

IN THE SUPREME COURT OF FLORIDA

ZACHARY TAYLOR WOOD,

Appellant,

v.

CASE NO. SC15-954

L.T. CASE NO. 14-CF-137

STATE OF FLORIDA,

Appellee.

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APPENDIX TO

INITIAL BRIEF OF APPELLANT

Sentencing Order dated May 12, 2015

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IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR WASHINGTON COUNTY

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO. 14-137 CF

ZACHARY TAYLOR WOOD,

Defendant.

FILED
CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY, FLORIDA
2015 MAY 12 PM 2 32

SENTENCING ORDER

The Defendant was tried before this Court during the term from February 23, 2015 through February 27, 2015. The jury found the Defendant guilty as charged of Murder in the First Degree, Burglary of a Structure with Firearm, and Robbery with Firearm. On February 27, 2015 the jury recommend by unanimous vote (12-0) that the death sentence be imposed upon the Defendant for the murder of James William Shores. This Court gives great weight to the jury's recommendation. On April 17, 2015, the Court convened a *Spencer* hearing wherein the State and Defendant presented additional evidence and argument. The Defendant presented additional evidence and argument he contends demonstrates mitigating evidence. The State argued by way of legal memoranda the aggravating circumstances previously presented at trial. The Court did not permit the State to present any evidence or argument of an aggravating circumstance not previously argued to the jury. Additional written arguments were made to the Court.

ENMUND/TISON CONSIDERATIONS

Given that the Defendant and Co-Defendant Dillon Rafsky were both present at the scene of the murder, and that facts suggest Rafsky may have fired the shotgun into the head of the victim, James William Shores, an issue of culpability arises under an *Enmund/Tison*. This Court is guided by *Perez v. State*, 919 So. 2d 347 (Fla. 2005). The Defendant admits to being present at the crime scene through his post arrest statement and trial testimony. The Defendant further admits to being inside the old farm house, and physical evidence such as his foot print found and a cigarette butt from inside the house with his matching DNA further support his admission. The Defendant admits to ingesting methamphetamine which made him do things he would not normally do. Defendant admits to "plundering" inside the farm house. The Defendant further admits to using the garden hoe to assist with unsuccessful attempts to dig out the stuck Jeep Cherokee. The Jeep, upon which both Wood and Rafsky arrived, was adjacent to the front porch of the house. The victim, who was driving his Toyota Camry, arrived on the scene a short time thereafter and encountered both Wood and Rafsky. Defendant Wood knew that the victim had written down the license tag number of the Jeep and placed it on his person. Subsequently a

struggle ensued. The Defendant in his post arrest statement admits that he may have punched the victim in a show of solidarity to Rafsky. Additional evidence found inside the Jeep Cherokee glove box indicates the presence of DNA from both Defendant and the victim. A piece of chain link length similar to the type that was used to bind the victim's hands was found on the front porch of the farm house with matching DNA to Defendant Wood. Defendant admits that Rafsky sent him looking for additional items with which to bind the victim. The Defendant admits to securing the victim's feet with a shirt he obtained from the farm house back porch. The Defendant admits the victim was bound behind the back porch of the farm house, where the garden hoe was later found. The Defendant admits that a potentially flammable liquid was poured on the victim while he was still alive and to striking matches over the victim's body. Physical evidence establishes that victim was brutally attacked, receiving in excess of fifteen strikes of a linear and repeated nature consistent with the garden hoe found at the scene. No defensive wounds were found on the victim's body. The victim did not die from the blunt force trauma. The victim suffered immediate death from a shotgun wound to the top of his head. The location of the victim's body and shotgun gun wound is consistent with being shot while lying face down. Upon fleeing the scene in the victim's car, Defendant admits to throwing out alongside the roadway the clothes he was wearing during the murder. Thereafter, Defendant controlled the money and valuables. Defendant admits to using the victim's money and credit cards at several locations after the murder.

There is substantial and competent evidence in the record to support the jury's determination that Wood was a major participant in the premeditated murder of James William Shores. Likewise, there is competent evidence that Wood participated in the felony murder of the victim by burglary of his farmhouse and/or vehicle and robbery of his valuables and motor vehicle all while a firearm was employed. Given the jury's verdict, the jury determined that Wood was a major participant in each of the crimes for which he is convicted and that these crimes were not independent acts of one another. This Court is satisfied that Defendant Zachary Taylor Wood acted with such reckless disregard for human life during the murder of James William Shores, that the *Enmund/Tison* standard is satisfied. The Defendant is death eligible.

This Court is now required to consider and give individual consideration to each and every aggravating and mitigating circumstance as set forth by Section 921.141, Florida Statutes, including any and all non-statutory mitigating circumstances. Having heard all of the evidence introduced at trial and the *Spencer* hearing, as well as considering the sentencing memoranda of the State and Defendant, this Court now addresses each of the aggravating and mitigating circumstances.

AGGRAVATING CIRCUMSTANCES

1. The capital felony was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification (CCP)

In order for CCP to apply, the State must satisfy a four part test: 1) the killing was a product of cool and calm reflection rather than an act prompted by emotional frenzy, panic or fit of rage; 2) the defendant had a careful plan or prearranged design to commit murder before the fatal incident; 3) the defendant exhibited heightened premeditation; 4) the defendant had no pretense of moral or legal justification. The Court relies upon Baker v. State, 71 So. 3d 802 (Fla. 2011).

It is undisputed that James William Shores was shot in the head while lying face down with his hands and legs bound. The Victim encountered both Defendant and Rafsky on his property, and while they were in the course of partying and "plundering" his farm house. The Defendant was the first to be aware James Shores recorded the immobilized Jeep license tag and was going to call law enforcement. According to the Defendant's version of events, Rafsky and the victim engaged in a struggle, after which the victim lay motionless on the ground after a beating with a garden hoe. This Court finds Defendant's version of events minimizes his involvement, given that Wood readily admits he may have also punched James Shores. The Defendant's claims that the struggle took place while he was elsewhere are not credible, given his differing versions of being near the Jeep or at the mailbox in front of the house.

Defendant asserts the victim was alive while he was lying face down in the backyard. This is corroborated by the opinion of the Medical Examiner. Dr. Michael Hunter observed multiple linear and repeated lacerations on the head and upper torso of the victim consistent with a garden hoe. The garden hoe was located at the scene with Shore's DNA on the metal end. However, Dr. Hunter opined the garden hoe injuries were not associated with the skull fractures he observed. While Dr. Hunter acknowledged that the attack was prolonged, it was unlikely the victim died from the blunt trauma. No defensive wounds were observed by Dr. Hunter on the victim's body, and he concedes that the victim could have been unconscious after such an attack. The Defendant and Rafsky could have abandoned their purpose at this point and left the scene with the victim still alive. They did not.

Instead, Rafsky and Defendant proceeded to gather chain with which to bind James Shores' hands behind his back. Defendant Wood's DNA is found on chain found at the scene similar to the chain used to bind Shores' hands behind his back. Defendant secured a shirt from the back porch of the house to bind the victim's legs. According to the Defendant, James Shores was alive and breathing at this point. With the victim incapacitated and unable to free himself, the Defendants could have abandoned their purpose and left the scene with the victim alive. They did not.

According to the Defendant's post-arrest statement, he poured some sort of liquid on the victim, possibly STP gas treatment. Wood stood over the victim's body striking matches in an attempt to light the victim on fire. The matches were too wet and would not light. Mr. Carl Chasteen, Forensic Lab Chief for the Florida Fire Marshal, opined that while STP gas treatment may not be ignitable, there was another ignitable substance found on Shores' clothing. The Court also notes State Exhibit 9-L depicting the Jeep driven by Defendants with its gas cap open and some sort of residue apparently spilled from the gas tank. The Defendant continued to insist he acted only upon orders and direction of Dillon Rafsky. The jury rejected such claims. This Court does not find the Defendant's continued obedience to Rafsky's demands as believable. The Defendants could have abandoned their purpose at this juncture and departed the property with James Shores alive. They did not.

Defendant returned to the immovable Jeep and removed the Alabama license tag, while Rafsky retrieved a shotgun from the victim's car and shot him in his upper back and left side of James Shores' head. According to Dr. Hunter, the wound and associated material in the victim's skull is consistent with an execution style murder, with the victim lying face down at time of the lethal gunshot. The defendant placed the Alabama tag in the trunk of the victim's car and the two left the premises in order to return to Alabama.

This Court finds the cold killing of James Shores was done in an execution-style, after cool reflection at each critical stage of event in keeping with Lynch v. State, 841 So. 2d 362 (Fla. 2003). This first prong of the "CCP" aggravator is satisfied by the record evidence. Additionally, after the victim was bound and incapacitated, the Defendant Wood armed himself with what he believed to be an ignitable liquid and struck matches in an attempt to burn James William Shores.

The second prong of CCP, namely "calculated", is satisfied in accord with Wright v. State, 19 So. 3d 277 (Fla. 2009). This prong is satisfied by the subsequent efforts to burn Shores, and the unimpeded actions of Rafsky and the lethal shot gun blast to James Shores' skull. In both instances the Defendant Wood and Rafsky utilized items found on the property to accomplish their developing plans. The evidence before the Court demonstrates Defendants had ample opportunity to release the victim. James Shores was incapacitated after the brutal beating and both Wood and Rafsky could have left the scene either on foot or by using the victim's car. Instead they remained and after a series of events extended over an ample period of time, they bound the victim's hands and feet, attempted to burn him to death, and ultimately took his life with a single shotgun blast to Shores' head.

The record also supports a finding of "heightened premeditation" and deliberate ruthlessness in keeping with Buzia v. State, 926 So. 2d 1203 (Fla. 2006). After the brutal beating, the Defendant bound the victim to ensure Shores would not escape. After the hoe attack, and with full knowledge that the Defendants had been seen by Shores, Wood did nothing to implore Rafsky to stop, nor did he impede Rafsky in any manner. Instead, Wood continued

his participation in the ultimate killing of Shores. During this period Wood had the presence of mind to remove the license tag and place it in the trunk of victim's car. The circumstantial evidence leads to a conclusion that by removing the Alabama tag from the Jeep, it would be more difficult to locate the perpetrators in another state. Likewise, it is equally reasonable to conclude that the Defendants would have seen the various weapons in the victim's trunk and procured any one of them for use at the scene. Additionally, in the period before the final gunshot, Wood had ample time to reach into the Jeep glove box, leaving inside traces of Shores' DNA along with his. It is a reasonable inference Wood was looking to remove other identifying evidence or things of value from the glove box. It is equally reasonable to conclude that as Wood was wearing gym shorts, his wallet may have been placed in the Jeep at the time of these events.

Finally, there is no evidence the killing of James Shores was based upon a moral or legal justification. The Defendant's admission before the Court at the *Spencer* hearing was that "there was no reason to kill Shores". The 66 year old victim had been previously unknown to the Defendants, "did not struggle", and "posed no threat to us". There was no pretense of moral or legal justification to the killing of James Shores in keeping with Christian v. State, 550 So. 2d 450 (Fla. 1989).

At trial the Defendant argued he acted out of duress for fear of what Rafsky might do to him or to his family. Wood claimed his fear was real given he had been beaten by Rafsky earlier in the month and that he had been shot in the leg by Rafsky the day before. The facts adduced at trial do not support such a claim. The jury rejected this assertion in their verdict by finding that the Defendant acted with premeditation in the murder. Duress is not a defense to intentional homicide. Henry v. State, 613 So. 2d 429 (Fla. 1992) as quoting Wright v. State, 402 So. 2d 493 (Fla. 3rd DCA 1981). The Defendant is of similar age and size with Dillon Rafsky. The fear of being shot again (if that in fact did happen) is unreasonable given that the gun alleged to have been used by Rafsky was sold prior to arriving at the Shores' property. Additionally video of Defendant immediately after the Shores' murder does not indicate any limp or difficulty walking. The evidence gives rise to a reasonable inference that any gunshot wound suffered by Wood was as a result of the subsequent gunfight between defendants and Alabama State Trooper Marcel Phillips. The bullet fragments remain in Defendant's leg, and have not been removed due to medical necessity. The Court determines that any perceived threat by Wood was not real, imminent or impending at the time of Shores death.

The Court pauses to address the Defendant's ever-evolving statements as to what he claims transpired at the scene. Forensic evidence as presented before the jury indicates neither Defendant nor Rafsky's DNA was found on the splintered handle of the garden hoe, yet the Defendant admits to using the hoe to at one point attempt to dig out the Jeep from the mud. The STP gas treatment bottle cap found does not indicate the presence of Defendant's DNA, yet by Wood's admission he poured something on the victim's body. The Court accepts the expert testimony that DNA results are subject to recoverable samples and environmental factors. As

such, the Court notes while DNA belonging to Rafsky was found on the shotgun, it is likely that there may have been other DNA otherwise not recoverable. The record supports such a conclusion as the victim's DNA was not found on his own shotgun. It is equally plausible that another person could have handled the shotgun on the day of Shores' murder, to include the subsequent high speed chase through lower Alabama. Not only does the Court reject Defendant's self-serving statements minimizing his involvement and placing blame upon Rafsky, the Court also rejects Defendant's claim that he had no knowledge Rafsky was going to shoot Shores, or if Rafsky even did so. The jury clearly rejected such unbelievable claims. The overwhelming evidence does not support the Defendant's version of critical facts.

The circumstances surrounding the continuing series of events leads this Court to apply this aggravator vicariously to both Defendant Wood and Rafsky, as both were engaged in the attempted burning of the live victim and his subsequent death by gunshot. Howell v. State, 707 So. 2d 674 (Fla. 1998).

The record clearly demonstrates the defendant acted without provocation. At no time did the defendant abandon the plan. The Court determines the four part test has been demonstrated by the totality of the circumstances, and proven beyond every reasonable doubt. The aggravating circumstance of CCP is established by competent and substantial evidence. The Court assigns very great weight to this aggravating circumstance.

2. The capital felony was committed while Defendant was engaged, or was an accomplice in the commission of, or an attempt to commit burglary and or robbery.

The jury found beyond a reasonable doubt that the Defendant committed Burglary of a Structure with a Firearm, and Robbery with a Firearm. By special verdict the jury also found that the killing of James William Shores occurred during the commission of the felony burglary and/or robbery. While "mudding" on various dirt roads throughout southern Alabama and North Florida, the Defendant and Rafsky came to the Shores property in rural Washington County, Florida. Seeing the farm house was apparently abandoned, they backed the Jeep Cherokee onto the property away from the dirt road. Defendant and Rafsky did not anticipate that the Jeep would become stuck in a hole where an old pecan tree had been removed. Given the rainy season, the Jeep was stuck down in the mud to its axle and was immovable. Defendant Wood and Rafsky entered the farm house, by Rafsky kicking down the front door. According to Defendant, once inside they began to "plunder" the house, which included discharging a fire extinguisher and taking various items. It was known to Defendant that Rafsky liked to take documents with personal and banking information so that he might use such information to commit identity theft. At the *Spencer* hearing, Defendant also admits to being convicted of an identity theft crime. Other documents found in the back of the Jeep Cherokee gives rise to a reasonable inference that the Defendants were looking for such information. According to Defendant Wood, they were both eating methamphetamine in the secluded location. Evidence

also suggests that both Defendants knew the mail delivery for the day had already occurred given their earlier encounter with the rural delivery mail lady, Jenna Holloman. According to Wood, he would later tear the mailbox from its post out front of the house. It is reasonable he was also looking for personal information therein. Notwithstanding, no unopened mail was found in the area where the mailbox had been affixed. Both forensic evidence and the Defendant's admission place him as being inside the house. While inside Wood claims Rafsky took some "boxes of stuff" from the farm house. Wood admitted to "opening some drawers and maybe took socks" from inside the house. As Wood was barefoot, this claim makes little sense. According to Wood, a checkbook which looked like "an older account" was taken from the house and placed onto the Jeep dashboard. This assertion is contradicted by the victim's brother, Joe Boy Shores, who testified that James Shores was known to keep all of his important papers in his vehicle. The victim's brother also testified that James Shores was also known to keep his firearms in his vehicle, so that they would not be around his grandchildren. The rationale for this testimony was that in rural areas of Northwest Florida house doors are often left unlocked, while vehicle trunks are locked. This Court finds more credible the testimony of Joe Boy Shores.

Wood claims he returned to the Jeep and was primarily responsible for digging it out using various implements including a garden hoe. Rafsky would leave and return to periodically assist. Defendant testified they both remained on the premises for about an hour before the victim unexpectedly arrived and found them at his farm house. It is a reasonable inference that the continuing nature of the burglary would have continued unabated but for the encounter.

Upon encountering the victim, both Wood and Rafsky engaged in a series of acts to immobilize James Shores. During this period both Defendant Wood and Rafsky went into victim's car. Rafsky took a firearm from the trunk, and Wood admits to going into the trunk to place the Alabama tag taken from the Jeep. Wood admits to seeing other operable firearms belonging to the victim in vehicle. At some point Wood secured James Shores' wallet from either the cup holder or Shores' person. The video of the victim's grocery purchases earlier in the day reflects Shores returned his wallet to his pants pocket.

According to the victim's daughter-in-law, Joanna Shores, he was known to carry "a couple hundred dollars cash" on him at all times. The record indicates when the victim's body was found, no cash was found on or about his person. James Shores also was known to have a cell phone, and according to Wood was going to use it to call the Sheriff. No cell phone was recovered at the scene belonging to Shores or anyone else for that matter.

While Shores was still alive, albeit incapacitated, the Defendant Wood and Rafsky got inside the victim's Camry to take it and depart the property. Inside the car was Shores' passport. As they were leaving, Wood asserts Rafsky got back out of the car and shot Shores with the lethal gunshot.

The Defendant later used the victim's credit card to purchase food and drink from the Finn-Way Express convenience store in Daleville, Alabama. Further evidence suggests (and Wood admits) that Wood cashed in the coins from the coin cup in the Camry at a Coin Star machine located in Walmart. The value of coins cashed was \$42.75. At the Walmart, Wood used the victim's Visa credit card to purchase two cell-phones for a total cost of \$382.69. The Defendant subsequently attempted to purchase various items of clothing, music CD's and wallet for a total cost of \$257.47. However, the credit card was denied, and Defendant and Rafsky walked out with the items without paying for the goods.

The State has proven beyond every reasonable doubt the defendant and Rafsky were both engaged in a continuing series of events wherein James Shores was killed during the course of commission of a burglary and/or robbery while armed. The Court finds the existence of this aggravating circumstance and gives it great weight.

3. The capital felony was committed for the purpose of avoiding arrest.

On the morning of April 19, 2014, James William Shores was babysitting his grandchildren at Joanna Shores' home. Around noon, James Shores left their house and went grocery shopping at Doc's Market in Bonifay, Florida. He checked out and paid for his groceries using his debit card at 12:54 p.m. Shores drove his Gold Toyota Camry to his property at 2547 Dauphin Road in Washington County. With groceries still in his vehicle, Shores drove by the family property and farm house located adjacent to his home at 2842 Johnson Road. According to law enforcement the trip would have taken approximately 16 minutes. Upon driving onto his property, Shores encountered the Defendant and Rafsky while they were on his property and inside his farm house. Being a retired law enforcement officer, Shores wrote down the Alabama license tag number "19AH632" from the Jeep Cherokee stuck in the mud beside his farmhouse. Defendant Wood was aware the license tag number had been recorded. Accordingly to Wood, Shores told them they needed to leave his property and that he would call the Sheriff to get them pulled out from the mud hole. No one else was present on the property. There is no record of a phone call to the Sheriff's Office.

According to Defendant Wood, the victim had a subsequent encounter with Rafsky on the back side of the farm house while Wood was still digging out the Jeep. As such, James Shores had an opportunity to see both Wood and Rafsky at the scene.

This Court is mindful that where the victim is not a law enforcement officer, the evidence must be "very strong" to prove that the sole or dominant motive for the killing was to eliminate a witness. Mere speculation cannot support this aggravator. Looney v. State, 803 So. 656 (Fla. 2001).

The circumstantial evidence in this case demonstrates neither Defendant Wood nor Rafsky wore masks or gloves. Wood punched the victim. Shores was brutally attacked by a garden hoe and was bound by Defendant Wood and Rafsky using a chain and a shirt.

Defendants were not prevented from leaving the property as Shores was subdued. Once in a position to offer no resistance or threat, an ignitable liquid was poured on Shores with Wood standing over his body striking matches to set him afire. As the attempt to burn Shores failed, Defendants used the victim's shotgun to inflict a lethal gunshot to his skull.

Defendant Wood admits to removing the license tag from the Jeep and placing it into the trunk of victim's car. Defendant went into the glove compartment of the Jeep after physically touching Shores, probably looking for Wood's misplaced wallet so as to avoid leaving his personal identification. Defendant's wallet was later found by law enforcement in the luggage area after the Jeep was towed to the Washington County Sheriff's Office. Wood later removed the gym shorts he wore at the scene and tossed them out on the highway. Wood's clothing was never recovered.

The Court relies upon the similar facts in Willacy v. State, 696 So. 2d 693 (Fla. 1997), as it finds the existence of this aggravator. As such, this Court finds the circumstantial evidence of defendants' actions leads to an inference that the primary purpose of the killing of James William Shores was to avoid detection and arrest. The Court finds beyond all reasonable doubt that the supporting evidence establishes this aggravating circumstance and gives it great weight.

STATUTORY MITIGATING CIRCUMSTANCES

The Court will address each statutory mitigating circumstance provided by Section 921.141, Florida Statutes, and every non-statutory mitigating as argued by Defendant. The Court notes at trial that Defendant presented mitigating evidence under the "catch-all" provisions of F.S. 921.141 (6)(h).

1. The Defendant has no significant history of criminal activity.

Since 2009, the Defendant has adult convictions for Driving under the Influence, misdemeanor drug possessions and 3 counts of Forgery (for which he is presently on Alabama Youthful Offender probation). Defendant also has a pending Driving While License Suspended charge in Enterprise, Alabama at time of his arrest. This Court determines this mitigating circumstance has not been established by the greater weight of the evidence, and it is entitled to no weight.

2. Defendant under Extreme Duress or Domination by Another.

The Court has previously addressed the duress defense in contrast of the CCP aggravator. However, the Court now considers this argument for statutory mitigation in context of all attendant facts presented in this case.

Defendant and Rafsky were known to have been in a tumultuous relationship since November 2013. Family members testified they saw bruising on Wood. According to Defendant, he met Rafsky through their mutual drug use. The two lived together for a time, and their relationship may have become physically abusive. This period of Wood's life was

characterized by heavy drug use, according to Janay Enfinger, who last saw Defendant in early January 2014.

According to Wood's step-father, Robbie Walker, he had concerns about Rafsky after meeting him at Walker's house in late January/early February 2014. However, Defendant Wood readily admits that in March 2014, without Walker's knowledge, Wood and a female took Walker's van and went to Pensacola because Rafsky had called needing help. Wood drove from just outside Enterprise, Alabama to Pensacola to pick up Rafsky. On the trip back Wood and Rafsky wrecked and totaled the van.

Wood testified that his relationship with Rafsky was abusive and that he was scared of what Rafsky might do to either he or his family. Notwithstanding, Wood voluntarily accompanied Rafsky as they drove in a Jeep Cherokee Thursday, April 17, 2014. According to Kelly Eggleston, a friend of both Wood and Rafsky, Rafsky came to her house on April 15, 2014 asking to borrow her Jeep. While Eggleston said no, Rafsky somehow got her keys and left the Enterprise area. Unbeknownst to Wood or Rafsky, the Jeep was later reported stolen.

According to Wood, he had been staying at an Enterprise hotel, and Rafsky showed up and invited Wood to go riding. Rather than remain, Wood left his hotel room and went with Rafsky for what became a night of drug use while they both drove muddy roads of southern Alabama. At some point Friday night, April 18, 2014, Rafsky got the Jeep stuck in the mud on Steverson Road, near Coffee Springs, Alabama. Both Wood and Rafsky spent the night in the Jeep. Defendants needed the assistance of a stranger who helped them get the Jeep pulled from the mud. Wood made no attempt to leave Rafsky at this point, or to alert the stranger he may be in distress and held against his will.

Instead, Wood and Rafsky continued their methamphetamine use as they drove local muddy roads. Wood claims at some point on April 18, 2014, Rafsky got mad and shot him in his left thigh. However, Wood also testified that sometime thereafter both he and Rafsky went to Rafsky's parents' house around 9:30 a.m., Saturday April 19. No medical attention was given to Wood's injury. They both continued their joy-riding as they travelled southbound. Wood testified they stopped at a couple of stores in Alabama, including a pawn shop where Rafsky sold the gun allegedly used to shoot Wood. Defendants also stopped at a Dollar general store along the way. At no time did Wood notify anyone about his injury, or that he was being held against his will. Wood testified that after Rafsky disposed of the gun, they had no other firearms until coming to the Shores' property.

Wood claims the two stopped around noon in Bonifay, Florida, at the Chevron Food Mart and Fred's Market, both on Hwy. 79. During these two stops Wood made no effort to notify anyone about his injury or his plight. Wood made no effort to leave Rafsky, or to report the gunshot to his leg to law enforcement.

Wood and Rafsky continued southbound on Hwy. 79, turning left onto Johnson Road for more dirt riding. They encountered the U.S. Mail carrier Jenna Holloman, and splashed her vehicle with mud. Wood stopped long enough to apologize to Holloman and to “bum” a cigarette. Defendant took no action to alert Holloman that he was being held against his will. The Court also notes Wood’s testimony that he was wearing gym shorts at the time of the murder. Holloman did not testify about anything unusual or any injury to Wood.

This Court has previously discussed at length the Defendant’s conduct while at the Shores’ property. As such, the Court will focus upon the demeanor of Wood after Shores had been killed.

Around 3:00 p.m., Defendant used the victim’s bank card to purchase pizza, chicken and drinks at the Finn-Way convenience store in Daleville, Alabama. A video of the transaction shows Wood and Rafsky acting casually inside the store. At one point Rafsky exits the store and Wood lingers at the counter chatting with the salesperson while ordering food. Wood makes no effort to alert anyone that he is under duress and being held against his will.

Approximately fifteen (15) minutes later, Defendant and Rafsky enter the Walmart store in Enterprise, Alabama. A video depicts their calm and purposeful actions as they exchange coins from Shores’ vehicle at the Coin Star machine. Another video shows Defendant smiling and casually engaging another customer while Wood stands in line to purchase two cell phones. Rafsky is not seen in the second video. A third video depicts Wood attempting to check out and pay for items using victim’s credit card. Rafsky stands beside Wood, but soon departs as Wood continues to swipe the credit card. The victim’s card is declined, and rather than immediately leave, Wood pauses to speak with a Walmart attendant before exiting on his own. Wood does not alert anyone that he was acting against his will. This Court also considers that Defendant’s claim of repeatedly swiping the credit card was his way of alerting store officials to his plight is not supported by the totality of the circumstances. Additionally, the three videos show Wood walking without a limp or injury.

The record evidence demonstrates that Wood and Rafsky are both in their early 20’s and of similar frame and build, as reported by Jenna Holloman.

Based upon the totality of the circumstances for the 72 hour time frame as discussed, this Court does not find Defendant was under any real, imminent or impending harm from Rafsky. Wood intentionally and recklessly allowed himself to remain in Rafsky’s presence, and took no steps to extricate himself. This Court rejects the Defendant’s claim he was under some sort of “Svengali” influence exerted by Rafsky. On the contrary, after the murder Wood controlled the victim’s valuables. It is equally likely Wood had far greater participation in Shores’ actual demise. This mitigation has not been proven by the preponderance of the evidence, and thus the Court assigns to it no weight.

3. Age of Defendant.

Defendant was 23 years old at the time of his arrest. There is no evidence that Wood suffers from any emotional immaturity or mental problems. Wood appears to be in good health. Defendant appears to have been a good high school student with sufficient intellectual ability to be accepted into college at Auburn University/Montgomery. Defendant also had the capacity and ability to become employed, serving in a leadership role. This Court finds Defendant to be of sufficient maturity so that this mitigating factor is not established. Caballero v. State, 851 So.2d 655 (Fla. 2003).

4. The Defendant is capable of employment and contribution to workforce

Defendant was employed at Sonic Drive- In restaurant, Enterprise, Alabama. Defendant rose to level of Crew leader and is eligible for re-hire. Co-worker, Janay Enfinger describes Defendant as a good worker and friend. Likewise, while Defendant was in high school, he was known to have assisted retired Judicial Assistant, Pat Lindsey, as she sorted various traffic tickets for Geneva County, Alabama. According to Ms. Lindsey, Wood was a good worker and pleasant. According to Defendant, he also worked for brief time with Sears. The totality of the evidence presented convinces the Court of the existence of this mitigating factor. The Court gives this mitigation little weight.

5. Defendant's family background and abusive childhood.

Defendant was raised by his birth mother, Sherry Wood, and step-father, Robbie Walker. During defendant's childhood he witnessed physical abuse by his step-father towards his mother. Defendant's mother died of cancer when he was eight (8) years old. Defendant's sister, Heather Griffin, assumed the maternal role of raising defendant. Additionally, family members report defendant was physically and mentally abused by his step-father. At some point, Heather Griffin moved defendant away from their step-father. During Ms. Griffin's first marriage, defendant also witnessed physical abuse between her and her ex-husband.

According to defendant's remarks in the pre-sentence investigation, he attempted a relationship with his birth father at the age of 16. That relationship was discontinued when defendant was 20. Jeffrey Wood, a second grade teacher in Montgomery, invited defendant to live with his family while attending college. Jeffrey Wood knew defendant to be a loving and sensitive child. However, the living arrangements became untenable due to defendant's drug use, and the living arrangement was discontinued. Subsequently, defendant lived with friends, on his own, and again with his step-father Robbie Walker.

Defendant reports that in 2012 he was admitted into Crenshaw Community Hospital suffering from depression and anxiety, and was "placed on suicidal and homicidal precautions". No other evidence was presented on this limited issue.

This Court has considered and finds the defendant's disruptive and abusive childhood is a mitigating factor proven by a preponderance of the evidence. This Court assigns some weight to this factor.

6. The Defendant's drug and alcohol abuse.

Family, friends and by Wood's admission all demonstrate defendant's extensive drug use. According to defendant, methamphetamine and pain pills were his drug of choice. He reported that methamphetamine made him feel significant energy and no pain. Defendant also abused alcohol and other prescription drugs. Wood testified that using "meth" would make him feel like he could do things he normally would not do. However, according to one of defendant's friends, Wood appeared to be the same person sober as when he was high.

Defendant's brother, Matthew Walker, testified drug abuse had always been in a factor in their family. Defendant's sister, Heather Griffin, admitted to not realizing just how badly Defendant was abusing drugs. Relative Jeffery Wood testified that he and his family welcomed defendant into their home to assist with his college participation. Their expectations were very high for Defendant. Defendant later left their residence after dropping out of college. Kersha Kinman, a friend of defendant since middle school, testified that she saw Wood about a "month or two" before his arrest. According to Kinman, defendant told her he was trying to get clean.

Notwithstanding, defendant's drug abuse was evident on the date of Shores' murder. Both he and Rafsky were eating methamphetamine just before they were discovered by James Shores. There is no evidence to suggest Wood's continued drug abuse lessens his moral culpability. On the contrary it appears to have emboldened him. Defendant does not claim his drug use made him participate in the murder. Likewise, there is no evidence defendant's past drug and alcohol abuse caused any mental deficiencies tending to mitigate his role in the murder. This mitigating factor has not been proven, and the Court assigns no weight thereto.

NON-STATUTORY MITIGATING CIRCUMSTANCES

Record evidence suggests the Court consider the existence of several non-statutory mitigating circumstances. The Court will address each one identified by the record.

1. The Defendant had good jail conduct pending and during trial.

According to Captain Karla Brock, Jail Administrator Washington County Sheriff's Office, but for the recent tattoo Defendant received, he has presented no disciplinary problems while incarcerated. The Court finds this mitigating circumstance has been established by the greater weight of the evidence. The Court assigns to this mitigation very little weight.

2. The Defendant's remorse.

Defendant testified at the *Spencer* hearing that "there was no reason to kill Shores". However, the Court noted at the same hearing that Defendant presented himself with a new tattoo of a teardrop beneath his left eye. When questioned whether he knew that such a tattoo is gang related with a meaning someone had been killed, he responded that he did not know that. Wood claims that the tattoo was in memory of a family member. The Court also considers the previously ordered Pre-Sentence Investigation wherein Defendant attached a 4 page hand written letter to the Court. Wood expresses that "April 19 2014 was the worst thing I have ever experienced." While the letter continues to justify Wood's defense at trial, he goes on to state, "yet again I feel as if it was my fault", and that he is "sorry for what happened". Defendant has testified that he "wants the death penalty", but that statement is more to do with what he perceives may happen in prison rather than true remorse for his actions. This mitigating circumstance has not been established.

3. Defendant's education.

Defendant graduated from Geneva High School in 2009. He went on to attend two semesters in the Criminal Justice Program, Auburn University at Montgomery in 2010. According to family member, Jeffrey Wood, Defendant dropped out of college due in large part to his drug and alcohol abuse. The Court considers the accomplishment of a high school degree and admission to college as mitigation that has been proven by the greater weight of the evidence. The Court assigns this mitigation factor little weight.

4. Defendant has support from loving siblings and friends.

There is record evidence establishing the Defendant has the capacity to form loving relationships with his siblings and other friends. Wood has support from both his sister and brother, other relatives, and secondary school friends. Based upon the totality of circumstances in this case the Court determines that this mitigating circumstance has been proven, and is afforded little weight.

5. Defendant's cooperation with law enforcement.

After the defendant's arrest, twenty two hours post-murder, defendant gave a voluntary taped statement to law enforcement. According to Alabama agent Tim Rogers, defendant had a gunshot wound and was on morphine at time of his statement. During his interview with law enforcement officials, defendant admitted to being present on the Shores' property, entering the farmhouse after Rafsky kicked in the door, and to assisting Rafsky in tying up James Shores. Defendant also told law enforcement about where both he and Rafsky went after the murder. As a result, law enforcement was able to further their investigation.

However, the defendant and Rafsky were arrested after a high speed chase and subsequent shoot-out. Defendant had been found inside a vehicle not belonging to either Wood or Rafsky, and registered to the victim. Had Alabama Agent Tim Rogers not called Washington County Sheriff's Office requesting a welfare check, the victim's body and crime scene would

have remained undetected for additional time. It was in fact the actions of law enforcement, not defendant that initiated the murder investigation in Washington County.

Throughout the entire criminal investigation and trial process, defendant has sought to minimize his involvement during critical events, by placing all culpability upon Rafsky. And at each opportunity, Wood's testimony has molded his testimony to match the narrative he wished to place before the jury. The jury rejected the defendant's version of his participation. And Wood himself acknowledges he "may have left a couple things out of his initial statement". This Court takes the defendant at his word when he tells the Court, "I have the ability to put on a good front".

Record evidence does indicate the defendant's statement assisted law enforcement in developing more context to the already discovered homicide crime scene. Defendant's statement also assisted law enforcement in confirming his path of flight. Based upon the totality of circumstances, this Court considers that this mitigation is proven, and as such assigns it little weight.

PROPORTIONALITY REVIEW

The most logical interpretation is that the defendant and Rafsky with calculated plan and heightened premeditation murdered James William Shores. Both Defendant and Rafsky acted in reckless disregard during the course of a burglary and robbery. Defendants became armed and ultimately killed Shores by a single gunshot to his head. The victim was struck, chained and bound. The defendants repeatedly beat the victim with a garden hoe. The defendant applied ignitable fluid over the victim's body in an attempt to burn it. Upon failing, Defendants shot and killed the victim. The defendants' purpose in committing this murder was to eliminate any witness and to avoid detection and arrest. Defendant fled Florida and, but for an alert Alabama State Trooper, would not have been immediately detected. Nothing about defendant's limited cooperation with law enforcement or family background suggests that the ultimate sentence for such conduct is disproportionate. The death penalty is reserved for the most aggravated and least mitigated capital felonies. A review of other reported capital decisions leads the Court to the conclusion that the death penalty in this matter is not disproportionate.

CONCLUSION

The Court finds the State has established beyond all reasonable doubt the existence of three statutory aggravating circumstances. A total of three aggravating circumstances exist.

The Court is reasonably convinced of the existence of two statutory mitigating circumstances.

The Court is reasonably convinced of the existence of four non-statutory mitigating circumstances.

In weighing aggravating and mitigating factors this Court employs a qualitative analysis as to the nature of each circumstance which has been established. I find the aggravating circumstances in this case far outweigh the mitigating circumstances.

SENTENCE

As to Count I of the Indictment, for the murder of James William Shores, the Court sentences you to be put to death in the manner prescribed by law.

As to Count II of the Indictment, for Burglary of a Structure with a Firearm, the Court sentences you to serve a term of 100 years imprisonment to be served in the Florida Department of Corrections.

As to Count III of the Indictment, for Robbery with a Firearm, the Court sentences you to serve a term of 100 years imprisonment to be served in the Florida Department of Corrections.

These sentences shall run concurrent to each other.

The Clerk is directed to assess the costs and enter judgment for those costs.

The Defendant is entitled to 376 days credit for time served.

You are hereby notified that this sentence is subject to automatic review by the Florida Supreme Court, and the Public Defender is appointed to represent you on appeal.

The Defendant shall be remanded to the Florida Department of Corrections for execution of this sentence.

MAY GOD HAVE MERCY ON YOUR SOUL.

DONE AND ORDERED, in open Court at Chipley, Washington County, Florida this 12th day of May, 2015.



CHRISTOPHER N. PATTERSON
Circuit Judge

Copies to:

Glenn Hess, Esq., State Attorney, Fourteenth Judicial Circuit

Larry Basford, Esq., and Shalla Jefcoat, Esq., Assistant State Attorneys

Walter Smith, Esq., Attorney for Defendant