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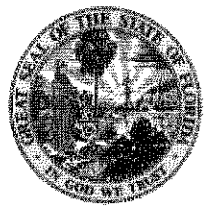

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OFFICE OF
STATE ATTORNEY
FIRST JUDICIAL CIRCUIT OF FLORIDA

August 16, 2012

PRESS RELEASE

State Attorney William "Bill" Eddins announced today that Timothy Lee Hurst was sentenced to death by Judge Linda Nobles. A copy of the Sentencing Order is attached to this press release.

On March 9, 2012, an Escambia County Jury recommended by vote of 7 to 5 that Timothy Lee Hurst receive the death penalty. Hurst's conviction was upheld by the Florida Supreme Court and remanded the case back before the trial Court to conduct a new penalty phase.

Hurst was convicted in 2000 for the murder of Cynthia Harrison which took place inside the Popeye's restaurant on May 2, 1998. Hurst, an employee at Popeye's, stabbed the Assistant Manager, Cynthia Harrison, approximately 60 times and placed her body in the restaurant's freezer.

Hurst was prosecuted by Assistant State Attorney John Molchan and for further information, please contact him at 850-595-4243.

IN THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA

vs.

TIMOTHY LEE HURST,

Defendant.

Case No.: 1998 CF 001795A
Div.: "C"

SENTENCING ORDER

On March 23, 2000, Defendant was found guilty of one count of first degree murder. On April 26, 2000, the Court imposed a sentence of death. Subsequently, the Supreme Court of Florida affirmed Defendant's conviction and sentence. Following postconviction proceedings, the Court entered an order denying Defendant's rule 3.851 motion. On October 8, 2009, the Supreme Court of Florida reversed in part the Court's order and remanded the case for a new penalty phase. From March 5-9, 2012, new penalty phase proceedings were conducted. On March 9, 2012, the jury rendered an advisory sentence of death by a vote of 7 to 5. On April 4, 2012, a Spencer[1] hearing was convened. Although neither party offered additional evidence at the hearing, the State and Defendant presented sentencing memoranda for the Court's consideration in imposing sentence.

Pursuant to §921.141(3), Florida Statutes, the Court must, notwithstanding the recommendation of the jury, independently weigh the aggravating and mitigating circumstances. If the Court finds that a sentence of death is appropriate, it must find that sufficient aggravating circumstances have been proven beyond a reasonable doubt to justify the imposition of the death

[1] Spencer v. State, 615 So. 2d 688 (Fla. 1993).

penalty. In its written order, the Court must set forth the specific facts relied upon to support each applicable aggravating circumstance. Additionally, the Court must expressly evaluate each statutory or non-statutory mitigating circumstance proposed by Defendant to determine whether it is supported by the evidence and whether, in the case of non-statutory factors, is truly of a mitigating nature. See Campbell v. State, 571 So. 2d 415, 419-420 (Fla. 1990). The Court is required to find as a mitigating circumstance each proposed factor that is mitigating in nature, and which has been reasonably established by the greater weight of the evidence. Finally, the Court must weigh the aggravating circumstances against the mitigating circumstances. Id.

The Court will not reiterate all of the facts of the case for the purposes of this order. However, to provide appropriate context, the underlying facts of the case were summarized by the Supreme Court of Florida as follows:

> On the morning of May 2, 1998, a murder . . . occurred at a Popeye's Fried Chicken restaurant in Escambia County, Florida, where Hurst was employed. Hurst and the victim, assistant manager Cynthia Lee Harrison, were scheduled to work at 8 a.m. on the day of the murder . . . On the morning of the murder, a Popeye's delivery truck was making the rounds at Popeye's restaurants in the area. Janet Pugh, who worked at another Popeye's, testified she telephoned Harrison at 7:55 a.m. to tell her that the delivery truck had just left and Harrison should expect the truck soon. Pugh spoke to the victim for four to five minutes and did not detect that there was anything wrong or hear anyone in the background. Pugh was certain of the time because she looked at the clock while on the phone. Popeye's was scheduled to open at 10:30 a.m. but Harrison and Hurst were the only employees scheduled to work at 8 a.m. However, at some point before opening, two other Popeye's employees arrived, in addition to the driver of the supply truck. None of them saw Hurst or his car. At 10:30 a.m., another Popeye's assistant manager, Tonya Crenshaw, arrived and found the two Popeye's employees and the truck driver waiting outside the locked restaurant. When Crenshaw unlocked the door, and she and the delivery driver entered, they discovered that the safe was unlocked and open, and the previous day's receipts, as well as $375 in small bills and change, were missing. The driver discovered the victim's dead body inside the freezer.

Hurst v. State, 819 So. 2d 689, 692-93 (Fla. 2002).

The Court has carefully considered the evidence, the arguments of counsel, and the relevant legal authority, and makes the following conclusions as to the aggravating and mitigating circumstances, and as to the ultimate penalty to be imposed.

AGGRAVATING CIRCUMSTANCES

The capital felony was especially heinous, atrocious, or cruel.

Dr. Michael Berkland, the deputy medical examiner at the time of the murder, testified that Ms. Harrison weighed 86 pounds and was 4 feet, 8½ inches tall at the time of her death. She had been bound and gagged with electrical tape and had more than sixty (60) wounds to her body. The wounds were consistent with having been inflicted with a box cutter. The Supreme Court of Florida has repeatedly upheld this aggravating circumstance in cases in which a victim was stabbed numerous times. See, e.g. Reynolds v. State, 934 So. 2d 1128 (Fla. 2006); Mahn v. State, 714 So. 2d 391 (Fla.1998); Rolling v. State, 695 So. 2d 278 (Fla.1997); Barwick v. State, 660 So. 2d 685 (Fla. 1995); Pittman v. State, 646 So. 2d 167 (Fla.1994). Dr. Berkland explained that a number of Ms. Harrison's wounds were facial cuts that went all the way down to the underlying bone, including cuts through the eyelid region and through the top of her lip. She also had a large cut to her neck which almost severed her trachea. In addition, Ms. Harrison suffered several superficial "poking" wounds, which would not be fatal, but would certainly contribute to the extremely painful manner in which she died. A few of the "stabbing" type wounds were inflicted about the time of Ms. Harrison's death, but there were no injuries which Dr. Berkland would characterize as post-mortem, meaning that all of the injuries occurred prior to her death. Testimony revealed that Ms. Harrison's death may have taken as long as 15 minutes to occur. The utter terror and pain that Ms. Harrison likely experienced during the incident is unfathomable. Words are inadequate to describe this death, but the photographs

introduced as evidence depict a person bound, rendered helpless, and brutally, savagely, and unmercifully slashed and disfigured. The murder of Ms. Harrison was conscienceless, pitiless, and unnecessarily torturous. This aggravating circumstance has been proved beyond a reasonable doubt, and the Court assigns it great weight.

The capital felony was committed while the defendant was engaged in the commission of a robbery.

Tonya Wilson, who was an assistant manager at Popeye's at the time of the murder, testified that the door to the restaurant was locked when she arrived there the morning of the murder. Only Ms. Harrison and Defendant were scheduled to work that morning. When Ms. Wilson unlocked the door and entered the restaurant, she found papers on the floor and the safe open. Standard procedure would have dictated that the previous night's proceeds be in the safe, along with the money to be used for change for the coming business day. Ms. Wilson explained that only the manager and assistant manager would have had the combination to the safe. Ms. Wilson described the procedures for making deposits and identified photos of a deposit slip signed by Ms. Harrison along with a deposit bag. According to the penalty phase testimony, approximately $1,751 from the previous day and $375 to be used to make change should have been in the safe. It was not.

Witness Lee Smith testified that Defendant told him prior to the murder that he was going to rob Popeye's. Later, Defendant came to Mr. Smith's home with some money and told him that he had robbed Popeye's and he "had cut her." Mr. Smith saw some blood on Defendant's pants. Defendant asked Mr. Smith to wash his pants, and he did. The money was hidden in Mr. Smith's room. Additionally, Defendant had a wallet with him which was thrown away in Mr. Smith's backyard garbage can, along with Defendant's shoes. Further testimony revealed that a deposit slip for $1,751 was recovered from the garbage can, along with a bank bag and Ms.

Harrison's change purse and driver's license. This aggravator has been proven beyond a reasonable doubt, and the Court assigns it great weight.

STATUTORY MITIGATING CIRCUMSTANCES

The defendant has no significant history of prior criminal activity.

The State concedes that this factor was established. The Court finds that it is entitled to moderate weight.

The defendant was an accomplice in the capital felony and his participation was relatively minor.

Testimony revealed that Defendant was the only person, other than Ms. Harrison, scheduled to work the morning of the murder. Defendant's vehicle was identified by an eyewitness as the car behind Ms. Harrison as she drove to work shortly before her murder. Another witness saw Defendant enter the restaurant shortly before the murder.

As previously noted, Defendant told Mr. Smith prior to the murder that he was going to rob Popeye's. Later, Defendant came to Mr. Smith's home with some money and told him that he had robbed Popeye's and he "had cut her." Mr. Smith saw some blood on Defendant's pants. Defendant asked Mr. Smith to wash his pants, and he did. The money was hidden in Mr. Smith's room. Defendant had a wallet with him, which was thrown away in Mr. Smith's backyard garbage can, along with Defendant's shoes. Defendant and his companions then went to Wal-Mart, where Defendant bought some shoes, and to a pawn shop, where he bought three rings. Later, a deposit slip for $1,751 was recovered from the garbage can, along with a bank bag and Ms. Harrison's change purse and driver's license. Socks were discovered inside the bank bag, which were eventually determined to have Ms. Harrison's blood on them.

Based on the foregoing, the Court does not find the existence of this mitigator has been reasonably established by the greater weight of the evidence, and therefore it is rejected for consideration.

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

Expert testimony was offered suggesting that Defendant suffers brain damage in areas critical to judgment and impulse control, and that his pattern of brain damage is consistent with fetal alcohol syndrome. However, no expert testified directly that the damage suffered by Defendant rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the law. As noted previously, Defendant had no significant history of prior criminal activity, tending to show that he was in fact capable of conforming his conduct to the law. Moreover, Isaac Sheppard, a defense witness, testified unequivocally that Defendant had an understanding of right and wrong. And, at least two other defense witnesses indicated that when teased, Defendant would get upset, but would not respond in a violent manner. In fact, Defendant's sister testified that she had never seen him react violently when angry. Such testimony is indicative of a person able to conform his conduct appropriately.

The Court also finds Defendant's statement to law enforcement, which showed deliberate attempts to mislead the officers as to his whereabouts and activities the morning of the murder, is indicative of an individual able to appreciate the criminality of his conduct, and capable of conforming his conduct to the law. See Provenzano v. State, 497 So. 2d 1177, 1184 (Fla.1986) (stating that Provenzano's actions on the day of the murder did not support the mitigator that the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired because he concealed the weapons he carried, put change in the parking meter, and took his knapsack out to his car instead of allowing it to be

searched because it would have exposed his illegal possession of weapons). See also Nelson v. State, 850 So. 2d 514, 531 (Fla. 2003) (mitigator was not proven where evidence showed the defendant knew his actions were wrong by his attempts to avoid responsibility, which included concealing the victim and lying to the police).

Based on the foregoing, the Court does not find the existence of this mitigator has been reasonably established by the greater weight of the evidence, and therefore it is rejected for consideration.

The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

As noted previously, testimony was offered that Defendant suffers from brain damage in areas which are known to be contributory to impulsive behavior and lack of judgment. "Expert testimony alone does not require a finding of extreme mental or emotional disturbance. Instead, the trial court may disregard expert opinion where it determines that the opinion is unsupported by the facts or conflicts with other evidence. More specifically, we have held that testimony from lay witnesses concerning the defendant's condition on the day of the murder may serve as competent, substantial evidence to support rejection of expert testimony on the extreme emotional disturbance mitigator." Heyne v. State, 88 So. 3d 113, 125-126 (Fla. 2012) (internal citations and quotations omitted). However, no testimony, expert or otherwise, was given specifically indicating that Defendant was under the influence of extreme mental or emotional disturbance at the time of the crime.

Defendant's conduct on the day of the murder does not evince someone acting under extreme mental or emotional disturbance. Patty Hurst, Defendant's cousin, testified that she saw him around 10:00 or 10:30 a.m. that day, and he was acting normally. Lola Hurst, another cousin, also saw him during that time period and stated he was acting as he always did. Jermaine

Bradley, his brother, similarly testified that he spent part of the morning of the murder with Defendant, playing a video game, and afterwards going to Wal-Mart to purchase shoes and to the pawn shop to purchase jewelry.

In addition, the evidence suggests that at least some level of planning was present in the crime. Ms. Knight testified that, to her knowledge, neither the box cutter nor the electrical tape used to bind Ms. Harrison was of a type found in the restaurant. Moreover, Mr. Smith testified that Defendant told him prior to the murder that he planned to rob Popeye's. The facts of the murder and Defendant's conduct following the murder are not consistent with a conclusion that Defendant was suffering from an extreme mental or emotional disturbance. See Hoskins v. State, 965 So. 2d 1, 17 (Fla. 2007).

Based on the foregoing, the Court does not find the existence of this mitigator has been reasonably established by the greater weight of the evidence, and therefore it is rejected for consideration.

The age of the defendant at the time of the crime.

Defendant suggests that his young age, and particularly, his "young mental age," are mitigating in this case. Defendant was chronologically 19 years old at the time of the crime.

Calvin Harris, an administrator at Tate High School, testified that Defendant should have been in special education due to his inability to achieve academically. Jerome Chism, of East Charter School, testified similarly, saying that at 18 or 19 years of age, Defendant's behavior was appropriate to a 12 or 13-year-old. Defendant's family members who testified echoed the opinion that he was "slow," and significantly immature for his age. The testimony of Defendant's family demonstrates that he had difficulties in school, was somewhat limited in his initiative and ability to care for himself, and was a poor reader.

For a "court to give a non-minor defendant's age significant weight as a mitigating circumstance, the defendant's age must be linked with some other characteristic of the defendant or the crime, such as significant emotional immaturity or mental problems." Hurst at 698. Based on the testimony, the Court finds that this mitigator has been reasonably established by the greater weight of the evidence, and gives it moderate weight.

The defendant acted under extreme duress or under the substantial domination of another person.

Although not argued by Defendant in his closing memorandum as a mitigator, certain evidence was presented during the penalty phase suggesting that Defendant was a "follower," and particularly a follower of Mr. Smith. In an abundance of caution, the Court has considered this mitigator and finds that it has not been reasonably established by the greater weight of the evidence. It is rejected from consideration.

NON-STATUTORY MITIGATING CIRCUMSTANCES

The defendant is mentally retarded and suffers from brain damage and fetal alcohol syndrome.

Defendant was not allowed to present evidence during the penalty phase proceedings that mental retardation is a bar to execution. He was, however, allowed to present evidence of mental retardation as mitigation.

In recent IQ testing, Defendant scored a full scale score of 69, according to the expert testimony offered by the defense. Dr. Harry Krop and Dr. Gordon Taub testified that they had reviewed educational records, records from the Department of Corrections, prior testing results, and other relevant documents, and determined that Defendant's adaptive functioning is also deficient, and that these deficiencies were manifest in Defendant prior to the age of 18. Dr. Krop testified that he did intellectual testing with Defendant in January 2012. Defendant and three

family members also completed the ABAS, a measurement tool of adaptive functioning. Dr. Krop stated that "all four, including Mr. Hurst's, came out significantly deficient." Dr. Krop also did neuropsychological testing which revealed mostly "low average" results, with some tests suggesting either borderline or mild impairment. Based on the totality of his information, Dr. Krop concluded that Defendant is mentally retarded, as did Dr. Taub.

Dr. Harry McClaren testified that he had also reviewed prior testing materials, school records, information regarding the crime, the depositions of Dr. Krop and Dr. Taub, and prior testimony of Defendant's family members. Dr. McClaren indicated that Defendant had previously scored a 76 and a 78 on intelligence tests, and further opined that there was "no objective information suggesting that he was functioning at such a low level as measured by any kind of intelligence testing in the Escambia County School despite coming to the attention of exceptional student services for a language disorder."

"When expert opinion evidence is presented, it 'may be rejected if that evidence cannot be reconciled with the other evidence in the case.' Trial judges have broad discretion in considering unrebutted expert testimony; however, the rejection of the expert testimony must have a rational basis, such as conflict with other evidence, credibility or impeachment of the witness, or other reasons." Williams v. State, 37 So. 3d 187, 204 (Fla. 2010)(internal citations omitted). The Court finds the opinion of Dr. McClaren to be more credible as to mental retardation in light of the circumstances of the case. It was uncontested that Defendant was able to maintain a job and had acquired a driver's license. Further, the Court finds Defendant's statement given to police and his efforts to conceal his involvement in the crime to be particularly persuasive in considering Defendant's adaptive functioning. The statement, given shortly after the crime, reveals an individual clearly recounting a morning's events, giving

directions, recalling telephone numbers, and deliberately omitting certain information tending to incriminate him. Similarly, the evidence offered at trial suggests that Defendant took numerous steps to conceal his involvement in the crime by attempting to clean the murder scene, having his clothes washed, hiding the money in another location, discarding Ms. Harrison's belongings and his shoes, and buying new shoes. Based on the foregoing, the Court does not find that Defendant meets the criteria for mental retardation.

While the Court concludes that Defendant is not mentally retarded, that is not to say that he does not suffer from significant mental issues. The Court accepts the testimony of Dr. Wu as credible. Dr. Wu testified that a PET scan of Defendant revealed that he has "widespread abnormalities in [his] brain in multiple areas," including the frontal lobe area, which is crucial to judgment and impulse control. Dr. Wu also testified that the pattern of brain injury visible on the PET scan is consistent with fetal alcohol syndrome. The testimony of Defendant's mother that she was 15 when she bore him and she drank to excess every day while pregnant with him supports a conclusion that he may well suffer from fetal alcohol syndrome.

All of the experts agreed that Defendant has limited intellectual capacity. In fact, the State concedes as much, and indeed, on the record before the Court, it would be difficult to conclude otherwise. Therefore, the Court finds that Defendant's limited mental capacity has been reasonably established by the greater weight of the evidence, and gives it moderate weight.

CONCLUSION

The Court has given great weight to the jury's recommendation, being ever mindful that a human life is at stake, and has carefully weighed the aggravators and mitigators as outlined above. The Court concludes that the aggravating factors applicable to this crime outweigh the mitigating factors presented. Accordingly, Timothy Lee Hurst, for the murder of Cynthia Lee

Harrison, the Court sentences you to be put to death in the manner prescribed by law. The sentence of death is subject to automatic review by the Supreme Court of Florida. The Office of the Public Defender is appointed for the purposes of appeal. Court costs in the amount of $518 are assessed and reduced to civil lien.

DONE and ORDERED at Pensacola, Escambia County, Florida, this 16th day of August, 2012.

LINDA L. NOBLES
Circuit Judge

LLN/krw

Copies:
cc: John A. Molchan, ASA
D. Todd Doss, Esq.
Timothy Lee Hurst
E.J. Buddy Gissendanner, III, APD