**CASE NO. SC20-472**

**In the**

# Supreme Court of Florida

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**JESSE BELL,**

*Appellant,*

*v.*

**STATE OF FLORIDA,**

*Appellee.*

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ON APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT IN AND FOR LAFAYETTE COUNTY, FLORIDA

## APPELLEE'S ANSWER BRIEF

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## TABLE OF CONTENTS

***Page***

## TABLE OF CITATIONS

***Cases*** ***Page(s)***

**Other Authorities**

## PRELIMINARY STATEMENT

Appellant, Jesse Bell, the defendant in the trial court, will be referred to as Bell. His codefendant Barry Noetzel (appellant in SC20-466) will be referred to as Noetzel. Appellee, the State of Florida, will be referred to as the State. The single volume record below will be referred to as "R." and then the page number, i.e., "(R. at 1.)." The presentence investigation report will be referred to as "PSI" and then the page number. Bell's initial brief shall be referred to as "I.B." followed by the page number.

## STATEMENT OF THE CASE AND FACTS

I. *Statement of the Case*

This appeal arises from Bell's conviction and sentence of death for the murder of inmate Donald Eastwood. A grand jury indicted Bell for the first-degree murder of Mr. Eastwood (Count I); attempted murder of a correctional officer, James Newman, with a weapon (Count II); conspiracy to commit the first-degree murder of James

Newman (Count III); and possession of a weapon by an inmate (Count IV).[1] (R. at 368–69.) The State sought the death penalty. (R. at 22.)

After detailed *Faretta* and plea colloquies, Bell waived his right to counsel, trial, and a penalty phase jury, and made an open no contest plea. (R. at 130–73, 179–80.) Bell also rejected standby counsel. (R. at 148, 155–56.) In an "abundance of caution," the court appointed an expert to evaluate Bell's competence. (R. at 174–78, 182.) The expert determined Bell was competent to stand trial and, based on his report, the court expressly found Bell competent. (R. at 198–204, 440–41.)

The State provided notice of, and relied on, the following five statutory aggravating factors in support of its death penalty request: (1) Bell was serving a felony prison sentence when he committed the murder under section 921.141(6)(a), Florida Statutes (proven beyond reasonable doubt and assigned great weight);[2] (2) Bell previously committed another felony involving the use of threat or violence

[1] This Count is listed as Count V on the joint indictment. Count IV solely pertains to the codefendant.

[2] The lower court's findings on the aggravators and mitigators are listed here to consolidate this information.

under section 921.141(6)(b), Florida Statutes (proven beyond reasonable doubt and assigned great weight); (3) Bell committed the present capital felony to disrupt or hinder governmental functions/law enforcement under section 921.141(6)(g), Florida Statutes (not proven, no weight); (4) the capital felony was especially heinous, atrocious, or cruel (HAC) under section 921.141(6)(h), Florida Statutes (proven beyond reasonable doubt and assigned very great weight); (5) the capital felony was committed in a cold, calculated, and premeditated (CCP) manner without any pretense of moral or legal justification under section 921.141(6)(i), Florida Statutes (proven beyond reasonable doubt and assigned very great weight). (R. at 22–23, 342–51.)

Bell admitted his competency report as mitigation and testified his family loves him, he had a good childhood, he was an honest person who took responsibility, he had never assaulted another officer, and he suffered from depression. (R. at 599–600.) After ordering a presentence investigation (PSI) and "comb[ing] through the record to consider any and all potential mitigation evidence," the court found the following nonstatutory mitigation: (1) Bell took responsibility for his conduct and cooperated during the

investigation/prosecution (proven, little weight); (2) Bell's courtroom behavior (proven, little weight); (3) Bell had never assaulted a correctional officer before this case (proven, no weight); (4) his family loves him (proven, slight weight); (5) Bell was previously diagnosed with and treated for depression (proven, little weight). (R. at 352–55.)

The court imposed the death penalty in a written order after considering and weighing the proven aggravators and mitigators. (R. at 339–56.) The court also imposed a natural-life sentence on Count II, thirty years on Count III, and fifteen years on Count V. (R. at 410–14, 423.) Bell appealed. (R. at 361.)

II. *Statement of the Facts*

A. Case Facts

In 1995, Bell received a forty-year sentence for kidnapping, armed robbery, aggravated battery, escape, and burglary of a dwelling. (R. at 207, 342.) While imprisoned in Mayo Correctional Institute, Bell shared a cell with Noetzel. (R. at 449.) They decided to kill a correctional officer, planned a "rehearsal" killing of a homosexual inmate, and wrote a "Countdown to [Execution or Extinction]" checklist with their plans. (R. at 197, 449, 486, 492, 496, 518–19, 525, 548–49, 569–82.) The checklist read:

Countdown To Extention [sic]

1. Get on Vegan Diet X
2. Get Multiple Tools X
3. Get Diagram of Area X
4. Find a Gofer [sic] X
5. Baby Powder?
6. Patience!!!!
7. Pick a dicksucker P
8. Background Check on Dicksucker P
9. Pick a Date X
10. Commence dry runs – rehearsals 1P2P3P4
11. Exicute! [sic]
12. Work on spelling!!

(R. at 197, 525–26.)

They decided to murder the correctional officer in the dining hall. (R. at 196, 503, 531, 572.) Noetzel drew a diagram of the dining hall because they wanted to "be prepared," have an idea of where they would stand, and run everything about the correctional officer's murder through their minds so they would know what to do. (R. at 196, 503, 531, 572.) They switched to the vegan diet so they would "have a reason to be standing" by a specific door in the dining hall. (R. at 503, 526–27, 531, 570.) The correctional officer had to come and open that door during meals. (R. at 503–04.) Bell also practiced the proper form for chokeholds to ensure he would cut off the blood flow to the correctional officer's brain. (R. at 551–52.)

About a month before the murder, Bell and Noetzel settled on inmate Eastwood, who they believed was a homosexual and a child molester, as their rehearsal murder target. (R. at 449, 492–93, 495–96, 575–76.) Bell and Noetzel decided to lure Eastwood into their cell, kill him by stabbing him in the eye with homemade weapons, stash his body, and go to the dining hall. (R. at 449–50, 493.) There, they would stab and kill the correctional officer, who worked in the kitchen. (R. at 450, 469–71.) They scrounged for pieces of metal and eventually made four knives. (R. at 499.) They also practiced a routine for Eastwood's murder. (R. at 541.)

Bell and Noetzel selected June 26, 2019, as the date they would kill Eastwood and the correctional officer because they believed the other officers working that day would pose less of a threat to their plans. (R. at 578–79.) The night before the murders, Noetzel and Bell came up with and wrote a sign that read: "God Hates Fags---fags hate God! Kill all Fags and Cho-Moes (and any COs who F[***] with you!)." (R. at 193, 480, 498.) They hung this sign in their shared cell. (R. at 498.)

On June 26, 2019, Bell and his codefendant executed their plan. (R. at 450.) Knowing Eastwood was a "coffee nut," they lured

him to their cell by offering him coffee. (R. at 493–94, 507, 539–540.) Noetzel asked Eastwood to look at something on his tablet and Eastwood bent down to see. (R. at 507, 579.) Bell then grabbed Eastwood in a chokehold, and Noetzel stabbed Eastwood in the eye with one of the homemade knives. (R. at 493–94, 507, 540–41, 580–81.) Eastwood tried to fight Bell and Noetzel off and screamed "what did I do?" (R. at 543, 584.)

Bell put Eastwood on the floor while Noetzel put up a privacy curtain to make sure no one would see. (R. at 507, 521.) Eastwood came to and began "making noise," so Bell choked him again and Noetzel stabbed Eastwood's other eye. (R. at 450, 493–94, 506–08, 585.) Eastwood tried to get up, but then went limp and made noises that sounded like either "breathing" or "air escaping." (R. at 508, 543, 585.) Bell pushed Eastwood's head into his own blood and saw Eastwood was "purple" and dead. (R. at 508, 543, 585–86.) Noetzel offered to cut Eastwood's head off to convince Bell that he really was dead. (R. at 547.) Bell and Noetzel congratulated themselves since they "took out a f***ing chomo and a faggot." (R. at 547.)

Noetzel and Bell then concealed Eastwood's body with blankets and stuffed it under a bunk in their cell. (R. at 496–97, 508.) They

cleaned the blood off the floor and threw their bloodied clothes and a towel in the laundry. (R. at 497–98.) Noetzel also removed the knife from Eastwood's eye and cleaned it since they were "going to need it when [they got] to the kitchen." (R. at 548.) No one could see Eastwood's body from just standing in the doorway; a pair of guards passed by without noticing it. (R. at 556–57.)

With their rehearsal murder concealed, Bell and Noetzel armed themselves with three knives and went to the dining hall during breakfast. (R. at 450–51, 472, 555, 557.) Bell's arm was hurting from strangling Eastwood, so they decided to jointly attack the correctional officer instead of having Bell restrain him first. (R. at 500–01, 504, 558.)

They went into the vegan diet line and waited for the correctional officer to come through the nearby door. (R. at 504.) When the officer came through and turned to lock the door, they both attacked. (R. at 450–51, 472, 504.) The correctional officer curled into a fetal position as Bell and Noetzel stabbed him. (R. at 472.) Correctional staff deployed chemical agents to break up the attack. (R. at 458, 460.) Despite suffering several stab wounds and having a weapon embedded in his neck, the officer lived. (R. at 451, 459–60,

474.) Law enforcement later found a homemade knife lying near a pool of the correctional officer's blood. (R. at 461–62.)

Noetzel and Bell were apprehended soon after. (R. at 451, 461, 474.) They were taken to shower, and the codefendant spontaneously stated there was a dead "chomo"—slang for child molester—under the bunk in his cell. (R. at 463–64.) Correctional staff recovered Eastwood's body from Noetzel and Bell's shared cell. (R. at 465, 476.) Eastwood had blood on his face and coming out of his eyes. (R. at 484.) The "God Hates Fags" sign was still hanging on the cell wall. (R. at 193, 480.) Law enforcement recovered another homemade weapon from Noetzel's bunk. (R. at 484.)

Post-*Miranda*, Bell and Noetzel admitted to killing Eastwood and planning to kill the correctional officer in recorded interviews. (R. at 451, 489–509, 516–60, 562–87.)

B. Counsel Waiver and No Contest Plea

Bell announced his desire to represent himself, plead no contest, and waive his right to guilt and penalty phase juries. (R. at 131–32, 149, 172, 179–80.) The court performed a *Faretta* inquiry and informed Bell that: he had the absolute right to state-paid counsel if he could not afford an attorney; having a lawyer is

advantageous due to a lawyer's knowledge and experience with bail, pretrial release, discovery, presenting legal arguments, calling witnesses, preserving error, providing legal advice, jury selection, preparing mitigation for sentencing, filing an appeal, and constitutional and statutory issues that may arise in his case; he was charged with first-degree murder with penalties ranging from life in prison to death; self-representation is unwise; he would not get any special treatment or continuances; he would only have limited legal resources and no more library privileges; a lawyer would have fewer restrictions researching his case; he would have to abide by the rules of criminal law and courtroom procedure; his access to the prosecutor would be severely limited compared to a lawyer; the State would not give him special treatment; he could not claim his lack of legal knowledge or skill on appeal as a basis for a new trial; he could be deported if he was found guilty. (R. at 135–52.)

Bell testified he was not under the influence of drugs, alcohol, or medication, his mind was free and clear, and he fully understood the proceedings. (R. at 137.) Bell confirmed he understood the dangers and disadvantages of representing himself and had no questions about them. (R. at 141.) At the time of the court's inquiry,

Bell was 45 years old, could read and write, had no difficult understanding English, finished eleventh grade and received a GED, had been diagnosed with depression and had been taking Effexor for about two months. (R. at 143–45.) This medication did nothing to affect his judgment, cloud his ability to understand the proceedings, or confuse him. (R. at 145.) Bell also confirmed he had no physical issues that would hinder his self-representation. (R. at 145.) No one threatened him to get him to forgo his right to counsel. (R. at 145.) Bell had counsel for two prior jury trials over twenty years ago. (R. at 146.) He had never represented himself before. (R. at 146–47.) Bell insisted he wanted to exercise his right to self-representation and had a sufficient time to decide to exercise that right. (R. at 148, 150–51.) He wanted to enter a no contest plea and did not want standby counsel. (R. at 148, 150.) He understood that his no contest plea would result in a penalty phase where his sentence would be determined. (R. at 148–49.)

The court reminded Bell that he had the absolute right to change his mind and have a lawyer appointed for him at any time. (R. at 149–50.) The court determined Bell was competent to represent himself and understood all the disadvantages of self-representation

and advantages of counsel. (R. at 151.) The court determined Bell made a decisive, uncoerced decision to represent himself and granted his request. (R. at 151.)

Bell then stated he wanted to enter a plea of no contest. (R. at 152.) The court reiterated its offer of counsel, noted the advantages of counsel at the plea phase, and the disadvantages of self-representation at the plea phase. (R. at 153–55.) Bell again confirmed he understood the maximum penalty for the first crime he was pleading to was death, and that a no contest plea had the same legal effect as a guilty plea. (R. at 155–56.) According to Bell, no one forced, threatened, or promised him anything to get him to plead no contest. (R. at 156–57.) Bell stated he understood he was giving up his right to trial; confront and cross witnesses; call trial witnesses; testify at trial; appeal most rulings; and have the State prove its case. (R. at 157–58, 167.)

The State provided a factual basis in support of Bell's plea. (R. at 159–60.) Other than the first-degree murder, the crimes Bell was pleading to had penalties up to mandatory life, thirty years, and fifteen years. (R. at 160–61.) The court went through each of these penalties with Bell, who confirmed he understood the maximums for

the crimes he was pleading no contest to. (R. at 162–63.) Bell again confirmed he wanted to plead no contest to all counts. (R. at 163.) The court instructed Bell to read an offer of plea that reiterated all the rights Bell was giving up. (R. at 69, 164, 168.)

Bell again confirmed he understood that Count I would proceed to a penalty phase where the State would have to prove aggravators beyond a reasonable doubt and a judge or jury would determine whether he received the death penalty. (R. at 165–67.) Bell would be able to provide mitigation. (R. at 166.) Bell signed the offer of plea and provided it to the court after confirming he read and understood it. (R. at 69, 169–70.) Yet again, Bell confirmed he needed no additional time and that he was pleading no contest without an attorney and against the court's advice. (R. at 170–71.)

The court found that the plea was freely and voluntarily made, supported by a sufficient factual basis, and done with an intelligent and knowing waiver of counsel. (R. at 172.) Bell's former counsel suggested doing a competency evaluation "in an abundance" of caution, and the court agreed. (R. at 174–75.)

## C. Competency Report

Doctor Mhatre examined Bell and determined he was competent to stand trial and negotiate a disposition in his case. (R. at 198–204.) Dr. Mhatre reviewed the arresting officers' reports and records from the Department of Corrections (DOC). (R. at 199.) He listed the following relevant background on Bell in the report: (1) his biological father died a year ago; (2) Bell had no contact with his father for twenty years until just prior to his death; (3) his biological mother lived in Mississippi and worked as a nurse; (4) he has regular contact with his family, including a stepsister and stepbrothers; (5) Bell denied being abused as a child, but DOC reports indicated he previously reported sexual abuse when he was five years old; (6) Bell reported no history of substance abuse or mental illness; Bell described his overall growing up as "good," but admitted he ran away from home on several occasions; (7) Bell dropped out of school in the 10th grade to work while attending school in Kansas; (8) he was often suspended for fighting; (9) he got along well with his peers and teachers; (10) he was in the school band, where he played tuba and baritone; (11) he obtained his GED in 1990; (12) he was married in 1996 and divorced in 2000 after he was sent to prison; (13) he worked

as a laborer prior to his arrest; (14) he has been in consistent legal trouble since eighteen, and he served twenty-six years in DOC; (15) he once stabbed himself, and another time he fractured his hand in a fight; (16) he once "apparently" tried to kill himself, but later stated he was not serious and just "attention starved"; (17) Bell has been on Prozac, Lithium, Celexa, and Zoloft, and has a longstanding history of depression; (18) his depression is currently under control; (19) DOC records indicated that Bell had Generalized Anxiety Disorder and Major Depressive Disorder; (20) during the interview, Bell was pleasant, cooperative, respectful, and showed some generalized remorse; (21) there was no evidence of any type of hallucinations, and Bell was rational and oriented to time, place, and person; (22) Bell's memory was intact; (23) Bell had adequate insight into his problem; (24) his social judgment was impaired by impulsivity; (25) Bell had fairly good abstract thinking. (R. at 199–202.)

Dr. Mhatre noted that Bell had the capacity to understood: (1) plea bargains and the charges and allegations against him; (2) the accompanying range of punishments; and (3) the adversarial nature of the legal process and roles of prosecutor, defense counsel, jury, and judge. (R. at 203.) Dr. Mhatre finally noted that Bell had the

capacity to assist his attorney plan a defense, exhibit appropriate courtroom behavior, and testify relevantly. (R. at 203.) Dr. Mhatre thus found Bell competent to proceed. (R. at 204.) After reading the report, the court found Bell "competent to proceed" and noted there was "no indication of any sort of mental infirmity or defect that would prevent [him] from doing so." (R. at 440–41.)

## D. Penalty Phase

The court conducted the penalty phase—which subsumed the *Spencer*[3] hearing—on February 21, 2020. (R. at 432.) Bell refused a renewed offer of counsel. (R. at 296–97.)

### *1. Aggravation Evidence*

In addition to the case facts, the State presented evidence of aggravation in support of its death-penalty request. A medical examiner performed an autopsy on Eastwood's body. (R. at 589, 592.) Eastwood's left eye had a "perforating stab wound" that "penetrated the left front lobe of the brain." (R. at 592.) This stab caused a subdural hemorrhage. (R. at 592.) There were stretch lacerations around the lower lobe of the right eyelid, hemorrhaging, and tissue

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

bruising around the eyes. (R. at 593.) The blood vessels in the right eye had been popped and the left eye was so badly damaged the examiner "couldn't see anything there." (R. at 593.) It was "basically just a bloody pulp." (R. at 594.) Eastwood also endured compression injuries to his neck, including a fractured hyoid bone. (R. at 593–94.) These injuries were consistent with manual strangulation and caused hemorrhaging in the neck and petechiae in the face and eyes. (R. at 594.)

The injuries to the eyes would have been "particularly painful," and may have caused a seizure, but were not fatal with medical attention. (R. at 594–97.) However, the neck compression resulted in irreversible brain injury and brain death. (R. at 595.) The large amount of blood flowing from Eastwood's left eye indicated he was alive to experience the manual strangulation. (R. at 596.) Eastwood died of sharp force trauma to the left eye and brain coupled with neck compression. (R. at 597.)

*2. Mitigation Evidence*

Bell and Noetzel both presented mitigation evidence. (R. at 599–602.) Bell testified to the following mitigation: (1) he never assaulted any officers besides the one in this case; (2) he suffered from

depression; (3) he took responsibility and pled no contest; (4) he had good behavior in court; (5) his family loves him; (6) he has had good prison behavior since this incident; and (7) he is an honest person. (R. at 599–602.) Bell also admitted the competency report as mitigation. (R. at 600.) He conceded he did not meet any of the statutory mitigation criteria and told the court he did not wish to call any other witnesses or admit any other exhibits. (R. at 601.) The State confirmed Bell had never been in the military and Dr. Mhatre's biographical information was correct. (R. at 603.) Bell entered his competency report as mitigation and rested his mitigation case. (R. at 604–06.)

*3. Closing Arguments*

The State gave closing argument and requested the court impose the death penalty. (R. at 606–14.) Bell argued the HAC aggravator was too vague and, under that standard, his own execution would be heinous, atrocious, and cruel because he would have a sense of impending doom too. (R. at 614.) Bell further argued the crime against the correctional officer could not serve as a prior violent felony aggravator for Eastwood's first-degree murder. (R. at 614–16.) Bell waived further argument. (R. at 616.) The court took

the matter under advisement and scheduled a sentencing hearing. (R. at 616.) In light of the minor mitigation presented by Bell and Noetzel, the court also ordered a PSI. (R. at 621–22.) Bell objected that a PSI was only appropriate if mitigation was waived and pointed out neither defendant waived mitigation. (R. at 622.) The court ordered one anyway, and Bell agreed so long as it would not "prolong anything." (R. at 622.)

E. PSI

The PSI noted Bell was born on February 20, 1974. (PSI at 1.) Bell refused "to sign a release of information" and thus "prevent[ed]" the officer "from doing a thorough investigation." (PSI at 3.) Bell was charged with multiple crimes occurring in September 1992 (when he was 18) and was convicted of forgery on January 8, 1993. (PSI at 1, 4.) In January 1994, Bell was charged with burglary, kidnapping, escape, robbery with a firearm, and aggravated battery. (PSI at 4.) On January 22, 1995, he was sentenced to forty years in prison. (PSI at 4.)

The PSI included the names of Bell's father and mother, along with his mother's address. (PSI at 1, 5.) It also noted that Bell refused to give the name of his divorced wife and denied having any children

with her. (PSI at 5.) Bell had no military history and was in good mental health other than his depression treatment. (PSI at 5.) Bell denied using any illegal drugs and stated he lived his whole life in Kansas before his transfer to Florida State Prison. (PSI at 5.)

F. Disposition Hearing

The court conducted a disposition hearing on March 13, 2020. (R. at 418.) Bell refused a renewed offer of counsel and agreed his PSI was accurate. (R. at 419–20, 424.) The State again urged the death penalty for the first-degree murder of Donald Eastwood. (R. at 421–22.) Bell stated he did not have any further matters in mitigation and did not wish to address the court. (R. at 422–23.) He also did not have any objections, notations, or corrections to the PSI. (R. at 424.) The court sentenced Bell to death, finding the State proved four aggravators and that they heavily outweighed the mitigators. (R. at 424–27.) The court issued a detailed sentencing order addressing its specific aggravation and mitigation findings. (R. at 339–56.) The sentencing order found, in relevant part, that "the aggravating factors clearly, convincingly, *and beyond a reasonable doubt outweigh the mitigating factors*." (R. at 356) (emphasis added).

## SUMMARY OF THE ARGUMENT

### Issue I

The trial court's consideration of mitigation evidence did not constitute fundamental error for two procedural reasons and four merits reasons. First, Bell has failed to preserve this issue or explain why it amounts to fundamental error. Second, this error is not fundamental under the facts of this case considering the aggravation evidence and that Bell's brief does not suggest any mitigation evidence that would have altered the lower court's calculus.

On the merits, first, the court was not required to request a comprehensive PSI because Bell did not waive mitigation. He actually presented several mitigation items—including his depression—that the court considered in its order. Any issues with the comprehensive nature of the PSI do not, therefore, constitute fundamental error.

Second, the trial court was not obligated to consider evidence of child abuse because Bell controverted that evidence. A trial court's duty to examine mitigation contained "anywhere" in the record only extends to uncontroverted, believable mitigation under this Court's

precedent. Bell has provided no reason to force courts to explicitly consider and reject mitigation that is controverted by capital defendants.

Third, the PSI was sufficient considering Bell refused to sign a release of information. This Court should not penalize the State and crime victims by permitting criminal defendants to stonewall mitigation procedures and achieve reversal. The PSI was as comprehensive as could be under the circumstances, and any fundamental error was waived under the invited-error doctrine.

Fourth, any error was harmless. The State proved the HAC, CCP, prior-violent-felony, and under-prison-sentence aggravators. The minimal, additional mitigation Bell suggests does not amount to harmful error. And it certainly does not amount to fundamental error—which is what Bell must show to obtain reversal in this case.

**Issue II**

This issue fails for two reasons. First, Bell failed to preserve it below or explain why it constitutes fundamental error on appeal. It is thus procedurally barred. This Court should not conduct fundamental-error review when an appellant presents only

conclusory argument that the asserted error is fundamental and reviewable when raised for the first time on appeal.

Second, alternatively, the trial court was not required to find the sufficiency of the aggravating factors or the weighing of the aggravating factors and mitigating circumstances beyond a reasonable doubt because neither factual determination was an element that made Bell eligible for the death penalty. The existence of aggravating factors must be found beyond a reasonable doubt because they expose a criminal defendant to the death penalty. Here, the trial court found five aggravating factors existed beyond a reasonable doubt, the aggravating factors were sufficient to impose the death penalty, and the aggravating factors outweighed the mitigating circumstances. Accordingly, the trial court properly imposed the death penalty in Appellant's case.

**Issue III**

Competent, substantial evidence supports the lower court's determination that Bell competently, knowingly, voluntarily, and intelligently entered his no contest plea. This Court reviews this issue sua sponte under its rules. The trial court performed an extensive plea colloquy and Dr. Mhatre determined Bell was competent to

stand trial. Based on these facts, his plea was valid, and this Court should affirm this issue.

## ARGUMENT

### I. THE TRIAL COURT'S CONSIDERATION OF MITIGATION DID NOT CONSTITUTE FUNDAMENTAL ERROR.

#### *Preservation*

Bell argues the trial court's consideration of mitigating evidence was deficient because the court: (1) did not require the State to add more of the defendant's background information into the record; (2) did not inquire further about the possibility of childhood abuse and a lifelong history of depression; and (3) did not require a comprehensive PSI.

This issue is not preserved, and Bell does not argue it constitutes fundamental error. Bell has failed to present any argument as to why this perceived error meets the demanding fundamental error standard. This is not sufficient to present fundamental error to this Court.

This Court should not countenance Bell's failure to address the necessary predicate to his claim—whether the "error" he asserts is fundamental under the facts of this case. This is particularly true

since the fundamental error issue Bell is trying to raise will necessarily be fact specific and require looking to the aggravators the court found, the accompany mitigation, and the mitigation counsel alleges would have been discovered by a more thorough investigation. *Cf. Craft v. State*, No. SC19-953, 2020 WL 6788794, at *6, *8 n.6 (Fla. Nov. 19, 2020) (noting the defendant did not "identify any mitigation allegedly in the State's possession but not in the record" and finding court's error in failing to consider uncontroverted mitigation harmless, rather than fundamental, in that case). A contrary rule would permit this Court to reverse and remand—as fundamental error—when no additional information exists to be presented at the penalty phase. Since Bell has failed to present a fundamental error claim, and explain why this error is fundamental under this case's specific facts, this Court should affirm. *E.g.*, *Lynn v. City of Fort Lauderdale*, 81 So. 2d 511, 513 (Fla. 1955) (holding conclusory assertions of error are insufficient to present the issue to this Court); *see also McDonald v. State*, 952 So. 2d 484, 489 (Fla. 2006) (refusing to address issues that were only presented by conclusory argument); *Wheeler v. State*, 87 So. 3d 5, 6 (Fla. 5th DCA 2012) (en banc) ("[T]he defendant did not raise a claim of fundamental error relating to this

issue in his initial brief; therefore, this court is not required to undertake a fundamental error analysis.").

Alternatively, in this case, with four weighty aggravators found beyond a reasonable doubt, minimal mitigation, and nothing in Bell's brief suggesting the possibility of additional mitigation that would change the weighing result,[4] any assumed error is not fundamental. Therefore, this issue should be affirmed as unpreserved with no fundamental error argument presented or, alternatively, failing to reach the level of fundamental error under these facts.

***Standard of Review***

Fundamental error must go to the foundation of a case or the merits of an action. *Hopkins v. State*, 632 So. 2d 1372, 1374 (Fla. 1994). The fundamental error doctrine should be used very guardedly, and only on errors so basic to the judicial decision under review that they are equivalent to a denial of due process. *Id.* This Court reviews fundamental error claims de novo. *State v. Smith*, 241 So. 3d 53, 55 (Fla. 2018).

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[4] Additionally, this Court can reweigh the aggravators and mitigators and affirm on that basis. *McKinney v. Arizona*, 140 S. Ct. 702, 707–08 (2020).

## *Merits*

Bell's arguments on this issue are meritless for four reasons. First, Bell has failed to identify anything in the State's possession that was not in the trial record, and it appears the State tried to elicit mitigation from Bell during the penalty phase. Second, the evidence of child abuse was controverted by Bell himself, and the trial court was well aware of his depression. Third, the court was not required to request a PSI at all or, alternatively, the PSI was sufficient in this case of a lifelong prisoner. Fourth, any error is harmless—and therefore definitionally not fundamental—under the facts of this case.

### A. Bell Did not Waive Mitigation.

Bell's argument on this issue primarily rests on the erroneous assumption that he was entitled to a comprehensive PSI. This Court has imposed a "policy" requirement that a comprehensive PSI must be prepared in every case where "the defendant is not challenging the imposition of the death penalty and *refuses to present mitigation evidence*." *Muhammad v. State*, 782 So. 2d 343, 363 (Fla. 2001) (emphasis added). Such a PSI should include "previous mental health problems (including hospitalizations), school records, and relevant

family background. In addition, the trial court could require the State to place in the record all evidence in its possession of a mitigating nature such as school records, military records, and medical records." *Id*. at 363–64. If the PSI alerts the court to the probability of "significant mitigation" the court has discretion to call mitigation witnesses on its own or appoint special counsel to do so. *Id*. at 364. But this Court has recently refused to "find a waiver of the right to present mitigation in a case where the defendant actually presented mitigation." *Craft v. State*, No. SC19-953, 2020 WL 6788794, at *5, *8 n.6 (Fla. Nov. 19, 2020). (emphasis omitted). A trial court does not err by accepting a limited mitigation presentation, in part, because competent defendants have a personal, constitutional right to control their cases and mitigation. *Id*.

In this case, the necessary predicate to *Muhammad*'s policy choice—refusal to present mitigation—never occurred. Bell presented affirmative testimony that: (1) he never assaulted any officers besides the one in this case; (2) he suffered from depression; (3) he took responsibility and pled no contest; (4) he had good behavior in court; (5) his family loves him; (6) he has had good prison behavior since this incident; and (7) he is an honest person. (R. at 599–602.) Bell

also admitted the competency report as mitigation. (R. at 600.) Since *Muhammad*—by its own terms—only applies when a defendant refuses to present mitigation, it definitionally does not apply when a defendant "actually presented mitigation." *Cf. Craft*, 2020 WL 6788794, at *5.

More importantly, Bell received a constitutionally adequate, individualized sentencing proceeding. Far from imposing the death penalty by default, the trial court issued a detailed, 17-page order explicitly setting out the aggravating and mitigating circumstances. (R. at 339–56.) The court specifically addressed Bell's depression and assigned it "little weight." (R. at 355.) But the court also addressed mitigation that: (1) Bell took responsibility for his crime and cooperated during the investigation and prosecution; (2) Bell exhibited appropriate courtroom behavior; (3) Bell had never assaulted a correctional officer until the instant case; and (4) Bell's family loves him. (R. at 353–55.) This measured consideration precludes the idea that the trial court simply imposed the death penalty by default and without an individualized look at both Bell and the first-degree murder he committed. Bell has failed to demonstrate the court committed fundamental error in this issue.

*See Craft*, 2020 WL 6788794, at *6 (rejecting the arguments that the trial court abused its discretion and reversibly erred by: (1) failing to require the State to place all evidence in its possession but not in the record where the defendant failed to identify any such evidence; (2) failing to call mitigation witnesses or appoint special counsel; and (3) failing to consider uncontroverted mitigation). This Court should affirm on this issue.

**B. The Evidence of Child Abuse Was Controverted.**

This Court's precedent requires a court determining whether to impose the death penalty to consider all available, believable, and uncontroverted mitigation found anywhere in the record. *Craft*, 2020 WL 6788794, at *7. This requirement only applies to "believable and uncontroverted" mitigation. *Id*. (quoting *Robinson v. State*, 684 So. 2d 175, 177 (Fla. 1996)). Bell cites no caselaw indicating the sentencing court has an obligation to discuss and/or reject controverted or unbelievable mitigation that a defendant has not proposed. Despite this, Bell argues the court erred by failing to consider or take steps to learn more about the possibility of child abuse in his past. I.B. at 36.

But the evidence of child abuse was controverted multiple times by Bell himself. (*E.g.*, R. at 199 (noting "the patient categorically denied being physically, emotionally, or sexually abused as a child" while also noting DOC records indicate he previously reported sexual abuse occurred when he was five); R. at 599 (Bell testifying during the penalty phase that he "had a pretty good childhood, really no abuse, nothing to speak of").) Therefore, the court did not need to inquire further to fulfil its duty under *Muhammad's* judicially-created policy directive.[5]

### C. The PSI Contained the Necessary Information in Light of Bell's Failure to Cooperate.

Without identifying anything other than the potential for further child abuse and depression evidence, Bell argues the PSI was not sufficiently comprehensive. This issue is meritless in part because

[5] In any event, a trial court should not be reversed on appeal for crediting the defendant's own depiction of his childhood. *Cf. Stewart v. Sec'y, Dep't of Corr.*, 476 F.3d 1193, 1210–11 (11th Cir. 2007) ("The Constitution imposes no burden on counsel to scour a defendant's background for potential abuse given the defendant's contrary representations or failure to mention the abuse."); *Correll v. Dugger*, 558 So. 2d 422, 426 n.3 (Fla. 1990) (rejecting ineffective assistance of counsel claim for failing to uncover and present evidence of childhood abuse where the defendant and his family provided counsel and the court with an opposite view of his family life at the time of trial).

Bell was not entitled to a PSI under *Muhammad*. But the PSI itself notes that the investigation could not be as thorough as normal because Bell refused "to sign a release of information." PSI at 3. It is unclear what Bell would have investigating officers do when stonewalled by a capital defendant. Additionally, Bell overlooks that he has spent most of his adult life in prison. *Cf. Robertson v. State*, 187 So. 3d 1207, 1214 (Fla. 2016) (noting the court "had before it all the documents and background information from which mitigating evidence could have been derived had Robertson allowed such evidence to be presented, particularly as Robertson has spent most of his adult life in prison and was incarcerated as a juvenile before that").

At sentencing, the court had the PSI, a competency report, and Bell's penalty-phase testimony. The State cross-examined Bell and attempted to adduce additional mitigation as well. (R. at 603 (asking Bell if he had ever been in the military).) Other than general speculation, Bell has not pointed to any other sources of information where mitigation evidence might have been derived. Certainly, the State and victims of crimes cannot be penalized when a defendant uses his autonomy rights to prevent the presentation of mitigation.

*See, e.g.*, *Czubak v. State*, 570 So. 2d 925, 928 (Fla. 1990) ("Under the invited-error doctrine, a party may not make or invite error at trial and then take advantage of the error on appeal."); *Universal Ins. Co. of N. Am. v. Warfel*, 82 So. 3d 47, 65 (Fla. 2012) (recognizing that even fundamental error may be waived under the invited error doctrine).

The PSI—which Bell was not even entitled to—did not require the court to sua sponte order additional fruitless investigation, particularly not on pain of fundamental error. Bell has waived any error in the comprehensiveness of the PSI by his actions below. Therefore, this issue is meritless, and this Court should affirm.

**D. Any Error Is Harmless, not Fundamental.**

Even assuming the trial court somehow erred, the error is harmless under the facts of this case. The only evidence Bell has proposed the trial court failed to adequately consider is the depression and child abuse evidence. The court explicitly addressed the depression evidence before it, although it, properly, did not explicitly address the controverted child abuse allegations.

A trial court's error in failing to consider *proposed* mitigation is harmless where there is no reasonable possibility the error

contributed to the sentence. *Craft*, 2020 WL 6788794, at *8. The presence of "HAC, CCP, and prior-violent-felony aggravators, which are three of the most serious and weighty aggravators in the capital sentencing scheme" strongly support finding the failure to consider additional mitigation harmless. *Id*.

In this case, the court sentenced Bell to death after finding HAC, CCP, prior-violent-felony, and under-prison-sentence aggravators. (R. at 342–52.) The court found only minimal mitigation. (R. at 351–56.) Bell's speculation that there may be additional evidence showing the extent of his depression or that he was abused as a child (despite his protestations below to the contrary) pale in comparison to the aggravating evidence the court found. There is no reasonable possibility any assumed error contributed to Bell's death sentence.

This is even clearer when viewed under the proper standard of review. While the State has the burden to show an error harmless, Bell has the burden to demonstrate fundamental error that excuses his lack of preservation. Speculation that there may be additional records or mitigation somewhere that could be found without Bell's cooperation does not come close to meeting this exacting standard. This Court has consistently held the fundamental error doctrine

must be used sparingly and guardedly. Permitting Bell to utilize this doctrine to achieve reversal based on sheer speculation is the antithesis of this well-worn rule.

Therefore, this Court should affirm because Bell has failed to demonstrate fundamental error, and any error is harmless anyway.

## II. THE TRIAL COURT DID NOT FUNDAMENTALLY ERR BY FAILING TO EXPRESSLY DETERMINE BEYOND A REASONABLE DOUBT THAT THE AGGRAVATING FACTORS WERE SUFFICIENT AND OUTWEIGHED THE MITIGATING FACTORS.

### ***Preservation***

This issue is not preserved and is only reviewable as fundamental error. Bell has failed to present any argument as to why his perceived error meets the demanding fundamental error standard other than a conclusory allegation that it does. This is not sufficient to present fundamental error to this Court.

Like the prior issue, Bell's failure to explain why his perceived error is fundamental under the specific facts of this case is fatal to this issue. The fundamental error issue Bell is trying to raise will necessarily be fact specific and require looking to the aggravators the court found and the accompanying mitigation. In this case, with four aggravators found beyond a reasonable doubt, and minimal mitigation, any assumed error would not be fundamental anyway. Therefore, this issue should be affirmed as procedurally barred. *E.g.*, *Lynn v. City of Fort Lauderdale*, 81 So. 2d 511, 513 (Fla. 1955) (holding conclusory assertions of error are insufficient to present the issue to this Court); *see also McDonald v. State*, 952 So. 2d 484, 489

(Fla. 2006) (refusing to address issues that were only presented by conclusory argument).

### *Standard of Review*

The State adopts its Issue I standard of review.

### *Merits*

Bell argues that the trial court committed fundamental error when it imposed the death penalty without making two findings beyond a reasonable doubt: (1) the aggravating factors were sufficient to impose the death penalty and (2) the aggravating factors outweighed the mitigating circumstances. Bell's argument is contrary to law; he conflates the statutory steps required to impose the death penalty under section 921.141, Florida Statutes, with the constitutional requirements to impose the death penalty under the Sixth Amendment to the United States Constitution. As Bell recognizes, this Court has rejected this argument. *Craft v. State*, No. SC19-953, 2020 WL 6788794, at *9 (Fla. Nov. 19, 2020).

The Sixth Amendment to the United States Constitution provides that: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." U.S. Const. amend. VI. The United States Supreme Court has interpreted

the right to an impartial jury, in conjunction with the Fourteenth Amendment's right to due process, to "entitle a criminal defendant to 'a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.'" *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000) (quoting *United States v. Gaudin*, 515 U.S. 506, 510 (1995)). Stated another way, in a criminal case the Sixth Amendment requires a jury, or a trial court if the defendant elects for a bench trial, to find all of the facts necessary to constitute a statutory offense and those facts must be proven beyond a reasonable doubt. *Id.* at 483-84; *see also Sullivan v. Louisiana*, 508 U.S. 275, 277-78 (1993); *In re Winship*, 397 U.S. 358, 364 (1970) ("[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.").

The United States Supreme Court has applied this framework to death penalty cases and concluded the Sixth Amendment requires a jury to find the existence of aggravating factors beyond a reasonable doubt before a trial court may sentence a defendant to death. *Ring v. Arizona*, 536 U.S. 584, 609 (2002) ("Because Arizona's enumerated aggravating factors operate as 'the functional equivalent of an

element of a greater offense,' *Apprendi*, 530 U.S., at 494, n. 19, the Sixth Amendment requires that they be found by a jury."). Importantly though, the Sixth Amendment's requirements are limited to facts that must be found by a jury in order to impose the death penalty. *Id*. at 612-13 (Scalia, J., concurring) ("What today's decision says is that the jury must find the existence of the *fact* that an aggravating factor existed. Those States that leave the ultimate life-or-death decision to the judge may continue to do so—by requiring a prior jury finding of aggravating factor in the sentencing phase or, more simply, by placing the aggravating-factor determination (where it logically belongs anyway) in the guilt phase."). The United States Supreme Court further articulated this in *Hurst v. Florida*, 136 S. Ct. 616 (2016), when the Court found that a defendant's death sentence violated the Sixth Amendment because Florida law required a trial court, rather than a jury, to find the *fact* that an aggravating factor existed before the court could sentence the defendant to death.

The United States Supreme Court has never held that the sufficiency of the aggravating factors, the weighing of the aggravating factors and mitigating circumstances, or the jury recommendation are elements that must be proven beyond a reasonable doubt under

the Sixth Amendment before a trial court may impose the death penalty on a criminal defendant. In fact, the Court has expressly rejected such contentions:

> Under *Ring* and *Hurst*, a jury must find the aggravating circumstance that makes the defendant death eligible. But importantly, in a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range. In *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), this Court carefully avoided any suggestion that "it is impermissible for judges to exercise discretion—taking into consideration various factors relating both to offense and offender—in imposing a judgment *within the range* prescribed by statute." *Id.*, at 481, 120 S. Ct. 2348. And in the death penalty context, as Justice Scalia, joined by Justice THOMAS, explained in his concurrence in *Ring*, the decision in *Ring* "has nothing to do with jury sentencing. What today's decision says is that the jury must find the existence of the *fact* that an aggravating factor existed." 536 U.S. at 612, 122 S. Ct. 2428; *see also Kansas v. Carr*, 577 U.S. ——, —— – ——, 136 S. Ct. 633, 193 L. Ed. 2d 535 (2016) (slip op., at 9–11). Therefore, as Justice Scalia explained, the "States that leave the ultimate life-or-death decision to the judge may continue to do so." *Ring*, 536 U.S. at 612, 122 S. Ct. 2428.
>
> In short, *Ring* and *Hurst* did not require jury weighing of aggravating and mitigating circumstances, and *Ring* and *Hurst* did not overrule *Clemons* so as to prohibit appellate reweighing of aggravating and mitigating circumstances.

*McKinney v. Arizona*, 140 S. Ct. 702, 707–08 (2020).

Bell's entire argument is predicated on an erroneous interpretation of the Sixth Amendment's requirements. The Sixth Amendment only requires that the *facts* which make a criminal defendant eligible for the death penalty be found beyond a reasonable doubt. Neither the sufficiency of the aggravating factors, nor the weighing of the aggravating factors and mitigating circumstances are facts, as explained by the United States Supreme Court. *Id*.

Florida's new death penalty statute sets out specific steps the jury must take before recommending a death sentence for a criminal defendant. If the jury:

> 2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:
>
> a. Whether sufficient aggravating factors exist.
>
> b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
>
> c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

§ 921.141(2)(b), Fla. Stat.

The statute's requirements thus differ from the Sixth Amendment's requirements because the statute requires the jury to make non-factual selection findings before recommending a death sentence. The statute's text reflects this as it identifies the unanimous finding of at least one aggravating factor as the eligibility requirement for the imposition of the death penalty. Put another way, the statute identifies the existence of an aggravating factor as a fact that must be unanimously found by the jury before the death penalty may be imposed. The additional statutory requirements, sufficiency and weighing, are selection findings that pertain to the jury recommendation, not the Sixth Amendment.[6]

Bell's argument conflates the selection findings under section 921.141 with the factual findings required by the Sixth Amendment in an effort to convince this Court to adopt a position expressly rejected by the United States Supreme Court in *McKinney*. 140 S. Ct. at 707–08. As such, Bell's argument is meritless.

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[6] Judges make sentencing decisions every day throughout this country using their discretion based upon the facts and circumstances of each defendant within the prescribed statutory range. There is no requirement in a capital case, much less a non-capital case, that a judge or jury form an opinion on the appropriate sentence beyond a reasonable doubt.

In this case, the trial court's sentencing order found that the State had proved the existence of four aggravating circumstances beyond a reasonable doubt. (R. at 339–56.) Under a correct Sixth Amendment analysis, such as the one this Court adopted in *State v. Poole*, 2020 WL 3116597 (Fla. Jan. 23, 2020), the trial court's sentencing order was required to go no further. This Court has explicitly, and correctly, rejected prior argument that the sufficiency and weight of the aggravating factors are determinations that must be made beyond a reasonable doubt. *Craft*, 2020 WL 6788794, at *9; *Santiago-Gonzalez v. State*, 301 So. 3d 157, 177 (Fla. 2020), *reh'g denied*, No. SC18-806, 2020 WL 5562599 (Fla. Sept. 17, 2020).

However, the court below did find the aggravating factors outweighed the mitigating factors. (R. at 356) ("This Court, having compared the mitigating factors against the aggravating factors, *finds that the aggravating factors clearly, convincingly, and beyond a reasonable doubt outweigh the mitigating factors*.") The portion of Bell's argument that the court erred by failing to find the aggravators outweighed the mitigators beyond a reasonable doubt is flatly

contradicted by the record.[7] For all these reasons, Bell's death sentence is not constitutionally deficient. Therefore, he is not entitled to relief.

## III. COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTS THE LOWER COURT'S DETERMINATION THAT BELL COMPETENTLY, KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY ENTERED HIS NO-CONTEST PLEA.

In capital cases, this Court has an independent obligation to ensure the evidence is sufficient to support a conviction. *Damas v. State*, 260 So. 3d 200, 215 (Fla. 2018). When a defendant pleads guilty or no contest, this Court's mandatory sufficiency review "shifts to the knowing, intelligent, and voluntary nature of that plea." *Id.* (quoting *Altersberger v. State*, 103 So. 3d 122, 128 (Fla. 2012)). "Proper review requires this Court to scrutinize the plea to ensure that the defendant was made aware of the consequences of his plea, was apprised of the constitutional rights he was waiving, and pled guilty voluntarily." *Winkles v. State*, 894 So. 2d 842, 847 (Fla. 2005) (quoting *Ocha v. State*, 826 So. 2d 956, 965 (Fla. 2002)). This Court has affirmed guilty pleas in death penalty cases where the defendant:

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[7] It does not, however, appear that the court expressly stated the aggravators were sufficient to impose death beyond reasonable doubt. Therefore, this portion of Bell's argument is factually based, although legally incorrect.

was told he was entitled to a jury at both the guilt and penalty phases of trial; was told a judge alone would determine his sentence if he elected to waive a jury; was told the only sentencing options for first-degree murder were life or death; stated he understood the ramifications of his plea and was not being threatened or coerced; and was not on any medication that would impair his understanding. *Id*.

Competent, substantial evidence supports the lower court's determination that Bell knowingly, voluntarily, and intelligently pled no contest. Bell read and signed a plea form that reiterated his charges and possible sentences, including death. (R. at 69–71.) The plea form also specifically stated the constitutional rights he was waiving: the right to remain silent; right to trial; right to compel witnesses; right to confront witnesses; his right against self-incrimination; and his right to appeal judgment related matters. (R. at 69–70.) When he signed the plea form, Bell certified his plea was not a result of coercion, intimidation, or threats, and that he had not been promised anything as a part of his plea. (R. at 69–71.)

The court also engaged in an extensive oral plea colloquy with Bell. In pertinent part, Bell swore his plea was not the result of

coercion, threats, intimidation, or any favorable promises. (R. at 142, 157–58.) He understood he was waiving his right to trial before a jury or judge along with the accompanying constitutional rights. (R. at 157.) Bell affirmed he understood the State was seeking death on Count I, and that he faced mandatory life on Count II. (R. at 156, 161–63.) Bell also confirmed his understanding that Count I would proceed to a penalty phase where a judge or jury would decide whether to impose life or death based upon the State proving aggravators beyond a reasonable doubt and any mitigation Bell provided. (R. at 165–67.)[8] And just prior to the plea colloquy, Bell stated he was not under the influence of drugs, medication, or alcohol, and that his mind was clear. (R. at 137.)

Based on the written plea form and oral plea colloquy, competent, substantial evidence supports the lower court's finding

[8] Bell decided to waive his right to a penalty phase jury and have a judge alone sentence him. (R. at 180.)

that Bell's plea was knowing, intelligent, and voluntary. This Court should affirm. *See, e.g.*, *Winkles*, 894 So. 2d at 847.[9]

## CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm the judgment and capital sentence imposed in this case.

[9] This Court recently "eliminate[d] comparative proportionality review from the scope of [its] appellate review set forth in rule 9.142(a)(5)." *Lawrence v. State*, No. SC18-2061, 2020 WL 6325895, at *7 (Fla. Oct. 29, 2020). But even if this Court engaged in proportionality review in this case, Bell's sentence is proportional. *See, e.g.*, *Craven v. State*, No. SC18-1643, 2020 WL 6166336, at *10 (Fla. Oct. 22, 2020); *Doty v. State*, 2020 WL 717815, at *4 (Fla. Feb. 13, 2020); *Gill v. State*, 14 So. 3d 946, 964 (Fla. 2009).

## CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to all counsel of record via the e-portal.

## CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Bookman Old Style 14-point font.

Respectfully submitted and certified,

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