

IN THE SUPREME COURT OF FLORIDA

BARRY TRYNELL DAVIS, JR., :

Appellant, :

v. :

Case No.: **SC15-1794**

STATE OF FLORIDA, :

Appellee. :

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APPENDIX TO
INITIAL BRIEF OF APPELLANT

Sentencing Order

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

2015 AUG 25 P 2:57

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO. 2013-CF-000124

BARRY TRYNELL DAVIS JR.,

Defendant.

SENTENCING ORDER

On May 18, 2015, the defendant, Barry Trynell Davis Jr., was found guilty by a Walton County Jury as charged in the superseding indictment of Count 1 first degree premeditated or felony murder of John Gregory Hughes and Count 2 first degree premeditated or felony murder of Hiedi Rhodes. The jury also found the defendant guilty as charged of Counts 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, and 15.¹

On May 22, 2015, by a vote of 9 to 3, the jury rendered an advisory sentence and recommendation that the defendant be sentenced to death for the murder of John Gregory Hughes. By a vote of 10 to 2, the jury rendered an advisory sentence and recommendation that the defendant be sentenced to death for the murder of Hiedi Rhodes. A Spencer² hearing was conducted on July 15, 2015, at which the Defendant presented additional evidence and argument. The defendant did not testify at the Spencer hearing. The state elected not to present additional evidence pertaining to aggravating circumstances. At the end of the hearing, the Court requested

¹ Count 8 was nolle prossed by the state.

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

that both the state and the defense prepare and submit a sentencing memorandum by August 5, 2015.

Having heard and considered the evidence presented at the guilt-phase and penalty-phase proceedings, the Spencer hearing, argument of counsel, the sentencing memoranda provided by the state and defense, and having considered the applicable statutory authority and case law, the Court finds as follows:

AGGRAVATING CIRCUMSTANCES AS TO JOHN GREGORY HUGHES

1) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

The defendant was convicted of murdering John Gregory Hughes and Hiedi Rhodes, and these contemporaneous convictions may be used to establish this aggravating circumstance. The Court finds that this aggravating circumstance is proven beyond a reasonable doubt and gives it great weight.

2) The capital felony was committed for pecuniary gain.

In the months and weeks prior to the murders, the defendant made statements to Tiffani Steward about kidnapping John Gregory Hughes and holding him for ransom. The defendant's finances were in poor condition, and about two weeks prior to the murders, the defendant's electrical power had been turned off for lack of payment, and his bank accounts were depleted. On May 7, 2012, he and Tiffani Steward drove to John Gregory Hughes's home. The defendant had told Tiffani Steward that he had to "get" John Gregory Hughes or "whack him off." The defendant attacked John Gregory Hughes in his home and rendered him unconscious, bloodied, and lying on the floor of the master bedroom. The defendant placed John Gregory Hughes and Hiedi Rhodes head-first into a bathtub, submerging their heads under the water to drown them.

The night of the murders, the defendant took John Gregory Hughes's Cadillac Escalade. The defendant also took and used John Gregory Hughes's checkbook and debit card. Notably, on May 8, 2012, the day after the murders, the defendant paid \$383.72 in cash to reconnect his electrical service. Then, during a span of approximately a week and a half, the defendant looted John Gregory Hughes's bank accounts and stole nearly every piece of property from his home. Multiple witnesses testified at trial that the defendant made statements that he killed two people for his family.

The Court finds that this aggravating circumstance is proven beyond a reasonable doubt and gives it great weight.

3) The capital felony was committed while the defendant was engaged in the commission of or an attempt to commit robbery and/or burglary.

The defendant's reason for killing John Gregory Hughes was to take his money and property. Defendant's statements and his financial desperation show that the taking of John Gregory Hughes's property was not an afterthought, but rather, that the defendant purposed to rob John Gregory Hughes and killed him for that reason. Further, the murder was committed while the defendant was committing burglary. Any consent for the defendant to be in John Gregory Hughes's home was implicitly withdrawn when the defendant attacked him.

The Court finds this aggravating circumstance is proven beyond a reasonable doubt. However, because financial gain was the underlying intent for the robbery and burglary, the "robbery," "burglary," and "pecuniary gain" aggravating circumstances merge together. Consequently, the Court treats these circumstances as a single aggravating circumstance and attributes no additional weight.

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

There was no moral or legal justification for the killing of John Gregory Hughes. The defendant needed money, and he knew that John Gregory Hughes had money and valuable possessions. The defendant also knew that John Gregory Hughes was of slight build and had a physical handicap in one hand. The defendant told Tiffani Steward that he had to “get” John Gregory Hughes and “whack him off,” and the defendant’s actions show that he carried out that intent. After the defendant attacked John Gregory Hughes and rendered him unconscious, the defendant could have fled, but he instead remained at the scene waiting for Tiffani Steward and Hiedi Rhodes to return. John Gregory Hughes was still alive at this point, as indicated by a “snoring” sound later observed by Tiffani Steward. When the defendant attacked Hiedi Rhodes he told Tiffani Steward to leave the room so he could “think.” After the defendant incapacitated Hiedi Rhodes, he told Tiffani Steward to bring him his backpack. The defendant retrieved duct tape from the backpack, bound the victims with the tape, coldly placed both victims in the bathtub, and submerged their heads underwater to ensure their deaths.

The Court finds that this aggravating circumstance is proven beyond a reasonable doubt and gives it great weight.

AGGRAVATING CIRCUMSTANCES AS TO HIEDI RHODES

1) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

The defendant was convicted of murdering John Gregory Hughes and Hiedi Rhodes, and these contemporaneous convictions may be used to establish this aggravating circumstance. The Court finds that this aggravating circumstance is proven beyond a reasonable doubt and gives it great weight.

2) The capital felony was committed while the defendant was engaged in the commission of or an attempt to commit robbery and/or burglary.

The defendant had not yet completed the taking of John Gregory Hughes's property when he attacked Hiedi Rhodes when she entered the home. Consequently, the defendant was engaged in the commission of robbery when he attacked and killed Hiedi Rhodes.

Any consent for the defendant to be in John Gregory Hughes's home was implicitly withdrawn when the defendant attacked John Gregory Hughes. Consequently, the defendant was committing burglary at the time he remained in the home and killed Hiedi Rhodes.

This aggravating circumstance is proven beyond a reasonable doubt and given great weight.

3) The capital felony was committed for pecuniary gain.

Although the defendant's predominant purpose for killing Hiedi Rhodes was to eliminate her as a witness to the crimes he committed against John Gregory Hughes, the defendant murdered her, in part, to facilitate his taking of John Gregory Hughes's property. Hiedi Rhodes's murder became an essential step in the defendant's plan to resolve his financial problems by stealing John Gregory Hughes's property.

This aggravating circumstance is proven beyond a reasonable doubt, but because the underlying intent for the robbery and burglary was also financial gain, the "robbery," "burglary," and "pecuniary gain" aggravating circumstances merge together. Consequently, the Court treats these circumstances as a single aggravating circumstance and attributes no additional weight.

4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

The defendant, after having incapacitated John Gregory Hughes, communicated with Tiffani Steward via cell phone while she was away from the home with Hiedi Rhodes, and he requested Tiffani Steward to return. There was no evidence that the defendant had made

statements of intent to take property from Hiedi Rhodes or that she had any property of significant value. Hiedi Rhodes would have been able to identify the defendant, and indeed, she called out his name when he attacked her. There is no evidence that Hiedi Rhodes posed any physical threat to the defendant or provoked his attack. The defendant's primary purpose for murdering Hiedi Rhodes was to avoid or prevent arrest for the crimes he committed, and was in the process of committing, against John Gregory Hughes. Accordingly, the Court finds that this aggravating circumstance is proven beyond a reasonable doubt, and the Court gives it great weight.

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

There was no moral or legal justification for the killing of Hiedi Rhodes. After the defendant attacked John Gregory Hughes and rendered him unconscious, the defendant communicated with Tiffani Steward on her cell phone, urging her to return to John Gregory Hughes's home. Though the defendant could have fled, he chose to remain at the scene, waiting for Tiffani Steward and Hiedi Rhodes to return. The defendant immediately attacked Hiedi Rhodes when she entered the home. During the attack, the defendant told Tiffani Steward to leave the room so he could "think." After the defendant incapacitated Hiedi Rhodes and dragged her to the master bedroom and bathroom area, he told Tiffani Steward to bring him his backpack, from which he retrieved duct tape. The defendant bound Heidi Rhodes with the tape and placed her in the bathtub (along with John Gregory Hughes), coldly submerging her head underwater to ensure her death.

The Court finds that this aggravating circumstance is proven beyond a reasonable doubt and gives it great weight.

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

When Hiedi Rhodes entered the home, the defendant immediately attacked her by pushing her against the wall, hitting her, and strangling her. Hiedi Rhodes cried out during the attack, calling the defendant by name and asking him what was wrong. Tiffani Steward began screaming, and the defendant told her to “shut up” or she would be “next.” Hiedi Rhodes experienced horrific terror as the defendant ruthlessly and mercilessly continued his attack. The defendant continued to choke the life out of Hiedi Rhodes, despite her desperate pleas to him, and she became aware of her impending death. After strangling Hiedi Rhodes, the defendant dragged her to the bathroom, bound her with duct tape, and submerged her in the bathtub to ensure her death. The Court finds that this aggravating circumstance is proven beyond a reasonable doubt and gives it great weight.

MITIGATING CIRCUMSTANCES

During the jury proceedings and the Spencer hearing, the defendant presented evidence in support of alleged statutory and non-statutory mitigating circumstances. At the Spencer hearing, the defendant expressly waived the statutory mitigating circumstance of “no significant history of prior criminal activity.”

STATUTORY MITIGATING CIRCUMSTANCES

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

Dr. Julie Harper testified that the defendant suffers from a mild neurocognitive disorder and a major depressive disorder that would have been present at the time of the murders. Dr. Harper testified that the defendant was not under an extreme emotional disturbance at the time of the murders, but that he was under an extreme mental disturbance as a result of his mild

neurocognitive disorder. Dr. Joseph Wu testified that defendant's PET scan showed that the defendant has traumatic brain injury.

The state introduced the testimony of Dr. Greg Prichard, who testified that he would not diagnose the defendant with having a mild neurocognitive impairment. Dr. Prichard testified that the defendant does not suffer from any major mental illness, and that he did not observe any relevant symptoms during his evaluation of the defendant and review of the defendant's history. Dr. Prichard testified that a mild neurocognitive disorder in combination with borderline intellectual functioning in perceptual reasoning would not amount to extreme emotional disturbance. Dr. Prichard opined that the defendant has a mixed personality disorder involving antisocial and narcissistic characteristics. Dr. Prichard testified that the defendant was not suffering from an extreme mental or emotional disturbance at the time of the murders, but rather, the defendant committed the murders out of a conscious choice to get what he wanted.

The Court finds that although the evidence shows that defendant's PET scan indicates abnormalities, Dr. Prichard's testimony is supported by the evidence introduced regarding the circumstances before, during, and after the murders. The evidence shows that the defendant did not commit the murders due to an extreme mental or emotional disturbance, but rather, the murders were based on the defendant's self-interest regarding his financial problems.

Accordingly, the Court finds that this statutory mitigating circumstance is not established.

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

Defense expert Dr. Harper testified that the quality of the defendant's decision-making is poor due to a mild neurocognitive disorder. Dr. Harper testified that the defendant has difficulty in conforming his behavior to the requirements of the law, but he does *not* show substantial impairment in conforming his conduct to the requirements of the law. Defense expert Dr.

Geoffrey Colino testified that the defendant could understand what is or is not a crime, but due to a frontal lobe abnormality in his brain, the defendant was substantially impaired in conforming his conduct to the requirements of the law. Dr. Wu testified that the defendant's capacity to conform his conduct to the requirements of law was substantially impaired.

Dr. Prichard testified that the efforts the defendant made in attempting to cover up the crimes show that he appreciated the criminality of his conduct. As to the defendant's ability to conform his conduct to the requirements of the law, Dr. Prichard testified that the crimes were a "conscious decision."

The defendant clearly could appreciate the criminality of his conduct, as shown by the evidence introduced at trial concerning, but not limited to, the lies he told investigators and other efforts to conceal the evidence of the crimes, including destruction and disposal of the bodies. The defendant's ability to conform his conduct to the requirements of law was not substantially impaired, as evidenced by the defendant's own legislative research concerning his business of selling chemicals. Accordingly, the Court finds that this mitigating circumstance is not established.

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

The defendant was twenty-six (26) at the time of the murders. The defendant's combined IQ score of eighty-seven (87) indicates he is in the low-average range of intellectual ability. At the time of the murders, the defendant was able to live on his own as an adult and complete business and banking transactions, showing that he had the mental and emotional maturity of an adult. At the time of the murders, the defendant was a capable, self-sufficient adult who had the necessary maturity to formulate and complete goals. For example, the defendant hired

individuals to help him take and deplete Mr. Hughes's assets, and the defendant oversaw that process. Accordingly, the Court finds that this mitigating circumstance is not established.

NON-STATUTORY MITIGATING CIRCUMSTANCES

1) The defendant lived for the first 8-10 years in the most violent neighborhood in L.A.

Testimony was presented that until the defendant was approximately nine years of age, he lived in an area of Los Angeles (L.A.) named "The Jungle." Testimony indicated that murders and gang violence were common in this area of L.A. This non-statutory mitigating circumstance is established and given little weight.

2) The defendant lived in L.A. during the Rodney King riots.

Testimony was introduced indicating that the defendant, after having left L.A. and living with his father for a period of time, went back to visit his mother in L.A. during the time of the Rodney King riots. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

3) The defendant remembers seeing blood, chalk lines, and other evidence of homicides on his way to school in L.A.

Testimony was introduced that as a child in L.A., when on his way to school, the defendant saw blood stains on the sidewalk, and tape or chalk lines. Further testimony indicated that, as a child in L.A., the defendant saw people shooting guns in alleys and bullet shells on the ground. This non-statutory mitigating circumstance is established and given little weight.

4) The defendant's mother was detached and unaffectionate and had very limited contact with him after he moved to Florida to live with his father.

The defendant's mother testified that she maintained a relationship by telephone with the defendant once he was living on his own. However, testimony indicated that the defendant's

mother has not seen or visited him since he was 14 years of age. This non-statutory mitigating circumstance is established and given little weight.

5) The defendant could not read and write at grade level until approximately ten years of age.

Testimony indicated that when the defendant moved to Florida at approximately age nine, his reading ability was below grade level. The defendant's stepmother, Debbie Davis, testified that the defendant was then homeschooled for two years to bring his performance up to the proper grade level. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

6) The defendant's father moved to Florida when he was approximately six years of age and the defendant did not see him until several years later.

Testimony indicates that the defendant's father moved to Panama City, Florida, when the defendant was about six years of age. Further, the testimony indicates that the defendant did not see his father until the defendant moved to Florida when he was about nine years of age. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

7) The defendant has a close bond with his siblings.

The defendant's mother testified that the defendant had a close relationship with his older sister, though the defendant and his sister have not seen each other since he was age 14. Kiana Davis testified that she is the defendant's older sister (by six years) and that she has been in contact with the defendant over the years. Her testimony indicates that she will continue to have contact with the defendant. Further, the defendant's father testified that the defendant had a good relationship with his half-brother. This non-statutory mitigating circumstance is established and is given little weight.

8) The defendant was sent to visit his father in Florida around the age of nine and he did not return to L.A., as expected at the end of the summer.

The defendant's mother testified that when he was nine years old, she sent him to visit his father in Florida. Testimony indicated that at some point, a decision was made that the defendant would stay with his father in Florida. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

9) The defendant exhibited good courtroom behavior during trial.

This non-statutory mitigating circumstance is established but given no weight.

10) The defendant is haunted by poor impulse control.

The evidence does not establish that the defendant is "haunted" by poor impulse control. This non-statutory mitigating circumstance is not established.

11) The defendant is capable of strong, loving relationships.

Testimony was presented that the defendant has maintained relationships with family members and others. For example, Takylah Glenn testified that she "looked up" to the defendant and that her relationship to him was "like my brother." This non-statutory mitigating circumstance is established and is given little weight.

12) The defendant has a special bond with his son.

The evidence shows that the defendant cared for and provided for his son. No evidence was presented that shows the defendant did not have a "special bond" with his son. Accordingly, this non-statutory mitigating circumstance is established and is given moderate weight.

13) The defendant had to be homeschooled for two years to catch up academically.

This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

14) The defendant has a family who loves him very much.

This non-statutory mitigating circumstance is established and given moderate weight.

15) The defendant has a history of traumatic brain injury.

The defendant's father testified that in approximately the fourth grade, the defendant began playing tackle football and continued to play through high school. The defendant's father testified that during a game, the defendant took a "real hard hit to the head," but that he appeared to be fine. The defendant's father testified that he normally attended the games and was only aware of the one head injury to the defendant from playing football. The defendant's mental health experts opined that the defendant suffers from brain abnormality due to head injuries. Dr. Harper testified that the neurological test results support a finding that the defendant had multiple head injuries. Dr. Colino testified that the defendant has abnormality in the frontal lobe of his brain, which indicates that there has been head trauma. Dr. Wu testified that the defendant's PET scan showed decreased frontal metabolism, and that the PET scan results were consistent with a person having had multiple concussions. This non-statutory mitigating circumstance is established and given moderate weight.

16) The defendant first encountered racism in Pop Warner football when a teammate called him the "n" word and was not punished.

Testimony was presented that during a football practice, the defendant tackled someone, and that person called the defendant the "n" word. The defendant's father testified that the coach made that person run one lap. However, there is no evidence suggesting that race had anything to do with the murders in this case. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

17) The defendant was skilled in sports, including track and football.

The defendant's father testified that the defendant played football and was "real good" in

track. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

18) The defendant suffers from anxiety.

Dr. Colino testified that the defendant stutters at times, which indicates that the defendant experiences anxiety. Dr. Harper opined that the defendant has a generalized anxiety disorder. Dr. Prichard testified, however, that the defendant does *not* suffer from generalized anxiety disorder. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

19) The defendant was helpful to an elderly neighbor, Vera Hudson.

This non-statutory mitigating circumstance is established and given little weight.

20) The defendant saved an elderly man from drowning.

Testimony showed that when the defendant was about at the age to begin high school, the Bay County Sheriff's Office presented him with a "Do the Right Thing" award for having saved a man who was drowning. The defendant's father testified that the defendant received a \$500 scholarship with the award and that the defendant maintained a relationship with the man he had rescued. This non-statutory mitigating circumstance is established and given substantial weight.

21) The defendant felt abandoned by his mother after he moved to Florida.

The testimony presented indicates that the defendant had little contact with his mother after he moved to Florida. Although it is not clear whether defendant "felt abandoned" by his mother, it is reasonable to conclude from the circumstances that the defendant may indeed have experienced a feeling of abandonment. To the extent that the Court has not already considered this non-statutory mitigating circumstance, it is established and given little weight.

22) The defendant felt abandoned by his dad and stepmother when they became estranged after his arrest in Panama City.

Testimony was presented that when the defendant was 17 years old, he was arrested as a suspect in an attempted murder. Dr. Harper testified that though the defendant was not convicted of that crime, as a result of the process and community response, the defendant's family could not lead a normal life and the defendant moved away to avoid the media. Dr. Harper testified that the family never functioned as a whole family again due to those circumstances, and the defendant was hurt because the family had to "pull back." Dr. Harper testified that the defendant no longer had the "warm and loving environment" that he had experienced prior to his arrest.

This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

23) The defendant assisted John Gregory Hughes in prison when other inmates were planning to attack him.

Dr. Harper testified that the defendant self-reported to her that while incarcerated in Florida at Apalachee Correctional Institution, he assisted John Gregory Hughes, who was also incarcerated there at that time, when a group of armed inmates attacked him. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

24) The defendant has a history of illegal drug use.

Testimony was presented that establishes that the defendant has a history of illegal drug use. However, testimony was also presented that the defendant was not under the influence of drugs at the time of the murders. This non-statutory mitigating circumstance is established and given little weight.

25) The defendant was a victim of a stabbing and robberies during his early drug dealing years when he was first estranged from his family.

Dr. Harper testified that the defendant reported to her that when he began selling drugs he was stabbed or “pricked” with a knife and robbed. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

26) The defendant suffered emotional distress due to his relationship with Tiffani Steward in the weeks preceding the murders.

Testimony indicates that the defendant’s relationship with Tiffani Steward was not ideal, at least in part, due to the defendant’s poor financial situation in the weeks preceding the murders. Although this circumstance is established, the Court finds that it does not support a finding that the defendant suffered extreme emotional distress. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

27) The defendant was 26 at the time of the offense.

The Court has considered the defendant’s age at the time of the offense, and as previously stated, the Court does not find that it rises to the level of a statutory mitigating circumstance. The Court has also considered the defendant’s age at the time of the offense as a non-statutory mitigating circumstance and cannot find that it is established.

28) The defendant has memory deficits as a result of the traumatic brain injury.

Dr. Harper testified that the defendant has trouble holding more than three items in his memory and that he exhibited problems with storing visual images in his mind. This non-statutory mitigating circumstance is established and given little weight.

29) The defendant has a tic disorder.

Dr. Colino testified that the defendant exhibited an “intense gaze” and “blinking” that would be “suggestive of a tic disorder.” This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

30) The defendant suffers from executive dysfunction.

Dr. Harper testified that the defendant has some level of executive dysfunction. As already addressed above, Dr. Harper testified that the defendant has some problems with memory. Dr. Harper testified that the defendant would have to make “bizarrely detailed lists” in order to accomplish tasks for the next day such as getting dressed. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

31) The defendant often stutters and has faced ridicule for this.

Dr. Colino testified that the defendant stuttered from time to time, but otherwise his speech was clear and fluent. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

32) The defendant suffered untreated concussions from sports.

The defendant’s stepmother testified that the defendant was hit hard while playing football, but that she was unaware of him ever being knocked unconscious. Likewise, the defendant’s father testified that on one occasion while playing football, the defendant was hit “real hard” in the head, but he appeared to be “fine” afterwards. Dr. Colino testified that the defendant reported being knocked out while boxing. However, the defendant’s father testified that he was unaware that the defendant had ever been knocked out from boxing. This non-statutory mitigating circumstance is not established.

33) The defendant's parents had a dysfunctional relationship.

The defendant's father testified that he and the defendant's mother were an "item" for a time. Testimony was presented indicating that the defendant's father and mother were unmarried and that the defendant's father moved out of the home when the defendant was approximately age three. As to the time that the defendant lived with his father and stepmother, testimony indicated that the family relationship was loving and functional. Testimony indicated that the family did not suffer from poverty, that they took family vacations, and there were no instances of domestic violence. Accordingly, the Court finds that this non-statutory mitigating circumstance is established only to the extent that the defendant's biological mother and father separated when he was young. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

34) The defendant suffered the loss of his paternal grandfather at a young age.

Testimony indicated that the defendant's grandfather died due to being a victim of a carjacking when the defendant was approximately age four or five. This non-statutory mitigating circumstance is established and given little weight.

35) The defendant was a good father to his son.

The defendant's son was approximately four months old at the time the defendant murdered the victims. The evidence indicates that the defendant did provide shelter, care, and support for his son through the money and property taken from John Gregory Hughes. This non-statutory mitigating circumstance is established and given moderate weight.

36) The defendant received his GED.

Dr. Harper testified that the defendant reported that he obtained a GED. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

37) The defendant suffered the loss of a family friend at a young age.

Testimony indicated that a family friend, who would bring the defendant candy from time to time when he was a child in L.A., was killed by gunfire. This non-statutory mitigating circumstance is established and given little weight.

38) The defendant suffers from borderline intellectual functioning in the area of perceptual reasoning and a specific learning disorder with impairment in reading.

Dr. Harper testified that the defendant suffers from borderline intellectual functioning in the visual spatial area and that the defendant has impairment in reading. Dr. Harper testified, however, that the defendant's reading comprehension was average and that his reading performance was low-average. Dr. Prichard testified that the defendant does have some impairment in reading, particularly in reading speed. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

39) The defendant has been diagnosed with mild neurocognitive disorder due to traumatic brain injury, major depressive disorder, generalized anxiety disorder, obsessive compulsive disorder, and post traumatic stress disorder.

Dr. Harper diagnosed the defendant with a mild neurocognitive disorder due to traumatic brain injury and that the defendant suffers from depression. Dr. Harper testified that the defendant meets the criteria for having a generalized anxiety disorder, and that the defendant has obsessive compulsive disorder. Dr. Harper testified that the defendant exhibits symptoms of post traumatic stress disorder (PTSD); however, Dr. Harper testified that because the defendant does

not state that he is suffering from distress, a diagnosis of post traumatic stress disorder cannot be made.

Dr. Prichard's testimony, combined with the facts and circumstances of this case, refutes Dr. Harper's testimony. Dr. Prichard testified that he would not diagnose the defendant with a mild neurocognitive impairment, and the defendant's history does not show that he suffers from generalized anxiety disorder. Dr. Prichard testified that although the defendant's list-making activities could be an element of obsessive compulsive behavior, it does not rise to the level of diagnosing the defendant with a major mental illness. Dr. Prichard testified that the defendant does not exhibit the symptoms of having a major depressive disorder. As previously stated, Dr. Prichard testified that the defendant does have a personality disorder involving antisocial and narcissistic characteristics.

To the extent that Dr. Harper diagnosed the defendant with certain diagnoses, and to the extent that the Court may not have already considered these diagnoses in the preceding section regarding statutory mitigating circumstances, this non-statutory mitigating circumstance is established and given moderate weight.

40) The defendant provided financial and other assistance to Donna Gee and her daughter, Takylah Glenn, and other individuals in need of assistance.

Evidence was presented that the defendant periodically employed Donna Gee in his apartment cleaning business. Evidence was presented that at times the defendant provided Donna Gee and Takylah Glenn with support or gifts. However, at least some of the gifts and support given were from the property stolen from John Gregory Hughes as well as a dog, Molly, that belonged to Hiedi Rhodes. This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

41) Tiffani Steward and others involved in the removal of the victim's property received disparate treatment. None of them faced any criminal charges even though every one of them committed perjury during the course of the investigation, as their statements to law enforcement were made under oath.

This non-statutory mitigating circumstance is not established.

42) The defendant suffered the loss of an elderly gentlemen who he would see in a park when he was a child.

This non-statutory mitigating circumstance is established, but it is not mitigating in this case, and therefore it is given no weight.

43) The defendant was previously incarcerated in prison and exposed to shocking behavior by other inmates.

This non-statutory mitigating circumstance is established through the testimony of Dr. Harper and given little weight.

44) The defendant has a personality disorder.

Although the defendant does not propose that this circumstance is mitigating, the Court, out of an abundance of caution, considers it. Dr. Prichard opined that the defendant has a mixed personality disorder involving antisocial and narcissistic characteristics. This non-statutory mitigating circumstance is established and given little weight.

CONCLUSION

The Court has considered all aggravating and mitigating circumstances while being mindful that a human life is at stake. The Court has considered the jury's recommendation and given it great weight. The defendant's contemporaneous convictions of the felony property crimes in Counts 3 through 7 and 9 through 15 have not been considered by the Court as non-statutory aggravating circumstances.

The Court has weighed independently all of the aggravating and mitigating circumstances and has assigned them the weight as found. The aggravating circumstances far outweigh the mitigating circumstances.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

Count 1: Barry Trynell Davis Jr. is sentenced to **DEATH** for the first degree premeditated murder or felony murder of John Gregory Hughes.

Count 2: Barry Trynell Davis Jr. is sentenced to **DEATH** for the first degree premeditated murder or felony murder of Hiedi Ann Rhodes.

Count 3: Barry Trynell Davis Jr. is sentenced to fifteen years of imprisonment in the Florida Department of Corrections for burglary of a dwelling.

Count 4: Barry Trynell Davis Jr. is sentenced to five years of imprisonment in the Florida Department of Corrections for theft (\$10,000 or more, but less than \$20,000).

Count 5: Barry Trynell Davis Jr. is sentenced to five years of imprisonment in the Florida Department of Corrections for grand theft auto.

Count 6: Barry Trynell Davis Jr. is sentenced to five years of imprisonment in the Florida Department of Corrections for grand theft auto.

Count 7: Barry Trynell Davis Jr. is sentenced to five years of imprisonment in the Florida Department of Corrections for burglary of an unoccupied structure.

Count 9: Barry Trynell Davis Jr. is sentenced to five years of imprisonment in the Florida Department of Corrections for fraudulent use of a credit card (\$100 or more).

Count 10: Barry Trynell Davis Jr. is sentenced to five years of imprisonment in the Florida Department of Corrections for forgery of a check.

Count 11: Barry Trynell Davis Jr. is sentenced to five years of imprisonment in the Florida Department of Corrections for uttering a forged check.

Count 12: Barry Trynell Davis Jr. is sentenced to five years of imprisonment in the Florida Department of Corrections for forgery of a check.

Count 13: Barry Trynell Davis Jr. is sentenced to five years of imprisonment in the Florida Department of Corrections for uttering a forged check.

Count 14: Barry Trynell Davis Jr. is sentenced to five years of imprisonment in the Florida Department of Corrections for forgery of a check.

Count 15: Barry Trynell Davis Jr. is sentenced to five years of imprisonment in the Florida Department of Corrections for uttering a forged check.

The defendant is adjudicated guilty on all counts. The defendant is assessed \$775 in court costs; \$100 local governmental trust fund; \$100 cost of prosecution; and a \$300 public defender fee. All monetary obligations are reduced to judgment. The Court reserves jurisdiction as to any restitution. All sentences are to run **CONSECUTIVE** with credit for time served. This case is subject to automatic review by the Florida Supreme Court. The Office of the Public Defender is appointed for appellate purposes. Barry Trynell Davis Jr. is committed to the Florida Department of Corrections for execution of this sentence.

DONE AND ORDERED in open court at DeFuniak Springs, Florida, on this 25 day of Aug, 2015.



KELVIN C. WELLS
CIRCUIT JUDGE

KCW/eeb

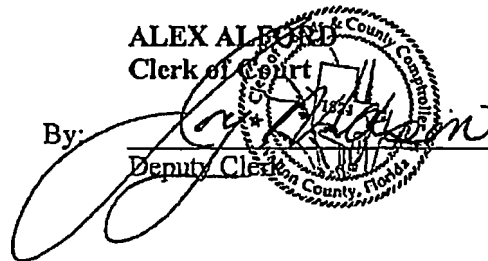
CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Order has been furnished by regular U.S. mail hand delivery in open court on this 25 day of August, 2015.

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Attorney for the defendant

By:  _____
ALEX ALFORD
Clerk of Court
Deputy Clerk
Escambia County, Florida