

IN THE SUPREME COURT OF FLORIDA

WILLIAM E. WELLS, III,

Appellant,

**CASE NO.: SC21-1001
LT. NO.: 2019-CF-00706**

v.

DEATH PENALTY CASE

STATE OF FLORIDA,

Appellee.

_____ /

**ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR BRADFORD COUNTY, FLORIDA**

ANSWER BRIEF OF THE APPELLEE

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PRELIMINARY STATEMENT

Appellant William E. Wells, III is referred to as “Appellant” or “Wells.” The State of Florida is referred to as “Appellee” or “State.” Appellant’s Initial Brief is cited as “IB.” The direct appeal record is cited as “DAR”, followed by the page number(s). The transcript of the April 2021 continued penalty phase transcript is cited as “T”, followed by the page number(s).

STATEMENT OF THE CASE AND FACTS

Background

Appellant, a prisoner in the custody of the Florida Department of Corrections (FDOC), appeals his death sentence for the July 5, 2019, murder of fellow inmate William Chapman. A Bradford County, Florida Grand Jury indicted Wells and co-defendant Leo Boatman (Boatman) on November 4, 2019: Count I) first-degree premeditated murder of Chapman; and Count II) possession of a weapon by a state prisoner. (DAR 31-33). The State filed its Notice of Intent to Seek the Death Penalty and four proposed aggravating factors on November 27, 2019. (DAR 48-49). Wells ultimately pleaded guilty to both counts, waived a penalty phase jury, and was sentenced to death by the trial judge on May 25, 2021. (DAR 1666-86).

The murder and contemporaneous events were captured by three FDOC video recordings taken at Florida State Prison (FSP). The State prepared corresponding time stamp summaries; introduced the video recordings and summaries into evidence; and published the recordings in open court during the penalty phase.

The primary video recording from FSP's dayroom camera captured Chapman's brutal and graphic murder at the hands of

Wells and Boatman. It also showed activity in the dayroom in the hour leading up to the attack.¹ (DAR 614-623; State Exhibits 5 and 6). A second video recording was generated by a camera mounted in the hallway outside of the dayroom, showed inmates coming in and out, and the corrections officers' response to the incident. (DAR 589-603; State Exhibits 1 and 2). The third recording was taken by a corrections officer with a handheld video camera which documented events in the dayroom, corrections officers' entry into the dayroom, removal of the victim, and Wells's statements made after the murder. (DAR 603-09, 625-32; State Exhibits 3, 4, and 10 (summary transcript of Exhibit 3)).

Facts of the Case

The murder took place on July 5, 2019, at FSP's I Wing dayroom. At the time, Wells was serving six life sentences for capital murder of five victims rendered in 2004 and another inmate in 2017.

¹ The dayroom is a secured, but unsupervised room, approximately 15' x 8' in dimension, where up to 16 "close management" level 3 inmates were permitted outside of their cells to congregate unrestrained. The room had benches and a small television. (DAR 580-81). The dayroom's recording has a 3-4 foot deep blind spot underneath the camera, where some of the attack occurred. (DAR 617, 623-24; State Exhibit 7).

(DAR 445, 468-512). On the day of the murder and years prior, Appellant was housed under “close management” level 3. (T 145).

Wells, co-defendant Boatman, the victim, and several other inmates arrived at the facility’s dayroom at approximately 7:20 pm, over one hour before the attack began. (DAR 616-17; State Exhibit 5). Approximately ten minutes before the attack began, Boatman left the dayroom with a corrections officer to go to the bathroom and returned two minutes later. (DAR 593-94, 644). Wells waited at the dayroom door for Boatman to return, then also went to the bathroom. (DAR 586-94, 616-20, 644-45).

Several minutes after Wells returned, Boatman walked over to the victim, spoke to him, and the two walked out of the camera’s view. (DAR 617-19). Wells walked toward Boatman and Chapman, who were still in the camera’s blind spot, and appeared “to be pulling something or removing something” from his pants. (DAR 619).

Wells then wrapped a white ligature around Chapman’s neck and Boatman began punching the victim. (DAR 619-20).

Wells and Chapman moved into the camera’s blind spot, the victim was being choked, and the two men were “rolling around on the floor.” (DAR 588). Boatman then moved in front of the dayroom

door, blocked it with his foot, and “brandished two large stabbing weapons, two large shanks,” one in each hand, tied to his wrists. (DAR 596, 620). The shanks were described as “ice-pick style,” ten inches long, “gold or brass in color,” with a “plastic or some type of handle and a lanyard attached to them.” (DAR 620, 638, 642-43).

Wells obtained the shanks from another inmate one week prior to the attack and were sharpened by “scraping them on the concrete,” which “took multiple weeks” to do. (DAR 642-43). Because Boatman was a “runaround” or “orderly,” he had access to the “pipe chases and to the bathroom,” the shanks and ligatures “could be taken to different locations,” and “planted by a runaround or someone outside of that cell and placed somewhere in the wing prior to the attack in the stage or planning throughout the wing.” (DAR 463-44).

During the attack, corrections officers unsuccessfully attempted to open the dayroom door, blocked by Boatman with his body and foot. Boatman also threatened the officers, telling them that he and Wells wanted to kill Chapman and they could not come in the dayroom or they would be killed. (DAR 596, 620).

Wells held Chapman up from behind, moved into the camera’s view close to Boatman, who turned around and began stabbing the

victim in his eyes. (DAR 597, 620). Chapman visibly struggled while Wells held him around the neck. The victim broke away briefly and attempted to hold and “block the shanks from stabbing him.” (DAR 598, 621).

Corrections officers opened the dayroom door slightly and managed to deploy a chemical agent/pepper spray. (DAR 598-99). The victim put his “fingers in the door,” repeatedly tried to pull and hold it open to escape the attack, but was “starting to lose the ability to defend himself.” (DAR 599, 620-21).

As the attack continued, the recording showed Wells holding Chapman’s leg and leaning against the dayroom door while Boatman continued the stabbings. (State Exhibits 5 and 6). Boatman then gave Wells one of the shanks. Wells began stabbing Chapman, raising and lowering the shank with both hands several times to the back of his neck, and with obvious force. (DAR 620). Wells did so for a period of time, appearing to try “to maneuver the weapon inside inmate Chapman’s body to kind of maximize the amount of damage,” leaving the shank imbedded in the victim’s neck. (DAR 620-21, State Exhibit 13).

Wells then leaned over Chapman and appeared to hold him

while Boatman repeatedly thrust the shank into the victim from underneath in a fast rhythmic fashion. At the same time, Boatman was talking to corrections officers through the door. (State Exhibit 5). At some point, Wells was heard telling Boatman, “He’s still breathing. Keep stabbing him,” wanting to make sure Chapman was dead. (DAR 600).

Chapman collapsed to the floor and Wells and Boatman appeared to be take a short break. Wells casually picked up and put on his eye-glasses lost minutes before during the attack. (DAR 621). After putting on his eye-glasses, Wells got on the floor next to Chapman and “continu[ed] to push on the shank” that was imbedded in his neck. (DAR 620-21).

Wells then retrieved a portion of the ligature lying on the floor and used “it as a rope to tie the door shut from the handle to the bench,” to keep corrections officers from gaining access. (DAR 600-01, 607, 621-22). The video also showed Wells retrieving clean ligatures from his left pant leg to further secure the door. Statements from corrections officers indicated that Wells and Boatman “were looking to just buy time until the inmate was deceased before they allowed the CO’s to come into the room.” (DAR 622).

After securing the door, Wells stood up, his arms, face and clothing visibly coated with Chapman's blood. (DAR 622). He walked around, went back to Chapman, and kicked him. (DAR 622). Both Wells and Boatman were talking to each other and to corrections officers through the door. Wells kicked Chapman again, assumed "door duty," blocking it with his foot, while Boatman nonchalantly went to get a drink of water. (DAR 622). Wells also checked Chapman to see if he was still breathing. (DAR 606-07). Toward the end of the attack, Boatman repeatedly stomped Chapman and thrust the shank into the victim's body with visible force. (DAR 622-23). The attack lasted approximately 12 minutes. (DAR 646).

FDOC's Designated Armed Response Team and other corrections officers made entry into the dayroom a few minutes later. (DAR 623). The dayroom floor was "slippery" with "just absolute extreme amounts of blood," and it had "a terrible smell, like blood and chemical spray." (DAR 602-03). Chapman was removed with "some vitals, but at this point he was nonresponsive." (DAR 623). Wells and Boatman "surrendered and became compliant." (DAR 623). Wells can be seen on the video calmly following a corrections officer's direction to lay on the floor, he put his hands behind his back, and

was removed without incident. (State Exhibit 5).

Several inmates were sitting on the dayroom benches and watched the attack unfold, but refused to intervene or help Chapman, even when corrections officers told them they were letting it happen and could stop it. (DAR 586, 601-02). When corrections officers deployed the chemical agent, the inmates covered their noses and faces. Corrections officers were heard telling Wells and Boatman to “get off of him,” “they’re killing him,” and “drop your weapons.” (State Exhibits 3 and 4).

After he was removed from the dayroom, Wells was secured in the shower confinement area and recorded by a corrections officer with a handheld video camera for over one hour. Wells made profane and voluntary statements to the camera including:

Cracker called bro a motherfucker fucking fagot, trying to turn him into a fucking fag. This is what Assistant Warden McClellan wanted, and this is what he got.

....

That’s a dumbass for not giving me the death sentence for that last fuckboy from K-wing.

I betcha them dumbass give me the death sentence this time. I betcha them dumbass jury in Bradford County give me a death sentence this time. They fucked up last time giving me a life sentence.

(DAR 625-32; State Exhibits 3 and 10.)

The Eighth District Medical Examiner William Hamilton, M.D. performed the autopsy of the victim on July 6, 2019. (DAR 687-700; State Exhibit 16). Dr. Hamilton observed sharp and blunt force injuries and evidence of ligature strangulation and described approximately 70 penetrating stab and puncture wounds to Chapman's head, forehead, eyes, and neck; front chest and abdomen; torso; posterior neck and upper trunk. (DAR 692-96). He also described a ligature mark and "furrow" on the victim's neck from strangulation and the nature of the injury suggested the ligature was held from behind, corroborated by the video recording. (DAR 692-96).

A 24 centimeter-long metal rod was impaled in and protruded from the posterior of the victim's neck. (DAR 693, 696-98). Wells imbedded the shank and either thrust it into Chapman's body or stomped on it with such force that it went through his neck and was bent. (DAR 651, State Exhibit 15). Dr. Hamilton also found blunt force trauma to the victim, indicated by brain hemorrhaging and swelling. (DAR 699). Dr. Hamilton's opinion as to Chapman's cause of death was "multiple modalities of injury including ligature strangulation, blunt traumatic head injuries, and extensive sharp

force injuries of head, neck and trunk.” (DAR 698).

Florida Department of Law Enforcement (FDLE) served as the lead investigative agency on Chapman’s murder. (DAR 610-52). FDLE Special Agents (SA) John Carlisle and David Meacham conducted a recorded interview with Wells post-*Miranda*² on July 6, 2019. (DAR 632-40, State Exhibits 11 and 12). SA Carlisle testified in the penalty phase regarding FDLE’s investigation and his testimony and Well’s interview are summarized as follows:

Per the FDOC video and FDLE interview, Wells complained of being on close management and “blamed Assistant Warden McClennan for his poor close management review” in June 2019, which prevented him from going “out to general population.”³ (DAR 627-28). He felt the Assistant Warden gave him “a hard time since 2011 when he killed another inmate” and was upset about not receiving a death sentence. (DAR 628, 636-37). Wells told SA Carlisle:

. . . I caught a murder here in 2011, and I asked for the

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ Close management reviews were held every six months. Inmates “look to get off of” close management and given an opportunity to go back to general population. Being taken off close management afforded an inmate better status, less restriction and “more freedoms” within the confines of the prison. (DAR 612; T 145).

death sentence. I went to trial, and they didn't give it to me. I got a mass murder case from Jacksonville in 2003. I asked for the death penalty. They gave me five life sentences. I got nothing to lose.

....

Me and my codefendant, we just had our CM reviews last month. They shit on us again. We can't get no privileges on CM3. CM2 we don't get no coffee, we don't -- we can't go to canteen. . . . I can go to death row and get all that.

....

. . . we've been planning on killing somebody . . . we said if they shit on us in this review, we was talking in May, if they shit on us in June, we might as well kill someone.

(DAR 636-38).

Wells and Boatman targeted Chapman in part because of his homosexuality and because another inmate from whom he and Boatman got coffee, sent Chapman “to get us, to, like, try to bust our ass for the black dude to get coffee for free. That ain't happening, and that's why he's dead.” (DAR 634-36). In other words, Chapman was sent to recruit Wells and Boatman “for sexual favors” in exchange and payment for coffee. (DAR 641).

Wells told SA Carlisle that he and Boatman discussed killing Chapman “for the last, like, three or four days. I'd say maybe a week, because that's when we started noticing what was going on and what

was being said by the other dude.” (DAR 640). Chapman “stepped up to the plate” and Wells felt “sorry for the guy, but he did what he did. He knows he’s in prison. You can’t try people like that, especially somebody that’s got eight murders already.” (DAR 638). According to one of the witnesses, on the day of the murder Wells asked Chapman if he was going to the dayroom to confirm he would be there and Chapman said he would. (DAR 645).

Although Wells did not disclose how he obtained the shanks, he described them as approximately 10-inch-long pieces of fencing from “the rec yard” and sharpened on concrete. (DAR 637-38). Wells made the ligatures by ripping a sheet and pillowcase from his cell “to tie the door and the strip of sheet” to choke Chapman. (DAR 639-40). He made the ligatures “a couple days before so that you know it's cold, calculated and premeditated. No doubt about it.” (DAR 640). Wells acquired athletic shoes just before the murder, which “provided better traction for him on those slick surfaces.” (DAR 644).

FDLE agents interviewed inmate Johnny Hodges who was in the cell next to Wells. He “overheard a lot of conversations and discussed with them about their plans to kill someone because of their poor CM

review that took place in June.”⁴ (DAR 647-48; T 54, 59). On the day of the attack, Hodges “passed a pair of tennis shoes to Wells,” purportedly to improve traction on the dayroom floor. (DAR 618-20, 644, 648-49, 1496-78). Hodges was not in the dayroom the evening of the murder because Wells instructed him “not to go,” implying that Hodges was given a heads up that the attack was going to take place.” (DAR 648). Wells also gave Hodges a “keepsake” approximately three days prior to Chapman’s murder and “the impression was that they would be famous for murder.” (DAR 648-50; T 57). The “keepsake” was Wells’s inmate profile sheet signed, “To my dog J.J. from the infamous Crawfish”. (DAR 648-50, T 57).⁵

Referring to Wells’s recorded statements after the murder, SA Carlisle described him “kind of laughing” that “30” corrections personnel “couldn’t get that door open” and he joked about using the victim’s body “as a doorstop.” (DAR 629-30). Wells further stated, “Did you see how far that knife went all the way through his fucking neck?” (DAR 630; State Exhibit 15). Wells then stated how Chapman

⁴ Hodges was called as a defense penalty phase witness. (T 54-59).

⁵ Wells’s nickname was “Crawfish.” “Will” referred to the victim, William Chapman. (DAR 649).

“tried the wrong” one in trying to recruit him and Boatman for sexual acts with another inmate. (DAR 630, State Exhibit 15).

Wells told the FDLE agents, since he and Boatman planned the murder, he knew items would be collected by FDOC’s inspector general and “packed it all up for the inspector wouldn’t have to do it. He could just come down there and grab it, take it down to his office and go through it looking for evidence.” (DAR 630-31).

Competency Evaluation and Procedural History

On November 7, 2019, three days after he was indicted, Wells moved to represent himself and proceed *pro se*. (DAR 35-40, 710). Upon its own motion, the trial court ordered Wells to undergo a competency evaluation. (DAR 42-45). The trial court recognized Wells’s previously diagnosed “mental health and neurological issues” and appointed Dr. Harry Krop to evaluate his competency to proceed, make cogent and rational decisions to represent himself, and to stand trial. (DAR 42). Dr. Krop was familiar with Wells as he participated in two prior cases. In 2003, Dr. Krop conducted a competency evaluation and found Wells competent to proceed. In the 2011 case, Dr. Krop participated in mitigation efforts. (DAR 51, 733).

At Wells’s November 27, 2019, arraignment, the trial court read

the charges against him and addressed his motion to represent himself, *in depth*. (DAR 706-25). Even though Dr. Krop's competency determination had not been completed, the trial judge nonetheless discussed Wells's right to and advantages of trial counsel; pitfalls and consequences of representing himself; his limited ability to prepare and present penalty phase evidence; potential postconviction consequences; and his right to request counsel be appointed at any time, should he change his mind. (DAR 706-25).

The court preliminarily noted that Wells appeared "oriented to time and place," answered his "questions appropriately, Wells asked appropriate questions, and had no reason to believe he would not be found competent." (DAR 712-13). But, because of "what's at stake," the court intended to proceed "on the side of making sure that we are correct," and further stated:

You understand that because of even the history, again, that you have, I will likely, whether you represent yourself or someone else, ask for an evaluation to be done to assure me that you are competent to go forward, both to stand trial and whatever decision I make here, just to talk to you about -- are you thinking rationally and capable of making a rational decision, competent decision, which is completely different than competency to stand trial. It's a different issue that I'm exploring today, is your decision to represent yourself.

But I will probably ask the expert to just also inquire about that as well . . . I'll need to be assured, especially if you represent yourself, that you're capable of moving forward in making rational decisions in doing that.

(DAR 712-13, 718-19).

The trial court continued to advise Wells of additional considerations such as limitations on access to materials, witnesses, discovery, and mitigation resources; the possibilities of delay as a result; appeal and postconviction claims; and the broader benefit of counsel. (DAR 19-24). Wells stated he understood or agreed with the trial court on each point and stand-by counsel was appointed. (DAR 19-24).

The trial court proceeded to Wells's arraignment and plea. (DAR 725-42). Wells received, read, "fully" understood the indictment, stated there was no need for the court to read it to him, and did not wish to consult counsel. (DAR 725, 727).

Wells pleaded *not guilty* to Count I, first-degree murder; and *guilty* to Count II, possession of a weapon by a state prisoner. (DAR 725-26).

The trial court conducted a detailed plea colloquy and: 1) cautioned Wells about the consequences of pleading guilty; 2)

ensured he understood those consequences; 3) explained the arraignment process and possible sentences; 4) extended the opportunity to discuss the pleas with stand-by counsel; 5) explained the rights being waived by pleading guilty; 6) again discussed the effects of representing himself; 7) discussed his right to trial on Count II; 8) discussed this waiver of investigation and discovery rights; and 9) the only procedural step was for the court to enter a sentence. (DAR 727-31). Wells informed the trial court he understood all his rights and matters raised. (DAR 727-31).

Following the State's factual proffer, but pending the competency evaluation and report, the trial court conditionally accepted Wells's guilty plea to Count II stating:

Based on your testimony, as of this moment I do find, based upon everything that you have said, all of your responses, that I have *every reason to believe that you are competent both to make the decision to represent yourself and competent to enter this plea*, and I expect that to be the case, but I do wish to have an expert to do an evaluation to ensure that we can go forward, given the gravity and the history that you have indicated that you have.

And if there is an issue, then you will be permitted, obviously, to withdraw your plea if they find that I have missed something that only an expert maybe would be able to identify, but I don't expect that at all. But I do think, given the nature of this case and your answers, that would be prudent for me to do.

....

Take your medication as prescribed . . . if you want this to move forward, it's going to be important that you do cooperate with those that are treating your mental health, because, as you know, if you stop and it deteriorates, then we'll be unable to go forward as you're wishing, and that will become its own barrier to the court being able to honor any request to have any critical issues resolved in the case if I cannot find that you're competent to continue forward.

(DAR 731-32, 734-35 (emphasis added)).⁶

Wells then recounted that Dr. Krop participated in mitigation efforts in his 2011 case and conducted a competency evaluation in 2003 relating to his trial for the quintuple homicide. (DAR 733).

Dr. Krop rendered his competency report on December 9, 2019, and determined Wells was “competent to proceed.” (DAR 50-53). Wells informed Dr. Krop that he requested a speedy trial and intended “to plead guilty with the hope of expediting his sentencing hearing.” (DAR 50). He had “no desire” to present mitigation evidence as “it is his desire to receive the death penalty.” (DAR 50).

Wells explained the reasons for requesting the death penalty were due to “having been on maximum closed management since

⁶ Wells waived a penalty phase jury trial on Count II and indicated he did not want to present mitigation evidence. (DAR 736-40).

2008 which he views as cruel and unusual punishment,” stating "I just want to get this over with; I am sick and tired of everything!" (DAR 50-51). He had “been studying the case law related to these issues, suggesting that he does not want to stay in prison and die a slow death from cancer as his father did.” (DAR 51). Wells understood that “Regional Counsel” would be appointed as the public defender’s office represented his co-defendant. (DAR 51). Dr. Krop observed that Wells recognized his “psychiatric issues which he believes have been exacerbated by his secure management status for over a decade. He describes a history of hallucinations and flashbacks related to his homicide of five victims in Duval County.” (DAR 51).

Importantly, Dr. Krop documented his 2003 competency to proceed determination was made despite Wells’s mental health diagnoses of Schizoaffective Disorder and Post-traumatic Stress Disorder (PTSD). (DAR 51). Dr. Krop concluded “*that Mr. Wells was Competent to Proceed as he was capable of assisting his attorney in all legal proceedings.*” (DAR 51).

As to his 2019 “Clinical Impressions,” Dr. Krop observed:

Mr. Wells recalled this examiner from the previous evaluations and cooperated fully with the evaluation process. He described many of the psychiatric symptoms .

. . including visual hallucinations, flashbacks and a high level of anxiety and depression. He expressed frustration that jail medical staff have not taken him seriously with regard to providing the psychiatric treatment he needs. He is insightful as to the possibility that his mental health could deteriorate to the point of interfering with his capacity to represent himself. He indicated however that his hallucinations only occur periodically as he conveyed that his last perceptual disturbance occurred the night of his last Court date. He was not responding to internal stimuli during our evaluation and *his thinking was relevant, coherent and goal-directed*. He did not appear to be manipulative but was hypervigilant throughout the interview, typically turning his head and looking out the window of the office when he heard a noise or someone talking. On the other hand, *he displayed excellent concentration and attention to the task at hand during our interview*.

(DAR 51-52 (emphasis added)).

Ultimately, Dr. Krop concluded:

In addressing the Court's question regarding his capacity to represent himself, *it is this examiner's opinion that the Defendant is capable of making a cogent and rational decision regarding this issue. He is an intelligent individual who currently does not show evidence of a thought disorder or indicia of a psychotic process. . . . it is this examiner's opinion that within a reasonable degree of psychological certainty, Mr. Wells has a rational, as well as factual understanding of the pending proceedings*.

(DAR 52).

Neither Dr. Krop's determination that Wells was competent to proceed, nor his underlying conclusions were directly challenged by

Appellant or his defense team. (DAR 773). Trial counsel did not argue Wells was not competent or request the trial court order additional psychiatric evaluations.

On December 13, 2019, Wells requested and the trial court appointed regional counsel. (DAR 539-41). He also moved to withdraw the not guilty plea to first-degree murder. However, upon counsel's appointment, this request was withdrawn. (DAR 57-58, 538, 542-43, 746). The trial court addressed regional counsel regarding the competency evaluation:

Because of prior history, I had no reason to believe while he was in court, that he was in any way exhibiting any competency issues; but because at that time there was at least an anticipation there may be a change of plea today or some other proceeding that would be more complex, I wanted to ascertain and be certain that he was both competent to proceed and to represent himself. And so I ordered that for the Court's assurance and thoroughness of the record. But I have no reason not to believe at this point that Mr. Wells is not competent to proceed in this case.

Obviously, if you have your own concerns, you can address that, as his counsel.

(DAR 541-42). No concerns were raised.

On February 5, 2020, Wells wrote to the trial court stating he was "unhappy" with appointed trial counsel, "wish[ed] to have them

removed,” and desired to “move forward pro se.” (DAR 55). A *Faretta*⁷ hearing to determine Appellant’s competence to represent himself was held on February 26, 2020, where the trial court conducted another comprehensive inquiry and colloquy regarding Wells’s self-representation. (DAR 754-774). The court concluded:

the threshold question is not whether you are a competent attorney, because the answer to that would be no. You're not trained nor do you have the experience, and you would -- *only because the constitution gives you the right to represent yourself can you make this choice, if you are competent to make the choice, and that's the threshold for the court.*

And I say that to, again, emphasize . . . *basically the constitution gives you the right to make a bad decision in this regard against all the advice, I'm sure, of counsel, certainly against the court's urging to you based on what's in front of me and trying to go through this process.*

Part of, though, the questions that I've asked and that being put on the record is to -- again, for me to -- and your responses being appropriate, your behavior being appropriate, having sat through a case like this as a defendant hardly qualifies you to handle a death penalty case with all the issues. You understand that?

MR. WELLS: I do, your Honor.

THE COURT: . . . again, there's nothing that would suggest to me that the finding of the expert previously that Mr. Wells is not competent on either level that would change my mind. I believe that Mr. Wells is competent to proceed

⁷ *Faretta v. California*, 422 U.S. 806 (1975).

and I believe that he is competent to make the decision as to whether or not he wishes to represent himself in this case, that he has a full understanding of the consequences of -- that could happen in this case, that it is a death penalty case, and he's indicated that even in one of his motions. He understands the gravity of the penalty.

He understands full well what an attorney is willing to do and can do on his behalf, as well as his own limitations in representing himself. And he's had the opportunity even to speak to counsel about that issue since they have been appointed, albeit for a brief amount of time. He has had the benefit of discussing their resources and their expertise and what they would be willing to do in representing him.

(DAR 770-72).

At the conclusion of the *Faretta* hearing, Appellant announced his intention to plead guilty to first-degree murder. Prior to accepting the plea, the trial court again addressed Appellant's constitutional rights given up upon the plea, including a right to jury trial and discovery, as well as consequences including giving up the right to appeal the facts of the case, and penalties of only life imprisonment and the death penalty. (DAR 774-88). Wells even commented that a presentence investigation report would be required only if he waived mitigation. (DAR 786). Following the State's factual proffer, the trial court accepted Wells's guilty plea finding it was freely, voluntarily, knowingly, and intelligently entered. (DAR 788-92). Wells also waived

a penalty phase jury and indicated he did not intend to present mitigation evidence. (DAR 809-20).

Although Wells waived mitigation, the trial court ordered “a very large amount of material” from his prior case. (DAR 819-20). Wells also stipulated to two aggravating factors: the capital felony was committed while under a sentence of imprisonment, seven life sentences for murders committed in 2003, 2008, and 2011; and he was previously convicted of another capital felony or a felony involving the use of violence when he killed Mr. Chapman. (DAR 445-90, 563-64, 671-72, 820-26).

Wells waived a sentencing jury and mitigation at the March 11, 2020, status conference and confirmed that trial counsel would not be appointed. The trial court again discussed Appellant’s rights and possible consequences of his actions and decisions. (DAR 800-17). Due to the impact of COVID-19, the next status conference took place on June 24, 2020. (DAR 818-30). The trial court confirmed Wells’s waiver of trial counsel, presentation of mitigation evidence, and stipulation to two aggravating factors (prior violent felony convictions and under a sentence of imprisonment). (DAR 820-25).

On July 23, 2020, just prior to the commencement of the

penalty phase, stand-by counsel unilaterally moved to continue the proceedings. (DAR 514-18). Stand-by counsel stated he had “not had the opportunity to engage in the necessary preparation” and Wells was entitled to representation. (DAR 514-18). The motion did not indicate it was filed at Wells’s direction or with his consent. The motion was denied without prejudice. (DAR 519-21).

Penalty Phase

The penalty phase commenced on August 3, 2020, and Appellant continued to represent himself. The court noted Wells appeared “alert and cognizant.” (DAR 554-56). He again waived a jury sentencing; and informed the court that he did not intend to present any mitigation evidence or witnesses. (DAR 556-62).

The State presented its opening statement and the testimony of FDOC Corrections Officer Eric Prock (DAR 573-609); FDLE Special Agent Carlisle (DAR 610-52); and Medical Examiner Dr. Hamilton⁸ (DAR 688). Senior FDOC Inspector General Kevin Snow briefly testified regarding Wells’s 2017 first-degree murder conviction, also

⁸ Wells’s trial counsel did not cross-examine Dr. Hamilton as the trial court authorized him to be re-called when the penalty phase proceedings resumed. (DAR 699-700).

involving an inmate. (DAR 653-71).

On the second day of the penalty phase, Wells informed the trial court that he wanted stand-by counsel to “take over from here due to some family issues.” (DAR 675-78). Assistant Regional Conflict Counsel Blake Johnson appeared on Wells’s behalf as defense death penalty phase counsel, advised the defense was not prepared to proceed, and moved for a continuance which the trial judge found “appropriate.” (DAR 678-81).

Regarding trial counsel’s request for appointment of doctors, the trial court asked that those familiar with Wells and the case be utilized. (DAR 681-86). The court remarked:

In the last case -- there may be additional you wish to call. That's up to you. But Dr. Holmes is the psychologist in the case, Dr. Ross, the neurologist, and Dr. Wu, also a psychiatrist with expertise in brain imagery who was called to the stand. Whether you wish to call any of them is up to you, but they already have familiarity with the case. And I think if you have the opportunity to have Ms. O'Shea review her work and update it, hopefully it could be done in an expeditious way.

And then there were several family members, as well as a couple of former teachers that were called. You may have additional ones you wish to call . . . however you wish, of course, to proceed.

But a great deal of work has already been done as far as his history is concerned, and individuals are familiar with

his case who, because of that, I think would enable them to update their work, and hopefully it will not take an inordinate amount of time.

(DAR 681-82).

The court appointed a mitigation specialist, O’Shea, who was “very familiar with this case.” (DAR 681-82). At the close of the August 2020 penalty phase proceedings and in light of Wells’s being represented by trial counsel, the trial judge addressed him as follows:

Mr. Wells, you asked for counsel. Now they're responsible for your case. The one thing, should there be a change of mind . . . I still am going to at this point now tell counsel to prepare as though you're going to proceed. So when it comes to November, if there was a change in September and I will allow you to represent yourself, they are going to continue by the court now to prepare so that there will not be further delays.

(DAR 702-03). Wells indicated he understood. (DAR 702-03).

Defense counsel’s preparation and progress for an anticipated November 2020 resumed penalty phase were gauged at the September 9, 2020 status conference. (DAR 1800). Trial counsel advised of the State’s “95 category A” *guilt phase* witnesses and that “mitigation may come from any of this.” (DAR 1800-01). The court responded that it needed to know “what you're doing, what your plan is.” (DAR 1801-02). Trial counsel advised they had been in

“consultation with experts” and work was dependent on records. (DAR 1802). The trial court stated, “I will be happy to assist. . . I will issue an order expediting records. I think given the nature and the status of this case, it should be a priority and FSP should make it a priority in terms of providing records.” (DAR 1803).

The penalty phase resumed on April 26, 2021, with Wells represented by trial counsel. (T 1-539). The defense argued a *Richardson*⁹ claim that the State did not produce FDOC - FSP video recordings of the wing where Appellant and his co-defendant resided during *the week prior* to the “alleged homicide.” (DAR 1477-1535; T 3-12). The defense argued a continuance was needed as a “sanction,” so their penalty phase expert witnesses could view it. (DAR 1479; T 7). The trial court denied the *Richardson* motion in part because the video was not relevant to FDLE’s investigation; the State was not aware of it and did not review or rely upon it in their case; and any suggested prejudice was “purely speculative.” (T 5-11). Although much of the defense argument was “speculative,” the trial court took the requested continuance under advisement. (T 11-13).

⁹ *Richardson v. State*, 246 So. 2d 771 (Fla. 1971).

The defense called eight penalty phase witnesses, whose testimony is summarized:

Fellow inmate Johnny Hodges, whose cell was next to Wells, briefly testified that he heard Wells yell at FSP mental health staff. (T 54-56). Hodges also testified about the “keepsake” given to him by Wells and that he wrote the date Chapman was killed, not Wells. (T 56-57). However, Hodges also stated that Wells told him, he intended to kill someone. (T 59).

Dr. Jeffery Danziger testified regarding Wells’s motion to withdraw his guilty plea and his “competency to waive his right to representation and to offer a guilty plea in February and March of 2020.” (IB 22; T 22, 19-53). He opined that Appellant suffered from serious psychiatric and mental health issues, schizoaffective disorder, post-traumatic stress disorder, cognitive deficits and limitations, and multiple adverse childhood experiences. (T 22).

Dr. Joseph Wu, an expert in neuroimaging and forensic psychiatry, reviewed the 2021 MRI, DTI, and PET scan imaging, and his own report and scan taken in Wells’s 2017 case. (T 165-299, 181). He testified to Wells’s “brain functioning,” frontal lobe “abnormalities” seen in conditions such as schizophrenia, bipolar disorders, hypoxic

brain injury, psychoses, and changes between 2017 and 2021, putting him at risk for CTE (chronic traumatic encephalopathy, a condition “not completely well researched yet,” and diagnosed through autopsy). (T 169, 179-240, 265-69). Dr. Wu opined Wells suffered from TBI, FASD, childhood neglect, abuse and psychosis, schizophrenia, mood disorders, and was at high risk for CTE. (T 240). However, on cross-examination, Dr. Wu confirmed he was *not qualified to render a competency opinion*; did not read Dr. Krop’s competency determination report; did not watch the video recordings or read the investigative reports; and never met with Wells. He did not believe Wells had the “neurological capacity to be able to exercise proper intelligent choices and judgment” to represent himself, because that required a “higher level of executive functioning.” (T 250-54, 272).

Dr. Terry Kupers, M.D. and master in social psychiatry, who specializes in the area of the effects of solitary confinement, testified that the negative effects of solitary confinement are especially detrimental for the mentally ill. He specifically testified that Appellant’s mental condition was exacerbated by the years spent in close management and solitary confinement. Dr. Kupers compared

Wells's deteriorating mental health and conduct in the 2019 murder to his behavior leading up to the 2008 attempted murder. He characterized Wells's actions to being a cry for help which went without proper intervention. (DAR 1676; T 366-492).

Dr. Heather Holmes, a clinical and forensic psychologist specializing in trauma, testified about the cumulative effects of chronic childhood trauma, and continued traumatic events that the Appellant experienced into adulthood. (DAR 1675; T 60-165).

Social worker Gwendolyn Lockwood was part of the psychological staff at FSP and was assigned as Wells's case manager in April 2016. Ms. Lockwood opined that leading up to the instant offense Appellant's mental health was deteriorating and he needed additional intervention. (DAR 1676; T 325-65).

Sentencing

Wells's *Spencer*¹⁰ hearing and sentencing were combined on May 25, 2021. (DAR 1727-68). Prior to the *Spencer* hearing, both the State and defense filed respective sentencing memoranda. (DAR 1607-22, 1623-62). No additional evidence was presented.

¹⁰ *Spencer v. State*, 691 So. 2d 1062 (Fla. 1996).

However, Wells delivered a lengthy allocution to the trial court. (DAR 1739-64). He thanked the court for its patience and understanding as he “flip-flopped through the counsel issue.” (DAR 1740). He then apologized to his murder victim’s sister for the pain he caused, acknowledging “that the words I’m sorry seem inadequate.” (DAR 1740-41). Wells regretted his actions “not because of the consequences I face here today, but because when I’m looking at life through a clear lens with clarity, I see what I’ve done is morally wrong and socially unacceptable.” (DAR 1740-41).

Wells recounted the emotional trauma and difficult life he suffered as a child and through his youth; alcohol and substance abuse; the death of his stepson; the 2003 “Mayport murders” and the killing of his wife and staying in the house with his other stepson and five decomposing bodies; losing custody of his son; and his mental health issues; quoted Biblical scripture; and for the first time, asked for mercy. (DAR 1741-64).

The trial court rendered its death sentence and prepared a detailed sentencing order. (DAR 1666-86). It found four aggravating factors, proved beyond a reasonable doubt, and assigned each either great or very great weight: 1) The capital felony was committed by a

person previously convicted of a felony and under the sentence of imprisonment. § 921.141(6)(a), Fla. Stat (2019) (great weight); 2) Wells was previously convicted of another capital felony or a felony involving the use or threat of violence. § 921.141(6)(b), Fla. Stat. (2019) (very great weight); 3) The murder was especially heinous, atrocious, or cruel. § 921.141(6)(h), Fla. Stat. (2019) (great weight); and 4) The murder was committed in a cold, calculated, and premeditated manner, § 921.141(6)(i), Fla. Stat. (2019) (great weight). (DAR 1667-74).

The trial court determined none of the eight proposed statutory mitigating circumstances had been proved by the evidence.¹¹ (DAR 1674-78). The sentencing order focused substantially on § 921.141(7)(b), Fla. Stat., that the capital felony was committed while

¹¹ 1) Wells had no significant prior criminal history; 2) The capital felony was committed while Wells was under the influence of extreme mental or emotional disturbance; 3) the victim participated in Wells's conduct or consented to the act; 4) Wells was an accomplice in the capital felony and his participation was relatively minor; 5) Wells acted under extreme duress or under substantial domination of another person; 6) Wells's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired; 7) Well's age at the time of the crime; and 8) the existence of any other factors in Wells's background that would mitigate against imposition of the death penalty. See § 921.141(7)(a)-(h), Fla. Stat. (DAR 1674-78).

Wells was under the influence of extreme mental or emotional disturbance. (DAR 1674-77). The trial court found:

Under this heading the Court will also consider the mitigation that the Defendant suffered from a serious mental health disorder(s) and neurocognitive disorder.

The Defendant's mental health issues surfaced long before he committed the first murders. The Defendant's first mental health crisis occurred when he was 17. Throughout his life, the Defendant continued to struggle with mental health issues, complicated by various traumatic events, including the accidental death of his 7-year-old step son, which the Defendant described as "the beginning of the end."

The Defendant's mental health history is well-documented. He has been diagnosed with depression, suicidal ideations, bipolar disorder, schizophrenia disorder and schizoaffective disorder. In addition, he suffers from PTSD and neurocognitive brain damage.

(DAR 1674-75).

The order then reviewed Appellant's expert witness testimony, discussed *infra* in Issue II, and concluded insufficient evidence was presented to establish "*he was acting under the influence of an extreme mental or emotional disturbance when he committed the crime.*" (DAR 1676-77 (emphasis in original)).

The court found that eight non-statutory mitigating circumstances were proven and gave weight as follows: Wells A)

experienced extreme childhood abuse, neglect, and other traumatic events in early adulthood (slight weight); B) suffered from serious mental illness, neurocognitive issues, and was in solitary confinement/close management for thirteen years (some weight); C) was cooperative with authorities after the incident (slight weight); D) took responsibility for the offense (slight weight); E) was always respectful to FDOC staff and to the court throughout the proceedings (some weight); F) struggled with substance abuse and alcoholism throughout his life (slight weight); G) mental health needs were neglected by FDOC (slight weight); and H) showed remorse for the murder (slight weight). (DAR 1678-83).

Determining that the aggravating factors “far outweigh[ed]” the mitigating circumstances, the trial court observed:

The Defendant has an extensive history of violent felony offenses; and, at the time of the murder in this case, was serving multiple life sentences in the Florida Department of Corrections based on three separate and distinct criminal episodes involving violence or threats of violence.

In this case, the Defendant planned, in a cold, calculated, and premeditated manner, the murder of the victim for days before he committed it. The Defendant obtained shanks, which he sharpened over the course of several days. Further, the Defendant ripped up his sheets and pillowcases to make ligatures with which to tie up the victim so that he could not resist. And prepared his

property to be transported and searched the inspector. Without any pretense of legal or moral justification, the Defendant then strangled and brutally stabbed the victim multiple times, during which the victim pled for his life knowing that death was imminent. And when the Defendant saw that the victim was still alive, he encouraged his co-defendant to keep mercilessly stabbing him. The murder in this case was carried out as a matter of course, without any threat from the victim. And while carrying it out openly in front of other inmates as well as correctional officers, the Defendant took actions, and made threats, to ensure that no one would intervene until the murder was completed to his satisfaction.

(DAR 1683-84).

The trial court sentenced Wells to death. (DAR 1683-84).

SUMMARY OF ARGUMENT

ISSUE I: The trial court did not abuse its discretion and trial counsel was not denied the opportunity to prepare its penalty phase case. Following the trial court's December 2019 competency determination, Appellant was represented by counsel until February 2020. Wells pleaded guilty to first-degree murder in February 2020 and elected to represent himself until August 4, 2020, when he requested stand-by counsel be appointed during the second day of the penalty phase proceedings. Between August 2020 and leading up to the April 2021 resumed penalty phase, the trial court afforded the defense numerous accommodations and assistance to prepare for

its penalty phase case. No prejudice to the Appellant has been shown.

ISSUE II: The trial court did not abuse its discretion and properly rejected statutory mitigators not established by Appellant. Mitigation must be established by competent, substantial evidence and failure to do so affords a trial court discretion to reject it. The trial court did not disregard expert testimony, which is addressed in its sentencing order. Moreover, the Appellant’s pre and post-murder actions cannot be squared with the expert testimony and refute the mental health statutory mitigating circumstances.

ISSUE III: The trial court did not commit error, much less fundamental error, when it sentenced Appellant to death, having determined the aggravating factors proved were sufficient to and outweighed the mitigating circumstances. Contrary to his argument, finding aggravator sufficiency and the weighing process are not “functional elements of a crime for sentencing purposes,” subject to a reasonable doubt standard. (IB 60). This claim is foreclosed by this Court’s precedent and the United States Supreme Court’s decision in *McKinney v. Arizona*, 140 S. Ct. 702 (2020).

ISSUE IV: Appellant asserts that Florida’s capital sentencing scheme does not limit the class of persons eligible for the death penalty and

violates the Eighth Amendment due to 1) elimination of proportionality review and 2) an overprovision of aggravating factors. (IB 70). Neither aspect of this issue is supported by meaningful analysis and Appellant failed to recognize that finding the existence of one aggravator is but an initial step to sentence a capital defendant to death. This claim is meritless and foreclosed by binding precedent.

ISSUE V: Appellant asserts that the Eighth Amendment's protection against cruel and unusual punishment precludes his death sentence due to his mental health diagnoses. Citing *Roper v. Simmons*, 543 U.S. 551 (2005) and *Atkins v. Virginia*, 536 U.S. 304 (2002), Appellant suggests his mental illness places him in the same class of persons as those intellectually disabled and under the age of eighteen when the capital crimes were committed, and he is therefore categorically excluded from eligibility to be sentenced to death. He asks this Court to revisit its decisions which have consistently rejected this very argument, without presenting any compelling reason to do so.

ARGUMENT

ISSUE I

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING DEFENSE'S MOTION FOR ADEQUATE TIME. [RESTATED]

Appellant asserts that the trial court abused its discretion denying “repeated pleas” to continue the penalty phase and for adequate time to investigate and prepare mitigation. (IB 44-45). He argues that trial counsel was unable to satisfy their ethical duty to investigate the case. (IB 44-45). Defense counsel requested continuances three times between July 2020 and March 2021 either by motion or orally, and once when not yet appointed counsel of record. (DAR 514-18, 558, 675-81). The trial court did not abuse its discretion and Wells was not prejudiced as 1) the death penalty defense team had over one year to prepare its case; 2) preparation was required only for the penalty phase, due to Wells’s guilty plea; and 3) the defense team, including mitigation specialist, did not start from scratch and had the benefit of Wells’s extensive mitigation records from his 2017 capital penalty phase.

Appellant offers an incomplete procedural and factual account of the proceedings. The record verifies the trial court’s unhurried

attention to this case and liberal accommodations made to the defense from the beginning of Appellant's case. Hence, applying this Court's precedent to the trial court's deliberate and thoughtful address of this issue, no abuse of discretion occurred.

Whether to grant or deny a motion for continuance, even in a capital penalty phase, is within the trial court's discretion. *Williams v. State*, 438 So. 2d 781, 785 (Fla. 1983). The decision will not be reversed "unless there has been a palpable abuse" of the trial court's discretion which "clearly and affirmatively" appears in the record. *Jordan v. State*, 2019 WL 8161276, *9 (Fla. Dec. 5, 2019) quoting *Weible v. State*, 761 So. 2d 469, 472 (Fla. 4th DCA 2000); *Smith v. State*, 170 So. 3d 745, 758 (Fla. 2015). Moreover, the court's denial of a continuance must result in "undue prejudice to the defendant." *Williams v. State*, 209 So. 3d 543, 555-57 (Fla. 2017) quoting *Snelgrove v. State*, 107 So. 3d 242, 250-51 (Fla. 2012). There is no abuse of discretion when the requesting party has unjustifiably caused the delay. *Id.*

While capital cases "command the closest scrutiny, it is still the obligation of an appellate court to review with caution the exercise of discretion by a trial judge in matters such as a motion for

continuance.” *Carr v. State*, 156 So. 3d 1052, 1064 (Fla. 2015) quoting *Doorbal v. State*, 983 So. 2d 464, 486 (2008). See also *Smith*, 170 So. 3d at 758-59 quoting *Hernandez-Albert v. State*, 889 So. 2d 721, 730 (Fla. 2004).

The procedural history demonstrates the trial court’s judicious consideration and assistance to counsel between August 2020 and May 2021, which refutes any claim that the court abused its discretion denying a late continuance. Wells was afforded effective assistance of counsel, expert witnesses were retained, depositions were taken, substantial discovery was conducted, and substantial mitigation efforts were made, refuting any claim of prejudice.

Approximately two months after Wells’s arraignment, trial counsel appeared on Wells’s behalf on January 29, 2020, and advised they were coordinating depositions and working with Wells’s former counsel “to get her file,” including “all of the mitigation that was done by Ms. Alavi” in Wells’s most recent capital case. (DAR 746-49). Trial counsel stated, “I do know that my office, either through investigators or other personnel, have already visited Mr. Wells a couple of times. So Mr. Wells is fully aware that we're working the case and that we're making progress.” (DAR 751-52). The trial judge then ordered the

penalty phase transcript in Wells's 2017 capital penalty phase and sentencing to give the defense "a leg up on where to start," they would know what witnesses were called, and to assist "expediting the procedure as far as preparation." (DAR 747-49).

One month later, Wells dismissed counsel and proceeded with his motion to withdraw his not guilty plea to first-degree murder. (DAR 754-99). After another detailed colloquy the trial court specifically informed Wells:

And the court's opinion would be you're making a mistake to represent yourself in a case of this magnitude without legal training, that you should do this cautiously, . . . you should have an attorney in this case to assist you through this process. (DAR 768). Stand-by counsel acknowledged they were "prepared to go forward" with the penalty phase defense case, limited only to aggravation and mitigation, not guilt. (DAR 769-70).

On July 23, 2020, stand-by counsel filed a Motion to Continue Penalty Phase Proceeding in the event Appellant changed his mind on self-representation and requested re-appointment of trial counsel. (DAR 514-18). The defense's first motion to continue was denied without prejudice. (DAR 519-21).

Wells requested that stand-by counsel be appointed as defense

counsel on the second day of the August 2020 penalty phase, who requested a continuance and expressed “concern with” rescheduling for November 2020, due to difficulties resulting from the pandemic such as visiting prisons and mitigation preparation which “requires in-person visits.” (DAR 678-680). Over State’s objection to a continuance, the trial court responded:

Here's what I think is appropriate in this case. I believe, given the nature of the evidence in this case, it's already been presented. The court will allow the state to give the medical examiner's testimony today, understanding the defense has not spent time preparing a cross-examination . . . that will complete I think the state's presentation.

The court will allow you to ask some questions today, but then *you can prepare cross-examination and if you wish, you can recall him*, and the court will allow you to conduct cross . . .

So I think that's expeditious and *in no way would prejudice the defendant to allow that*, and it would also make the most use of our time today.

(DAR 680-81 (emphasis added)).

The trial court further observed, “a great deal of work has already been done” regarding Wells’s history. The trial court suggested appointing a mitigation specialist who was already “very familiar with this case,” to help “expedite” preparation; and acknowledging it was the defense’s decision to utilize doctors “who

already have familiarity with this case”; and noted family members and teachers were previously called. (DAR 681-83). Addressing counsel’s concerns over “timetables,” the lower court responded:

. . . today we're anticipating that there may be a few more obstacles than we've had in the past ordinarily, but the court will try to assist in breaking down any roadblocks that may be . . .

I do expect regional counsel to utilize as well whatever is available. . . . whatever is required, we will try to arrange, but taking into consideration where possible remote discussion . . . I think the only real difficulty in preparing this -- you may uncover some additional things after you speak with Ms. O'Shea [mitigation specialist] from her history.

To me the big obstacle[s] are the medical individuals and opportunities for them to do their evaluations. I don't know whether . . . there will be a need or a request for some type of testing. That may be a little more difficult. But psychologists can certainly speak with them -- I think that we can make arrangements for them to do their work.

And the family members . . . if they're still alive, are available and can be reached and contacted. And any additional information that you can familiarize yourself with their testimony, as well as the transcript is available for you to review of their prior testimony, which will, I think, go a long way in assisting as to what history that's unlikely to change. There may be additional questions to ask as you review and work with the mitigation specialist that you may want to present that wasn't previously. Those will be your decisions.

But there's a lot of material already available to you and to the court that I think is relevant to this proceeding . . . I

wouldn't expect it to be changed particularly. So at least that much I think we are ahead of the game and that's available. . . . and I will expedite any issues that can assist you in being prepared in November.

(DAR 683-85).

The trial court ensured defense counsel would be provided Wells's prior capital case penalty phase transcript, as well as the mitigation specialist's records which "would be extraordinarily helpful." (DAR 685-86). Importantly, the trial court granted the defense "latitude" to later call State witnesses who already testified and were released without cross-examination. (DAR 686-87).

When the State concluded its penalty phase case in August 2020, the trial court informed the parties:

The state has rested . . . We'll come back and hopefully the defense will have an opportunity to . . . review the packet and . . . I'll try to get an order out appointing the mitigation specialist . . . I would like by September 2nd that you've contacted as many of the individuals to at least be able to say we've located people and that they are available and had some type of communication to at least identify individuals that you may wish to talk to further.

And I would ask, given the status of the case, that this be a priority for the office and that everything possible is done to have this ready in November if we can. *If we have to move it, I would like to know that in advance* . . . I would like for you to contact these doctors. That doesn't mean you must call them or you're limited only to their services. . . . But you at least identify if they're available for

testimony. . . So for scheduling purposes, at least you can identify any obstacles that you may be facing and try to identify times when they would be available.

(DAR 700-01).

Defense counsel informed the court that no order appointing the mitigation specialist was needed as they had spoken to and “already have started making use of” her. (DAR 701).

The September 9, 2020 status conference was held to gauge defense counsel’s preparation and progress for an anticipated November 2020 resumed penalty phase. (DAR 1799-1813). Trial counsel advised of the State’s “95 category A” *guilt phase* witnesses and that “mitigation may come from any of this.” (DAR 1800-01). The court responded:

the State has rested. . . so at this point, there is no other witness to be called by the State. . . This is purely a matter of the Defense preparing their case that they wish to present.

....

Counsel, all I need you really to tell me is what you're doing, what your plan is. We've been now, I don't know how many days or how many weeks, and it, I know the complication of the case. I also know the simplicity of the case in terms of where we are and what the responsibility that you have. I expect you to take it seriously, but what I need you to tell me is this is what we are going to do.

. . . Not just a pitch in the dark about, there are all of these witnesses . . . at this point, if you've gone through them, you may have already determined out of those, you can say there are 135 witnesses but realistically there may only be five or six that you even want to talk to. . . I expect you to be able to identify in terms of the status of the case those things. . . give me a plan on what you're doing.

(DAR 1801-02). Trial counsel advised they had been in “consultation with experts” and work was dependent on records. (DAR 1802).

The trial court availed itself to the defense offering its assistance to expedite ordering records and from FDOC and informed counsel,

. . . I'll talk with any judge that needs convincing saying, why are mine being delayed. This case is where it is, and I understand that it puts you all in a very difficult circumstance but nonetheless, that is the status of the case, and I think you have to put your resources fully in identifying and doing the job of mitigation . . .

....

I understand the seriousness of the case and your due diligence but that means that you need to put the resources of your office together in identifying the witnesses, looking at what your experts, what information they would want, who you would really seriously want to talk to and you ought to be able to identify by October 7 who those individuals are . . .

I think the State will cooperate in making available all of the witnesses that you'd like to discuss with. . . You don't need to be prepared to cross-examine for the State's presentation. That's done. . .

But that doesn't change the fact that this case does need to be accomplished in terms of all of your other serious

cases. This one needs to be expedited. It needs to be at the top of the list. It is no less or more important than the other cases, I'm sure, but it's in a different status. I don't think you probably have any of those that you are currently in trial.

....

If we do need to delay, obviously if there is good cause, but to me, good cause can't be simply saying what sometimes, Judge, this is a death case. Okay, it's a death case. Death is different. Okay. There are all of these documents. Okay. I get all of that, but that doesn't tell me anything. That's going to be true a month from now.

....

But it can't continue to be a mystery at this point in terms of whoever you choose for that purpose, but on October 7, I think that will be 60 days approximately, an outline of where the finish line is going to be should be able to be given to the Court and *if you need more time than November 30, based upon that reasonably, obviously you'll be entitled to get more time*, but I don't know of any way to manage any case -- and I think even more importantly a death case -- if a Court does not require deadlines and this is when things will be done and you have to give me, here's what we are doing, and when we can reasonably expect it, they can drag on for years.

....

I'm asking you to, as an officer of the Court, to give me a good faith representation of what you need, who you need to talk to and why and how long the process is going to take in order to be prepared. *So if you're going to ask me to move from the November 30 date, then I need to have good cause for that.*

(DAR 1802-09 (emphasis added)).

Trial counsel waited until February 23, 2021, to request discovery and records from the FDOC Office of the Inspector General, which was listed on the State's original December 2019 witness list. (DAR 852-53). These records became an issue and source of delay.

Noting defense counsel's delay requesting these records, Appellee recognizes that Appellant's writ of prohibition in the First District Court of Appeals stayed the proceedings as of September 15, 2020. (IB 48). However, contrary to Appellant's characterization that the stay hindered preparation, the trial court addressed this at the October 7, 2020, status conference:

. . . we're currently set to resume the trial on November 30th, and I would just urge the defense to continue to move forward with preparation.

....

I think everyone is aware of, where we are. The status is we're in the middle of trial. I'm going to act, and I feel at this point fairly confident that they're going to -- because of the status of the case, in the middle of trial, that they will lift that and allow the trial to be finished, so we need to go forward.

....

I think the defense should be prepared. I don't know whether any other judge would grant any additional time either. Just move forward as though the trial were going to

be completed on that day. While there may be a short amount of time after which -- just bear in mind, we're in the middle of trial, and that, I think, creates an expectation that's different than the type of preparation that may be permissible pretrial.

There are consequences that have to come. I don't believe, as a matter of law, that the court would require to appoint counsel in the middle of trial, but *I've tried to do what I think is appropriate, as the defense points out, given the gravity of this case.*

....

Nothing is prohibiting defense counsel from going forward with all these things. . . .

(DAR 1769-73 (emphasis added)).

Defense counsel filed its Motion for Adequate Time and Memorandum of Law on March 11, 2021. (DAR 988-1025). A status conference was held the next day, where the State confirmed its penalty phase case was concluded and would not be re-opened with additional witnesses. (DAR 1778-80). The trial court asked if the defense witness list had been narrowed, to which trial counsel responded, they were attempting to do so, were “in touch with experts, and had depositions scheduled. (DAR 1779).

The trial court painstakingly discussed the accommodations afforded to trial counsel to adequately prepare Appellant’s case

despite his mid-trial change of mind on representation. The court accommodated the defense on discovery, but concluded:

. . . I accept reading the reports, or the motions Defense has been diligent in *preparing for now over eight months*, the mitigation phase. Now, the State has rested.

. . . *you had the benefit of knowing what they presented*. Obviously, you were not participating during that part of the trial, but *there is no other preparation to be done to cross-examine the witnesses* . . . they are done. They are saying they are not reopening their case. So this is really about your presentation of evidence.

I think you are entitled to depose any witness that you wish to depose. That is my understanding of the law. . . . if they are connected to the case, and you believe that it is essential to try to depose a witness, you are entitled to depose witnesses. . . .

. . . but the right to take a deposition is different from *the right to time to take depositions when a trial has commenced*. And I'm not willing to simply schedule this in order to allow you to complete all the discovery you might otherwise wish to complete.

(DAR 1780-82 (emphasis added)).

Defense counsel again moved to continue the penalty phase on March 22, 2021. (DAR 1429-31). Both the March 11 and 22, 2021, motions were heard on March 29, 2021. (DAR 1841-52). Defense counsel argued it was “unable to do a constitutional[ly] respective job of representing William Wells in the time and [under] the

circumstance that we have here”. (DAR 1841-42). Counsel again complained of 95 State witnesses originally listed for the guilt phase; and a requested subpoena for e-mail communications, letters, and telephone recordings from the FDOC inspector general’s office, even though defense counsel informed the trial court “[w]e don’t know what is in the e-mails, we don’t know what is in the correspondence,” or the telephone calls. (DAR 1852, 1854-55).

The trial court found the subpoena request was “way overbroad,” of no particular relevance “to any specific issue,” and untimely. (DAR 1856-57). However, while the trial court did not intend to “continue trial,” waiting on a search for all of the documents requested, it afforded the defense leave to file a “more narrowly tailored” motion. (DAR 1862-67).

Defense counsel acknowledged Wells’s decisions to represent himself and plead guilty to first-degree murder, but “special accommodations, considerations” and protections should be made. (DAR 1842-43). However, blame was nonetheless put on 95 State *guilt phase* witnesses, the “global pandemic,” and inability to investigate the aggravating factors. (DAR 1842-45). These excuses were raised and addressed at the September 9, 2020, case

management conference where the trial court was to gauge defense counsel's progress. (DAR 1800).

Bolstering the trial court's observations regarding a continuance, the State enumerated "a few dates for the record":

The original discovery in this case was provided to Defense counsel and to the Defendant back on December 13, 2019 in which most of the witnesses were listed at that point that we knew about.

Supplemental discovery was also provided February 18, 2020 . . . The Defendant himself [has] been provided all of the discovery. We made sure that every single disc and every single document was given to him at the Florida State Prison on March 16, 2020.

The State filed a supplemental discovery May 6, 2020; minor, maybe reports, nothing major. . . These were given both to the Defendant and also we served a notice of service over to Defense counsel. *Supplemental discovery July 1, 2020 in which it gave one of the penalty phase witnesses. Again, we provided all discovery September 11, 2020 to the Defense counsel, whatever they had we made sure we copied everything and give over to them again.*

. . . from August 4, [2020] which would have been the date that the State rested to today's date has been seven months and nine days. From February 28, 2020 to March 12 and that's when the Defense counsel was appointed as standby. It's been 12 months and 13 days. *From the first day that the discovery was sent to Defense counsel that, which is December 13, 2019; it has been 14 months and 21 days. Supplemental discovery which is the one from February 20 in which most of the witnesses, 95, I'll say 93, have been discovered to them had been a year and 21 days. . . . since September 11, 2020, when we provided*

everything again, we had some discussions and so we copied everything and gave it to them again. It was 163 days or six months and two days.

(DAR 1845-46 (emphasis added)).

The trial court wanted to think “a little bit more about” that motion and remarked:

. . . it's worth to note that capital cases in their own unique place in terms of the Court's trying very much so to ensure that what is sometimes referred to as super due process . . . given the ultimate penalty that is being sought, be sure that we apply all of our juris prudence appropriately and *if we must lean, let us ever lean toward ensuring that justice is being performed . . .*

So I'm well aware of that. *That doesn't mean though that there are not consequences, appropriate, even in death penalty cases* which there is a multitude of . . . cases that stand for the proposition that individuals, when they make decisions in their cases as in this case, whether it's to represent yourself . . . *there were multiple colloquies in this case to ensure Mr. Wells considered those consequences and the hindrance it would be to his case, that those consequences do not negate that due process is being done.*

....

So the Court has been more than willing to, from the time that you stepped in to try to give you . . . not only by the, what the stay is limited in its nature as you pointed out, but even otherwise, time that was only permitted because it is a non-jury trial. . . . *it could not have reasonably been expected to have been permitted this much time in the middle of a trial to allow for the Defense to prepare* as it is clear that you've been working very hard in this case.

....

I'm confident the record that we have in front of us meets all of the expectations in terms of this Court's trying to provide the Defense with, I don't know if it can be super duper due process, that would not ordinarily have been given, but to ensure that . . . the Court who has been given this great wave of responsibility, has everything that can possibly be given that is appropriate to consider in making a decision in this case.

(DAR 1849-52 (emphasis added)).

With leave to raise it again, the trial court denied the continuance motions on March 31, 2021. (DAR 1463-66, 1863-67).

In his April 21, 2021 Third Motion to Continue Capital Penalty Phase, Wells claimed “discovery [was] still ongoing,” referring to FSP video recordings taken *one week prior to the murder* of the wing where he resided. (DAR 1471-76). He sought a continuance as an “appropriate sanction” in conjunction with a motion for a *Richardson* hearing. (DAR 1477-1535). The motions were heard on April 26, 2021, at the start of the resumed penalty phase hearing. (T 3-15). Taking Appellant’s *Richardson* claim under advisement and addressing the accompanying request for a continuance, the trial court stated:

. . . once again, for the record that much of where we are with regard to many of the things that are being asked

about that the court has tried to accommodate come under discovery and the preparation of the case . . . was mostly affected by the defendant's own choice to represent himself, at which time he repeatedly stated on the record that it was not his intent to present a defense of any kind, that it was his intent up until his request for counsel, so the state had not received any requests. That's what put us in the position that we're in.

We're in this circumstance because the defendant announced his desire to go forward, and so we began the trial. The state presented its case, and in the middle of trial the defense asked for standby counsel to proceed. That limits what the court is, I think, willing to do within reason in order to move forward.

....

Whether or not they believe this is going to change . . . or affect their opinion . . . or simply corroborate their opinion, but I would like to hear from them why they think it is important, *and that too will shape the court's willingness to continue to give them that opportunity.*

So I'll defer as to the remedy that you've requested, but I don't think it's necessary for the court to not go forward at this time with the other testimony. We have three days set . . . I don't think the state is requesting nor is it necessary that they formulate written reports of any kind.

(DAR 11-13 (emphasis added)).

In addition to the continuance regarding the additional FSP recordings, defense counsel renewed its generic March 11, 2021 motion to continue. Trial counsel argued, “[w]e have not done the investigation . . . that he deserves in a case of this magnitude,” and

attributed blame to “5,000 estimated pages” of Wells’s FDOC psychological records, over 90 witnesses were not “fully fleshed out,” and he simply had not “had the time to investigate that in the manner that it should be investigated”. (T 15-17). The trial court denied the motion, except to the possible continuance remedy regarding the FDOC recording at issue in the *Richardson* claim. (T 17). After the defense rested its penalty phase case, it inquired about “additional time” to review the FDOC Inspector General’s e-mails and the ability to re-open its case. (T 496). The trial court responded:

If you have good cause and you present that to the court. So I'm expecting that you're going to continue trying to obtain that. And if there's something else outstanding that you get that you want to present the motion as to what your evidence would be and why it's relevant, I'll consider that opportunity.

(T 496).

At the May 25, 2021, sentencing hearing, defense counsel discussed the FDOC video recordings as “late discovery,” which they had not had “the opportunity to thoroughly review” and not given the expert witness to review. (T 1730-33). The Court rejected the *Richardson* argument and additional time because nothing indicated that the video would have impacted Dr. Holmes’s opinion and

“anything exculpatory as it relates to this case would be extremely speculative.” (T 1734-36).

Inexplicably, Appellant disregards and omits the consideration, effort, and accommodation given by the trial court for over one year to ensure the proceedings complied with due process requirements. The trial court’s discussions with counsel clearly demonstrate its cognizance and import of trial counsel’s ability to adequately prepare Wells’s penalty phase case and its willingness to do anything within its powers to accomplish that.

Wells cherry-picked *one* isolated segment to point out to this Court where the trial court stated, it “reviewed the court record of Mr. Wells’s previous trial, and that counsel could call on the mitigation specialist and experts who had participated in that case so as to expedite the current case.” (IB 48). Doing so creates the false impression that the trial court merely stayed the case for over six months to February 2021 and failed to take Wells’s rights into consideration. (IB 48).

Appellant’s assertion that trial counsel was forced to proceed unprepared is disproved when the facts are viewed in toto. (IB 45). Had trial counsel indeed been unprepared, Appellant would have

been able to show prejudice. The facts are, Appellant did not plead specific prejudice and none can be extracted from the face of the record, especially as he was granted significant latitude under the circumstances. Because Appellant failed to demonstrate if or how he was prejudiced, or how the lack of a continuance affected his penalty phase, he cannot establish that the trial court abused its discretion, this claim should be rejected.

ISSUE II

COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTED THE TRIAL COURT'S REJECTION OF TWO MENTAL HEALTH-RELATED STATUTORY MITIGATING CIRCUMSTANCES. [RESTATED]

Appellant claims that the trial court abused its discretion when it rejected two statutory mitigating circumstances, finding they were not supported by the evidence: 1) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance; and 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. (IB 52); §§ 921.141(7)(b) and (f), Fla. Stat. (2019), respectively.¹² Wells states the

¹² Wells proposed other statutory mitigators not proven, refuted by

trial court ignored expert witness testimony which purportedly established he experienced extreme mental and emotional distress and could not conform his conduct to the requirements of law “at the time of the charged offense.” (IB 53-55). This assertion is not substantiated on the face of the record. The trial court’s rejection of the statutory mental health mitigating circumstances was well-within its discretion, supported by competent, substantial evidence.

Florida law requires the sentencing court to consider all mitigation found anywhere in the record. *Craft v. State*, 312 So. 3d 45, 55 (Fla. 2020); *Smith*, 170 So. 3d at 762 (“Whenever a reasonable quantum of competent, uncontroverted evidence of mitigation has been presented, the trial court must find that the mitigating circumstance has been proved.”). Whether a mitigating circumstance has been established is a decision within the trial court’s discretion and is reviewed only for an abuse of that discretion. *See Coday v.*

the record, and rejected by the trial court: he lacked “significant criminal history”; was an accomplice and his participation was “relatively minor”; acted under the substantial dominion of another person; age (Wells was over 40 years old at the time of the murder); and the victim participated in the conduct or consented to “the act”. (DAR 1674-78); *see, e.g. Ault v. State*, 53 So. 3d 175, n.4. Wells does not challenge these rulings on appeal.

State, 946 So. 2d 988, 1001 (Fla. 2006).

A mitigator may be rejected “if the record contains substantial evidence to support the trial court's rejection of the mitigating circumstance.” *Smith*, 170 So. 3d at 762. It may also be rejected if the testimony purportedly supporting the mitigator it is not substantiated by the defendant’s actions or the testimony conflicts with other evidence. *See Jordan v. State*, 176 So. 3d 920, 935 (Fla. 2015). The trial court’s rejection of mitigation “is not subject to reversal merely because the appellant reaches a different conclusion.” *Blackwood v. State*, 777 So. 2d 399, 409 (Fla. 2000).

Regarding expert opinions, *Williams v. State*, 37 So. 3d 187 (Fla. 2010) also cited by Appellant, provides that an opinion “*may be rejected if that evidence cannot be reconciled with the other evidence in the case.*” *Id.* at 204, quoting *Coday v. State*, 946 So. 2d 988, 1003 (Fla. 2006)¹³ (emphasis added). *See also Bright v. State*, 299 So. 3d 985, 1005 (Fla. 2020) (“[e]ven uncontroverted opinion testimony can

¹³ Although the trial court erred in *Williams* and rejected § 921.141(7)(f), Fla. Stat. (2019), it is factually inapposite because *Williams* was “strung out on crack cocaine” at the time of the murder and could not conform his conduct to the requirements of law. *Williams*, 37 So. 3d at 204-05.

be rejected, especially when it is hard to reconcile with the other evidence presented in the case,” quoting *Philmore v. State*, 820 So. 2d 919, 936 (Fla. 2002).

The record below is *replete* with instances where defense expert testimony cannot be reconciled with, overcome, or contradict the facts established before the trial court.

Wells speciously argues that because he “showed signs of planning the offense” and “clarity of thought before and after the offense” are of no importance and “insufficient to rebut the expert testimony.” (IB 55). Quite the opposite, this Court’s consistent precedent expressly provides that Wells’s purposeful actions, during and after Chapman’s brutal killing, are taken into consideration when analyzing these very claims. Moreover, Wells overlooks these cases, this Court’s analysis, and the underlying factual bases to uphold rejection of the aggravators. While it is difficult to prove a negative, the penalty phase transcript is *devoid* of any opinion that Wells experienced extreme mental or emotional distress and could not conform his conduct at the time of the killing.

A. The trial court did not dismiss expert witness testimony and its rejection of the extreme mental or emotional disturbance mitigator was supported by competent, substantial evidence.

The defense listed doctors Dr. Danziger, Dr. Wu; Dr. Holmes; and Dr. Kupers as mental health professionals intended to establish mitigation. (DAR 1467). However, their testimony did not sufficiently impact or address either statutory mitigator at issue. Contrary to Appellant's assertions, defense witnesses primarily focused on Appellant's mental health condition and how it may have affected his conduct and decision making *after* the killing, during the criminal proceedings. Hence, the trial court could not have abused its discretion in failing to reject the mitigator.

The "outright rejection" of extreme mental or emotional disturbance mitigator will be upheld "where the facts of the crime 'show[ed] an element of planning' and the defendant was not shown to be under the influence of a disturbance 'at the time of the murder.'" *Bargo v. State*, 331 So. 3d 653, *6 (Fla. 2021) quoting *Hoskins v. State*, 965 So. 2d 1, 17 (Fla. 2007).

The sentencing order's detailed findings are important considerations in the abuse of discretion analysis. The lower court's

order plainly shows that it “considered all relevant mitigating factors and reached an independent judgment regarding the appropriate sentence.” *Carr*, 156 So. 3d at 1068. Further, with respect to the psychological evaluations, “expert testimony alone does not require a finding of extreme mental or emotional disturbance” and the trial court is not *required* to find this mitigator. *Smith*, 170 So. 3d at 762, quoting *Heyne v. State*, 88 So. 3d 113, 125 (Fla. 2012).

In Wells’s case, the statutory mitigators were thoroughly analyzed, including the expert testimony given. (DAR 1674-78). Rejecting the extreme mental or emotional disturbance aggravator, the trial judge recognized Wells’s “well-documented” history of serious mental health disorders and diagnoses of depression, suicidal ideations, bipolar disorder, schizophrenia, schizoaffective disorder, post-traumatic stress disorder (PTSD) and neurocognitive brain damage. (DAR 1674-75). Contrary to Appellant’s claim that the trial court disregarded and dismissed expert testimony, the opinion of each expert was summarized in the order. (DAR 1675-76).

Finding that the evidence did not establish extreme mental or emotional disturbance, the trial court reasoned:

While there is ample evidence that the Defendant has

suffered from significant mental health and emotional issues (which will be considered under "other factors", *the Court does not find that the Defendant reasonably established that he was acting under the influence of an extreme mental or emotional disturbance when he committed the crime.*

As stated above, the evidence demonstrates overwhelmingly that the offense was committed in a cold, calculated, and premeditated manner. The video evidence shows that the Defendant's actions were controlled and carried out deliberately. Further, the crime was carried out to accomplish a clearly stated goal — to improve the Defendants living conditions by being placed on death row. This goal was not irrational or delusional. There was ample evidence that the Defendant's immediate living conditions would be significantly better should he be placed on death row rather than continue to be held in a close management status. Dr. Heather Holmes testified, "If I had to go to prison and you said you can only be on CM (close management) or death row, a hundred times out of a hundred times I'm taking death row."

(DAR 1676 (emphasis in original)).¹⁴

Appellee points out that the sentencing order did not reference Dr. Danziger's penalty phase testimony, relied upon in part by Appellant. (IB 55-56). While Appellee agrees the trial court must consider mitigation substantiated anywhere in the record, Dr.

¹⁴ The trial court found sufficient evidence established a non-statutory mitigator concerning Wells's "mental illness and neurocognitive issues" and close management confinement in prison, giving it some weight. (DAR 1679-80).

Danzinger's testimony did not address either statutory mitigator, to any degree. Nor did he offer an opinion to support that Wells's either experienced extreme mental or emotional distress or could not conform his conduct when he killed Chapman. (T 19-53). Instead, Dr. Danziger's penalty phase testimony and opinions were *specifically* directed at Wells's competency in *February and March 2020*:

The key issue was his competency to waive his right to representation and to offer a plea of guilty in February and March of 2020. But in addition, you asked me when I met with him to assess his current mental state and see if there are any competency issues. That would have been a secondary issue. The key was to look back February and March 2020 when those key decisions were made and to offer opinions about his competency to do so.

(T 17, 22, 37, IB 55).

On cross-examination, Dr. Danziger was asked about the FDOC video recordings taken the week or two leading up to the killing and addressed at the earlier *Richardson* hearing. (T 49). Dr. Danziger *definitively stated* that those videos would have no impact on his testimony or Wells's ability to conform his conduct stating:

That goes to the issue of at the time of the offense, whether there was severe mental distress or his ability to conform his conduct or appreciate was substantially impaired. *That could potentially go to statutory mitigators, but I'm not opining on that today.*

(T 49. (emphasis added)).

Dr. Danziger's testimony does not support finding this mitigator and it does not appear it was even offered for that purpose.

In fact, Wells omitted any mention or discussion of Dr. Danziger from his sentencing memorandum. (DAR 1623-62). Appellee specifically directs the Court to section "IV. April 2021 Sentencing Phase Testimony" and the sole expert testimony of Drs. Wu, Holmes, and Kupers. (DAR 1640-45). It may then be reasonably presumed that the trial court did not include Dr. Danziger's testimony because it was not germane to the mental health mitigators.

Additionally, the fact that the trial court asked his own questions of the experts further refutes Wells's claim that the court abused its discretion. On direct examination, Dr. Holmes was asked whether Wells's mental health issues impaired his ability to exercise rational judgement as it related to the "criminal offense" and Dr. Holmes replied that it was faulty logic to believe that killing someone would lead to "a better living situation." (T 98). Dr. Holmes gave this opinion despite testifying that if she had the choice of confinement between close management and death row, "a hundred times I'm taking death row." (T 98, 130). The trial court followed up with Dr.

Holmes about Wells's "decompensation" prior to the murder. (T 155-57). But her testimony fell well-short of proving Wells experienced *extreme* mental or emotional impairment.

The trial court engaged in an in-depth exchange with Dr. Wu regarding Wells's goal-oriented planning and action, as well as Dr. Holmes's opinion that choosing death row over close management confinement would be a "considerable improvement" and possible motivation for the murder. (T 284-89).

THE COURT: . . . Improving one's circumstances, it is a logical motive for people to act in any way, whether commit a crime often, even murder, or to gain money . . . that's a fairly common motive.

[Dr. Wu]: Yes, I would agree.

(T 284-89).

Unconvinced by Dr. Wu's equivocal impressions regarding Wells's mental status and perceived intent to commit suicide, the trial court continued:

THE COURT: *That sort of segues me.* Is Mr. Wells capable of reflection?

[Dr. Wu]: I think if he's properly medicated and he gets proper counseling, I think that he is capable of reflection. I don't think he is incapable of reflection. But I think when he's in a state of decompensation clinically and having people trying to flag the higher ups that this guy needs

immediate attention, I don't think in those places he's capable of reflection.

THE COURT: . . . you had an opportunity while you've been in court to observe his behavior in court.

[Dr. Wu]: Yes. I think he's certainly in a calm and -- although I know he was despondent right before court started and Dr. Kupers had to spend a few minutes to . . . get him to sort of settle down so he could come into court . . .

THE COURT: In those moments at least, would he be capable of carrying out executive functions intelligently?

[Dr. Wu]: . . . *I don't think that all executive function is impaired* I think that in the emotional regulation domain I think he had impairment, because he gets agitated and upset and difficulty regulating aggressive impulses that build up, *but I think that he's certainly capable of other aspects of executive functions.* It's a complex multifaceted domain.

THE COURT: Something like could he write a will?

[Dr. Wu]: I believe if he was in proper state of mind with proper treatment and other things he could, yes.

THE COURT: Could he get married?

[Dr. Wu]: I believe he could, yes.

(T 289-91).

The record does not support Dr. Wu's opinion that Wells's intent, motivation, planning and execution of Chapman's murder was to commit state-assisted suicide via the death penalty. Moreover,

Dr. Wu's opinions that Wells was indeed capable of reflection and carrying out executive functions such as making a will or getting married are supported by the record. (DAR 635-36).

Finally, the trial court engaged Dr. Kupers extensively because there were "some things" the court wanted to get its "mind wrapped around" regarding Wells's "neurocognitive circumstances," "organic brain injury," and effects of isolation. (T 473-83). The trial court pointedly asked Dr. Kupers about his opinion that with proper treatment, he guaranteed, "to an acceptable degree of medical certainty," that Wells would not harm anyone in the future. (T 478-79). Although Dr. Kupers testified that he did not believe Wells's "participation was rational," because of his schizoaffective disorder and "psychotic thinking, he advised the trial court that Wells's planning and execution of the murder did in fact involve rational thought. (T 482-83). Even Dr. Krop's intensive competency evaluation conducted not long after the murder, ruled out a "psychotic process." (DAR 52).

The record corroborates the trial court's interpretation of the expert witness testimony, which may be extrapolated from his denial of Wells's motion to withdraw his guilty plea at the end of the penalty

phase testimony. The trial court stated:

The court remains convinced that Mr. Wells made a knowing and intelligent decision to represent himself, and I will stand on the record as to that, notwithstanding the evidence which has been presented to the court that he suffers from mental illness, and albeit certainly at times has serious ramifications from that.

. . . like as it's often proved, any kind of disease, including mental health disease, when he's both being treated or in moments of calmness, the ability to reflect, the ability to make decisions, and *one of the defense witnesses made it clear under those circumstances he was competent to make important decisions, such as getting married, writing a will, and the court finds that it's very often confused -- I think gets confused by those who have testified in regard to this. I believe that has happened in this case to some degree.*

(T 500-02 (emphasis added)).

As an aside, Dr. Danziger gave circuitous opinions as to whether Wells was “competent” to knowingly and intelligently represent himself or waive a jury trial. First, during his October 2020 and March 2021 meetings with Wells, Dr. Danziger “satisfied” himself that he “was able to be competent to proceed in the hearing now,” understood the legal process and was able to reasonably consult with his attorneys. (DAR 27-28). Dr. Danziger later commented:

I don't question the knowingly part. My concern is how psychiatric illness impacted Mr. Wells' ability to make intelligent decisions in his decisions versus the impact of his mental illness on decision-making.

....

Dr. Krop, I agree, found there was evidence of significant mental illness. . . I agree Mr. Wells knew what was going on and knew the likely consequence. What I didn't see in Dr. Krop was an analysis of why Mr. Wells was making that decision and the impact of mental illness.

(DAR 33-34).

Even the trial court was cognizant of the “fairly nuanced opinion” and posed questions Dr. Danzinger for clarification. (DAR 49-51). Nonetheless, Appellant’s “competency” was not further challenged or explored. Even when defense counsel asked whether it would have been “the best practice” to obtain another evaluation, Dr. Danzinger equivocated, did not directly answer, and deferred to counsel’s “concerns.” (DAR 35).

Appellee also points out that other evidence contradicts the notion that Wells experienced an extreme emotional disturbance when he killed Chapman. At one point during the attack, Wells’s eye-glasses came off. Once Chapman collapsed, Wells casually retrieved his glasses, put them back on, then continued to push on the shank imbedded in Chapman’s neck. The video recording shows Wells’s calm and deliberate demeanor when he was talking to corrections officers through the door, when he picked up the ligatures from the

floor, unhurriedly secured the dayroom door to a bench, and prevented corrections officers from entering. (DAR 621-22; State Exhibits 5 and 6).

The trial court considered the evidence and expert testimony, finding several non-statutory mental health-related mitigators were proven and assigned weight. (DAR 1678-83). For example, the trial court found “*the mental illness and neurocognitive issues of the Defendant and the personal trauma and tragedy which shaped his circumstances, including being placed in solitary confinement and close management all were proven by the greater weight of the evidence,*” and gave it some weight. (DAR 1680 (emphasis in original)). The lower court also considered Dr. Kupers and Gwendolyn Lockwood’s testimony regarding Wells’s proposed non-statutory mitigator that his mental health needs were neglected by FDOC. (DAR 1681-82). Although the court “characterize[d] most of Dr. Kupers’s testimony as aspirational rather than practical,” it found a variation of the mitigator was proven and gave it slight weight. (DAR 1682). In so doing, the trial court importantly observed:

. . . the Defendant had been moving steadily toward gaining greater freedoms and less restrictive close management. That is why he was in the day room when

the instant offense occurred. *Everything about the Defendant's behavior before, during, and after the instance offense indicates he was in control of his mental faculties. He acted deliberately. Right up to the beginning of the instant offense, the Defendant appears calm as he casually interacts with other inmates.*

(DAR 1682 (emphasis added)).

As in *Smith*, Wells, argued that the expert opinion was “unequivocal and not refuted by another psychologist.” *Smith*, 170 So. 3d at 763; (IB 53-54). *Smith*’s sentencing judge analyzed expert testimony that through MRI and PET scans, the defendant had “unequivocal brain damage and brain impairment” and as a result, his “decision-making ability [was] profoundly impaired.” *Smith*, 170 So. 3d at 762. This is similar to the testimony presented by Dr. Wu. (T 165-299). The *Smith* Court held, “the trial court may disregard expert opinion where it determines that the opinion is unsupported by the facts or conflicts with other evidence.” *Id.*

In Appellant’s case, just as in *Bargo*, substantial evidence was presented of Wells’s planning and execution of a very well-thought-out crime, including procuring the instruments of death, choosing the victim, and setting up the logistics for the murder, including a mechanism to keep corrections officers from intervening. *See Bargo*,

331 So. 3d at *6. Hence, the trial court did not abuse its discretion when it rejected this statutory mitigating circumstance.

B. The record evidence supported Wells's appreciation of the criminality of his conduct and ability to conform his conduct to the requirements of law.

Appellee does not dispute that Wells suffered from mental illness, endured tragedy and loss in his life, and his prison confinement added to the stresses. However, no evidence supports a theory that he was substantially impaired or lacked the ability to control his conduct. On the contrary, the record clearly supports the trial court's rejection of this mitigator and shows Wells planned and brutally murdered Chapman, with all deliberate intent, knowing the consequences of his actions. Rejecting Wells's proposed mitigator that he was unable to appreciate the criminality of his conduct or conform his conduct to the requirements of law, § 921.141(7)(f), Fla. Stat. (2019), the lower court reasoned:

This mitigator was not established by the evidence. The Defendant understood full well the criminality of the offense as well as the penalty prescribed. There is no credible evidence in this case that the Defendant's ability to conform his conduct was impaired or that he did not know that killing the victim was wrong. Pardo v. State, 563 So. 2d 77, 80 (Fla. 1990). Although the Defendant has an extensive mental health history, there is no evidence that was not thinking clearly before, during, or immediately

after his offense.

(DAR 1677-78 (emphasis in original)).

The trial court's rejection of the substantial impairment mitigator will be upheld "when a defendant's actions during and after the crime has indicated that he was aware of the criminality of his conduct." *Bargo*, 331 So. 3d at *8, quoting *Bright*, 299 So. 3d at 1006. In *Davidson*, the trial did not abuse its discretion rejecting the substantial impairment mitigator even with expert testimony, where the defendant's logical steps and "post-murder conduct" constituted "purposeful actions . . . indicative of someone who knew those acts were wrong and who could conform his conduct to the law if he so desired." *Davidson v. State*, 323 So. 3d 1241, 1248 (Fla. 2021).

This Court also noted that "the trial court could properly determine that Davidson suffered from mental-health issues to some extent, but nonetheless had the ability to conform his conduct to the requirements of law." *Id.* See also *Ault*, 53 So. 3d at 187 (upholding the trial court's rejection of the same mitigator based on the defendant's purposeful post-murder conduct); *Newberry v. State*, 288 So. 3d 1040, 1047 (Fla. 2019) (upholding rejection of mental health mitigating circumstances when a defendant's purposeful actions

during and after the crime indicated that he was aware of the criminality of his conduct).

The record in this case is *replete* with examples of Wells's conduct which constitutes competent, substantial evidence supporting rejection of the mitigation, his expert witnesses notwithstanding. First, Dr. Krop's competency determination made only months after the murder refutes Wells's argument where he found it "obvious that Mr. Wells is fully aware of the charges and allegations and as noted above, has provided a statement to law enforcement regarding his involvement in the instant offense [and] is also clearly aware of the possible penalties and understands the adversarial process." (DAR 52). He further found that Wells was "an intelligent individual," showing no "evidence of a thought disorder or indicia of a psychotic process." (DAR 52).

Wells's own words and admissions, bolstered by testimony of FDLE investigators and inmate Hodges, are the best evidence of his deliberate and purposeful conduct. Wells described his pre-murder logical steps, purposeful actions, planning, and execution: the process and reasoning behind choosing the victim; ripping his pillowcases in advance to make ligatures used to strangle the victim

and secure the door; obtaining and sharpening the shanks; obtaining tennis shoes to improve traction on what would be a bloody floor; confirming when Chapman would be in the dayroom; and planting the weapons. These actions established in the record were proven purposeful actions, showing Wells knew his conduct was wrong. See, *e.g. Hoskins*, 965 So. 2d at 18.

That Wells was clearly aware of the video camera in the dayroom and the other recordings show that he concealed the weapons, was observed withdrawing them from his pant leg, held the victim while his co-defendant repeatedly stabbed him, obstructed and tied the dayroom door so corrections officers could not enter, told Boatman to keep stabbing Chapman because he was still breathing, and did not acquiesce to corrections officers until the victim was certain to die, all demonstrate Wells's knowledge that what he was doing was wrong and he could have stopped.

Moreover, Wells's "post-murder conduct" included an unequivocal admission that the murder was "cold, calculated and premeditated. No doubt about it"; he clearly articulated the motive to kill Chapman in retaliation for unfavorable close management reports and to improve confinement conditions; he planned the time,

location, and conditions to execute the attack and killing; and prepared his personal belongings in advance, knowing FDOC inspectors would search his cell and impound it.

The trial court's specific findings in support of the cold, calculated, and premeditated (CCP) aggravator *equally* support competent, substantial evidence of Wells's purposeful actions justifying rejection of this statutory mitigator:

This aggravating circumstance pertains specifically to the state of mind, intent, and motivation of the defendant, and involves a much higher degree of premeditation than that required to prove first-degree murder. . . the evidence must establish beyond a reasonable doubt that the defendant planned or prearranged to commit murder before the crime began. . . The aggravating factor can be established by circumstances demonstrating advance procurement of a weapon, lack of resistance or provocation by the victim, and the appearance of a killing carried out as a matter of course.

....

The Defendant committed this crime in Florida State Prison while under close management. The manner and circumstances of the crime demonstrate careful planning to ensure the desired result (the death of the victim) which is supported by the Defendant's own admission.

The Defendant's stated purpose was to be sent to death row and his statements and actions demonstrate that he intended to make it clear that the murder was committed in a cold, calculated, and premeditated manner.

The Defendant and co-defendant began planning the murder as early as April/May 2019; and started discussing the murder of this particular victim days before the crime . . . "for the last like 3 or 4 days, I'd say, maybe a week."

The shanks used in the murder were ordered and sharpened over several days. The Defendant stated he and the co-defendant "sharpened the shanks on the concrete, they're brass."

Regarding the ligatures used to strangle the victim, the Defendant stated, "I ripped my sheet up that was in my cell and my pillow cases and I did that a couple of days before, so that you know it's cold, calculated and premeditated. No doubt about it."

The video of the murder shows a well-planned, premeditated act.

The Defendant knew his cell would be searched after the murder; and got his property ready in advance. He stated, "my shit's all packed up. Yeah, my shit's already all packed, I already knew what time it was, we were ready. Packed it all up so that the inspector wouldn't have to do it. He could just come down and grab it, take it down to his office and go through it looking for evidence. This ain't my first fucking rodeo."

The Defendant offered no moral justification for killing the victim. The Defendant repeatedly stated that his motive was to get the death penalty so he would be moved to death row, which he believed would be an improvement upon his current circumstances.

While the Defendant explained why this particular victim was chosen, because he believed the victim was trying to recruit him into a homosexual group, there is no evidence of any threatening acts by the victim prior to the murder;

nor is there any evidence that the victim intended to harm either the Defendant or his co-defendant. The reason for selecting Mr. Chapman was incidental. . . . What is clear from the evidence is that the Defendant was looking for a victim to murder in order to get to death row.

(DAR 1672-74 (internal citations omitted)).

The testimony of defense witnesses Nathan Shoemaker and Ron Summers anecdotally contradicts the defense expert testimony. Wells's former instructor and principal at the Marine Science Education Center testified about positive experiences with him as a 16-19 year-old student: he was "wonderful to see every day and was just a joy," showed no cognitive defects, was "a likeable young man who had a good relationship with his peers," was never known to be impulsive, he came back to the school with his own children, and he would describe the fish in the fish tanks, but noticed a change in him after his son died, and tried to visit him in prisons. (T 306-24; DAR 1643-44). The trial court took note of it finding:

Despite his traumatic childhood, Nathan Shoemaker and Ron Summers testified about their positive experience with the Defendant when he was student at the Marine Science Education Center . . . Mr. Shoemaker was an instructor who had the Defendant as a student when [he] was about 17 or 18 years old. He described the Defendant as a likeable young man who had a good relationship with his peers.

(DAR 1675-76).

Even if the trial court erred rejecting the two mental health-related statutory mitigating circumstances, it was harmless beyond a reasonable doubt because the numerous serious aggravators still would have easily outweighed the mitigation. *Craft*, 312 So. 3d at 56; *Ault*, 53 So. 3d at 195; *Mullens v. State*, 197 So. 3d 16, 30 (Fla. 2016); *Smiley v. State*, 295 So. 3d 156, 177 (Fla. 2020); *see also McKinney v. Arizona*, 140 S. Ct. 702, 706-07 (2020) (“the Federal Constitution does not prevent a state appellate court from upholding a death sentence that is based in part on an invalid or improperly defined aggravating circumstance either by reweighing of the aggravating and mitigating evidence or by harmless-error review.”); There is no reasonable possibility that such an error contributed to Wells’s death sentence and “reversal is permitted only if the excluded mitigating factors reasonably could have resulted in a lesser sentence.” *Kaczmar v. State*, 228 So. 3d 1, 14 (Fla. 2017), quoting *Ault*, 53 So. 3d at 195.

Wells’s case is highly and substantially aggravated. Three of the four aggravating factors found are the most “qualitatively weightiest aggravators in Florida’s capital sentencing scheme” and the trial court gave them *great or very great weight*. *Allen v. State*, 322 So. 3d

589, 602 (Fla. 2021) (CCP, HAC and prior violent felony aggravators among the weightiest aggravators); *see also* *Santiago-Gonzalez v. State*, 301 So. 3d 157, 176 (Fla. 2020). Further, the sentencing order itself leaves no doubt that the trial court was aware of and considered Wells’s proposed mitigation, including the expert witness testimony.

Although no statutory mitigating circumstances were proven, the trial court found seven non-statutory mitigators, including mental health considerations, and gave them slight or some weight.¹⁵ (DAR 1678-83). Had the mental health-related statutory mitigators been proven, assigning anything more than a modicum of weight would be speculative at best. Based on the record as a whole, there can be no reasonable possibility that the trial court’s weighing calculus would have been changed, resulting in a life sentence. *See Smiley*, 295 So. 3d at 177-78.

The record is clear, the expert witness testimony fell woefully short of establishing that Wells was under the influence of any

¹⁵ Wells’s May 18, 2021 sentencing memorandum proposed 96 mitigating circumstances. (DAR 1650-56). In its sentencing order, the trial court permissibly grouped and “considered them contextually” within the respective categories. (DAR 1683). *See Smiley*, 295 So. 3d at 177.

mental or emotional disturbance, or, that his ability to comply with the law was substantially impaired at the time of the murder. *See e.g. Hoskins*, 965 So. 2d at 17. Absent a requisite showing by Wells and in light of the contradictory evidence, this Court should not “second-guess the trial judge’s evaluation of this issue and rejection of the statutory mitigating circumstance[s]” of extreme mental or emotional distress or an impaired capacity to conform his conduct to the requirements of law. *See Whitfield v. State*, 706 So. 2d 1, 6 (Fla. 1997). Afterall, this was not Wells’s first rodeo. (DAR 631).

ISSUE III

FAILING TO APPLY THE BEYOND A REASONABLE DOUBT STANDARD TO DETERMINE THAT SUFFICIENT AGGRAVATING FACTORS OUTWEIGH MITIGATING CIRCUMSTANCES TO IMPOSE A DEATH SENTENCE IS NOT FUNDAMENTAL ERROR. [RESTATED]

Appellant claims the trial court fundamentally erred by failing to apply the beyond a reasonable doubt standard to determinations that 1) aggravating factors proven by the State were sufficient to render him death penalty eligible; and 2) those aggravators outweighed the mitigating circumstances to impose a death sentence. (IB 57). He conflates § 921.141, Fla. Stat. (2019) to include

“functional elements of a crime for sentencing purposes” and wrongly applies the beyond a reasonable doubt standard to those findings. (IB 59-67). In so doing, Wells asserts this Court’s decisions in *Rogers v. State*, 285 So. 3d 872 (Fla. 2019) and *State v. Poole*, 297 So. 3d 487 (2020), holding that “sufficiency” and weighing” determinations are not “elements” subject to a reasonable doubt standard, are “incompatible with Supreme Court precedent.” (IB 59). Appellant’s argument has been rejected, foreclosed and deemed meritless.

This claim of fundamental error involves a pure question of law and is reviewed *de novo*. See *Davidson*, 323 So. 3d at n.8. Fundamental error goes to the foundation of a case, 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.*; *Hopkins v. State*, 632 So. 2d 1372, 1374 (Fla. 1994). Wells failed to meet this exacting standard of review and no error occurred.

Appellant’s argument is predicated on a faulty application of the Sixth Amendment and its requirements as interpreted by the United States Supreme Court. He misapplies *Alleyne v. United States*, 570 U.S. 99 (2013) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000) to support the flawed concept that “sufficiency” and “weighing”

determinations are “elements” for capital sentencing purposes. Wells’s suggestion that *Rogers* and *Poole* are “incompatible” with United States Supreme Court precedent is simply incorrect.

The Sixth Amendment requires a jury or a trial court to find all of the facts necessary to constitute a statutory offense and those facts must be proven beyond a reasonable doubt. *See Apprendi*, 530 U.S. 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”). Applying this framework and the Sixth Amendment to capital cases, the United States Supreme Court concluded the *existence* of aggravating factors must be found beyond a reasonable doubt before a death sentence may be rendered. *See Ring*, 536 U.S. at 609.

It is axiomatic, the United States Supreme Court has never extended its Sixth Amendment analysis or held that determinations of the sufficiency of aggravating factors and weighing against mitigating circumstances are “elements” to be found beyond a reasonable doubt. Indeed, the *McKinney* Court rejected this

proposition. See *McKinney*, 140 S. Ct. at 707-08 (explaining that under *Ring v. Arizona*, 536 U.S. 584, 609 (2002) and *Hurst v. Florida*, 577 U.S. 92 (2016), “a jury must find the aggravating circumstance that makes the defendant death eligible” but that “*Ring* and *Hurst* did not require jury weighing of aggravating and mitigating circumstances”). Moreover, because Wells waived a penalty phase jury, Florida Statutes only requires the trial court to find the existence of at least one aggravating circumstance. § 921.141(3)(b), Fla. Stat. (2019).

Prior to *McKinney*, the *Rogers* and *Poole* decisions recognized that “the sufficiency and weight of the aggravating factors” were not elements required to be determined beyond a reasonable doubt. *Rogers*, 285 So. at 886; *Poole*, 297 So. 3d at 507-08 (receding from *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) only to the extent that a jury is required to unanimously find at least one aggravating circumstance beyond a reasonable doubt). Contrary to Appellant’s incompatibility assertion, *Poole*’s consistency with *McKinney* is not disputed. See *Owen v. State*, 304 So. 3d 239, 241-42 (Fla. 2020) (“*McKinney* confirms that we correctly interpreted *Hurst v. Florida* in *Poole*”); *Ponticelli v. State*, 297 So. 3d 1292, 1293 (Fla. 2020).

Subsequent decisions have correctly rejected Appellant’s “elements” argument and that the Sixth Amendment requires that the proof beyond a reasonable doubt be applied to “sufficiency” and “weighing” determinations before a death sentence may be imposed. *See Allen*, 322 So. 3d at 603; *Deviney v. State*, 322 So. 3d 563, 572 (Fla. 2021) (sufficiency and weighing determinations are not “elements . . . subject to the beyond a reasonable doubt standard of proof,” quoting *Newberry*, 288 So. 3d at 1047; *Bell v. State*, 2022 WL 324821, *5 (Fla. Feb. 3, 2022) (weighing determinations in section 921.141, Fla. Stat. are not subject to a reasonable doubt standard and there is “no reason to depart from this precedent”); *See also Santiago-Gonzalez v. State*, 301 So. 3d 157, 177 (Fla. 2020); *Bright*, 299 So. 3d at 998; *Davidson*, 323 So. 3d at 1247-48 (fundamental error “argument rests upon the faulty premise that the sufficiency and weighing determinations of section 921.141 are subject to the beyond-a-reasonable doubt standard” and this Court’s “recent case law is inconsistent with that premise”).

Just last month, this Court declined the “invitation to revisit what has been settled: only the *existence* of a statutory aggravating factor must be found beyond a reasonable doubt.” *McKenzie v. State*,

2022 WL 405038, *6 (Fla. Feb. 10, 2022), citing *McKinney*, 140 S. Ct. at 705; *Joseph v. State*, 2022 WL 405557, n.5 (Fla. Feb. 10, 2022) (“the sufficiency and weight of the aggravating factors and the final recommendation of death” are not elements and “are not subject to the beyond a reasonable doubt standard of proof,” citing *Rogers*, 285 So. 3d at 885-86 (rejecting the argument “that the trial court erred in failing to instruct the jury that it must determine beyond a reasonable doubt whether the aggravating factors were sufficient to justify the death penalty and whether those factors outweighed the mitigating circumstances”)).

Appellant bewilderingly fails to even acknowledge *McKinney*, the foregoing decisions, or that his death sentence comports with settled law. Wells became eligible for the death penalty upon the trial court’s findings that four statutory aggravators were proven beyond a reasonable doubt, which “far outweighed the mitigating circumstances.”¹⁶ See §§ 921.141(2)(b)(2) and (3)(b), Fla. Stat. (2019);

¹⁶ F.S. 921.141(6)(a): Wells was under a sentence of imprisonment; F.S. 921.141(6)(b): the homicide was committed while Wells was previously convicted of another capital felony or of a felony involving the use or threat of violence; F.S. 921.141(6)(h): the homicide was especially heinous, atrocious, or cruel; and F.S. 921.141(6)(i): the homicide was committed in a cold, calculated,

Poole, 297 So. 3d at 503-07 (Fla. 2020); *accord McKinney*, 140 S. Ct. 702, 707-08.

He further claims that the trial court’s sentencing order did not include “express findings” of the sufficiency of the aggravators or that they outweighed the mitigating circumstances. (IB 68). As indicated above, the sentencing order detailed the trial court’s findings and conclusions that the four aggravating factors were proven beyond a reasonable doubt and “far outweigh the mitigating circumstances.” (DAR 1667-74, 83-84). This argument is therefore, equally meritless. *See Santiago-Gonzalez*, 301 So. 3d at 177.

Because Appellant offers no compelling argument for this Court to reconsider or recede from its established precedent, this issue must be rejected. *See Davidson*, 323 So. 3d at 1248. Accordingly, Appellant’s faulty interpretations and disregard of federal jurisprudence, in light of purposeful application of *Rogers*, *Poole* and subsequent decisions, does not alter Appellant’s eligibility to be sentenced to death or render his sentence constitutionally deficient.

and premeditated manner without any pretense of moral obligation or legal justification. (DAR 1667-74, 83-84).

ISSUE IV

FLORIDA’S CAPITAL SENTENCING SCHEME DOES NOT VIOLATE THE UNITED STATES OR FLORIDA STATE CONSTITUTIONS. [RESTATED]

Appellant invokes *Furman v. Georgia*, 408 U.S. 238 (1972) to challenge the constitutionality of Florida’s capital sentencing scheme in section 921.141, Fla. Stat. (2019) as violative of the Eighth Amendment and the State Constitution. (IB 70). Wells argues that this Court misapplied *Pulley v. Harris*, 465 U.S. 37 (1984) when it eliminated proportionality review and the “myriad” of statutory aggravating factors fails to limit the class of persons eligible for the death penalty. *Id.* at 74-76. This issue is reviewed, *de novo*. See *Henry v. State*, 134 So. 3d 938, 944 (Fla. 2014).

Similarly-based constitutional challenges to Florida’s death penalty statute have been consistently rejected. Presumptively, Appellant invites this Court to reconsider its prior decisions. Because Wells offers no new or persuasive argument or specific claim of error in his sentencing, this facial challenge to Florida’s capital sentencing scheme is meritless and should be rejected.

By way of background, Wells moved to declare sections 921.141 (6)(a), (b) (h), and (i), Fla. Stat. (2019) unconstitutional as written and

as applied, because these aggravating factors increased the number of persons eligible for the death penalty. (DAR 868-937, 1827-28). The trial court observed that Wells did not raise a new issue not already addressed by this Court and denied all of the motions following the March 29, 2021 motion hearing. *See, id.* at 1441-48, 1455-58, 1830. Appellant also sought to declare sections 782.04 921.141(3), Fla. Stat. (2019) and 921.141 Fla. Stat. (2019) unconstitutional on their face and as applied, based on an amalgamation of grounds including an attack on the felony murder aggravator, arbitrariness of the statutes, the proliferation of aggravating factors, and violation of international law. (DAR 964-75). This motion was also denied. *Id.* at 1457-58, 1839.

On appeal, Appellant broadly declares that the “sheer number” of Florida’s statutory aggravators result “in nearly all first-degree murder cases being death-eligible.” (IB 74). This unsupported and hyperbolic position completely ignores how Florida implements the death penalty. The constitutional protections Florida capital defendants are afforded ensure “a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to

minimize the risk of wholly arbitrary and capricious action.” See *Poole*, 297 So. 3d at 495-96.

The *existence* of a statutory aggravating factor is but the *first step* in the sentencing process to narrow that class of persons eligible for the death penalty. It begins “with an evidentiary hearing before a jury and/or judge to hear evidence relevant to the nature of the crime and the character of the defendant, including statutory aggravating and mitigating circumstances.” *Poole*, 297 So. 3d at 465. Whether the sentencing fact finder is a jury or judge, at least one aggravating factor must be proven beyond a reasonable doubt. *Id.* at 491; *McKinney*, 140 S. Ct. at 707. Only then is the sentencer able to proceed to the sufficiency and weighing stage. § 921.141(2)(b), Fla. Stat. (2019). In the event of unanimous jury aggravation findings and death sentence recommendation, the trial court may still nonetheless impose a life sentence. § 921.141(3), Fla. Stat. (2019).

Appellant’s arguments mirror those most recently made and succinctly rejected in *Joseph*, 2022 WL 405557. Joseph argued Florida’s statutory aggravating factors “mushroomed into sixteen” and “[s]uch a large number . . . only increases the number of murders in which the defendant could have a sentence of death imposed,

enlarging and not narrowing the pool of consideration.” See Initial Brief of Appellant, SC20-1741 at 59. This claim was rejected. *Joseph*, 2022 WL 405557 at n.5, citing *Bush v. State*, 295 So. 3d 179, 214 (Fla. 2020) (concluding the defendant was not entitled to relief on claim that Florida’s death penalty statute is unconstitutional because it does not sufficiently narrow the class of individuals eligible to receive the death penalty).

The argument that Florida’s capital sentencing scheme was unconstitutional and failed to limit the class of persons eligible for the death penalty because “there are so many aggravators that almost every murder is death penalty eligible” was also made in *Cruz v. State*, 320 So. 3d 695, 730 (Fla. 2021). This Court rejected Cruz’s claim, relying in part on *Lugo v. State*, 845 So. 2d 74, 119 (Fla. 2003) (the argument that Florida’s capital sentencing scheme “fails to limit the class of persons eligible for the death penalty” is meritless).¹⁷

The *Colley* Court succinctly rejected the claim that Florida’s “legislative enactments have expanded the number of aggravating

¹⁷ *Cruz* was reversed and remanded “for the limited purpose of resentencing by the trial court and a new sentencing order” where the defendant was improperly sentenced to death based on facts not admitted during the penalty phase. *Id.* at 723-24.

factors to the point where every first-degree murder conviction is eligible for a death sentence, in violation of the Supreme Court's mandate” in *Furman. Colley v. State*, 310 So. 3d 2, 15-16 (Fla. 2020), citing *Miller v. State*, 926 So. 2d 1243, 1260 (Fla. 2006). Notably and unlike Colley, who challenged the HAC aggravator as unconstitutionally vague and overbroad, Wells makes no such challenge to *any* of the aggravating circumstances found in his case.

Wells ignores the undisputed fact that he became constitutionally eligible for the death penalty when the trial court found four aggravating factors were proven beyond a reasonable doubt. *See, e.g., Craft*, 312 So. 3d at 56 and *Knight v. State*, 225 So. 3d 661, 683 (Fla. 2017). Only after this process was Wells placed within a narrow class of persons *eligible* for the death penalty. The *number* of aggravating factors enumerated in Florida Statutes had no impact on the individualized eligibility findings.

Importantly, although Wells filed motions in the trial court challenging the constitutionality of aggravators ultimately found in his case, he does not do so in his appeal. Nor does he challenge the factual basis of the aggravators or the trial court’s analysis conducted to make the findings. Instead, he generally comments about the

legislative expansion of “under sentence of imprisonment” and “prior violent felony” aggravators. (IB 72-73). Notably, these aggravators are based on multiple first-degree murder convictions and accompanying life sentences. However, even had these aggravators *not* been found, the HAC and CCP aggravators remain and have not been challenged.

Finally, Wells asserts that elimination of proportionality review “is a misapplication of” *Pulley* and removes safeguards to limit a capital sentencer’s discretion. (IB 75-79). This Court has rejected the same hyperbolic argument. *See Joseph*, 2022 WL 405557.

This Court receded from the “judge-made” comparative proportionality review requirement in death penalty direct appeals in *Lawrence* and held that it is not required by the Eighth Amendment. *Lawrence v. State*, 308 So. 3d 544, 545, 550-52 (Fla. 2020). This Court further held that the conformity clause in article I, section 17 of the Florida Constitution prohibited comparative proportionality review. *Id.* Since *Lawrence*, this Court has not revisited its decision and recognized that it “lacks constitutional or statutory authority to conduct proportionality review.” *Colley*, 310 So. 3d at n.7. *See also Davidson*, 323 So. 3d at n.6; *Joseph*, 2022 WL 405557, n.5.

Wells provides no *direct* nexus to the issue of the

constitutionality of Florida’s death sentencing scheme and his death sentence. He offers no reason for this Court to revisit its decision in *Lawrence* and presents no significant import of the proportionality issue to the constitutionality of Florida’s capital sentencing scheme. Because this issue is well-settled at law, no relief is warranted.

ISSUE V

APPELLANT’S MENTAL ILLNESS DOES NOT CATEGORICALLY BAR EXECUTION OR VIOLATE THE EIGHTH AMENDMENT’S PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT. [RESTATED]

Lastly, Appellant asserts that his death sentence violates the Eighth Amendment’s prohibition against cruel and unusual punishment due to his mental health and neurocognitive issues. (IB 80). Wells argues that his mental illness categorically bars his death sentence and interchanges mental illness with intellectual disability recognized in *Hall v. Florida*, 572 U.S. 701 (2014) and *Atkins v. Virginia*, 536 U.S. 304 (2002), and juvenile capital offenders in *Roper v. Simmons*, 543 U.S. 551 (2005).¹⁸ (IB 80-81). These arguments have

¹⁸/Wells moved to “bar the death penalty based on mental illness” on March 22, 2021. (DAR 1235-1428). Dr. Danziger testified in support of this motion, as well as to withdraw Well’s guilty plea and penalty phase jury waver. (DAR 1817-19, 1849; T 8, 21-22). The gravamen of Dr. Danziger’s testimony addressed Wells’s

been unvaryingly rejected and remain meritless.

This Court's long-standing precedent rejecting the very argument Wells makes effectively began with *Lawrence v. State*, 969 So. 2d 294 (Fla. 2007). The *Lawrence* Court rejected the assertion that under *Atkins*, "equal protection requires that his mental illness be treated similarly to those with mental retardation because both conditions result in reduced culpability." *Lawrence*, 969 So. 2d at n.9. (citations omitted). The holdings of this Court have remained consistent for more than a decade.

"competency" in February and March 2020 to represent himself, plead guilty, and waive a jury trial. (T 22, 37). He opined that Wells's "serious psychiatric and mental health issues including schizoaffective disorder, posttraumatic stress disorder, and cognitive deficits . . . impacted his judgment and reasoning to where his decision-making was not intelligent" and his ability to conduct the court proceedings was impaired substantially." (T 22-23). In other words, Dr. Danzinger described Wells's decisions to waive a jury trial, stipulate to certain aggravators, was "knowing," but not intelligent due to mental illness. (T 35-36). He further opined that Wells's motivation to improve his confinement conditions and that he "deliberately" did nothing to defend himself and "take a dive" was exclusively attributed to his mental illness. (T 41-42). Despite Dr. Danzinger's "fairly nuanced opinion," defense counsel did not argue Wells was not competent or even request that another competency evaluation be conducted. (T 49-50). He also unsuccessfully moved to declare Florida's capital sentencing scheme unconstitutional under the Eighth Amendment and in violation of evolving standards of decency in the context of *Atkins* and *Roper* and was denied. (See DAR 951-63, 1837-39).

In *Simmons v. State*, 105 So. 3d 475 (Fla. 2012) a capital defendant's claim that "mental illness and neuropsychological deficits" placed him in the same category of persons whose executions are barred by age under *Roper* or intellectually disabled under *Atkins* was meritless. *Id.* at 510-11. Quoting *Nixon v. State*, 2 So. 3d 137, 146 (Fla. 2009), the *Simmons* Court rejected the argument stating:

In *Lawrence v. State*, 969 So. 2d 294 (Fla. 2007), we rejected the defendant's argument that the Equal Protection Clause requires this Court to extend *Atkins* to the mentally ill. . . . In *Connor v. State*, 979 So. 2d 852 (Fla. 2007), we noted that "[t]o the extent that Connor is arguing that he cannot be executed because of mental conditions that are not insanity or mental retardation, the issue has been resolved adversely to his position." *Connor*, 979 So.2d at 867 (citing *Diaz v. State*, 945 So.2d 1136, 1151 (Fla.) *cert. denied*, 549 U.S. 1103 (2006) (indicating that neither the United States Supreme Court nor this Court has recognized mental illness as a per se bar to execution)).

Id. at 511. *See also Newberry*, 288 So. 3d at 1050 (declining to extend *Atkins* "to individuals who are not intellectually disabled but are intellectually impaired"); *McKenzie v. State*, 153 So. 3d 867, 884-85 (Fla. 2014) (noting "neither this Court nor the United States Supreme Court has recognized mental illness as a per se bar to execution," citing *Power v. State*, 992 So. 2d 218, 222 (Fla. 2008); *Muhammad v.*

State, 132 So. 3d 176, 207 (Fla. 2013) (holding execution of a capital defendant who suffers from schizophrenia and paranoia does not constitute cruel and unusual punishment); *McCoy v. State*, 132 So. 3d 756, 775 (Fla. 2013) (rejecting the argument that capital defendant was “so severely mentally ill” that he is in “the class of persons similar to those” under the age of eighteen and with “mental retardation, who are categorically excluded from being eligible for the death penalty”); [David Eugene] *Johnston v. State*, 70 So. 3d 472, 484-85 (Fla. 2011) (holding “there is no per se bar to imposing the death penalty on individuals with mental illness”); *Schoenwetter v. State*, 46 So. 3d 535, 562-63 (Fla. 2010) (holding “mental illness does not serve as a bar to execution under *Atkins*” and mental and psychological disorders or conditions may be considered as mitigation circumstances); and [David Eugene] *Johnston v. State*, 27 So. 3d 11, 26 (Fla. 2010) (finding no merit in the claim that mentally ill persons are similar to and should be treated the same as juveniles who are exempt from execution).

It cannot be disputed that *Atkins* and *Hall* do not apply to Wells’s case because he was/is *not intellectually disabled* and his intellect was *never* in dispute or made an issue. References to Wells’s

I.Q. were made during the final penalty phase proceeding in April 2021 by Dr. Danziger regarding the motion to withdraw his guilty plea; and Dr. Wu regarding neuroimaging studies. (T 1, 8, 17). In response to the prosecutor's question whether he agreed that Wells seemed to "be an intelligent person," Dr. Danziger testified, "looking simply at IQ, interestingly, I think the score of an IQ that I saw in the records was 74, which is borderline, but *he presents as more articulate and intelligent than someone with that*. Just looking at raw cognitive ability, higher than that." (T 40-41 (emphasis added)).

Dr. Wu discussed Wells's verbal and non-verbal IQ score data, but at *no time* opined that he was intellectually disabled. When asked by defense counsel whether Wells "basically [] has the intelligence," Dr. Wu acknowledged his verbal score was within normal range, nonverbal IQ was impaired, but remarked:

. . . given his professional degree in terms of being a marine engineer and a ship's captain, to me it would be inconceivable that someone could have obtained this degree with a second percentile in terms of nonverbal IQ processing. . . . you cannot, in my opinion, professionally obtain those kind of degrees with this kind of IQ score in a nonverbal area.

(T 214-15, 242-45).

Wells gives no support for this Court to extend Eighth

Amendment protections or create a categorical bar to execution based on mental illness. There is no support to find that his mental health was such that imposing the death penalty was unconstitutional or tantamount to cruel and unusual punishment. In fact, the record refutes it. Instead, Wells offers a meager survey of United States Supreme Court decisions in *Roper* on juveniles under the age of eighteen as a limited class of persons who may not be sentenced to death; and *Hall* and *Atkins*, regarding capital defendants' diminished capacities and intellectual disability.

Even giving Wells *substantial* benefit of the doubt that he attempts to raise or comingle a *competency* claim to any degree, it is equally meritless. Appellee does not dispute Wells's documented history of mental health issues, recognized by the trial court throughout the proceedings. However, at *no time* did Appellant individually or through trial counsel directly challenge his competency determinations, much less suggest he was intellectually disabled or suffered from a diminished capacity to any degree, or presented evidence in support.

Appellant does not claim he was or is actually incompetent to proceed; never directly challenged Dr. Krop's competency

determination as unreliable; and never sought or requested supplemental competency evaluation, testing, or a hearing because Dr. Krop's competency determination was unreliable. Moreover, Appellant makes no bona fide argument that any diagnosed condition bars the lawfully imposed death sentence, except for referring to the equivocal penalty phase expert opinion evidence presented in support of his motion to withdraw his guilty plea and tangentially in support of statutory mental health mitigators. Again, the record clearly demonstrates Wells's competency determinations and competency throughout the proceedings.

In support of a motion to declare Florida's capital sentencing scheme unconstitutional, defense counsel briefly argued that the "evolving standards of decency" prohibit juveniles and the intellectually disabled to be sentenced to death. (DAR 1837-38). The State responded, "[t]he Defendant is not mentally disabled, there's no mental retardation [regarding] his pleadings or any medical records we have, and he's also not a juvenile . . ." (DAR 1838). The trial court denied the motion. (DAR 1838).

Appellant failed to present any new argument or compelling reason for this Court to reconsider well-established precedent and

expand *Atkins* and *Hall* to mentally ill defendants. See *McCoy*, 132 So. 3d at 775. Instead, Wells fruitlessly re-interprets settled constitutional law to urge this Court to expand United States Supreme Court precedent. (IB 80-82). He then relies on “position” papers and *polling data* that “Americans were opposed to executing the mentally ill.” (IB 80-82). This meager effort further renders the issue meritless and should again be rejected.

STATEMENT ON SUFFICIENCY OF THE EVIDENCE

Although Appellant made no statement on the sufficiency of the evidence in his case, this Court has a mandatory obligation to independently review its legal sufficiency in every death penalty appeal. See *Santiago-Gonzalez*, 301 So. 3d at 180. Ordinarily, this Court evaluates whether the conviction is supported by competent, substantial, and sufficient evidence. *Id.* However, when a defendant pleads guilty and waives a jury trial, the relevant inquiry becomes whether the guilty plea was knowingly, intelligently, and voluntarily entered. See *Davidson*, 323 So. at 1250; *Craft*, 312 So. 3d at 58. The plea is scrutinized “to ensure that [Appellant] was made aware of the consequences of his plea, was appraised of the constitutional rights he was waiving,” and that his guilty plea was voluntary. *Id.*

The record demonstrates that the trial court's determination that Appellant's guilty plea was knowing, intelligent, and voluntary was supported by competent, substantial evidence. First, on its own motion, the lower court ordered a comprehensive competency evaluation following Appellant's motion to represent himself, but prior to his guilty pleas. (DAR 42-45).

For the second time since Wells's 2003 capital case, Dr. Krop found he was "competent to proceed" and made several individual determinations: Wells was "an intelligent individual" capable of making "cogent and rational" decisions in his self-representation; he was capable to manifest appropriate behavior; Wells was "obvious[ly]" and "fully aware" of the charges against him and possible death sentence; understanding of the criminal proceedings, and ultimately determined he was competent to proceed. (DAR 51-52). None of Dr Krop's competency conclusions were directly challenged by Appellant or his defense team. (DAR 773).

The trial court conducted extensive colloquies with Appellant throughout the proceedings. As set forth in detail *supra*, the trial court verified Appellant's knowledge and understanding of: the charges against him; legal and constitutional rights being waived by

pleading guilty; the consequences of representing himself, his guilty pleas and waiving a penalty phase jury; and that the two possible sentences for first-degree murder were life imprisonment or death.

Wells's guilty plea notwithstanding, the evidence supporting his conviction of first-degree murder is overwhelming, incontrovertible, and includes: the video recordings graphically documenting the killing and Wells's conduct leading up to it; Wells's recorded statements and confessions to FDOC corrections officers and FDLE special agents about his motive and advanced planning; and statements of other inmates documenting the motive for and advance planning of the murder with his co-defendant.

The sentencing order detailed four aggravating factors which were proven beyond a reasonable doubt and given great or very great weight. (DAR 1667-74). The trial court analyzed each of the seven statutory mitigating circumstances, substantially focusing on § 921.141(7)(b), Fla. Stat., that the capital felony was committed while Wells was under the influence of extreme mental or emotional disturbance. (DAR 1674-77). Of the eight non-statutory mitigation circumstances, all were found proven by the greater weight of the evidence and given some or slight weight. (DAR 1678-83).

Determining that the aggravating factors “far outweigh[ed]” the mitigating circumstances, the trial court observed:

. . . the Defendant planned, in a cold, calculated, and premeditated manner, the murder of the victim for days before he committed it. . . obtained shanks, which he sharpened over the course of several days. . . ripped up his sheets and pillowcases to make ligatures with which to tie up the victim so that he could not resist. And prepared his property to be transported and searched the inspector. Without any pretense of legal or moral justification, the Defendant then strangled and brutally stabbed the victim multiple times, during which the victim pled for his life knowing that death was imminent. And when the Defendant saw that the victim was still alive, he encouraged his co-defendant to keep mercilessly stabbing him. The murder in this case was carried out as a matter of course, without any threat from the victim. And while carrying it out openly in front of other inmates as well as correctional officers, the Defendant took actions, and made threats, to ensure that no one would intervene until the murder was completed to his satisfaction.

(DAR 1683-84).

Appellant’s guilty pleas, conviction and death sentence comply with constitutional protections. His competency finding, the trial court’s extensive interactions and colloquies with the Appellant, coupled with overwhelming State’s evidence proving four very weighty aggravating factors beyond a reasonable doubt, refute any claim of error or that he was not eligible for the death penalty.

CONCLUSION

Appellee, the State of Florida, respectfully requests this Court affirm the Appellant's conviction and death sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of March, 2022, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Barbara J. Busharis, Assistant Public Defender, Office of the Public Defender, Leon County Courthouse, 301 South Monroe Street, Suite 401, Tallahassee, Florida 32301, **barbara.busharis@flpd2.com**.

CERTIFICATE OF FONT AND WORD LIMIT COMPLIANCE

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