life without any hesitation as to what he was doing, shows that Defendant had a carefully considered, premeditated plan to murder her. The fact that Defendant's plan to murder was formed quickly, executed in a clumsy way, and/or that he did not anticipate Ruiz would "come back to life" multiple times, does not mean that the killing was done without premeditation or while in the heat of passion.

64. Finally, there was no evidence suggesting that either of the murders were committed with any pretense of moral or legal justification in the case of either victim; rather, the totality of the evidence indicates that the murders were committed on a whim. Defendant appears to have had no justification at all for killing the victims, much less a moral or legal justification. Defendant killed Diane Ruiz coldly and methodically. After choking the first victim, Defendant chose to engage in the same manner of killing against the second victim. Defendant had ample time to consider the second murder and consciously decided to continue, even after Ruiz "came back to life" several times.

65. The Court finds the elements of this aggravating factor were proven beyond a reasonable doubt as to the murder of Diane Ruiz. The Court gives this aggravating factor great weight.

G. MITIGATING CIRCUMSTANCES

66. "The court must find as a mitigating circumstance each proposed factor that is mitigating in nature and has been reasonably established by the greater weight of the evidence." *Campbell v. State*, 571 So. 2d 415, 419 (Fla. 1990). "Whenever a reasonable quantum of competent, uncontroverted evidence of mitigation has been presented, the trial court must find that the mitigating circumstance has been proved." *Nelson v. State*, 850 So. 2d 514, 529 (Fla. 2003). A mitigating circumstance can be anything in the life of the Defendant that might indicate that the death penalty is not appropriate. It is not limited to the facts surrounding the crime and may include any aspect of the Defendant's character, background, or life or any circumstance of the offense that may reasonably indicate that the death penalty is not an appropriate sentence in the case.

67. Defendant submitted no statutory mitigating circumstances under Fla. Stat. 921.141(7), except for several mitigators that fall within the "catch-all" provision of subsection (7)(h). The jury found that no mitigating circumstances had been proven by a greater weight of the evidence. However, defense counsel brought up some statutory mitigators during closing argument at the end of the *Spencer* hearing. Moreover, the Court considered the possibility that other factors may exist in Defendant's character, record, or background that would mitigate against the imposition of the death penalty. Specifically, the Court has considered the following mitigating factors, beginning with the statutory mitigating factors under Fla. Stat. § 921.141(7) that may be applicable.

H. STATUTORY MITIGATING CIRCUMSTANCES

68. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. Fla. Stat. 921.141(7)(b). Defendant asserted that he was "on drugs" at the time of the offenses and when he consumes drugs, he becomes "crazy." However, voluntary intoxication is not synonymous with extreme mental or emotional disturbance. The Court cannot find that Defendant was under the influence of extreme mental or emotional disturbance at the time of the murders because the evidence does not support this conclusion. Accordingly, the Court finds that the evidence does not support this mitigating factor. However, the Court considered Defendant's history of drug abuse and mental health issues as a non-statutory mitigating factor (see below).

69. The capacity of the defendant to appreciate the criminality of their conduct or to conform their conduct to the requirements of law was substantially impaired. Fla. Stat. 921.141(7)(f). Again, the Court finds that the evidence does not support this mitigating factor. The evidence showed that Defendant had consumed drugs around the time of the offenses, but there was no evidence other than Defendant's self-serving statements that these drugs impaired his ability to appreciate the criminality of his conduct. Rather, regarding this specific statutory mitigating factor, the evidence established that Defendant fully appreciated that his conduct was criminal because he worked to conceal his culpability and evade law enforcement. Furthermore, he admitted to the officers during his post-Miranda statement that what he did was wrong. Moreover, while the evidence presented during the penalty phase indicated that Defendant possibly suffered minor head injuries during his youth, it should be noted that Defendant required little to no medical care for the alleged head injuries. As such, the Court cannot find that the defendant's capacity to appreciate the criminality of his conduct was substantially impaired. From the start,

Defendant knew his actions were criminal and tried to evade the consequences of this same criminal conduct. The Court finds that the evidence does not support this mitigating factor.

70. At the *Spencer* hearing, defense counsel also argued several additional mitigating circumstances that he referred to as "statutory" mitigators; specifically, that Defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability and Defendant is amenable to treatment, and that Defendant cooperated with the State to resolve the current offenses. These are not statutory mitigating circumstances established by Fla. Stat. 921.141(7). Rather, they are bases to impose a downward departure sentence under Fla. Stat. 921.0026. To the extent these can be considered as non-statutory mitigating circumstances, they appear to fall within several of the non-statutory mitigators identified by the defense, which are discussed below.

I. NON-STATUTORY MITIGATING CIRCUMSTANCES

71. When weighing aggravating factors and mitigating circumstances, the trial court must "(1) expressly evaluate in his or her written order each mitigating circumstance proposed by the defendant to determine whether it is supported by the evidence and whether, in the case of non-statutory [circumstance], it is truly of a mitigating nature; (2) assign a weight to each aggravating factor and mitigating [circumstance] properly established; (3) weigh the established aggravating circumstances against the established mitigating circumstances; and (4) provide a detailed explanation of the result of the weighing process." *Orme v. State*, 25 So. 3d 536, 547-48 (Fla. 2009). In *Ford v. State,* 802 So.2d 1121, 1133-34 (Fla. 2001), the Florida Supreme Court summarized what a trial court must do in considering a circumstance that is proposed as mitigating in nature. The Court held that the trial court must determine the following:

1. Whether the evidence is mitigating in nature as a matter of law, and
2. Whether the circumstance is mitigating under the facts of the case.

72. If a proposed circumstance falls within a statutory category, it necessarily is mitigating in any case in which it is present. If a circumstance does not fall within a statutory category but nevertheless meets the definition of mitigating circumstances, it must be shown to be mitigating in each case, not merely present. If a non-statutory circumstance is present and found to be mitigating in nature, it must be afforded some weight; the weight is within the trial court's discretion. *Id.* at 1134-35.

73. Non-statutory "catch-all" mitigating circumstances raised in this case are as follows:

1. *When Wade Wilson is not on drugs, he is charming, polite, cool, in a good mood, friendly, and outgoing.*
   The Court concludes that this fact has not been established, because virtually no evidence proving this assertion was presented. Instead, the evidence indicates that Defendant is just as "charming" and "friendly" when he is on drugs, as he was still able to "charm" the victims in this case while intoxicated. Moreover, the evidence shows that Defendant has a prior criminal history, and therefore, his criminal actions in this case cannot be characterized as an isolated incident brought on by drug use. The Court gives this mitigating circumstance no weight.

2. *Wade Wilson experienced the following mental health disorders: schizophrenia, schizoaffective disorders, delusions, paranoia, suicidal adjustment disorders, major depressive disorder, hallucinations, and perseveration.*
   The Court concludes that this fact has been established, although the evidence is inconsistent as to which mental health disorders Defendant suffers from. Hundreds of pages of mental health records from Defendant's incarceration in jail were reviewed by the experts. The jail records indicate that Defendant claimed to have been previously diagnosed with bipolar disorder, depression, anxiety, schizophrenia, antisocial personality disorder and adjustment disorder; these prior diagnoses were self-reported by Defendant. Defendant does not appear to have ever been formally diagnosed with a psychotic illness. Defendant was prescribed psychotropic medications while in jail, but they were dispensed based on Defendant's self-reported past diagnoses. There was some testimony that Defendant's biological mother had some type of mental health problem which could have been inherited by Defendant.

   Defense expert Dr. Hyman Eisenstein testified that he met with Defendant three times and administered several tests. The first test was the "TOM" test of memory or malingering. Defendant performed well on this test and appeared to be putting

forth genuine effort to participate. Subsequent tests had inconsistent results. Most results were normal, but some were below average or borderline. Defendant's performance indicated that Defendant's mind is very fast, impulsive and accurate in short bursts, but he becomes unable to focus as the tests become longer. However, it was unclear whether this was a function of some deficiency in Defendant's brain or because he was becoming bored with the testing as it went on. Defendant scored a 92 on a standardized IQ test, placing him squarely in the average range.

Defendant's scores on memory tests were questionable, as he scored borderline on one test performed by Dr. Eisenstein and then *seven* deviations below the mean on another. If Defendant's memory was truly so deficient as to be seven standard deviations below normal, he would not be able to function in daily life. This result is incongruent with Defendant's other scores and with his life history, as he has previously held various jobs and earned his GED. His past mental health records reflect no memory issues and his family reported no memory issues.

Dr. Mark Mills, a second mitigation expert hired by the defense, attempted to meet with Defendant three times, but two of those meetings were unsuccessful because Defendant refused to participate. Defendant expressed concern that there were jail staff eavesdropping on what was being discussed but he continued to refuse to participate even after jail staff moved away from the door. Dr. Mills interpreted this as Defendant being paranoid. Two personality tests were administered on Defendant under Dr. Mills' direction, but these tests indicated that Defendant was not compliant and was not engaging in the tests sincerely. The tests produced invalid results. Dr. Mills concluded, based on Defendant's jail records and the information gathered by Dr. Eisenstein, that Defendant has some kind of psychotic disorder. However, because Defendant was not forthcoming with Dr. Mills, he could not offer a diagnosis of his own. He testified that a major problem with evaluating Defendant is that no team of mental health professionals has ever formally diagnosed him with anything or put him on a regiment of medication and treatment to see whether his issues could be improved.

In contrast, the State's expert, Dr. Michael Herkov, concluded that Defendant did not have any psychotic disorder or mood disorder. He testified that the jail records contain no indications of schizophrenia, schizoaffective disorder or bipolar disorder aside from Defendant's self-report of having a prior diagnosis. As a child, he was diagnosed with depression, anxiety and adjustment disorder. No medical professional appears to have ever diagnosed Defendant with a psychotic mental illness. Dr. Herkov testified that psychotic illnesses such as BPD and schizophrenia tend to get noticed because they result in highly disruptive behavior and require hospitalization. Dr. Herkov pointed out that the DSM-5-TR, a diagnostic treatise for diagnosing mental disorders, specifically indicates that psychotic disorders cannot be diagnosed when the patient also takes street drugs, because symptoms must not be attributable to substances.

In Dr. Herkov's opinion, Defendant's behavioral issues are attributable to his history of drug abuse. While he agreed that Defendant had some impairment to his memory, Dr. Herkov testified that it was impossible for the extremely low memory score on Dr. Eisenstein's test to be legitimate. This is because such a score would represent a "catastrophic memory impairment," which someone over the years would have noticed before now.

Initially, the evidence was inconclusive as to whether Defendant had any impairment to his brain function. Although Dr. Eisenstein and Dr. Mills concluded that Defendant had some sort of impairment to his frontal lobe and the right hemisphere of his brain, Dr. Michael Herkov concluded that Defendant did not have any brain impairment. Defendant had minimal history of head injuries, such as bumping his head on a fence when playing sports. However, none of these injuries caused damage that showed up on brain scans. Dr. Herkov testified that Defendant's records contained no evidence of executive function brain damage.

At the *Spencer* hearing, more evidence was presented as to whether Defendant suffered from any brain injury or impairment to his brain function. Dr. Mark Rubino administered the "MoCA" (Montreal Cognitive Assessment) test on Defendant and found some indicators of possible brain impairment. Based on the exam findings and Defendant's self-reported history of brain injuries, Dr. Rubino ordered several brain scans, including MRI, DTI and CAT scans. According to Dr. Rubino, these scans showed ventricle asymmetry and atrophy to the frontal cortex and the amygdala and hippocampus areas of the limbic center. He testified that these brain abnormalities would cause emotional instability, impulsivity, and difficulty with adjusting one's behavior.

However, Dr. Rubino's expert opinion is not entirely credible, as he was not certified to perform the MoCA test. Moreover, Dr. Coyne's testimony refuted Dr. Rubino's findings of brain abnormality. He testified that the appearance of ventricle asymmetry was caused by the brain not being level during the scan. He further testified that there were none of the other symptoms one would expect to see if ventricle asymmetry was actually present, such as pressure in the brain and fluid spilling into other areas of the brain, which would be visible on the scans. He also disagreed that there were any indications of atrophy to Defendant's limbic center or frontal lobe, testifying that the scans of these areas were normal. In Dr. Coyne's opinion, he would describe Defendant's brain as structurally normal and would not have ordered any additional scans. There was no evidence of brain trauma or chronic traumatic encephalopathy, i.e., repeated trauma of the kind often seen in football players. Dr. Coyne further noted that Dr. Rubino's report was issued after the MoCA testing but before the brain scans were done. He strongly disagreed with Dr. Rubino's opinion that Defendant's brain injuries made him more likely to commit the crimes in this case, not simply because he felt that Defendant has no brain injuries, but because there are too many other factors to be able to predict a person's behavior.

Having reviewed the entirety of the evidence presented regarding Defendant's mental illness, the totality of the evidence indicates that Defendant has been consuming drugs since a very young age and has an undiagnosed mental health disorder that contributed to his behavioral problems. But, as mentioned above, the evidence did not conclusively establish any of the details of this mental disorder or how severe it is. The evidence did not establish that Defendant suffers from any brain impairment caused by prior injuries or accidents.

The evidence did not refute the possibility that Defendant's childhood behavioral issues were caused by his childhood drug use. Defendant could not and did not provide to the experts any specific instances of delusions, psychosis, or mania. In contrast, what *was* consistent in Defendant's records were his reports of depression and anxiety. While he reported unspecified hallucinations, recreational drugs can cause hallucinations. Similarly, Defendant reported being suicidal in the past, but this can be caused by drug use or depression.

The Court gives this mitigating circumstance little weight.

3. *While Wade Wilson is on drugs, he is out of his mind, on a rampage, it makes him crazy, and it makes him do wrong things.*
The Court concludes that this fact has not been established, because there was no evidence that Defendant's drug use *causes* him to engage in any particular behavior. The Court gives this mitigating circumstance no weight.

4. *The drugs that Wade Wilson took that night before the event led to an unanticipated effect.*
The Court concludes that this fact has not been established, because it presupposes that Defendant's drug consumption is responsible for his criminal acts and that he would not have committed the crimes if he had not consumed drugs. There was no evidence presented supporting this assertion. The Court gives this mitigating circumstance no weight.

5. *Wade Wilson confessed to law enforcement to do the right thing.*
The Court concludes that this fact has been established, because he stated this to officers during his confession. The Court gives this mitigating circumstance little weight.

6. *Wade Wilson wanted to put Ms. Ruiz back with her family.*
The Court concludes that this fact has been established, because Defendant stated as much to the officers who took his post-Miranda statement. However, the sincerity of this claim is questionable because he appeared to be just as concerned with eating a burger and French fries in exchange for his statement as he was with leading investigators to the body. The Court gives this mitigating circumstance little weight.

7. *Wade Wilson is loved by his adoptive parents and sisters.*

The Court concludes that this fact has been established, as Defendant's family expressed love and devotion towards Defendant when speaking with the mental health experts. The Court gives this mitigating circumstance some weight.

8. *Wade Wilson felt abandoned by his biological parents.*
The Court concludes that this fact has been established. Testimony established that he was adopted as a baby by his current family through a connection at church. Defendant's biological mother was thirteen years old at the time he was born and his biological father was fourteen years old. Defendant did not have any contact with either biological parent until he reached out to his father at age eighteen. The Court acknowledges that Defendant subjectively feels abandoned by his biological parents. However, the mitigating effect of this circumstance is diminished by the fact that Defendant has a loving and dedicated adopted family. The Court gives this mitigating circumstance some weight.

9. *Wade Wilson's mental illness started as a child.*
The Court concludes that this fact has been established. The evidence was somewhat inconsistent on this point, as the symptoms reported by Defendant's family in his childhood could have also been caused by his consumption of illicit drugs. The Court gives this mitigating circumstance little weight.

10. *Wade Wilson was involuntarily committed when he was a teenager.*
The Court concludes that this fact has been established, as it was uncontested that Defendant was Baker Acted at the age of 15 or 16. However, his father called the police because he found Defendant in possession of drugs, not because he was having a mental health episode. He was released from custody the next day. The Court gives this mitigating circumstance some weight.

11. *Wade Wilson tried to reach out to his biological parents when he became an adult.*
The Court concludes that this fact has been established. However, Defendant's biological father testified that Defendant's communication with him was infrequent and he usually only called him when he needed help or money. The Court gives this mitigating circumstance little weight.

12. *Wade Wilson's biological parents were young and did not try to reach out to establish a relationship.*
The Court concludes that this fact has been established, as Defendant did not come into contact with his biological father until he was 18 years old. The Court gives this mitigating circumstance some weight.

13. *Wade Wilson was a loving son before mental health disorders.*
The Court concludes that this fact has established, based on letters submitted by Defendant's adoptive family. The Court gives this mitigating circumstance little weight.

J. SENTENCING CIRCUMSTANCE AND PROPORTIONALITY

74. In evaluating the aggravating and mitigating factors, the Court does not engage in a mere counting procedure but instead makes a reasoned judgment based on the totality of the circumstances. *See Terry v. State*, 668 So. 2d 954 (Fla. 1996). In reaching this decision, the Court is mindful that because death is a unique punishment in its finality, its application is reserved only for those cases where the most aggravating and least mitigating circumstances exist. *Id.* The law never requires the imposition of a sentence of death.

75. In this case, the totality of the circumstances indicates that Defendant, with premeditation, beat and strangled Kristine Melton in her home before stealing her vehicle and driving to meet his girlfriend, Melissa Montanez. After Montanez refused to get into the car with him, Defendant battered her in broad daylight. When Montanez managed to flee from Defendant, he fled the scene and drove back to Cape Coral, where he decided he might as well murder another person. He saw Diane Ruiz walking to work and pulled over, pretending to ask for directions. She got into the car to provide directions but Defendant strangled her when she tried to exit. He then drove to an empty lot, strangling her to unconsciousness at least one additional time on the way there. When she tried to flee from the car, he drove over her at least one time, inflicting mortal injuries to her spine, ribs and neck.

76. The evidence showed that both murders were heinous, atrocious and cruel, and that the second murder was cold, calculated and premeditated. Defendant inflicted serious physical and emotional pain on the victims. Moreover, Defendant committed the murders while on probation for prior felony convictions and he committed two first degree murders contemporaneously with each other and with grand theft of a motor vehicle, battery, and burglary of a dwelling.

77. No statutory mitigating circumstances were established, but the Court considered the non-statutory mitigating circumstances presented by Defendant. Out of thirteen enumerated non-statutory mitigating factors, the Court found that ten have been established. Out of those established, six were given little weight. The totality of the mitigating circumstances indicates that Defendant suffers from drug use from a young age, along with undiagnosed and untreated mental health issues of some kind. He felt abandoned by his biological parents but had a devoted adoptive family who raised him in a supportive and loving environment. Defendant did not resist law enforcement when arrested and confessed fully to both murders.

78. The Court has further considered and given great weight to the advisory verdict of the jury, who recommended that the death penalty be imposed by a vote of nine to three on count 1 (murder of Kristine Melton) and a vote of ten to two on count 4 (murder of Diane Ruiz).

79. The Court recognizes there is no mathematical formula for considering the aggravating and mitigating factors. It is not enough to weigh the number of aggravators against the number of mitigators. The Court carefully considered the nature and quality of each aggravator and mitigator. Having reviewed all of the aggravating factors proven beyond a reasonable doubt and all of the mitigating circumstances reasonably established by the evidence, the Court finds that the mitigating circumstances do not outweigh the aggravating factors.

80. Given the facts of the case, nothing in Defendant's background or mental state would suggest that a death sentence is inappropriate. This Court's review of other reported capital cases has led the Court to conclude that the death penalty is not disproportionate in this case. Under the totality of the circumstances and evidence, the Court finds no basis to override the jury's verdict. The totality of the circumstances warrants that Defendant, Wade Steven Wilson, be sentenced to death on counts one and four.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant, Wade Steven Wilson, is sentenced as follows:

Count 1:	First-Degree Murder of Kristine Melton, Defendant is hereby sentenced to death.
Count 2:	Grand Theft of a Motor Vehicle, Defendant is hereby sentenced to five years imprisonment in the Department of Corrections.
Count 3:	Battery, Defendant is hereby sentenced to 364 days in jail.
Count 4:	First-Degree Murder of Diane Ruiz, Defendant is hereby sentenced to death.
Count 5:	Burglary of a Dwelling, Defendant is hereby sentenced to fifteen years imprisonment in the Department of Corrections.
Count 6:	Petite Theft, Defendant is hereby sentenced to 364 days in jail.

Defendant is given credit for all time served in this case on all counts. All counts are to run concurrently to each other. All statutorily mandated fines, fees and costs as announced on the record are imposed.

Defendant is committed to the custody of the Department of Corrections for the execution of this sentence as provided by law.

Defendant is hereby notified that these convictions and sentences are subject to automatic review by the Florida Supreme Court.

DONE AND ORDERED in chambers at Fort Myers, Lee County, Florida, this 27th day of August, 2024.

Nicholas R. Thompson
Circuit Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this order has been served on this 27th day of August, 2024, as follows:

Electronic Service:
Office of the State Attorney
Lee Hollander
Kevin Clifford Shirley

KEVIN C. KARNES
Clerk of Court

K. Sagastume
Deputy Clerk