

IN THE SUPREME COURT OF FLORIDA

LEO L. BOATMAN,

Appellant,

v.

FSC Case No. SC22-1547

L.T. No. 2019-CF-706-B

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 APPELLEE

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PRELIMINARY STATEMENT

Citations to the record in this brief will be designated as follows:

The record on direct appeal will be referred to as “DR:” followed by the page number. References to the trial transcripts from the direct appeal will be referred to as “DT:” followed by the page number.

STATEMENT OF THE CASE AND FACTS

On November 4, 2019, Leo Boatman was charged by indictment with one count of first-degree premeditated murder and one count of possessing a weapon while being lawfully confined at a state correctional institution on July 5, 2019. (DR:34-45).

The case proceeded to jury trial before Circuit Judge James M. Colaw on August 15, 2022 (DT:1-2). On August 19, 2022, the jury returned a verdict finding Boatman guilty as charged on both counts. (DR:474; DT: 1110-1111). The penalty phase of the trial commenced on August 22, 2022. (DT:1125). On August 25, 2022, Boatman filed a pro se waiver of the penalty phase jury (DT:482), which the court granted over the objection of Boatman's counsel. (DT:1668-69). On August 30, 2022, the trial was completed. (DT:2067).

A *Spencer*¹ hearing was held on October 3, 2022 (DR:952-964). On November 9, 2022, Boatman's sentencing hearing was held, and the Court sentenced Boatman to death on his murder conviction and five years on his conviction for possession of a weapon. (DR: 938-51; 752-81).

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

GUILT PHASE

On July 5, 2019, Sergeant Prock, a correctional officer at Florida State Prison, learned that a struggle was occurring in the dayroom at the prison when Officer Merchain, yelled out that he saw one inmate choking another inmate or rolling around on the ground with him. Sgt. Prock and Officer Davis ran over to the dayroom to assist. (DT:550).

The dayroom is a TV room where prisoners are permitted to watch TV and converse with each other. The room was monitored by Merchain. He sat in an office across the walkway from the dayroom while the inmates were in it. It contains a camera that records. There is also video in the hallway. Prock and Merchain conducted a strip search of the inmates entering the dayroom that evening and then escorted them there. (DT:519-49).

Prock looked in and saw two inmates on the ground. One appeared to have the other in a headlock. Boatman prevented Prock from entering the dayroom by jumping against the door. Inside the dayroom, Boatman and another inmate, William "Crawfish" Wells, were attacking inmate William Chapman. Wells was choking Chapman with a ligature and Boatman was repeatedly stabbing

Chapman with shanks. Boatman displayed both weapons and said, “Don't try to be Captain Save-A-Ho. This guy – this inmate's going to die tonight. And if you come in here and try to stop it, you'll die too...” (State’s Exhibit 1; DT:550-55; 627; 693).

Correctional officers attempted to force open the door. They managed to crack open the door and spray in a chemical agent. The captain arrived. He ordered them to stop because the prisoners were armed and the officers were not. He then activated the Designated Armed Response Team (“DART team”), an emergency response team with weapons. (DT:554-56; 588).

The attack continued. Eventually, Boatman handed a weapon to Wells and told him to stab Chapman. Wells did. Finally, Chapman collapsed to the floor. Wells checked to see if he was still breathing, and stated he was still alive, and Boatman needed to keep stabbing him. Boatman did. When the DART Team arrived, Boatman and Wells got on the ground and officers removed an unconscious Chapman. (State’s Exhibit 1; DT:557-613; 626).

Florida Department of Law Enforcement (“FDLE”) Special Agent in Charge Garrett Carlisle and Special Agent David Meacham

investigated the homicide on August 5, 2019. Post-*Miranda*² Boatman admitted that he and Wells were angry because they continued to be placed on controlled management. Boatman wanted to “send a clear and present message I will not tolerate any more bullshit.” He became angry with Chapman about a week before the murder. They then decided to kill Chapman the first chance they got. (DT:632-53).

In addition to the dayroom video, the agents obtained handheld video, and other video from before the attack. This included video of Boatman carrying the sneakers Wells wore and being passed from near Boatman’s cell with someone stating they are meant for Crawfish. Meacham noted that they grip a surface better, and during the attack, Boatman and Wells switched places so that Wells was the one guarding the door. (696-702).

A correctional officer to whom Meacham described Boatman’s weapons, stated they sounded like the plungers in the “pipe chase.” When Meacham examined it, he discovered some of the plungers were missing. Meacham viewed intact plungers in the pipe chase

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

and discovered they are essentially the same length and diameter as the weapons that were recovered and appear to be the same type of material. (DT:726-28).

Medical Examiner William Hamilton performed an autopsy on August 6, 2019. Chapman suffered multiple sharp force injuries consisting of both cuts and stabs. This included to the head and neck with penetrating injuries to the orbitals around Chapman's eyes. Chapman had 25 cuts and stabs over a 7 by 4-centimeter area on the right side of the neck; and 13 cuts and stabs on the back of the neck; and a penetrating injury of the back of the neck from which a metal rod protruded due to Boatman stomping on the rod when he completed his attack. There was also hemorrhaging in this area, extensive hemorrhaging in the soft tissue of the neck, penetration into the neck laryngopharynx and the neck space, and marked blood aspiration in the right and left lungs. (DT:663-70).

There was also a ligature furrow around Chapman's neck and internal injuries to the head and neck. These internal head and neck injuries consisted of a swelling in the brain and hemorrhage over the surface of the brain consistent with blunt trauma. (DT:671-72).

There were multiple stab wounds of both the anterior and posterior trunk with focal penetration into the mediastinum cavity, which contains the heart, great vessels, trachea, and esophagus. Altogether, there were thirty punctures on the anterior trunk, chest, and abdomen. (DT:674-75).

Dr. Hamilton concluded that the probable cause of death was multiple modalities of injury, including ligature strangulation, blunt traumatic head injuries, and extensive sharp-force injuries of the head, neck, and trunk. He noted either the total sharp-force injuries of the head and neck or ligature strangulation would have been fatal. He added that the stab wounds to the trunk, chest, abdomen, and back would probably have been fatal from blood loss in the latter, and certainly from the infections one would expect to follow. (DT:676).

After the State rested its case, Boatman moved for judgment of acquittal, which was denied. (DT:770-71). Boatman then put on his case, which consisted of five witnesses: Assistant Warden Jeffrey McClellen, Boatman, inmates Maurice Bell and Reginal Arline, and psychiatrist Tonia Werner.

McClellen testified about discipline reports, including the fact that two inmates were disciplined for having anal sex. He also confirmed that privileges are withheld from prisoners on close management, who are reviewed every six months to determine whether their status be continued, reduced, or be moved up, based on the prisoner's adjustment. (DT:814-17).

Boatman testified that he was born in G. Pierce Woods, a mental institution because his mother was a patient there at the time. Also, that his mother had sexual intercourse with him when he was eight years old, how his grandmother abused him, and the abuse he suffered in foster care, including sexual abuse. (DT:824-27).

He discussed what a violent world prison is, explained what prison is like when on controlled management, that he has always been on it during a twelve-year period over which he was imprisoned several times, and for ten straight years at the time of the murder. (DT:825-842). Boatman stated that it was easy to get weapons in prison and added that they are required to protect oneself because you cannot rely on the correctional officers to do that. Failing to respond to someone who threatens you results in others thinking you are weak and can be taken advantage of. (DT:844-46).

Boatman denied being homosexual, bisexual, or having any sexual contact while in prison. He added that if you do not beat up someone who seeks sex from you, others will soon be seeking it. He claimed that Chapman was a member of a gang and engaged in homosexual activity. They were friendly before the attack, but that Chapman put him at risk by not telling him the truth about being a homosexual. (DT:848-58).

The problem between Boatman and Chapman began when Chapman purposefully broke another prisoner's radio Boatman arranged for Chapman to repair. Chapman was also telling everyone to suck his dick, including Boatman. This was all around the time frame of when the attack happened. He claimed that Chapman was a threat to him because he battered an officer and stabbed an inmate. Boatman claimed he got a kite, a written message passed between inmates, that suggested Chapman was trying to recruit Boatman for homosexual activity. (DT:859-70).

Boatman admitted that initially he and Wells had planned on killing another inmate known as "Smurf." He only decided to kill Chapman after he saw the kite message. Boatman agreed that to successfully kill Chapman, he had to have weapons, he had to make

sure the door was secured against correctional officers entering to prevent the murder, and he needed somebody to bring Chapman to the door. He admitted that he planned the murder over several days. (DT:883-87). Boatman claimed that he had a mental breakdown in 2015 from being placed on closed management. (DT:891-92).

Maurice Bell testified that he was on close management at Florida State Prison back in 2019. He stated that it was possible to have sex at the prison in the dayroom, kiosks, and bathroom if you snuck in. He also testified that if somebody “put your name out there,” you had to do something to them to save face. You had to hurt them because prison is all about violence and respect. (DT:896-98).

Reginald Arline testified that prison has its own rules. If there is a problem, one does not go to law enforcement. If you do, you are labeled a “snitch,” and your life is in danger. Instead, one has to stand your ground and take care of your own business without going to the police officers. He agreed that there are lots of weapons in prison. He stated that Chapman was gay but did not want anyone to know it unless they were someone with whom he had sex. He also stated that if someone who is not gay associates with someone who is, that “puts dirt on them.” (DT:905-15).

Arline also testified Chapman had “disrespected” Boatman and other inmates by telling them to suck his penis and was even disrespectful to the officers. This put his close associates in danger. Bell and Chapman were both disrespectful to others both verbally and sexually. (DT:915-16).

Arline admitted that he had twenty felony convictions and that Boatman is his best friend. However, he testified that Boatman’s life was not in danger. He also testified that according to prison rules, what Boatman did was not okay. (DT:920-27).

Dr. Werner clinically interviewed Boatman. She interviewed him on two occasions, the first in 2020 and the second in 2021. She discussed his background, sexual abuse he suffered, and physical abuse he suffered, including his grandmother’s abuse of him. She diagnosed Boatman with an adjustment disorder. She described it as a maladaptive adjustment to a stressor. Dr. Werner stated that an adjustment disorder might trigger a heightened response to any perceived threat. (DT:929-35).

When she interviewed Boatman, he informed her that his closed management status triggered his anger. She also testified that all the

childhood incidents she described were self-reported by Boatman. (DT:936-40).

After closing arguments, the jury was instructed and returned a verdict finding Boatman guilty on both counts, as charged. (DR:474).

PENALTY PHASE

The State first called Marion County Deputy Eric Dice. Dice investigated the 2006 murders of two college students from Gainesville committed by Boatman. He testified that Boatman used an AK-47 to kill the students and gave a statement in which he admitted to shooting both of them. He informed the jury that Boatman was convicted of the murders and sentenced to life imprisonment. The State also introduced his judgment and sentence. (DT:1172-1205; 1276; DR:1234-43).

Next, the State called former FDLE Investigator Joseph Hamner. He discussed a criminal investigation of Boatman conducted by FDLE involving his attempt in 2009 to hang another inmate with a bedsheet. The officer ended the murder attempt by spraying a chemical agent after Boatman refused to stop when ordered. (DT:1208-12).

Post-*Miranda*, Boatman stated that earlier in the day the inmate, Apicella, informed him that doctors were not taking seriously his mental health problems concerning his desire to hurt himself and that he may do something to make them realize he was serious. Boatman stated he made a noose out of a sheet, told Apicella that he could hang himself, and threw the noose at Apicella, who threw it back, starting a fight. Boatman claimed that during the fight he “snapped” and while trying to defend himself, he slipped the noose around Apicella’s neck, began pulling on it and hanging him. The State also introduced the judgment and sentence for this attempted murder. (DT:1212; 1229-32; 1276; DR:1244-49).

The State then called Department of Corrections (“DOC”) Office of the Inspector General Senior Inspector Kevin Michael Ortiz (DT:1238). On August 18, 2010, he investigated an incident between involved Boatman and another inmate, Ricky Morris, who was seriously injured enough to be airlifted to the hospital. Morris had been in a cell with Boatman, and a corrections officer spotted Boatman beating Morris and slamming Morris’s head against the concrete five to six times. Boatman stated that the fight started because he was in a bad mood due to his controlled management

being extended and decided to take it out on Morris. Boatman added that he had a life sentence, and “if they were not going to work with him, he was going to make prison fun.” Morris died of his injuries on September 19th. Boatman was convicted of third-degree murder for the attack. (DT:1250-61; 1276; DR:1250-59).

The State recalled FDLE agent John Carlisle who testified that Boatman and Wells had their close management review on June 3, 2019. Wells received the result of his review on June 10th and Boatman on June 20th. The murder occurred fifteen days later. During the attack, Boatman stabbed at the victim about 124 times of which four or five were at Chapman’s eyes. Wells stabbed Chapman approximately six times. In addition, Boatman stabbed Chapman thirty-three times after he was no longer struggling and on the ground. Boatman then stabbed Chapman one final time before stomping on him. He stomped on Chapman eight times. (DT:1271-75).

Following this testimony, the State introduced the Victim Impact Statement before resting. (DT:1287-88).

The defense put on fourteen witnesses. The lay witnesses testified to Boatman’s dysfunctional family, abuse, and prison

conditions. Boatman also called several mental health experts, Dr. Michael Quinones, Dr. Joseph Wu, and Dr. Geoffrey Colina.

Dr. Quinones is a clinical psychologist who met with Boatman a year ago for two different four-hour sessions. He reviewed records from The Department of Juvenile Justice (“DJJ”), DOC, and DCF. He concluded that Boatman was “exposed to a large number of adverse childhood experiences, “ACEs” and raised in an environment “that was primarily or frequently just chaotic, hostile, inconsistent, and traumatizing.” (DT:1698-1706). Dr. Quinones assessed each of the ten types of ACEs as they apply to Mr. Boatman. He determined that Boatman suffered from physical abuse, sexual abuse, emotional abuse, emotional neglect, physical neglect, multiple forms of household dysfunction, household substance abuse, parental separation, and other non-delineated ACEs. (DT:1723-28). As a result of all this, he had to contend with distrust and fear of harm from others. (DT:1744-50). Therefore, it's very difficult for Boatman to be able to control his impulses. Dr. Quinones concluded that he believes that Boatman has been contending with severe mental health issues and impairments throughout his whole entire life. (DT:1753).

Dr. Joseph Wu is a professor emeritus at the University of California Irvine, Department of Psychiatry and Human Behavior, and specializes in neuropsychiatry and neurocognitive imaging. In his review of Boatman's PET scan, he found abnormalities that are consistent with "a wide variety of different clinical neuropsychiatric diagnoses, including fetal alcohol spectrum disorder or FASD, traumatic brain injury or TBI, posttraumatic stress disorder or PTSD, and adverse child experiences or ACE, causing limbic kindling or temporal lobe epilepsy-like changes or TLE." The epilepsy spectrum questionnaire administered by Dr. Colino to Boatman is consistent with the kind of abnormalities that Dr. Wu observed on Boatman's PET scan. (DT:1784-1802).

Dr. Wu described Boatman as a "a neurological perfect storm" due to a combination of neurological dysfunction coming from a fetal alcohol spectrum disorder, traumatic brain injury from PTSD, severe childhood abuse, and neglect, which results in a catastrophic breakdown in terms of his ability to regulate his aggressive impulses. Dr. Wu concluded that because of these factors and because of what he found in Boatman's PET scan, Boatman was under the influence of extreme mental or emotional

disturbance and that his capacity to conform his conduct to the requirements of the law was substantially neurologically impaired. (DT:1805-13).

Dr. Geoffrey Colina testified that he is a medical doctor specializing in forensic neurology. He met with Boatman and conducted a comprehensive evaluation of him on March 25, 2022. He also ordered a PET scan, brain scans and an MRI. (DT:1819-25). He concluded that Boatman suffered from fetal alcohol syndrome, and a demyelinating disease, which he believed to be multiple sclerosis but could be lupus. He also concluded that Boatman suffers from traumatic brain injury based on events reported to him by Boatman, records from the DJJ, reports from family members and as corroborated by the imaging. (DT:1827). He opined that Boatman committed the murder while under the influence of a significant to profound neurological impairment or disturbance. (DT:1940-42).

On cross-examination, Dr. Colina explained that one could say that Boatman has one single diagnosis, FASD, and that everything else stems from there. (DT:1965). On redirect examination, he clarified his earlier testimony regarding the statutory mitigator,

stating that his findings are the “equivalent” of an extreme mental or emotional distress. (DT:1980).

A sentencing hearing was held on November 9, 2022. (DR:938-51; DT:938-51). In the trial court’s order sentencing Boatman to death, the court found and weighed the following aggravators: the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment (very great weight); (2) the defendant was previously convicted of another capital felony or a felony involving the use or threat of violence to the person (very great weight); (3) the capital felony was especially heinous, atrocious, or cruel ((very great weight); the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification (great weight).

The court found that Boatman established the following mitigating circumstances and gave them the following weights: (1) the age of the defendant at the time of the crime (no weight); (2) courtroom behavior (some weight); (3) waived jury (some weight); (4) care for the community and family (some weight); (5) generational trauma (some weight); brain malformation (little weight); conception (or perception of conception) (some weight); fetal alcohol syndrome

(little weight); instability in the home (some weight); juvenile commitment from age 14 (some weight); sexual abuse (some weight); adverse childhood experiences (ACEs) (some weight); mercy (little weight).

Boatman filed his Notice of Appeal on November 9, 2022, from which this appeal follows (DT:751).

SUMMARY OF THE ARGUMENT

ISSUE 1: There is no legal basis for reversing Boatman's conviction or sentence based on competence. The expert's evaluation found that Boatman did not meet any of the legal criteria for a determination of incompetence even though the expert concluded that he was incompetent to proceed.

ISSUE 2: The comments of the judge in questioning Boatman's counsel about why the defense required a continuance of the trial would not place a reasonably prudent person in fear of not receiving a fair and impartial trial.

ISSUE 3: The crime scene photos, autopsy photos, and video of Boatman murdering Chapman were not overly prejudicial.

ISSUE 4: The Court has repeatedly held that aggravating factors do not need to be listed in the indictment.

ISSUE 5: The trial court did not abuse its discretion in refusing to require individual voir dire due to pretrial publicity or not including everything Boatman sought in the court's statement to the venire concerning their knowledge of the case due to pretrial publicity.

ISSUE 6: The court did not abuse its discretion in denying Boatman's request to use photographs or the video of the murder during voir dire.

ISSUE 7: The court correctly denied Boatman's motion to strike the venire because it was not improper for him to inform them that the defense intended to conduct voir dire until late in the evening. The court wanted the members of the venire to be able to make arrangements for their unanticipated late night. Moreover, the defense agreed at a bench conference that the court could inform them of this.

ISSUE 8: The court did not abuse its discretion in refusing to strike potential jurors for cause. Boatman does not cite in the record any improper comments made by these individuals nor can Boatman demonstrate any prejudice because he removed each of these individuals with peremptory challenges and was provided an additional one when he ran out of peremptory challenges and needed one.

ISSUE 9: Boatman has not demonstrated that he did not receive a fair trial due to allegedly inadmissible evidence being admitted at trial.

ISSUE 10: There was competent substantial evidence of premeditation and the jury properly rejected self-defense as a basis for the murder of Chapman.

ISSUE 11: There was competent substantial evidence of premeditation.

ISSUE 12: The court properly refused to instruct the jury on the crime of “Unnecessary Killing to Prevent Unlawful Act” as a lesser included offense because there was no evidence of Chapman attempting to commit an unlawful act and the crime is not a lesser included offense of first-degree murder according to the schedule of lesser included offenses for the charge.

ISSUE 13: The court properly determined that Boatman was competent to waive a jury for his penalty phase proceeding.

ISSUE 14: The Court has repeatedly held that Florida’s death penalty scheme sufficiently narrows the class of those eligible for the death penalty.

ISSUE 15: There was competent substantial evidence of both CCP and HAC, the Court has repeatedly held that neither *Roper v. Simmons*, 543 U.S. 551 (2005) nor *Atkins v. Virginia*, 536 U.S. 304 (2002) apply to mental illness, the court did not abuse its discretion

in determining that the aggravation outweighed the mitigation, and the Court has recently held that proportionality review violates the Florida Constitution.

ARGUMENT

I. The Trial Court Did Not Abuse Its Discretion When It Denied Boatman's Motion to Adjudicate the Defendant Incompetent to Proceed.

Boatman's first claim is that the trial judge wrongfully failed to adjudicate Boatman incompetent to proceed. On August 10, 2020, Boatman filed a motion seeking to have the court adjudicate him incompetent to proceed which the court denied on February 5, 2021. (DR:87-88; 99-100).

A trial court's ruling on the competence of a defendant to proceed is subject to appellate review for an abuse of discretion. *Hardy v. State*, 716 So. 2d 761, 764 (Fla. 1998). This Court's review for abuse of discretion means "[it] will not disturb the court's conclusion unless no reasonable person would take the view adopted by the trial court." *Kocaker v. State*, 311 So. 3d 814, 820 (Fla. 2020) (internal quotes and citations omitted).

The motion relied upon the June 10, 2020, psychiatric evaluation performed by Tonia Werner, M.D. (DR: 87-98). Florida Statute 916.12 and Florida Rule of Criminal Procedure 3.211, specify that the examining expert "[i]n considering the issue of competence to proceed," is required to "consider and specifically include in his or

her report” the defendant's capacity to (a) appreciate the charges or allegations against the defendant; (b) appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant; (c) understand the adversarial nature of the legal process; (d) disclose to counsel facts pertinent to the proceedings at issue; (e) manifest appropriate courtroom behavior; (f) testify relevantly; (g) and include in his or her report any other factor deemed relevant by the expert. However, the *specific criteria* required to be proven regarding a defendant’s competence proceed is whether the defendant “*has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as a factual understanding of the proceedings against him.*” *Hardy*, 716 So. 2d at 763–64 (emphasis added) *citing Dusky v. United States*, 362 U.S. 402 (1960); *see also* § 916.12(1), Fla. Stat. (1993); Fla. R. Crim. P. 3.211(a)(1).

Although Boatman correctly points out that Dr. Werner expressed the ultimate conclusion that “Boatman is incompetent to proceed” (DR: 98, IB at 44), *this conclusion cannot be legally justified because it conflicts with the doctor’s opinion regarding the actual criteria upon*

which a court must base its decision. In her report, Dr. Werner expressly found that Boatman had both “an adequate understanding of the proceedings and an adequate ability to participate in his own defense if he so choses.” (sic) (DR:98).

Moreover, Dr. Werner did not stray from these opinions when she testified at Boatman’s competency hearing:

Dr. Werner: “*So I think if you look at the competence criteria, **I think he passes all of that**, and he wants to be competent to proceed and he wants to make that decision to plead and get the death penalty, but I don't believe, in having met with him and talked with him, I don't think that's a free and rational decision. I think it's based on his history and solely wanting to get out of close management. I don't think it's a rational decision that he's thought through with, or is able to even think through with regards to the ultimate outcome of that.* (sic).

Q: *So you believe that he would be incompetent to proceed even though he has an adequate understanding of the statutory criteria?*

A: Yes. I don't think he's making a free and willing choice.

(DR:971) (emphasis added). However, Boatman is not challenging in this claim whether any decision of his was freely and voluntarily entered, but only whether he initially possessed the competency to make decisions.

While Boatman contends that the doctor's report "clearly included all that was required for the Trial Court to find that Boatman suffered from mental illness which made him incompetent to proceed and assist in his own defense," the standard of review has never been whether the record contains competent evidence to support a ruling different from the one made, but whether there is evidence in the record to support the decision the court made. *Kocaker*, 311 So. 3d at 820. ("We look to the record for evidentiary support for the circuit court's determination. And where the court's resolution of an evidentiary conflict is supported by competent, substantial evidence, we will not find an abuse of discretion.").

Moreover, both Dr. Werner's report and her testimony contain remarks of hers that actually may *prohibit* the trial court from entering an order finding Boatman incompetent to proceed. Dr. Werner's medical opinion is that both Boatman's ability to participate in his own defense (competency prong one), and his understanding of the proceedings (competency prong two), are "adequate." Therefore, the record, arguably, lacks competent substantial evidence that would have permitted the court to find

Boatman incompetent to proceed. Therefore, this Court should deny this claim.³

II. The Trial Court Correctly Denied Boatman's Motion to Disqualify the Judge Because it Failed to Allege Facts That Would Place a Reasonably Prudent Person in Fear of Not Receiving a Fair and Impartial Trial.

Next, Boatman claims that the trial court wrongfully denied his motion to disqualify the judge. Boatman filed the motion after the court denied his motion to continue the trial. The motion to disqualify the judge argued that the comments of the judge made during the hearing on the motion to continue “left Mr. Boatman with the impressions outlined in his sworn statement in support of disqualification from August 3rd, 2021” and that these beliefs “are objectively reasonable in light of the Court’s statement on July 28th.” (DR:169-76). The trial court entered an order finding that the motion was legally insufficient. (DR:180-82).

The legal sufficiency of a motion to disqualify a judge is a question of law this Court reviews *de novo*. *Arbelaez v. State*, 898 So. 2d 25, 41 (Fla. 2005). “The primary consideration is whether the facts

³ Notably, there were no outward manifestations of incompetence during the trial or penalty phase. To the contrary, Boatman testified in his own defense in a clear and rational manner. (DT:824-94).

alleged, if true, would place a reasonably prudent person in fear of not receiving a fair and impartial trial.” “A mere ‘subjective fear []’ of bias will not be legally sufficient; rather, the fear must be objectively reasonable.” *Arbelaez*, 898 So. 2d at 41.

During the hearing, the court informed trial counsel that he was “not inclined” to continue the case and explained he had doubts about the defense’s claim that they could not be ready for trial on the date then set:

I am trying to discern and you’re making it very difficult for me to discern between not actually being ready and what is starting to feel like sort of willfully putting yourself in a position to continue to state you are not ready, and let me just be very transparent with you about what I’m talking about.

(DR:154).

The court reminded Boatman’s defense team that at the February 24, 2021, case management conference, Boatman’s lead trial counsel, Kristofer Eisenmenger, informed the court that the only thing that needed to be completed before he was ready for trial were depositions then set for March 11, 2021, depositions on “five to six inmates, a handful of FDLE and then some command staff.” (DR:155). The court further noted that trial counsel had requested

another case management conference for April 28th and, according to the judge, informed the court that on that date, “all those remaining things would be calendared, and you could give me the dates of those scheduled remaining depositions on April 28, and then on that date we could have the discussion about what the trial date could be.” The court went on to point out that:

[W]hen April 28 came, none of those things had been done . . . You tell me depositions are progressing but none of the inmates that you referenced needing to do had even been scheduled on that date. It was no longer five or six. You told me on April 28 you now had eight inmates because we engaged in a similar discussion . . . you are telling me that it remains eight inmates, five DOC staff and a handful of FDLE but you are telling me that whoever was doing your scheduling has been diligent for two months but unable to get any of those apparently scheduled in a 60 day time frame.

* * * * *

[Y]our current motion to continue now lists five inmates, four – ten FDLE folks, two medical examiner folks. So it seems like the things that you are telling me you needed time for in February are still the same things in whole or in part that got you from February until today.

So I can't make sense of it. If I'm just being frank. It's hard for me to discern between legitimate not ready and engaging in a scheduling strategy that puts you in a position to continue to claim being not ready to maybe put you in the best position to continue, to get a continuance. I don't know, but help me, help me with that. (sic).

(DR:155-58).⁴

Boatman argues that the court's statements resulted in him suffering an objectively reasonable fear of not receiving a fair and impartial trial because the judge is "biased" against his counsel, contending that the judge "accused my lawyers of being liars." He cites several cases in which courts reversed trial court orders denying a motion to disqualify the trial judge for bias based on the judge's alleged improper comments about the credibility of a party or his attorney. *See Crosby v. State*, 97 So. 2d 181, 183 (Fla. 1957) (the trial judge labeling defendant as "a liar" and "the biggest liar in the world" when he testified as a witness in a previous case); *Campbell Soup*

⁴ The court also stated that trial counsel previously asked for a September pretrial date with a trial date in October. (DR:156). Mr. Eisenmenger had agreed to an "aspirational date" that included a September pretrial for an October trial date. (DR:133). He did expressly state that eight inmates, five members of "the DOC command staff", and a "handful of investigators" from FDLE remained to be deposed. (DR:132). However, when the judge noted that his expectation was a July 28th pretrial conference and a trial in August, Boatman's trial counsel never suggested this may not be sufficient for trial, but rather asked for a September pretrial date instead so that they could attend their annual death penalty training that occurs on the last day of August but had been suspended for two years due to COVID and added "that's why the September pretrial would give us plenty of time to finalize any motions we need to file *and be ready to have the trial in the October trial term.*" (DR:134-35) (emphasis added).

Company v. Roberts, 676 So. 2d 435, 436 (Fla. 2d DCA 1995) (trial judge expressing doubt about the reliability of an affidavit of a party's corporate legal staff and expressing doubt about how much "credence I would give it" if an affidavit of the party's presiding officer contained the same information); *Brown v. St. George Island, Ltd.*, 561 So. 2d 253 (Fla. 1990) (trial judge tossed back an affidavit submitted by a party and stated that even though he never heard testimony from the witness he would not believe the witness if present); *Owens-Corning Fiberglas Corporation v. Parsons*, 644 So. 2d 340, 341 (Fla. 1st DCA 1994) (trial judge described a party as being "somewhere without the bounds of propriety, and their credibility with me is about as thin as a balloon.").

However, the trial judge in Boatman's case never called his lawyers "liars" or accused them of lying to him. The cases cited by Boatman involve a judge being disqualified as a result of prejudging the creditability of a witness, party, or their attorney. Here, the trial judge merely expressed his concern about delays in the scheduling of depositions that defense counsel had previously represented to him would be completed by this point, questioned how none were even scheduled in the 60-day period following that representation to

the court, and whether this was actually a means of obtaining a continuance to attend the Public Defender training that the court identified as the primary basis for asking on April 28th for a later trial date.⁵ See *Carnevale v. Shir*, 359 So. 3d 801, 803-04 (Fla. 3d DCA 2023) (“The context of the hearing and history of the case as reflected in the record are relevant to understanding whether a movant has a well-founded fear of judicial bias.”).

Such discussions are completely appropriate for a court to engage in while attempting to determine whether a trial continuance is warranted. See *1440 Plaza, LLC v. New Gala Bldg., LLC*, 314 So. 3d 555, 558-59 (Fla. 3d DCA 2020) (The trial court’s comments on counsel’s argument to stimulate a response by counsel that will assist them in better adjudicating an issue were not improper.); *City of Palatka v. Frederick*, 174 So. 826, 828 (Fla. 1937) (“It is the function of a judge to consider and weigh what is being said in argument in every cause and frequently it happens that in order to be more fully advised he interrupts counsel frequently and at length

⁵ It should be noted that co-counsel, William Miller, who argued, “I don’t believe we are even close to be ready to try this case” acknowledged he was scheduled to give a presentation at the seminar. (DR:161-62).

by propounding questions to them and by such means obtains as best he can the assistance of counsel in the administration of justice.”).

Furthermore, the judge made it clear that he had not reached any conclusion about whether he was being misled by Boatman’s trial counsel. For instance, he indicated “I’m *not sure* I can follow any longer what you are indicating to me needs to be done”; “I’m *trying to discern . . .* between not actually being ready and what is starting to feel like sort of willfully putting yourself in a position to continue to state you are not ready”; “*help me understand* what you need to do *because I want to work in a reasonable framework around that because that’s important to me that you get done what you need done to effectively represent Mr. Boatman.*”; “*That’s hard for me to understand. I’m willing to be open minded and give everyone a chance to explain to me what is making it so difficult* that in 60 days you can’t even get things calendared for what appears to be a relatively small number of remaining witnesses, but *I take your representation and I even tell you on the 28th I’m willing to trust you all as counsel in getting done what you need to be, you telling me you need to get done in a*

reasonable time frame and work with that, within some reason."; "We get to June 9 and you represent that all of the matters that you previously mentioned on both February 24 and April 28 court date needing to be done are scheduled, *at least that's how I understand your representation.*"; "So I can't make sense of it."; "I don't know, but help me, help me with that."; "tell me how we can't even get coordinated. That's what I don't understand. How are we not even coordinated for the folks that are identified and explain to the Court have to be deposed since at least February."; "I'll take your request under advisement and think about it." (DR:155-166). The comments of the court contain "clear qualifiers," which, while including the judge's mental impressions, demonstrate that he is not making any decisions based upon his first impression. *Pilkington v. Pilkington*, 182 So. 3d 776, 779 (Fla. 5th DCA 2015). *See also 1440 Plaza, LLC*, 314 So. 3d at 557-59 (a judge advising the parties of his mental impressions and opinions on a motion is not a basis for disqualification). "Comments from the bench – even unflattering remarks – which reflect observations or mental impressions are not legally sufficient to require disqualification."

Pilkington, 182 So. 3d at 779 citing *Oates v. State*, 619 So. 2d 23, 25-26 (Fla. 4th DCA 1993).

As a result, Boatman has failed to demonstrate that he has an objectively reasonable fear of not receiving a fair and impartial trial. Therefore, this claim should be denied.

III. The Trial Court Did Not Abuse Its Discretion When It Denied Boatman's Motion in Limine

Boatman next claims that the judge erred in denying a defense motion in limine to prohibit the State from introducing both the video from the prison, which shows the murder occurring, and photos from the crime scene and autopsy. With regard to the photos, the court's ruling denying the motion was "without prejudice" to permit defense counsel the opportunity to review the specific photos the State determined it would be seeking to introduce and raise an additional objection as to those specific photos. (DR:1104-05).

The standard of review for a judge's decision to admit evidence is abuse of discretion. *Hudson v. State*, 992 So. 2d 96 (Fla. 2008). Abuse of discretion occurs when the judicial action is arbitrary, fanciful, or unreasonable, and discretion is only abused where no reasonable person would take the view adopted by the trial judge; if

reasonable people could differ, there is no error. *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980).

Boatman argues that the photographs were “not *necessary*” because the witnesses were capable of sufficiently explaining to the jury “the violent manner in which the victim was attacked and the medical examiner’s testimony was sufficient to explain the number of stab wounds the victim suffered and the cause of his death.” (emphasis added). (IB at 55). However, the standard for admissibility of photographic evidence is *not necessity*, but *relevance*, as Boatman previously conceded. (IB at 52 *citing Pope v. State*, 679 So. 2d 710, 713 (Fla. 1996)).

“Relevant evidence is evidence tending to prove or disprove a material fact.” § 90.401, Fla. Stat. As the Court has stated:

Crime scene photographs are considered relevant when they establish the manner in which the murder was committed, show the position and location of the victim when he or she is found by police, or assist crime scene technicians in explaining the condition of the crime scene when police arrived.

Douglas v. State, 878 So. 2d 1246, 1255 (Fla. 2004). “This Court has consistently upheld the admission of allegedly gruesome

photographs where they were independently relevant or corroborative of other evidence.” *Jennings v. State*, 123 So. 3d 1101 (Fla. 2013).

Clearly, the video of Boatman and Wells *actually committing the murder* is “independently relevant” evidence as it is “evidence tending to prove or disprove a material fact” – that Boatman was one of the two prisoners who attacked Chapman and that the manner in which he was killed provides circumstantial evidence of his intent to kill the victim. In addition, the photographs are relevant because, as the prosecutor explained at the hearing, despite a clear video, everything cannot be seen; the photos show at least some of the locations of where the stabbings occurred on the body and the “extent of the heinous and atrocious nature of the crime.” This Court has stated that, “[t]hose whose work products are murdered human beings should expect to be confronted by photographs of their accomplishments.” *Chavez v. State*, 832 So. 2d 730, 763 (Fla. 2002) (citation omitted).

In addition, the video and photographs are hardly of such a nature that the probative value of each is *substantially outweighed* by the danger of unfair prejudice or needless presentation of cumulative evidence as Boatman argues. The court, in permitting the

video that depicts Boatman's actions while committing the murder, limiting admissibility of photographs to a number that is not cumulative, and permitting the defense to raise the objection again if it felt the chosen photographs were overly prejudicial, did not make a ruling that "no reasonable person would take the view adopted by the trial judge." This claim is meritless.

IV. The Trial Court Correctly Denied Boatman's Motion And Renewed Motion To Preclude a Penalty Phase Because the Indictment Did Not Recite the Aggravating Factors.

Next, Boatman claims that the trial court erred when it denied his motion and renewed motion to preclude the death penalty because the aggravating circumstances upon which the State relied to seek a sentence of death were not listed in the indictment. However, the Court has "repeatedly rejected the argument that aggravating circumstances must be alleged in the indictment." *Lott v. State*, 303 So. 3d 165, 166 (Fla. 2020) (quoting *Pham v. State*, 70 So. 3d 485, 496 (Fla. 2011) *citing e.g., Coday v. State*, 946 So. 2d 988, 1006 (Fla. 2006); *Ibar v. State*, 938 So. 2d 451, 473 (Fla. 2006); *Kormondy v. State*, 845 So. 2d 41, 54 (Fla. 2004). Boatman fails to provide any

compelling reason for the Court to reconsider its recent decision in *Lott*. Therefore, the Court should deny this claim.

V. The Trial Court Did Not Abuse Its Discretion When It Denied Boatman's Motion for Sequestered Jury Selection and Denied Statements He Sought the Court to Read to the Venire Regarding Pre-trial Publicity.

Boatman argues that the trial court erred both when the judge denied his motion for individual voir dire and when he rejected the statement regarding pretrial publicity that Boatman's trial counsel submitted to the court to read to the jurors.

Initially, Boatman contends that such individual voir dire "in the face of pretrial publicity is constitutionally compelled" and cites *Mu'Min v. Virginia*, 500 U.S. 415, 430 (1991) in support of this proposition. (IB at 62). However, this is clearly *not* what the Supreme Court held in that case. The issue in *Mu'Min* was whether the defendant's Sixth Amendment right to an impartial jury and his right to due process under the Fourteenth Amendment were violated because the trial judge refused to question further prospective jurors about the specific contents of the news reports to which they had been exposed. *Id.* at 417. The Court held that "the Due Process Clause of the Fourteenth Amendment does not reach this far, and

that *the voir dire examination conducted by the trial court in this case was consistent with that provision.*” *Id.* at 431–32. Although the Supreme Court did not rule on the issue of individualized voir dire, it acknowledged that the pretrial publicity was “substantial” and explained that the voir dire, which it found “consistent with” the Due Process Clause, was one in which the court asked the *entire venire* questions about the effect on them of pretrial publicity or information about the case obtained by other means. In addition, the trial court conducted further voir dire in panels of four. *Id.* at 429–31. Thus, Boatman’s reliance on this case to support his statement that individual voir dire is constitutionally compelled in the face of pretrial publicity is, *at best*, misplaced.

In addition, Boatman conceded at the motion hearing that the trial judge “has the discretion to determine whether to allow this.” (IB at 62). When the judge informed the parties that he did not intend to do so, he provided to them a reasonable explanation for his decision:

I have some experience with death cases and only one of those was done in an individual and sequestered manner. All of the others were done in a group setting just like jury selection . . . my own experiences with these type of cases indicate to me it simply isn’t necessary. It does, I think, become more burdensome than providing any additional safeguards or benefits to Mr. Boatman or the State. (sic).

(DR: 1096).

The court added that if a juror had a “special unique familiarity” with the case, that *is* something that would be discussed in “a sequestered and individualized format.” (DT:1099). *See Boggs v. State*, 667 So. 2d 765, 767 (Fla. 1996) (To this end, the trial court has broad discretion in deciding if prospective jurors must be questioned individually about publicity the case may have received).

Boatman argues that the court’s discretion “must be bounded by protection of Boatman’s constitutional rights.” (IB at 65). However, he cites no case that even suggests that the court’s method violates any constitutional rights. Instead, Boatman cites *Cummings v. Dugger*, 862 F.2d 1504, 1507-08 (11th. Cir. 1989), which merely states that in federal courts “the *preferred* approach in such cases . . . is to conduct individual examination of the jurors. *Id.* at 1508 (emphasis added).

Boatman further claims that the court abused its discretion by refusing to include statements he sought in the summary of facts the judge read to the venire when he inquired what they knew about the case due to pretrial publicity. The Court refused to include two

statements requested by Boatman. The first statement the court refused to give was that “Mr. Boatman is serving two life sentences without the possibility of parole for his involvement in a 2006 murder of two people in the Ocala National Forest.” (DR:894). The court also refused to include “that Wells was serving six life sentences” or to identify him by “names that either he self-promulgated for himself or someone else called him in an article.” (DR:894-95).

He noted that he was not saying that he would prevent Boatman’s trial counsel from inquiring about these areas, “but I don't think I need to include that to see if it triggers publicity.” (DR:894). Boatman contends that “[i]t is clear that said facts should have been brought to the jury and questions asked regarding their knowledge of the same.” (IB at 66). However, he provides no support for his claim that the refusal to include these statements somehow abuses the broad discretion a court has in conducting voir dire.

Boatman adds that he used up all his peremptory challenges and had to request an additional one, further noting that, “all but a few of his challenges for cause were denied.” (IB at 66). However, Boatman does not explain how the court’s refusal to conduct individualized voir dire or include the statements he sought to

include in the factual summary resulted in his use of all his peremptory challenges or how his need to seek an additional peremptory challenge affected his right to a fair trial. Moreover, when Boatman needed and sought an additional peremptory challenge, the trial court awarded him the additional peremptory challenge.⁶ (DT:471-73).

Boatman cannot demonstrate that the court abused its discretion in refusing to conduct individualized voir dire or include the sought statements. Therefore, this claim should be denied.

VI. The Trial Court Did Not Abuse Its Discretion When It Denied Boatman's Motion to Use Photographs and Video During Voir Dire.

Boatman next claims that the trial court committed error when the judge denied Boatman's motion to permit him to use video of the murder, crime scene photographs, and autopsy photographs during his voir dire. Specifically, Boatman asked for "a representative sample" of photographs and/or the video of the crime the court found "relevant and admissible" to show during voir dire. (DR:328).

⁶ The record reflects that very few of the prospective jurors had been exposed to pretrial publicity. (DT:21-476).

Boatman's trial counsel argued in the motion that the jurors "must be shown the imagery" "to accurately assess the emotional impact the photos will have." (DR:328). However, "[t]he scope of voir dire questioning rests in the sound discretion of the court and will not be interfered with unless that discretion is clearly abused." *Hoskins v. State*, 965 So. 2d 1, 13 (Fla. 2007).

The court expressed its concerns about permitting the use of the video and photographs during voir dire, noting that the court felt trial counsel was pre-trying the case or even misleading the jurors. (DR:1107-08).

Attorneys are generally not allowed to pre-try the case in questioning jurors during voir dire. *See Gerald v. State*, 111 So. 3d 778, 806 (Fla. 2010), *as revised on denial of reh'g* (Feb. 2, 2012) ("However, '[t]o the extent hypothetical questions involve the facts of the case they are not allowed.'")((quoting *Blevins v. State*, 766 So. 2d 401, 402 (Fla. 2d DCA 2000)); *State v. Celian*, 613 S.W.3d 380, 385 (Mo. Ct. App. 2020) (noting that in general, presenting specific facts of the case in voir dire is "inappropriate.")(citation omitted).

While the trial court did not permit use of the video or photographs during voir dire, the court did rule that the attorneys in

the case can question the prospective jurors about those issues. (DR:1111). See *Hoskins v. State*, 965 So. 2d 1 (Fla. 2007) (prohibiting use of the actual video or photographs but permitting questioning about the effect of viewing graphic autopsy photographs did not restrict Hoskins's ability to determine the jurors' fairness). Thus, the trial court did not abuse its discretion in preventing use of the video and autopsy photos during the voir dire, and this claim should be denied.

VII. The Trial Court Did Not Err When It Denied Boatman's Motion to Strike the Venire.

Boatman next claims that the trial court wrongly refused to dismiss the venire upon his motion during jury selection. The motion to strike the venire occurred following a bench conference after an objection by the State unrelated to this claim. At the bench, the court and the attorneys discussed the length of time the defense felt it needed to complete *voir dire*. Shortly after the court overruled the State's objection, defense counsel asked the court if it desired to take a midafternoon break, and the following conversation occurred:

THE COURT: At some point, sure. I'm assuming we're going to be very, very late tonight.

MR. GOLDMAN: Absolutely.

THE COURT: 10:00 o'clock.

MR. GOLDMAN: Absolutely.

THE COURT: Yeah. *So I'll just tell them that you're going to be ten hours. Is that a fair estimate?*

MR. GOLDMAN: I would prefer that you don't give a specific time.

THE COURT: You're an hour and a half in, and you haven't even done eight jurors.

MR. GOLDMAN: Yes, sir.

THE COURT: *So I'll tell them nine or ten hours for voir dire. I'm going to be honest with them.*

MR. GOLDMAN: I plan on being -- asking every -- I don't know what the timeline is. *The Court can make that determination*, but I would think that by giving a specific time, if it's incorrect and I go longer than that or if it's incorrect and I go shorter than that, it may be problematic.

THE COURT: They have to have some guide at the break, being able to reach out to their families or make arrangements for picking up children or notifying spouses and family, dinner arrangements, all that sort of stuff.

MR. GOLDMAN: *I absolutely agree with the Court.*

THE COURT: Okay. All right. Thank you.

(End of sidebar.)

(DT:231-32). (emphasis added).

Immediately thereafter, the court addressed the jury to discuss with them what he had just discussed with trial counsel:

THE COURT: All right. So I understand that some of you need a short break; so why don't we take about a five□ or ten-minute break, let y'all use the restroom, stretch your legs. This may be a time -- I've just been advised by

counsel -- and you may have already gleaned this, but they're indicating they plan to spend eight, nine hours or more with their questioning; so you may want to reach out to your --

PROSPECTIVE JUROR: Family.

THE COURT: family and let them know that that's sort of the process because I don't know what everybody's individual situation is. Right? Some of you have children to pick up or spouses you should notify. But they've indicated that's the amount of time they intend to spend.

* * * * *

PROSPECTIVE JUROR: Today?

THE COURT: -- on their voir dire. So let's take a break.

PROSPECTIVE JUROR: Will that be today?

THE COURT: Today.

PROSPECTIVE JUROR: So give or take, what estimate time? Do you have an idea?

THE COURT: I've given you a range.

PROSPECTIVE JUROR: Nine or ten.

THE COURT: -- of seven to nine hours is what they're indicating they're going to --

PROSPECTIVE JUROR: I have to be to work. I'm a truck driver. I have to be to sleep at a certain time.

THE COURT: Ma'am, all I can do is have you explain that to -- in your answers. But let's take a recess so you can use the restroom, stretch your legs, get a drink of water, and then we'll come back and proceed.

So, again, I do need -- I know everyone may not need a break, but I do need everyone to step out.

(Venire leaves the courtroom.)

(DT:232-33). As soon as the jury exited the courtroom, Boatman's trial counsel moved to strike the jury arguing that the court had just informed the jury that it was defense counsel's fault that the jury would need to remain somewhere between 11:00 P.M. and 1:00 A.M.(DT:233-34).

Boatman cites *Wilding v. State*, 427 So. 2d 1069 (Fla. 2d DCA 1983) in support of his claim. However, any reliance on *Wilding* is clearly misplaced. In *Wilding*, the defendant moved for a mistrial during voir dire when one of the prospective jurors stated before the venire that he had knowledge of previous charges against the defendant. The court denied the motion, but the appellate court reversed and remanded the case for a new trial. The appellate court noted that denying the motion resulted in the defendant being tried by a jury "which had *improperly obtained knowledge of other charges against him* . . . the jury panel was bound to be unfairly prejudiced by virtue of their knowledge of his arrest for another crime." *Wilding*, 427 So. 2d at 1069.. (emphasis added).

Clearly, the *potential* for prejudice that may result from the court informing the venire that they may be staying later than anticipated – even much later – is not comparable to the *actual*

prejudice Wilding suffered when the jury improperly learned of a prior conviction. Indeed, Florida law generally prohibits the introduction of evidence of a defendant's prior criminal acts, except in specific and narrow instances, for the very reason that such information is considered prejudicial. See Florida Statute § 90.404.

Moreover, if the court did err, “[W]here a trial court has extended counsel an opportunity to cure an error, and counsel fails to take advantage of such an opportunity, the error is considered acquiesced to and does not warrant reversal.” *McCloud v. State*, 208 So. 3d 668, 684 (Fla. 2016). Here, defense counsel *agreed* to the judge's comments while at the bench. (“So I'll just tell them that *you're going to be ten hours*. Is that a fair estimate? (DT:231-232). Thus, he has waived this argument by agreeing to the court's statements to the venire.

Finally, the court did not inform the jury of anything that they would be unable to conclude on their own. As the court noted, the prosecutor took an hour and a half to conduct his voir dire of the venire. Obviously, the jury can figure out that the additional time was taken by the defense. If there was any chance that the jury may hold against the defense the fact that they took over seven times longer

than the State to conduct their voir dire, those feelings would occur regardless of any statement made by the court. Therefore, if there was any error in informing the jury that the defense would proceed for another ten hours, it was harmless as the jury would conclude this on their own. As a result, this claim should be denied.

VIII. Boatman Fails to Demonstrate that the Trial Court Abused Its Discretion When It Denied Boatman's Challenges for Cause.

Boatman asserts the trial court erred when it denied his attempts to strike several jurors for cause, which prejudiced him because he was required to use peremptory challenges to remove the jurors. However, Boatman cannot prevail on this claim. First, he waived the claim by failing to cite the location in the record where the *prospective jurors* allegedly made improper comments (as opposed to the record of what his trial counsel *asserted* what these individuals said). Furthermore, even if he has not waived the claim, the court did not abuse its discretion in denying his challenges for cause. Alternatively, if the court erred in refusing to grant any of the challenges for cause, the error in doing so was harmless as a result of the court providing to Boatman an additional peremptory challenge when needed and requested.

A. Boatman Waived this Claim

Boatman fails to cite to the location in the record where the jurors' alleged improper statements appear. Instead, he relies on the arguments of counsel and comments of the judge as his source for the comments. As a result, he waives this claim. *Barwick v. State*, 88 So. 3d 85, 101 (Fla. 2011) (because the defendant failed to direct the Court's attention to the prosecutor's statements in the record about which he claims error, he waived his claims); *Amaro v. State*, 272 So. 3d 853, 855 (Fla. 5th DCA 2019) ("[W]e conclude that Amaro waived this claim for appellate review by failing to cite to the record or transcript to identify the questions at issue . . . "). As the court in *Amaro* explained in a footnote, "[w]ith a trial transcript of over 1300 pages, failure to identify the questions at issue renders the claim waived for appellate review. *Amaro* 272 So. 3d at 855, fn. 8.

The total record in this case exceeds 3,500 pages, of which the trial transcript, alone, comprises nearly 2,100 pages. Boatman's citation to the record contains only the *attorney's and court's recollection* of what the potential jurors stated. If this Court is to properly determine if their statements should have resulted in these individuals being dismissed for cause, it is only reasonable that the

actual comments be reviewed and discussed, as opposed to someone's *memory of the comments*. Based on the comments quoted in Boatman's brief, the State's and the trial court's memories of the comments starkly contrast with those of the trial defense counsel. Because Boatman failed to cite to the location in the record where the alleged statements exist, he has waived this claim.

B. The Trial Court Did Not Abuse its Discretion When it Denied Boatman's Challenges for Cause

"The validity of a cause challenge is a mixed question of law and fact, on which a trial court's ruling will be overturned only for "manifest error." *Johnson v. State*, 969 So. 2d 938, 946 (Fla. 2007) citing *Fernandez v. State*, 730 So. 2d 277, 281 (Fla. 1999). "Manifest error" is tantamount to an abuse of discretion." *Johnson* 969 So. 2d at 946.

1. Mr. Nicula

The first juror Boatman sought to strike for cause was juror Mr. Nicula. Boatman argues that the court should have permitted striking Mr. Nicula for cause based on the objection in the record claiming Mr. Nicula was "90 percent in favor of the death penalty" and stated that he "can't consider certain types of mitigation."

In response, the court stated that its notes regarding Mr. Nicula's responses conflicted with the arguments raised by Boatman's counsel:

THE COURT: Yeah. The Court wrote down what he indicated. He indicated he was a pro death penalty person but indicated repeatedly he would listen to any mitigation presented. And his totality of the responses made it clear to the Court that he had not only the ability to abide by the Court's instruction, but he indicated he would, in fact, abide by the Court's instruction; so the for-cause challenge would be denied.

(DT:445). This Court has stated that "the trial court is in the best position to observe the attitude and demeanor of the juror and to gauge the quality of the juror's responses". *Dufour v. State*, 905 So. 2d 42, 54 (Fla. 2005); *Ibarrondo v. State*, 1 So. 3d 226, 230 (Fla. 2008).

Therefore, even if Boatman has not waived his claim, he fails to demonstrate that the court abused its discretion in denying his challenge of Mr. Nicula for cause. He cites nothing contradicting the court's summary of Mr. Nicula's responses, and there exists no basis for a cause challenge in the court's summary of those responses.

2. Mr. McLoughlin

Boatman also sought to strike Mr. McLoughlin as a juror. Boatman contends that based upon McLoughlin's responses, he is "mitigation impaired" because "he cannot consider things about the defendant's history and can only consider things about the crime." Boatman further states that his defense is based in part on Boatman's history, and "Mr. McLoughlin would not be able to consider that" (IB at 75). The trial court denied Boatman's challenge for cause, contending that McLoughlin seemed confused about the question posed by defense counsel, but clarified his response to indicate to the court that he could give "meaningful consideration" to the mitigation. Boatman instead used a peremptory challenge to remove McLoughlin from the venire. (DT:445-47).

Again, Boatman fails to include the actual responses of McLoughlin, instead, relating only the recollections of the lawyers and court. However, even if Boatman did not waive this claim, the claim still fails because the court did not abuse its discretion in refusing to strike him for cause based on the court's recollection of what was said.

3. Ms. Rigdon

Boatman claims that the court erred by not striking Ms. Rigdon for cause. Boatman argues that his challenge should have been sustained because Rigdon indicated she could not consider mitigation unless it was related to the facts of the crime and rejected child sex abuse as a mitigator. However, both the State and trial court disagreed with Boatman's trial counsel's assessment of Rigdon's answers, and Boatman cites to the record only for the attorneys' and judge's comments about her answers, rather than her actual answers themselves.

The State informed the court that while Rigdon stated she favored the death penalty she acknowledged that the propriety of recommending a death sentence depended on the mitigation. The judge added that his notes indicated she would consider the mitigation presented despite any view she had about death. "Her answers seem overwhelming and clear to the Court that she was expressing ability to abide by the Court's instructions on the law in this case, and so the for-cause would be denied." (DT:448). Based on Rigdon's statements, as recalled by the trial court, there was no abuse of discretion by the court in refusing to grant Boatman's challenge for cause.

4. Mr. Loper

Finally, Boatman argues that the trial court erred when it refused to strike Mr. Loper for cause. Boatman argues that Loper stated that he would give the benefit of the doubt to an officer and that the death penalty comes with a first-degree murder. The court responded that Loper stated, “he would objectively -- these are his words: He would objectively listen to both but would consider years of experience of an officer that could sway it. And he would want to listen to both and then consider it with the other evidence in the case.” (DT:452). Again, Boatman fails to cite any of Mr. Loper’s actual responses to the particular questions asked of him. Instead, Boatman relies only on the objections of trial counsel and response of the court. Based on the comments of the court, there is no error in it denying the challenge for cause.

C. Because the Court Provided Boatman Additional Peremptory Challenges, Any Error is Harmless

Finally, even if Boatman did not waive this claim and the trial court erred in refusing to grant any of the challenges for cause, the error is harmless. In each of the instances discussed above, Boatman’s trial counsel exercised a peremptory challenge to remove

the potential juror after the court denied the challenges for cause. Thus, none of the individuals served on the jury. Therefore, Boatman suffered no harm due to a juror wrongly serving on the jury.

The only prejudice that Boatman claims he suffered is the loss of the peremptory challenges he used to remove these individuals from his jury. However, Boatman was not prejudiced by his need to use his peremptory challenges because the trial court provided him an additional one when he ran out. Thus, that no objectionable juror served on Boatman's jury (or at least he never sought to exercise an additional peremptory challenge or requested an additional one to do so)⁷. "[E]xpenditure of a peremptory challenge to cure the trial court's improper denial of a cause challenge constitutes reversible error *if a defendant exhausts all remaining peremptory challenges and can show that an objectionable juror has served on the jury.*" *Kopsho v. State*, 959 So. 2d 168, 173 (Fla. 2007) (Emphasis added). See also

⁷ Boatman's trial counsel used a peremptory challenge on page 468 and then unsuccessfully sought to challenge potential juror Hendrieth for cause on page 471. When the court denied the for-cause challenge, counsel announced he was out of peremptory challenges, sought an additional one, which the court granted, and then Boatman struck Hendrieth with the provided peremptory challenge. Boatman sought to strike no more jurors and the jury was selected on page 472. (DT:468-72).

Overton v. State, 801 So. 2d 877, 889–90 (Fla. 2001) (when the court provides an additional peremptory challenge, the defendant is only prejudiced if the defendant can demonstrate that the court’s refusal to permit a challenge for cause on both potential jurors were wrongfully denied); *Watson v. State*, 651 So. 2d 1159, 1162 (Fla. 1994) (“Since the trial judge gave Watson one additional peremptory challenge, he is not entitled to reversal unless both jurors were improperly excused.”); *Cook v. State*, 542 So. 2d 964, 969 (Fla. 1989) (“Because the trial judge granted the appellant's motion for one additional challenge, appellant is entitled to have his conviction reversed only if he can show that the judge abused his discretion in refusing to excuse both jurors Sergio and Boan for cause.”).

Finally, assuming for a moment that this claim is preserved for appeal and that Boatman had to use a peremptory challenge to excuse a juror who should have been excused for cause, Boatman’s convictions should not be reversed. This Court should now recede from *Hill v. State*, 477 So. 2d 553, 556 (Fla. 1985) and align itself with federal law and precedent from the United States Supreme Court.⁸

⁸Courts have thus often remarked that “[r]eplacement of one unbiased juror with another unbiased juror should not alter the

The better view of the law is as follows: When a trial court erroneously denies a cause challenge and a litigant uses a curative peremptory strike on the objectionable juror, any error is harmless because the legally objectionable juror never serves.

The appropriate test for determining whether a trial error justifies reversal is this Court's harmless-error standard from *DiGuilio*, which places the burden on the appellee "to prove beyond a reasonable doubt that the error complained of did not contribute to

outcome." *Fields v. Brown*, 503 F.3d 755, 776 (9th Cir. 2007) (en banc); see also *Keith v. Mitchell*, 455 F.3d 662, 677–78 (6th Cir. 2006) ("In the absence of any evidence that a different set of unbiased jurors would have had a 'reasonable probability' of a different result, any erroneous exclusion of an impartial juror was harmless because we have every reason to believe the replacement was also an impartial juror."); *Owen v. Fla. Dept. of Corr.*, 686 F.3d 1181, 1201 (11th Cir. 2012) ("[I]f no juror were biased, then there is no 'reasonable probability that . . . the result of the proceeding would have been different.'"). *Ross v. Oklahoma*, 487 U.S. 81, 88 (1988) ("[T]here is no need to speculate whether [a juror removed using a peremptory strike in the aftermath of a failed cause challenge] would have been removed absent the erroneous ruling by the trial court; [the objectionable juror] was in fact removed and did not sit."). The question of harmless error in the context of losing peremptory challenges where no challenged juror sat on the jury is currently pending before this Court in the civil context. See *Seadler v. Marina Bay Resort Condo. Assn, Inc.*, 341 So. 3d 1146, 1156 (Fla. 1st DCA 2021), *reh'g denied* (June 29, 2022), *review granted*, SC22-984, 2022 WL 16543867 (Fla. Oct. 31, 2022). There is no reason to treat criminal cases differently from civil cases in this context.

the verdict or alternatively stated, that there is no reasonable possibility that the error contributed to the conviction.” *DiGuilio* 491 So. 2d at 1135.. As applied to the refusal to award an additional peremptory strike, that test compels a finding of harmlessness when the trial court’s refusal does not result in a legally objectionable juror serving on the jury. *Deviney v. State*, 322 So. 3d 563, 583–87 (Fla. 2021) (Lawson, J., concurring in part and concurring in result). That is so because, where the jury that ultimately renders a verdict is composed of unbiased jurors otherwise qualified to serve, there is no reason to believe that a hypothetical alternate jury composed of different unbiased jurors would come to a different conclusion.

Therefore, the Court should deny this claim.

IX. Boatman Has Failed to Demonstrate That He Was Denied a Fair Trial.

Boatman next claims that he was denied a fundamentally fair trial because the trial court repeatedly admitted evidence in both phases of the trial which Boatman claims should not have been permitted to be introduced. He argues that as a result, his right to due process was violated. However, because Boatman is unable to demonstrate that the court erred in permitting the evidence to be

introduced, there is no error. A trial judge's ruling on the admissibility of evidence generally will not be disturbed absent an abuse of discretion. *Alston v. State*, 723 So. 2d 148, 156 (Fla. 1998), *citing* *Kearse v. State*, 662 So. 2d 677, 684 (Fla. 1995). Alternatively, if the court did err in permitting inadmissible evidence, there is no reasonable possibility that the cumulative effect of the errors in this case contributed to Boatman's conviction. *Brooks v. State*, 918 So. 2d 181, 202 (Fla. 2005) *reversed in part*, 175 So. 3d 204 (Fla. 2015)).

A. Guilt Phase

Boatman argues that the trial court wrongly admitted testimony and evidence in the guilt phase from several different witnesses: Seargent Prock, Agent Meacham, Dr. Hamilton, and Agent Carlisle.

1. Sgt. Prock's Testimony

Boatman complains about three statements made by Prock during his testimony. The first statement about which Boatman complains is the statement responding to the prosecutor's question asking Prock what he recalls first seeing when he first looked into the dayroom. (DT:550). Boatman's trial counsel objected to the question based on the best evidence rule (DT:551). The trial court properly overruled the best evidence objection because Prock's observation

and testimony about the two struggling on the floor is not subject to the “best evidence” portrayed in the video because the video does not show this part of the struggle – much of what occurs during the murder cannot be seen on the video due to the location and angles of the cameras. (DR:692; State’s Exhibit #1).

In addition, Boatman complains that the trial court overruled the objection his attorney raised when Prock began his response to the prosecutor’s question with, “I believe . . .” However, Boatman does not properly identify where in the record this exchange took place and what grounds he raised for this objection. He later states that the trial court ruled on a subsequent objection on pages 557-59 of the record, but *this* objection is not found at that location. Because the defendant failed to direct the Court’s attention to the statements in the record about which he claims error, he waived his claim as to this comment. *Barwick* 88 So. 3d at 101 (Fla. 2011) (because the defendant failed to direct the Court’s attention to the prosecutor’s statements in the record about which he claims error, he waived his claims); *Amaro*, 272 So. 3d at 855. (“[W]e conclude that Amaro waived this claim for appellate review by failing to cite to the record or transcript to identify the questions at issue . . . ”). As the court in

Amaro explained in a footnote, “[w]ith a trial transcript of over 1300 pages, failure to identify the questions at issue renders the claim waived for appellate review. *Amaro*, 272 So. 3d at 855, fn. 8. The total record in this case exceeds 3,500 pages, of which the trial transcript, alone, comprises nearly 2,100 pages.

It appears that this question and answer is located on pages 553-54. *Assuming this is correct*, during the exchange between the prosecutor and witness, *Boatman’s trial attorney objected without stating any grounds for his objection*. Boatman now states that the basis for the objection was what amounts to a lack of foundation of knowledge for answering because he began his answer with the phrase “I believe,” suggesting that he was unsure or did not recall what was said. (IB at 77). However, this objection is not preserved for review because Boatman’s attorney failed to state grounds for his objection. *Bell v. State*, 336 So. 3d 211, 217 (Fla. 2022), *reh’g denied*, 2022 WL 819738 (Fla. Mar. 18, 2022), and *cert. denied sub nom. Bell v. Florida*, 143 S. Ct. 184 (2022) (“where a defendant fails to preserve — by specific objection — the trial court’s alleged errors, this Court will only reverse where there is a showing of fundamental error.”). Fundamental error is one that “must reach down into the validity of

the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.” *Steiger v. State*, 328 So. 3d 926, 930–31 (Fla. 2021) *citing* *F.B. v. State*, 852 So. 2d 226, 229 (Fla. 2003) (quoting *Brown v. State*, 124 So. 2d 481, 484 (Fla. 1960)).

Prock’s response to the question was, “I believe he said, Don't try to be Captain Save-A-Ho. This guy this inmate's going to die tonight. And if you come in here and try to stop it, you'll die too -- kind of thing.” (DT:554). It hardly suggests that the witness did not recall what was said to him. Prock saying “I believe” does not mean “I am not sure” or “I do not remember.” Rather, it suggests that the witness relayed what he recalled Boatman saying to him. Thus, even had the objection been properly preserved, this Court should not find that the court abused its discretion in permitting Prock to answer the question. Moreover, given that the failure to preserve the objection requires that Boatman demonstrate the court committed *fundamental error*, the Court should reject this portion of the claim because it’s neither error nor likely that the jury would not have reached the same verdict had this testimony not been permitted considering the overwhelming evidence of Boatman’s guilt, including

the videotape of him murdering the victim and his post-*Miranda* admissions to planning and committing it.

Boatman also complains that the trial court improperly permitted Prock to testify about remarks made by Boatman to his accomplice, Wells, regarding the weapon used to commit the murder. However, he *again* failed to state any grounds for his objection. See *Bell v. State*, 336 So. 3d 211 (Fla. 2022). Prock testified when asked about Boatman's statement to Wells, "I did overhear Mr. Boatman handing the weapon to Mr. Wells and telling him to -- he needed to stab the inmate as well."

First, the statement is not hearsay. It is not being offered to prove the truth of the matter asserted – *that Wells needed to stab the victim*, but, rather, to prove *Boatman's intention* to commit the murder by showing his purposeful involvement with Wells in stabbing the victim to death by voluntarily relinquishing his weapon to Wells to participate in committing the murder. In addition, even if the Court finds that this statement constitutes hearsay, it qualifies as an exception to the hearsay rule for an admission. See § 90.803(18), Fla. Stat. Finally, even if the Court concludes that this statement is hearsay and not an admission, it does not constitute

fundamental error when one considers both the videotape of Boatman murdering the victim and Boatman's post-*Miranda* admissions made to the FDLE investigators of his intent to kill Chapman. *See Steiger* 328 So. 3d at 930–31.

Finally, Boatman contests two additional questions asked Prock about what he observed and what was said during the murder.

First, he claims that permitting Prock to testify what Wells said to Boatman, that the victim was still alive, while checking the victim's breathing, is both hearsay and a violation of Boatman's right of confrontation. (DT:558). However, again, Boatman's trial counsel failed to preserve this objection by failing to state the grounds for the objection contemporaneously with the objection. *Bell*, 336 So. 3d at 217. In this instance, when Boatman's attorney objected, he stated "same objection." *But the prior objection Boatman's trial counsel made is the one listed above **that contains no grounds for the objection.*** (DT:557-58).

In addition, the statement by Wells to Boatman is not hearsay because the purpose of admitting the statement is not to demonstrate the truth asserted by Wells that the victim was still alive, and that Boatman should keep stabbing him. Rather, it was introduced to

prove Boatman's *intent to murder the victim* by demonstrating that Boatman continued to stab the victim when he believed he remained alive. Furthermore, even if the statement is hearsay, it qualifies for at least two exceptions to the hearsay rule because it is both a "spontaneous statement" and the statement of Boatman's "co-conspirator." See § 90.803(1), Fla. Stat.

However, even if the Court determines that the statement is hearsay that does not qualify as an exception to the hearsay rule, Boatman's counsel's failure to object to the statement requires that Boatman demonstrate that the court committed fundamental error by permitting it. Boatman cannot prevail on this argument because there exists abundant evidence of Boatman's intent to kill the victim, including the video tape showing Boatman murdering the victim and Boatman's subsequent admissions to plotting and committing the murder. *Steiger*, 328 So. 3d at 930–31.

The last statement by Prock which Boatman claims was wrongly admitted into evidence involves the same conversation between Boatman and Wells in which Prock repeats that Wells told Boatman that the victim's breathing, that he was still alive, but adds that Wells told Boatman he should continue stabbing the victim. (DR:558). Of

note is that this time Boatman's counsel does state his objections to the question, based on "hearsay" and "confrontation." (DT:558-59).

Although Boatman's trial counsel managed to state the legal grounds for his objection in this instance, the statement is not hearsay or qualifies as an exception to the hearsay rule. Nor does Boatman make any attempt to explain how Well's statement to Boatman violates the Confrontation Clause. This Court reviews a trial court's admission of evidence over a defense objection regarding the Confrontation Clause de novo. *Andres v. State*, 254 So. 3d 283, 295 (Fla. 2018).

This Court has previously noted that the United States Supreme Court held in *Crawford v. Washington*, 541 U.S. 36 (2004) that the Confrontation Clause is violated when a court admits a hearsay statement made by a declarant who does not testify at trial *if*: (1) *the statement is testimonial*, (2) the declarant is unavailable, and (3) the defendant lacked a prior opportunity for cross-examination of the declarant. *State v. Contreras*, 979 So. 2d 896, 902 (Fla. 2008) (emphasis added). However, the Court also noted that, "While *Crawford* did not establish a precise definition of the term "testimonial," the Supreme Court did provide some guidance, holding

that, at a minimum, *statements* are testimonial if the declarant made them at a “preliminary hearing, before a grand jury, or at a former trial; and [in] police interrogations.” *Contreras*, 979 So. 2d at 903 (emphasis added). *See also Howard v. State*, 254 So. 3d 1188, 1190 (Fla. 1st DCA 2018) (“Testimonial statements are those made with an expectation of being used in an investigation or prosecution of a crime”) (internal citations omitted); *Brown v. State*, 69 So. 3d 316, 319 (Fla. 4th DCA 2011) (“Most courts agree that a spontaneous statement to a friend or family member is not likely to be testimonial under *Crawford*.”). Wells’s statement that the court admitted into evidence was not made “with an expectation of being used in an investigation or prosecution of a crime,” and undeniably not made at a preliminary hearing, before a grand jury, at a former trial, or during a police interrogation. Therefore, the statement is not “testimonial” and does not violate the Confrontation Clause any more than it violates the hearsay rule. However, even if admission of the statement did violate the Confrontation Clause or the hearsay rule, its admission would qualify as harmless error. “It is well established that violations of the Confrontation Clause, if preserved for appellate review, are subject to harmless error review . . . and *Crawford* does

not suggest otherwise.” *Contreras*, 979 So. 2d at 911 (quoting *United States v. McClain*, 377 F.3d 219, 222 (2d Cir.2004)).

“Under Florida's harmless error analysis, the reviewing court must determine ‘whether there is a reasonable possibility that the error affected the verdict.’” *DiGuilio*, 491 So. 2d at 1139.. The State, as the beneficiary of the error, has the burden to show that the error was harmless.” *Contreras*, 979 So. 2d at 911. Because the videotape clearly shows Boatman’s actions killing the victim, and his interview clearly demonstrates that Boatman had a fully formed conscious intent in advance to commit the killing, the statements of Wells to Boatman that the victim remained alive and Boatman should continue to stab the victim are, if admitted in error, such admission was harmless. *See Contreras*, 979 So. 2d at 912 (the error in admitting the child's testimonial statements was harmless beyond a reasonable doubt as to the lewd and lascivious molestation conviction because the State introduced other “compelling evidence” that the defendant sexually abused his daughter.)

2. The Transcript of Agent Meacham’s Interview of Boatman

Boatman also argues that the trial court erred when it permitted the jury to read a transcript of Agent Meacham’s interview of

Boatman while the tape of the interview was played for the jury. Boatman states that the court permitted this even though his counsel informed the court that the defense did not receive a copy of the transcript, did not know who transcribed it, and whether the transcript was accurate, particularly considering that counsel asserted that some parts of the interview were difficult to hear.

However, Boatman cites no support for his argument. In addition, Boatman ignores the court's statement explaining his ruling, in which he informs the parties that he will permit the transcript to be used because *Agent Meacham already testified that the transcript is accurate.*

In addition, the court pointed out that while it was not finding that Boatman waived a *Richardson*⁹ hearing, his trial counsel was not asking for one, either, at this point in time. The judge went on to point out that the court would have a full *Richardson* hearing if the defense sought one, but that he would defer to them as to whether they wished to pursue one because of the conflicting claims as to whether the transcript was provided in discovery. The court then

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

permitted the use of the transcript and provided to the jury at the request of Boatman's counsel jury instruction 2.6 regarding use of transcripts of recordings.

Although Boatman cites no support for his argument that the court erred in permitting the jury to read the transcript, if the Court determines that doing so was error, the error would be a harmless one given the objection. Boatman's objection to use of the transcript was his concern expressed that the transcript may not accurately reflect the actual conversation. However, Boatman makes no claim that this is the case. Because Boatman has not complained, let alone demonstrated, that the transcript was inaccurate, the decision would at worst be harmless error.

3. Autopsy Photos and the X-ray of the Victim's Head

Next, Boatman contends that the court erred in permitting the State to introduce autopsy photos and an X-ray of the victim's head showing the penetration of the skull by the shank when Boatman stomped on it at the end of the attack. Boatman contends that the evidence was "more prejudicial than probative based upon the number of pictures introduced." (IB at 79).

The trial court disagreed with Boatman's counsel. The court determined that each of the photographs was separately relevant and not cumulative. Moreover, he disagreed that the images were overly prejudicial. (DT:664-65). The standard of review for a judge's decision to admit evidence is abuse of discretion. *Hudson*, 992 So. 2d 96. Boatman argues that the photographs are overly prejudicial but cites no authority supporting this claim. Indeed, he does not even identify for this Court the photographs about which he is complaining. Because Boatman cannot show that the trial court abused its discretion in permitting the photographs and X-ray to be introduced into evidence, the Court should deny this portion of his claim.

4. Agent Carlisle's Testimony About the Videos and Murder Weapons

Boatman asserts that the trial court improperly permitted Agent Carlisle to (1) describe what the videos show despite an objection to this testimony that the videos themselves are the "best evidence" of what is contained on them and (2) testify that a correctional officer informed him that the murder weapon Carlisle described to him "sounded like the plungers that were in the pipe chase on the dorms, inside the wings" despite a hearsay and Confrontation Clause

objection. (DT:727). This Court reviews a trial court's admission of evidence over a defense objection regarding the Confrontation Clause de novo. *Andres*, 254 So. 3d at 295.

a. Testimony About the Video

“Section 90.952, Florida Statutes (2020), provides:

Except as otherwise provided by statute, an original writing, recording, or photograph is required in order to prove the contents of the writing, recording, or photograph. This rule, commonly known as the best evidence rule, is predicated on the principle that if the original evidence is available, that evidence should be presented to ensure accurate transmittal of the critical facts contained within it. A witness's in-court description of actions depicted in a video recording is content-based testimony that violates the best evidence rule when offered to prove the crime *without introduction of the video in evidence.*”

Derrick v. State, 335 So. 3d 801, 802 (Fla. 2d DCA 2022) (internal citations and quotations omitted). Because the video about which the officer testified was in fact introduced into evidence, there is no violation of the best evidence rule.

However, even if this Court were to find that the testimony violates the best evidence rule, this portion of the claim should be denied because best evidence violations are subject to harmless error review. *T.D.W. v. State*, 137 So. 3d 574, 577 (Fla. 4th DCA 2014). In

light of both the videotape showing Boatman committing the murder and Boatman's confession to planning and executing the murder, this testimony would be harmless error if improperly admitted because there is no reasonable doubt that it did not contribute to Boatman's conviction.

b. Testimony About the Murder Weapon

§ 90.801(1)(c), Florida Statutes defines "Hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." However, Agent Carlisle's testimony about the correctional officer's belief was not offered to "prove the truth of the matter asserted." "Where testimony is not offered to prove the truth of the matter asserted, or where hearsay exceptions apply, the testimony can be deemed admissible." *Andres*, 254 So. 3d at 294. Here, Agent Carlisle was answering the question posed to him by the prosecutor, which was why Carlisle took the particular photograph of a "pipe chase" in the prison dorms. Agent Carlisle explained:

So I described to him what type of weapon would be about nine or ten inches long, made of possibly of brass, kind of like a gold metal, and he indicated it sounded like the plungers that were in the pipe chase on the dorms, inside the wings. So I asked him to let me look at them, and *I*

went in there, and that's what I found -- was some of the plungers were missing from the pipe chase from some of the cells, and then some of them were actually present so you can actually see some of them.

(DT:727) (emphasis added).

His testimony about what the correctional officer believed was the murder weapon was not offered to prove that the murder weapon was in fact a “plunger” “in the pipe chase,” but, rather, to explain that this led Agent Carlisle to look into the pipe chase, discover it had a missing part, and photograph the pipe chase to show that the part had been removed. The evidence offered to prove that the murder weapon was a plunger removed from the pipe chase in the dorm is the observation of Carlisle, himself, and *the photograph* of the pipe chase with missing plungers corroborated that testimony. Thus, the testimony was not hearsay, and the trial court did not err in permitting it.

Nor did this testimony violate the Confrontation Clause. As discussed earlier, the Confrontation Clause requires that the testimony to which the party objects must be “testimonial.” *Contreras*, 979 So. 2d at 902.. Because the statements made to Agent

Carlisle by the correctional officer are not testimonial, there cannot be a violation of the Confrontation Clause.

In the event that the Court concludes that this statement violates either the hearsay rule or Confrontation Clause, then the error of the trial court in permitting the testimony was harmless. *See Contreras*, 979 So. 2d at 912; *Andres*, 254 So. 3d at 294–95 (any error in permitting the officers to testify about why they chose not to further investigate Alberto Ruiz as a potential suspect in the case was harmless beyond a reasonable doubt based on the specific facts of this case). Agent Carlisle explained that he viewed the pipe chase with the missing parts and was able to reasonably conclude that the missing parts were plungers because some of the plungers were still in the pipe chase permitting him to determine what the missing part was. In addition, he was able to provide a photograph confirming this. Considering that Boatman both confessed to the planning and murder of the victim, as well as actually committing the murder on video that was admitted into evidence for the jury to see, any error in permitting this testimony was harmless.

Moreover, although Florida courts will review a case with multiple errors to determine if the cumulative effect of the errors has

denied a defendant his right to a fair trial, the Court has held that “[W]here the alleged errors urged for consideration in a cumulative error analysis are individually ‘either procedurally barred or without merit, the claim of cumulative error also necessarily fails.’” *Joseph v. State*, 336 So. 3d 218, 243 (Fla. 2022), *reh'g denied*, 2022 WL 831661 (Fla. Mar. 21, 2022), and *cert. denied sub nom. Joseph v. Florida*, 143 S. Ct. 183 (2022) *citing Salazar v. State*, 188 So. 3d 799, 818 (Fla. 2016) (quoting *Hurst v. State*, 18 So. 3d 975, 1015 (Fla. 2009)). Because the errors alleged by Boatman either are without merit or procedurally barred, his claim for cumulative error in the guilt phase “also necessarily fails.” *Joseph*, 336 So. 3d at 243.

B. PENALTY PHASE

1. The Murder Scene Photographs

Boatman next claims that the trial court wrongly denied a hearsay objection concerning certain *unidentified* photographs. He argues that the admission of the photographs violated the Confrontation Clause because they were not taken by the officer testifying, Deputy Eric Dice, “who did not view the bodies in this particular manner.” Boatman further notes that he again objected to the photographs based upon the photos being “particularly

inflammatory and depict a gruesome scene that this witness is not even familiar with.”

- a. Boatman Has Failed to Demonstrate that the Photographs Violate the Confrontation Clause.

Deputy Dice admitted that he did not take the photographs or view the murder scene, and only testified that the photographs truly and accurately reflect what was described to him about the scene at the time of the investigation and what would have been in the Marion County Sheriff's Office investigation case file:

Q So were there bodies that were recovered at the scene?

A Yes, sir.

MR. EISENMENGER: Your Honor, may we approach?

THE COURT: Sure.

(Begin sidebar.)

MR. EISENMENGER: Your Honor, recognizing that some hearsay is admissible in a penalty phase proceeding, we believe these *photos* would violate the confrontation clause because these were not taken by this particular officer, and he did not view the bodies in this particular manner.

(DT:1180-81) (emphasis added).

As previously noted, the Court has explained that testimonial evidence is required to invoke the Confrontation Clause. See *Contreras*, 979 So. 2d at 902. *Statements* are testimonial if the declarant made them at a “preliminary hearing, before a grand jury, or at a former trial; and [in] police interrogations.” *Contreras*, 979 So. 2d at 903 (emphasis added). See also *Howard*, 254 So. 3d at 1190. (“Testimonial *statements* are those made with an expectation of being used in an investigation or prosecution of a crime”) (emphasis added).

However, “photographs” are not “testimonial *statements*.” Certainly, Boatman has not cited any authority concluding differently. And the only objection Boatman raised at this point in his argument at the bench regarding the admissibility of the photographs, themselves, is that their admission violates the Confrontation Clause. Because the Confrontation Clause only applies to statements, the admission of the *photographs* cannot violate the Confrontation Clause.

b. Boatman Waived the Argument That There Was an Improper Foundation by Failing to Argue It.

After the prosecutor argued that hearsay evidence is permitted in penalty phase proceedings, he explained that even though the

deputy was not at the scene, the photographs were described to him and were part of the investigative materials that were developed in the case. At that point, Boatman's trial counsel argued that this did not provide a proper foundation for the photographs. The trial court overruled the objection. (DT:1181).

However, after reciting to the record for the bench conference discussed above, Boatman fails to provide a proper argument regarding this portion of his claim. In fact, the entire argument he makes consists of the following two sentences, "Again, *said error was a violation of BOATMAN'S right to confrontation*. And, because the Trial Court overruled the objection and allowed said testimony and pictures to be admitted, BOATMAN'S due process rights were again violated." (IB at 82) (emphasis added). In addition, at the beginning of the next argument on page 83 of his brief, Boatman quotes his trial counsel describing the previous argument as "the confrontation clause objection." (IB at 82). Because Boatman's only argument to *this* Court is that his *right to confrontation* has been violated, he waives any argument regarding lack of a proper foundation for admitting the photographs. *Kilgore v. State*, 55 So. 3d 487, 511 (Fla. 2010) ("In his initial brief to this Court for this claim, Kilgore simply

asserts conclusory statements that reiterate arguments made before the postconviction court. Accordingly, these issues are waived for appellate review.”); *See Rose v. State*, 985 So. 2d 500, 509 (Fla. 2008) (“Rose has merely stated a conclusion and referred to arguments made below. Thus, we consider the issue waived for appellate review.”); *Duest v. Dugger*, 555 So. 2d 849, 852 (Fla. 1990) (“The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without further elucidation does not suffice to preserve issues, and these claims are deemed to have been waived.”).

c. Boatman Waived the Argument by Failing to Identify the Photographs.

In addition, Boatman has waived this argument by failing to identify the photographs about which he is complaining. *See Barwick* 88 So. 3d at 101 (holding that defendant waived appellate review of his postconviction claim that trial counsel was ineffective for failure to object to certain comments by the State where defendant failed to direct court's attention to comments at issue.”); *Amaro* 272 So. 3d at 855 (“[W]e conclude that Amaro waived this claim for appellate review by failing to cite to the record or transcript to identify the questions

at issue . . . ”). As the court in *Amaro* explained in a footnote, “[w]ith a trial transcript of over 1300 pages, failure to identify the questions at issue renders the claim waived for appellate review. *Amaro*, 272 So. 3d at 855, fn. 8.

Based on the argument appearing in Boatman’s brief, there exists no way for the Court to determine which photographs are the ones about which Boatman is complaining. Therefore, even if the Court agreed that Boatman should prevail on the substance of his argument, Boatman has not identified the photographs that the Court needs to review to determine whether wrongly permitting them was harmless error. Therefore, the Court should deny this portion of his claim.

d. Boatman Has Failed to Demonstrate That the Photographs
Are Overly Prejudicial.

Boatman also complains that the photographs are “particularly inflammatory” and “depict a gruesome scene.” However, Boatman never explains what it is about the photographs that causes him to characterize them in this manner. The only additional information presented in his brief is the State’s response stating that they are not

“inflammatory” and that they are a “select few.” Boatman even fails to identify which photographs he is objecting to.

Based on the record citation provided by Boatman, page 1,184 of the transcript provides us at least the Court’s perspective regarding the photographs complained about there:

THE COURT: All right. So the objection is overruled, including the current, new objection about the gruesomeness.

MR. MILLER: Yes, sir.

THE COURT: I do -- I did review those six photos when you came up the first time

MR. MILLER: Yes, sir.

THE COURT: -- at sidebar. They do all appear to show something slightly different, and they do appear to demonstrate some of the wounds of the victims, different parts of the bodies; so I would note the objections and overrule it and allow it in as the State's next numbered exhibit.

MR. BUSTAMANTE: Thank you, your Honor.
(End of sidebar.)

(DT:1184-85).

At this point, the transcript also identifies the exhibit numbers (even though Boatman still failed to do so). Following the sidebar, the court then states that the evidence will be received by the court as

Exhibits 35-40. However, Boatman's failure to identify their location waives this portion of his claim. Moreover, photographs of the injuries to the murder victim are clearly relevant to the penalty phase where the state had to prove the murder was heinous, atrocious, and cruel or harmless error considering the overwhelming evidence proving this.

2. Joseph Hammer's Testimony About Boatman's Cross City Corrections Facility Complaint.

Boatman also contends that a DOC inspector Joseph Hamner was permitted to testify to hearsay regarding the investigation of Boatman's attempted murder of inmate Apicella at Cross City Corrections Facility in March 2009. Hamner testified that a report was filed with the inspector general's office that Boatman was seen by officers pulling on a sheet tied around Apicella's neck as Boatman attempted to lift and hang him. (DT:1211). As the questioning continued, the prosecutor asked Hamner how the incident came to the attention of the correctional officers:

Q And according to the reports that you reviewed, how is it that an incident came into the attention of the correctional officers?

MR. EISENMENGER: Objection, your Honor. Hearsay and confrontation.

THE COURT: Overruled.

(DT:1212).

As previously discussed, the Court has explained that the Confrontation Clause is invoked when a court admits a *hearsay statement* made by a declarant who does not testify at trial *if*: (1) *the statement is testimonial*, (2) the declarant is unavailable, and (3) the defendant lacked a prior opportunity for cross-examination of the declarant.” *Contreras*, 979 So. 2d at 902 (emphasis added).

However, the only information sought in the question posed by the prosecutor is, “[H]ow is it that an incident came into the attention of the correctional officers?” The question does not seek information that qualifies as a testimonial statement. Nor does Boatman contend that the March 2009 report was not provided to him in discovery or that the names of the correctional officers were not available in the reports. Absent such claims, there is no reason for the Court to conclude that the corrections officers were unavailable to testify or to be deposed regarding any statements they made that are testimonial. Moreover, even if the statement in the reports about how the incident came to the officers’ attention are testimonial, they are clearly

harmless error. Therefore, the Court correctly overruled the objection.

The witness's initial response to the question confirms that the answer to the question does not contain any testimonial statements:

THE WITNESS: There was a correctional officer in the quad or wing that housed Boatman and the other inmate. He heard a noise coming from a cell, housing those two inmates. He went to investigate what was going on.

(DT:1212).

However, Hamner continued uninterrupted to say:

When he looked in the window -- the doors are a solid door, with a small window in it. When he looked in the window, he observed Boatman holding a sheet that went over the top bunk and was around the other inmate's neck. And the report -- or, excuse me. The report that has the testimony of the officers said that he described it as Boatman -- almost like he was in a tug of war -- is the way it was described.

BY MR. BUSTAMANTE:

Q Tug of war. So there is one inmate that is tugging something and then

A Correct.

Q -- the other inmate is on the other side, and it looks like something around his neck.

A Correct.

Q What did the officer do?

A According to the report that I read, he banged on the door, yelled for help, told Boatman to stop, and Boatman did not stop at that time.

The officer then retrieved his chemical agents from his belt, opened the food flap in the door and told Boatman that if he did not stop, that he would administer the chemical agents. And at that time, Boatman stopped.

(DT:1212-13).

Although this portion of Hamner's response may qualify as a testimonial statement, Boatman's trial counsel did not object to it. It is not until the prosecutor asks an additional question and Hamner begins the second sentence of his response that Boatman's attorney requests a standing objection.

Boatman also argues that the trial court denied him his right to confront a witness when the court denied his objection to Hamner's testimony about a statement made by Apicella. Boatman notes that Apicella stated that he and Boatman did not have a lot of problems when housed together but mentioned that Boatman informed him a week earlier that he had stabbed an officer while housed at Marion County Jail.

Boatman's trial counsel immediately objected to the testimony as improper character evidence and moved for a mistrial. He then

raised the hearsay and confrontation clause objections, as well as asserting that the statement Apicella said Boatman made was untrue because “there is no evidence of any sort of stabbing of a correctional officer with the Marion County Sheriff’s Office.” (DT:1218). The court denied the objections and motion for mistrial, and the court read a stipulation by the parties that the stabbing never occurred, to ensure the “stabbing” was not used as an aggravator and further stipulated that Apicella had multiple prior felony convictions and a conviction for a misdemeanor involving dishonesty or false statement. Furthermore, the court provided Boatman a standing objection based on the Confrontation Clause and permitted Boatman to preserve his objection despite the stipulation. (DT:1217-27). However, Boatman has not demonstrated that Apicella was not available to be deposed. Thus, there is no Confrontation Clause violation.

3. Inspector Ortiz

Inspector Ortiz testified about one of the aggravating circumstances involving a prior violent felony committed by Boatman which resulted in the death of inmate Ricky Morris. During Ortiz’s testimony, he spoke about the corrections officer, Officer Cross, who

inspected Boatman and Morris's cell and discovered Morris face down and bleeding while noticing Boatman's bloody hands:

Q What did Officer Cross do?

A He attempted to get assistance from other staff. So sometimes the way they do that in the evening is they'll take their flashlight and shine it towards the officer's station.

And he said at that point Boatman began to beat Morris some more.

Q Okay. And when he said that –

MR. EISENMENGER: Your Honor, I'm going to object as to hearsay and confrontation as to the Officer Cross.

THE COURT: Overruled.

BY MR. BUSTAMANTE:

Q So what did Officer Cross say?

A That he tried to get attention from staff and that Boatman continued to beat Morris.

(DT:1257).

Again, there is no Confrontation Clause violation because Boatman fails to demonstrate that Officer Cross is not available for deposition. In the event this Court concludes otherwise, the error is harmless because the State entered Boatman's judgment and sentence for manslaughter arising out of these facts.

4. Boatman Waived His Confrontation Clause Arguments by Failing to Properly Argue Them in His Brief.

In his brief to this Court for the portion of this claim that applies to the penalty phase, Boatman simply asserts “conclusory statements that reiterate arguments made before the postconviction court.” As a result, these issues are waived for appellate review. *Kilgore*, 55 So. 3d at 511.. *See also Rose*, 985 So. 2d at 509 (“Rose has merely stated a conclusion and referred to arguments made below. Thus, we consider the issue waived for appellate review.”).

Boatman refers to two instances in the penalty phase when he raised Confrontation Clause objections that were overruled by the trial court. The first is the testimony of Joseph Hamner and the second is that of Inspector Ortiz. Boatman’s entire “argument” regarding these points is comments about, and a mere quotation of, the testimony, objection, and bench conference for each of the two incidents. Boatman then adds the following comment:

Accordingly, because the improperly admitted evidence constituted singular and cumulative error that infected the entire penalty phase and prejudiced BOATMAN both before the jury and the Trial Court. Therefore, this Court should vacate BOATMAN’S sentence. *Evans v. State of Florida*, 177 So. 3d 1219 (Fla. 2015).

(IB at 87).

This comment is the sum of the entire argument Boatman makes on this portion of his claim. It is nothing more than a conclusion preceded by references to arguments made below. The one case citation contains no discussion regarding the effects of the Confrontation Clause on testimony presented by a party. Therefore, Boatman's brief on this claim contains no new argument regarding the Confrontation Clause, but instead relies solely on his arguments to the court below that are quoted in his brief. As a result, this argument is waived.

X. The Evidence Was Sufficient to Support Boatman's Conviction for First Degree Murder.

Boatman also challenges the sufficiency of the evidence to support his conviction of premeditated murder. He expressly denies that the evidence provided a basis for "deciding [his] state of [] mind." (IB at 88). In addition, this Court has the duty to address the sufficiency of the evidence in reviewing a capital case. *Ferguson v. State*, 417 So. 2d 639, 642 (Fla. 1982).

Whether the evidence is sufficient is judged by whether it is competent and substantial. *See Blake v. State*, 972 So. 2d 839, 850 (Fla. 2007). "In determining the sufficiency of the evidence, the

question is whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt.” *Bradley v. State*, 787 So. 2d 732, 738 (Fla. 2001); *see also Simpson v. State*, 3 So. 3d 1135, 1147 (Fla. 2009) (applying competent, substantial evidence standard to determine sufficiency of the evidence).

In this case, the jury was instructed only on premeditation as the legal basis for the charge of first-degree murder. (DR:457-73). Florida defines premeditated murder as “the unlawful killing of a human being when perpetrated from a premeditated design to effect the death of the person killed or any human being.” § 782.04(1)(a), Fla. Stat.

“Premeditation” is defined as more than a mere intent to kill; it is a fully formed conscious purpose to kill. Premeditation may be formed in a moment and need only exist for such a time as will allow the accused to be conscious of the nature of the act he is about to commit and the probable result of that act. Furthermore, premeditation can be shown by circumstantial evidence. *Glover v. State*, 226 So. 3d 795, 805-606 (Fla. 2017) *citing Morrison v. State*,

818 So. 2d 432, 452 (Fla. 2002) (emphasis added). In this case, the evidence – in fact, the very words of Boatman himself, -- establish competent, substantial proof of Boatman’s premeditation to kill the victim and is sufficient to demonstrate that a rational jury could have found him guilty of the crimes charged.

The evidence in this case includes a tape of Boatman being interviewed following the murder in which he admits to planning it *days before* committing it and statements Boatman made to correctional officers during the attack about his intent to murder Chapman. (DT:554; 645-53). In fact, at one point, Wells checked the victim’s breathing to see if he was still breathing, and informed Boatman that “he’s still alive. Keep stabbing him.” And Boatman did. (DT:558-59).

At 5:14 am on July 6, 2019, Boatman was interviewed by Special Agent Garrett Carlisle and Dave Meacham with FDLE. Boatman explained that he decided to commit murder due to his anger with the Department of Corrections keeping him on controlled management (“CM” in the interview) and then explains why and when he determined that he would make Chapman his victim:

A So, I got continued again, after I've watched numerous people with way worse histories and cases than mine get released. And I said when I got continued and he got continued. We go up at the same time. I said man, I'm done. The next person that crosses that line, it is what it is.

Q By by continued, you mean you and and William Wells? (sic).

A Yes

Q Ok

A Yeah, continued on CM review, review. And then when we are our CM level, because of our CM level, which I don't understand because there's several people with worse cases than ours.

* * * * *

"[t]his dude is supposed to be my friend . . . I felt more towards him because that was somebody in my circle. He betrayed a trust. He went way too far . . . I said, man I want to fucking kill him. He said, let's do it.

Q How long ago was that? That you guys decided to kill Chapman?

A I don't know the exact time, ***probably a week ago***. We've, we've moved, it's been close, I think the last three days is probably what it, probably was I give you the answer I have to the last two days.

Q Ok. So *you guys, you guys, **planned** on doing it in the day room from the start?* Y'all planned on doing it.

A ***First chance we got.***

Q First chance you got just happened to be where you were.

A Yeah

(DR:449-52) (emphasis added).

In addition to Boatman's confession to planning the murder, the video of the murder provides convincing circumstantial evidence that corroborates the intent to kill that Boatman admitted in his confession. It shows the *repeated stabbings* of Chapman by Boatman with the shanks and demonstrates that Boatman had a sufficient period of time "*to allow reflection by [him]*" in the course of the *stabbings and before Chapman's death on whether to end the slaying attempt*. But the video shows that Boatman has no intention of ending the stabbing attack prior to the victim's death, and even prevents the corrections officers from assisting Chapman by placing his foot against the door, which stops multiple officers together from pushing open the door.

In viewing all the evidence and resolving all inferences from it in favor of the verdict, there is substantial, competent evidence that Boatman committed the murder with premeditation, and the jury's verdict convicting him of first-degree murder should be sustained. Therefore, the Court should deny this claim.

XI. The Trial Court Correctly Denied Boatman's Motion for Judgment of Acquittal Because There Exists Sufficient Evidence of Premeditated Murder.

Boatman also argues that the trial court erred in denying his motion for judgment of acquittal. He contends that “there’s no competent substantial evidence of premeditation in this particular case.” (IB at 92). This claim is plainly meritless.

“In reviewing a motion for judgment of acquittal, a de novo standard of review applies. Generally, an appellate court will not reverse a conviction which is supported by competent, substantial evidence. If, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt, sufficient evidence exists to sustain a conviction.” *Pagan v. State*, 830 So. 2d 792, 803 (Fla. 2002) (internal quotations and citations omitted). As discussed in the previous claim, there was both circumstantial evidence of Boatman’s premeditation and an actual admission by him to *planning* to kill this victim. (DR:449-52). The investigators concluded that sink rods were removed from the sink and sharpened to be used as weapons. (DT:727-28).

Moreover, one cannot watch the video of the murder and not conclude that Boatman intended to kill Chapman and had far more than sufficient time to reflect on his actions and cease from them if he decided during the killing that he no longer desired to see him dead. Finally, one would have to ignore Boatman's own words about his desire in advance to kill his victim and that he took several days of planning to do so.

It is completely unclear why Boatman cites *State v. Mischler*, 488 So. 2d 523, 525 (Fla. 1986) and the definition it quotes for clear and convincing evidence. The standard of review concerning rulings on motions for judgment of acquittal has nothing to do with clear and convincing evidence as previously noted. The Court in *Mischler* was responding to a certified question regarding the propriety of the reason for a guideline sentence departure, and such a departure requires a clear and convincing reason for departure. The Court held that the defendant's lack of remorse for stealing from her employer was not a clear and convincing reason for a departure from a guideline sentence. The case literally *has nothing to do with the facts of this case or the standard of review the Court uses in reviewing a trial court's denial of a judgment for acquittal*.

There was certainly competent substantial evidence to establish each element of the crimes charged. Furthermore, this Court “should not grant a motion for judgment of acquittal unless the evidence is such that *no view which the jury may lawfully take of it favorable to the opposite party can be sustained under the law.*” *Lynch v. State*, 293 So. 2d 44, 45 (Fla. 1974); *see also Morrison v. State*, 818 So. 2d 432, 451 (Fla. 2002), *cert. denied*, 537 U.S. 957 (2002); *Gordon v. State*, 704 So. 2d 107, 112 (Fla. 1997). Therefore, this claim should be denied.

XII. The Trial Court Did Not Abuse Its Discretion When It Denied Boatman’s Request for the “Unnecessary Killing to Prevent Unlawful Act” Jury Instruction and Denied His Objection to the Manslaughter Jury Instruction, 7.7.

Boatman next claims that the trial court wrongly denied his request for Florida Standard Jury Instructions, Criminal 7.7(b), the “Unnecessary Killing to Prevent Unlawful Act” instruction as a lesser included offense for first-degree murder and denied his objection to the Manslaughter instruction appearing in 7.7. He contends that Chapman was attempting to commit a battery or sexual battery and implies that Boatman murdered Chapman to prevent the attack but recognizes that this was not a lawful manner of doing so. The Court

reviews the denial of a requested instruction for an abuse of discretion. *Hoskins*, 965 So. 2d at 14. See *James v. State*, 695 So. 2d 1229, 1236 (Fla. 1997) (“[A] trial court has wide discretion in instructing the jury, and the court's decision ... is reviewed with a presumption of correctness on appeal.”).

A. Boatman Fails to Demonstrate That the Trial Court Abused its Discretion When it Denied Jury Instruction 7.7(b) Because the Evidence Admitted at Trial Did Not Support Giving the Instruction.

The State argued that there was no evidence to support the trial court giving the instruction and objected to the court doing so. The prosecutor noted that the very words of the instruction require that the victim must take some action towards committing the offense beyond just thinking or talking about it, and, at most, thinking or talking about it is all the evidence that Boatman had to support the instruction. (DT:951-53). Boatman himself, cites cases that agree that a defendant is only entitled to a jury instruction on his theory of defense if there is evidence to support the instruction. See *Hooper v. State*, 476 So. 2d 1253, 1256 (Fla. 1985) citing *Smith v. State*, 424 So. 2d 726 (Fla. 1982) (Defendant is entitled to have the jury instructed on the rules of law applicable to his theory of defense *if there is any*

evidence to support such instructions) (emphasis added); *Palmes v. State*, 397 So. 2d 648 (Fla. 1981) (“If the jury had been instructed about accessory after the fact, a conviction on that charge would not be valid since it would not be supported by the facts alleged in the indictment . . . Therefore, the court did not err in refusing to instruct the jury about accessory after the fact either as a defense or as a lesser included offense.”) (IB at 94); *See also Mitchell v. State*, 368 So. 2d 607, 608 (Fla. 3d DCA 1979) (One cannot not be properly convicted under Section 782.11 when the record is devoid of evidence by which a jury can determine what specific felony or unlawful act the victim was attempting to commit when he was killed); *Hoffman v. State*, 708 So. 2d 962, 965 (Fla. 5th DCA 1998) (“The party presenting a jury instruction point as error on appeal must show that the requested instruction accurately states the applicable law, *that the facts in the case support giving the instruction, and that the instruction was necessary in order to allow the jury to properly resolve all issues in the case.*”) (emphasis supplied).

In addition, the trial court pointed out that the instruction was neither a mandatory nor a permissible lesser included offense for murder and was not supported by the evidence admitted in the case:

THE COURT: Well, *it's not even a category two; right? It's not in the one or two of lessers*; so it's one that's being requested. It doesn't even fit in the schedule, and, I guess, *the problem for the Court is I'm not aware of any evidence presented in the trial that could support this instruction*, which is what -- even for a category two what would be required is to make sure it was pled correctly to include the elements of this and that there was evidence presented during the course of the trial to support it. Neither things exist.

(DT:451) (emphasis added).

Boatman argues that the instruction was appropriate because of the testimony of Reginald Arline that Boatman is not gay but that Arline “intercepted” a “kite” that was in his cell with Boatman’s name on it involving homosexual activity. (DT:916). He further testified that Chapman “disrespected other inmates, including Boatman, and that when Chapman would tell others to “suck my penis – suck my dick” it was the type of insult “that a person have to do something because they’re disrespected and disrespected of their manhood.” (sic). (DT:916-17; IB at 99).

However, Arline’s testimony cited in the brief does not support this argument. The jury instruction clearly requires that there must be evidence that the victim *did some act toward committing the felony or unlawful act that went beyond just thinking or talking about it*

(element one) **and** that that *the victim would have committed the felony* or unlawful act except that someone prevented [him] [her] from committing it or [he] [she] failed (element three). Fla. Std. Jury Instr. (Crim.) 7.7(b). As the prosecutor noted, there is simply no evidence of the first or third elements which require proof beyond a reasonable doubt that Chapman attempted to commit either a felony or an unlawful act.

In addition, the trial court correctly noted that the charge of Unnecessary Killing to Prevent an Unlawful Act is neither a mandatory lesser included offense for first-degree murder *nor a permissive* lesser included offense for first-degree murder. *Jury Instruction 7.2, Murder – First Degree, Lesser Included Offenses*.

Finally, the charge requires that the attempted felony or unlawful act be independent of any act directed toward the defendant. (element two). *See also, State v. Kadet*, 455 So. 2d 389, 390 (Fla. 5th DCA 1984) (“We agree . . . that section 782.11 does not apply under the circumstances here. An element of this statute is that the victim was committing or attempting to commit a felony or other unlawful act *independent of the threatened act directed at the defendant.*”) (emphasis added). The court in *Kadet* reasoned that *this*

distinguished the circumstances of cases in which the instruction is properly given from cases in which the instructions on self-defense adequately cover an unnecessary killing under a claim of self-defense. Kadet, 455 So. 2d at 390 citing State v. Carrizales, 356 So. 2d 274, 275 (Fla. 2017). Thus, even if there was evidence that the victim was committing a felony or other unlawful act against Boatman, the trial court still would have properly denied giving this instruction because the “self-defense instruction” would “adequately cover an unnecessary killing.”

B. Boatman Failed to Demonstrate That the Trial Court Abused its Discretion When it Overruled Boatman’s Objection to Reading Jury Instruction 7.7 as a Lesser Included Offense Rather than Jury Instruction 7.7(b) Which Was Not Supported by Any Evidence in the Case.

Boatman also claims in his caption that the trial court abused its discretion when it denied his objection to instruction 7.7. However, his brief only mentions one objection Boatman made:

BOATMAN’S Trial Counsel further objected to the manslaughter instruction and argued that “we believe the proper manslaughter instruction is 7.7(b). The Trial Court overruled BOATMAN’S objection. (RT:958-59).

(IB at 101).

The discussion between Boatman's trial counsel and the trial court regarding the proper manslaughter instruction appears on pages 958-59:

MR. GOLDMAN: The last argument, your Honor, is that category one lesser-included offenses are manslaughter. This is 78.7(b). I believe 7.7(a) is the traditional manslaughter. 7.7(c) is the non-traditional. I think this is a category one lesser-included offense and that it should be given.

THE COURT: I understand.

MR. GOLDMAN: I figured you would.

THE COURT: I disagree, respectfully, and I'm not giving it. So that takes us on to the first-degree murder instruction. Any objection to that proposed instruction?

MR. EISENMENGER: No, sir. It appears standard.

THE COURT: Other than you have the same objection and request on 3.4 that you're wanting unlawful killing to prevent an unlawful act to be included, any other objections?

MR. EISENMENGER: No other objections to second degree and manslaughter, your Honor.

THE COURT: Okay. Any objection to the second degree?

MR. EISENMENGER: No, sir. It appears standard.

THE COURT: Any objection to the -- I know they're both on the same next page, but let's take them one at a time. Any objection to the manslaughter?

MR. EISENMENGER: Only the one that we've articulated: That we believe the proper manslaughter instruction is 7.7(b).

(DT:958-59).

It is unclear what Boatman's trial counsel was referring to when he spoke about "78.7(b)," but it appears to be an error in that either trial counsel misspoke or the court reporter took down the statement incorrectly, and the reference is actually to 7.7(b), the jury instruction on unnecessary killing. However, he is clearly incorrect regarding his statement about instructions 7.7(a) being "the traditional" manslaughter instruction and 7.7(c) being "the non-traditional" manslaughter instruction, and, most importantly, that 7.7(b) is a category one lesser-included offense.

According to the Lesser Included Offenses schedule that appears in Jury Instruction 7.2, the "Murder-First Degree" instruction, there are two *Category One lesser included offenses* – (1) Second degree (depraved mind) murder, Florida Statute 782.04(2), Jury Instruction 7.4 and (2) Manslaughter, Florida Statute 782.07, **Jury Instruction 7.7**. Under Category Two, there is only Aggravated Manslaughter (Child), Florida Statute 782.07(3), Jury Instruction 7.7(a) (Thus, Boatman's trial counsel's error in referring to Jury

Instruction 7.7(a) as “the traditional manslaughter”; Jury Instruction 7.7(c) is Assisted Self-Murder pursuant to § 782.08, Fla. Stat. *Jury Instruction 7.7(c) at J-71*. Therefore, Boatman’s trial counsel confused what he refers to as the “traditional manslaughter” with the “non-traditional” manslaughter.

Because Second-degree murder and Manslaughter (charged pursuant to § Florida Statute 782.07) are the mandatory lesser included offenses, and Aggravated Manslaughter is the permissive lesser included offense, the only manslaughter instruction properly charged, given the evidence in this case, is 7.7, the charge objected to by Boatman and given by the trial court. The court correctly informed Boatman’s trial counsel that 7.7(b) is not included in the schedule of Lesser Included Offenses for the charge of first-degree murder and did not abuse his discretion in giving, instead, the jury instruction in 7.7.

There is an additional matter raised by Boatman is this claim, but it does not involve a second objection. Rather, he notes in his brief that trial counsel requested “a proper instruction as to self defense be given.” (sic). (IB at 100). However, Boatman does not raise any argument on this point. He does not even provide the “proper

instruction” on self-defense which he sought. He merely quotes the bench conference starting with the comment about a self-defense instruction, “we’re going to get to it in a moment,” but never does.

Instead, the quoted transcript merely continues with the previous discussion between the trial court and trial counsel about charging the jury on the lesser included offense of unnecessary killing. (DT:952-58). Although Boatman again mentions that the court abused its discretion “by not giving the requested instructions.” It is merely a conclusory statement. Therefore, this request for a “proper” self-defense instruction was not preserved for appellate review. *Kilgore*, 55 So. 3d at.

Therefore, the Court should deny this claim.

XIII. The Trial Court Correctly Permitted Boatman to Waive His Right to a Penalty Phase Jury.

Boatman contends that the trial court wrongly permitted him to waive his right to a jury in the penalty phase of his trial over the objection of his trial counsel because Boatman was not competent to knowingly, voluntarily, and intelligently waive this right. However, the trial court properly determined that Boatman was competent to waive the penalty-phase jury.

The Court has previously held that “[a]s with a guilty plea, in which a defendant waives his or her right to a jury determination of guilt, a waiver of the right to jury sentencing will be upheld if that waiver is knowingly, voluntarily, and intelligently made. *Mullens v. State*, 197 So. 3d 16, 39 (Fla. 2016). Thus, the question for the court was merely one of whether Boatman knowingly, voluntarily, and intelligently, waived his right to a penalty-phase jury.

Here, during the penalty phase of Boatman’s trial, one of his attorneys informed the trial court at the end of the day that Boatman “is expressing desires to potentially dismiss the jury entirely and somehow convert this into a non-jury trial.” He added, “I would like an opportunity to not only talk to him out in the hall about that desire but also potentially object to it.” (DT:1499). After the judge further questioned Boatman’s trial counsel, he learned that Boatman wanted to address the issue then, but his attorneys had not yet had an opportunity to discuss the matter with Boatman. Therefore, the judge decided to address the issue the following day so that court personnel would not have to remain pending the discussion between Boatman and his attorneys and Boatman would have an additional night to reflect on his decision. (DT:1499-1502).

The following day, Boatman's trial counsel requested that the trial court address the issue either after lunch or at the end of the day, and Boatman confirmed that he desired to wait until after lunch to address the waiver. (1503-05). During the colloquy between Boatman and the court, Boatman informed the judge that initially he never intended to have a jury on the penalty-phase of his case:

THE COURT: And when did you first or start considering that decision?

THE DEFENDANT: Three years ago. I just recently agreed to the jury, and I was somewhat reluctant throughout. It was always my intention to have a jury guilt phase, but if it were to proceed to the penalty phase, it was my wish to have the penalty phase heard by the Bench.

THE COURT: So you're saying that was always how you had intended to proceed, as you had contemplated this process for the three years it's been pending.

THE DEFENDANT: Correct.

THE COURT: And it was only recently that you were convinced to stay with a jury.

THE DEFENDANT: Correct.

THE COURT: But at some point in this process –

THE DEFENDANT: I regretted that decision and wish to proceed as I wanted to all along.

(DT:1521). After further questioning and argument by Boatman's trial counsel, the court found Boatman's waiver to be knowing, intelligent and voluntary, but determined at that time, that he would

not grant the request but would give it further consideration as the proceedings continued. (DT:1521-40). At the same time, Boatman's counsel maintained (1) that his waiver was not knowing, intelligent, and voluntary due to stress placed on him from being on close management which resulted in his desire to be sentenced to death and reside on death row, (2) he was incompetent to waive a jury for the same reason (as determined by Dr. Tonia Werner), yet competent to continue with the trial because the stress did not apply to that decision making process. (DT:1541-47). The court then asked Boatman's trial counsel if they could have Dr. Werner, who was scheduled to testify that day, come in early to speak with Boatman about his decision. (DT:1547-48).

Boatman's trial counsel presented the testimony of Dr. Tonia Werner in the penalty-phase proceedings, as well as the guilt-phase proceedings. In the penalty-phase, she initially reminded the jury that "an adjustment disorder is a disorder where an individual has a mood reaction or behavioral reaction to an identifiable stressor. And it can be any stressor." (DT:1632). When asked about what "stressor" she identified as causing Boatman to attempt suicide back in 2020, she responded that Boatman "identifies the stressor as being locked

in solitary confinement with no identifiable release date from that.” (DT:1634).

Following her brief testimony, the trial court again turned to questioning Boatman about his desire to waive the jury for the penalty-phase proceedings. The Court engaged in a very detailed colloquy with Boatman concerning the waiver in which he confirmed his desire to waive the jury and agreed to, and that day did execute, a written waiver. (DT:1636-48; DR:482). The court then brought the jury back into the courtroom and dismissed them for the day so that Dr. Werner could interview Boatman. (DT:1649). Following her interview of Boatman, Dr. Werner returned to the witness stand and testified about her interview of Boatman. (DT:1650-1660):

Q Doctor, what's your impression of the rationale of his decision?

A I think it's similar to the last time that I met with Mr. Boatman and discussed this issue. And he clearly is motivated to get off of close management or max management. He called it both different things. And he sees that this is his best way of doing that, in getting sentenced to death. He related it the same as his codefendant who was in the same position as him and was sentenced to death and now is moved to death row and has more freedoms.

Q Understanding that the privileges are different between close management and death row, *could that be classified as a rationale decision?*

A Right. I think -- *yes, I think that that would be a rationale decision for some individuals: to want to have, you know, more freedom and access to, as he said, phone, tablet, regular visitation, television, and being able to go out in the yard, he said.*

Q *In light of his diagnosis, do you have concerns about the free nature of that decision?*

A I do. Again, I think that, you know, it's difficult for him to be able to -- for that, to be able to say that that's a free decision based on, you know, him thinking, I have to stay in close management probably for the rest of my life.

And he related to someone who had testified earlier who kind of alluded to that, didn't necessarily say that but alluded to that: that it would be a very long time and a long process for him to get out of there. But he's unsure of what he needs to do or show in order to get off of max management because he hasn't had any DRs, and he hasn't had any problems.

And I kind of equate that to almost an addiction. And so when a smoker -- you know, I testify in the tobacco trials, and they say, you know, *Why didn't they just quit?* Well, because it's no longer a free choice after they're addicted to nicotine because when they put it down or try to put it down, there are consequences to that.

And so his consequences are that he's still in this close management, and this is the only way he can see to get out of that.

Q So in that regard, do you think that he can freely, knowingly, and voluntarily make the decision to waive a jury under these circumstances?

A I think that's a question, and I think clearly he sees that he -- and he wouldn't -- *he wouldn't acknowledge this,*

although I did ask him, but I think that he clearly sees that his best chance of getting to death row is through a bench trial as opposed to a jury trial. And he would laugh when I said that and say, Well, those are your words, not mine.

Q Right. And so would that, in your opinion, be a free, knowing, or voluntary decision?

A I don't believe so.

(DT:1650-52) (emphasis added).

On cross-examination Dr. Werner agreed that Boatman fully understood the consequences of his decision, including the possibility of execution if he was sentenced to death. She conceded that he was making a “rational choice” in his mind between what the rest of his life would be like on death row and his current situation regarding his incarceration status. She even pointed out that he waited until this point in the trial to waive the jury so that his sister, when she testified, could testify in front of a jury because he felt “that that would alleviate some of her guilt or feelings of guilt over things that have happened in his life.” (DT:1653-54). She further testified that Boatman also informed her that he did not desire the jury to have to struggle with this decision and admitted that Boatman might be able to establish a basis for mitigation based on his desire to relieve the jury of this decision and help his sister to move on in her life with less guilt. (DT:1654-55). Finally, Dr. Werner agreed that

during her testimony, both in the guilt-phase and penalty-phase, as well as when she first interviewed Boatman in 2020, he never demonstrated “extreme stress” other than the stress he was under back in 2020 regarding the stress he felt from being under “maximum management.” (DT:1665).

When questioned by the trial court, it became clear that what Dr. Werner was truly questioning was his *judgment*. She admitted she was not suggesting that Boatman was *incompetent* to make the decision, but that she was questioning whether his decision was freely made *when “it's coming out of his situation and wanting to be off of max – he sees that as the only way out of max management is to be sentenced to death.”* (DT:1656).

The plea colloquy in this case reflects that Boatman affirmatively represented that he was waiving a jury in his penalty-phase proceeding of his own volition and had not been coerced or forced into waiving the jury. In fact, not only did Boatman’s trial attorneys do nothing to coerce or force him to waive the jury, they opposed him doing so. They argued to the trial court both that Boatman was incompetent to do so and that his decision to waive the jury was not done knowingly, intelligently, and voluntarily. Further,

the record shows that Boatman clearly understood the rights he was waiving and the consequences of his plea. (DT:1666-69). *See Doty v. State*, 170 So. 3d 731, 739 (Fla. 2015). As a result, the Court should deny this claim.

XIV. Florida's Death Penalty Scheme Sufficiently Narrows the Class of Those Eligible for the Death Penalty.

Boatman claims that Florida's death penalty scheme is unconstitutional because it allegedly fails to narrow the class of persons eligible for the death penalty. This claim is meritless.

This Court has recently discussed this issue in *Wells v. State*, 364 So. 3d 1005 (Fla. 2023), *reh'g denied*, 2023 WL 3938086 (Fla. June 12, 2023), and *cert. denied sub nom. Wells v. Florida*, 2023 WL 7287192 (U.S. Nov. 6, 2023) and noted that it has previously rejected such arguments, and did so again, even when the defendant argued this was the case when combined with the Court's rejection of comparative proportionality in *Lawrence v. State*, 308 So. 3d 544, 552 (Fla. 2020). As the Court stated in *Wells*:

We have repeatedly rejected the argument that the death-penalty statute violates the Eighth Amendment because it fails to sufficiently narrow the class of murderers eligible for the death penalty. *See Johnson v. State*, 969 So. 2d 938, 961 (Fla. 2007); *Miller v. State*, 926 So. 2d 1243, 1260

(Fla. 2006). We have done so recently—even with the statute in its current form. See *Joseph v. State*, 336 So. 3d 218, 227 n.5 (Fla. 2022); *Cruz v. State*, 320 So. 3d 695, 730 (Fla. 2021); *Colley v. State*, 310 So. 3d 2, 15-16 (Fla. 2020); *Bush v. State*, 295 So. 3d 179, 214 (Fla. 2020); cf. Ch. 2019-167, § 129, Laws of Fla. (most recent legislation involving death-penalty statute; merely reenacting subsection (9) of statute); Ch. 2010-120, § 1, Laws of Fla. (most recent change to aggravating factors; adding a sixteenth factor).

Wells, 364 So. 3d at 1015; see also *Loyd v. State*, 2023 WL 7815783 (Fla. Nov. 16, 2023).

Because Boatman provides to this Court no compelling reason for it to reverse its position on this matter, this claim should be denied.

XV. The Trial Court Did Not Abuse Its Discretion in Sentencing Boatman to Death Because There is Substantial and Competent Evidence to Support the Sentence and Nothing That Legally Prohibited the Court From Imposing the Sentence.

Finally, Boatman claims that the trial court erred in imposing a sentence of death. He contends that there was insufficient evidence to support finding the two aggravating factors that the murder was (1) cold, calculated, and premeditated without pretense of moral or legal justification, and (2) heinous, atrocious, and cruel. He further contends that due to his suffering from mental illness, *Atkins v.*

Virginia, 536 U.S. 304 (2002) and *Roper v. Simmons*, 543 U.S. 551 (2005) prohibit imposing a death sentence against him and that the sentence of death is not proportional to other cases in that the crime committed does not fall into the category of both the most aggravated and least mitigated murders.

Furthermore, Boatman points out that during the penalty phase, his trial counsel objected to the jury and the trial court considering the aggravators separately. However, Boatman does not identify where in the record the objection occurred or the precise objection he made. Nor does he argue this point in his brief. Thus, Boatman does not preserve this objection and is barred from further argument of it before this Court.

In addition, Boatman argues that he objected to consideration of two prior crimes he committed, the attempted second-degree murder of Mark Apicella and the third-degree murder of Rick Morris, as aggravating factors. Boatman argues the homicides should not have been considered because “neither are a previous crime against the person of *William Chapman*.” (IB at 117) (emphasis added). Boatman states that he objected to this and cites to page 772 of the record. However, page 772 of the record is the portion of the judge’s

sentencing order discussing mitigation (specifically, the fourth mitigator, the capacity of Boatman to appreciate the criminality of his conduct or to conform his conduct to the requirement of law was substantially impaired, and his fifth mitigator, the age of the defendant at the time of the crime). Neither topic questions whether it is appropriate to consider prior crimes committed against someone other than the victim nor mentions any objection to considering such aggravation.

Nor does page 772 of the transcript. Page 772 of the transcript instead refers to Boatman testifying before the trial court during the penalty phase to his desire to waive the jury for the penalty-phase proceedings. Therefore, Boatman has waived this objection, as well, and is barred from arguing this point on appeal before this Court. *Kilgore*, 55 So. 3d at 511.

A. There Was Competent Substantial Evidence That Chapman's Murder Was Cold, Calculated, and Premeditated.

Boatman contends that the murder of Chapman does not legally qualify as cold, calculated, and premeditated.

As this Court has previously stated:

In order to establish the CCP aggravator, the evidence must show: (1) the killing was the product of cool and calm reflection and *not an act prompted by emotional frenzy, panic, or a fit of rage* (cold); (2) the defendant had a careful plan or *prearranged design to commit murder before the fatal incident* (calculated); (3) the defendant exhibited heightened premeditation (premeditated); (4) the defendant had no pretense of moral or legal justification. CCP involves a much higher degree of premeditation than is required to prove first-degree murder. *Premeditation can be established by examining the circumstances of the killing and the conduct of the accused.* Further, the evidence must prove beyond a reasonable doubt that the defendant *planned or prearranged to commit murder before the crime began.* The CCP aggravator can be indicated by circumstances showing such facts as *advance procurement of a weapon, lack of resistance or provocation, and the appearance of a killing carried out as a matter of course.*

Williams v. State, 37 So. 3d 187, 195 (Fla. 2010) (internal quotations and citations omitted and emphasis added). Contrary to Boatman's assertion that "[t]here was nothing cold about Boatman's killing of Mr. Chapman . . . he was upset about being passed over on his close management review", the evidence clearly shows that the murder was "not an act prompted by emotional frenzy, panic, or a fit of rage" as the Court explained in *Williams* the meaning of "cold" in "cold, calculated and premeditated."

After Boatman killed Chapman, he provided a post-*Miranda* explanation for his action that included his determination to kill

someone because he was angry with the fact that he remained indefinitely on close management. However, this anger was not the type prompted by “emotional frenzy, panic, or a fit of rage.” Boatman was not so emotionally wrought by his situation that he was unable to control himself and immediately struck out at Chapman. Agent Carlisle, the investigator from FDLE testified that Boatman learned on June 20th that he was to remain on close management but did not kill Chapman until *fifteen days later*, on July 5th. (DT:1271). In addition, Boatman admitted to Carlisle that he and Wells had a *prearranged design* to commit murder, and that they initially selected Chapman *in advance of the murder*. (DR:449-52).

Furthermore, Boatman exhibited *heightened premeditation*. Agent Carlisle testified that Boatman informed him that he and Wells arranged *in advance* to obtain weapons to commit the murder and hiding them. He also stated Wells prepared the ligatures in advance. But this required a prearrangement, as well, and was the result of him and Chapman planning to commit the murder. Prior to the actual killing, Boatman had to obtain the ligatures, arm himself with the weapons and tie them to his wrist with the ligatures to prevent Chapman taking the shanks away from him by during the slaying.

And, on the day of the murder, he and Wells arranged to leave the dayroom prior to attacking Chapman so that they each could obtain the weapons they planned on using to commit the murder. All this is competent evidence of heightened premeditation.

Finally, there is sufficient evidence from which the judge properly concluded that Boatman had no pretense of moral or legal justification. There was no credible threat to Boatman or others presented by Chapman at the time of the murder. Boatman accuses Chapman of “trying” Boatman and felt like he could be attacked by Chapman. But the trial court properly found that there was no credible evidence that Chapman had any intent to attack Boatman, and there is no observable actual threat to Boatman in the video taken during his slaying of Chapman or prior to it. Boatman argues that the “kite” sent to him alleging he was gay placed him at risk and somehow, provides some pretense morally or legally justifying Boatman killing Chapman. The trial court properly rejected the argument. There is no requirement that “we must judge the aggravator by the prison code.” And it would be inherently dangerous to society if we did as there would likely exist anarchy in Florida’s

prison system if inmates could justifiably kill each other because one inmate says something another feels places him in danger.

Because there is competent substantial evidence to support the court finding Boatman committed the murder in a cold, calculated, and premeditated manner without any pretense of moral or legal justification, the court's finding is not error. *Barnhill*, 834 So. 2d at 850–51 (“the trial judge's ruling on an aggravating circumstance will be sustained on review as long as the court applied the right rule of law and its ruling is supported by competent, substantial evidence in the record.”).

B. There Was Competent Substantial Evidence That Chapman's Murder Was Especially Heinous, Atrocious, and Cruel.

Boatman also claims that the trial court erred in finding that that the murder was committed in an especially heinous, atrocious, and cruel manner. He contends that this aggravator applies “only in torturous murders” when “the victim was conscious and aware of impending death” and argues that Chapman's murder does not qualify because Chapman was unaware of his impending death, it is unknown when Chapman lost consciousness, the stabbing was not

determined to be the cause of death, and there was no testimony as to his pain and suffering. (IB at 120-21).

In *Barnhill*, this Court explained:

The HAC aggravating factor applies in physically and mentally torturous murders which can be exemplified by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another. HAC focuses on the means and manner in which the death is inflicted and the immediate circumstances surrounding the death, rather than the intent and motivation of a defendant, *where a victim experiences the torturous anxiety and fear of impending death*. Thus, if a victim is killed in a torturous manner, *a defendant need not have the intent or desire to inflict torture, because the very torturous manner of the victim's death is evidence of a defendant's indifference. Because strangulation of a conscious victim involves foreknowledge and the extreme anxiety of impending death, death by strangulation constitutes prima facie evidence of HAC.*

Barnhill, 834 So. 2d at 849–50 (internal citations omitted and emphasis added).

In its sentencing order, the court explains that “the primary mechanism of death was *multiple stabbings* by metal shanks, *blunt force trauma*, and *strangulation* by use of a ligature.” (DR:764). The court described the injuries sustained as “multiple traumas to [Chapman’s] head, neck, eyes, face, and body, including: 25 stab wounds/cuts on the right side of the neck by a metal rod (which was

still in the victim's neck at the time of the autopsy); a deep ligature furrow in his neck (indicating he had been strangled with a ligature); hemorrhaging around the eyes (the eyes themselves were intact); internal injuries (brain hemorrhaging caused by blunt force trauma; and multiple torso injuries (both internal and external) caused by penetrating injuries due sharp (sic) force trauma." (DT:764). The court noted that the actual attack, itself, went on for *over ten minutes* and included Boatman and Wells "brutally" beating, stabbing, strangling, and stomping on the victim "without respite," even as he pleaded for his life and attempted to escape. (DR:764). The court concluded:

[T]he testimony and evidence show an attack that was intended not only to kill the victim but *to make him suffer physically and mentally. The victim was aware that he was going to die; and that no help was coming for him. The level of fear and hopelessness that the victim was experiencing is clear from the testimony and evidence presented to this Court.*

Further, the Defendant refused to allow correctional officers into the day room to help the victim, threatening to kill them as well if they intervened, thereby *prolonging the victim's pain and suffering*. Both during and after the merciless attack, *the victim was faced with the reality that his death was imminent. And the Defendant was totally indifferent to the victim's suffering.*

(DT:764-65) (emphasis added).

The trial judge's ruling on an aggravating circumstance will be sustained on review as long as the court applied the right rule of law and its ruling is supported by competent, substantial evidence in the record. *Barnhill*, 834 So. 2d at 850–51. Boatman argues that because the stabbing was not determined to be the sole cause of death, the medical examiner could not determine when Chapman lost consciousness, and there was no testimony about Chapman's pain and suffering, there is no evidence that the murder was torturous. This ignores the evidence to the contrary. Chapman survived much of the brutal attack as evidenced by his pleading for his life and his attempt to escape from what at that point in time was an attempt to strangle him to death and repeated stabbings to his body. Although the court did not cite to it in the sentencing order as a basis for finding HAC, it is crystal clear from the video that Boatman was attempting to stab the victim directly in the eyes, as well.

As this Court noted in *Barnhill*, the trial court, in determining that HAC applied as an aggravator, relied on the fact that the strangulation took six or seven minutes during which “the victim struggled and fought and tried to yell for help” although he “lost consciousness within one to two minutes after being manually

strangled and would have died within one to seven minutes.” *Id.* at 850. This Court concluded that, “This evidence demonstrates that the victim was aware of his impending death” citing *Capehart v. State*, 583 So. 2d 1009 (Fla. 1991) (HAC applies where victim's death was painful, and where the smothering was not instantaneous because the victim remained conscious for two minutes). As a result, the Court held that “the trial judge reasonably found that the victim suffered a physically and mentally cruel, torturous death. *Id.* Similarly, Chapman was strangled, stabbed, and beaten for at least as long, and was observably conscious for much of the attack as he struggled to survive, obviously aware that no help was forthcoming as it became clear that the correctional officers did not have the wherewithal to rescue him. Thus, there exists substantial competent evidence that Chapman suffered a physically and mentally cruel, torturous death.

C. Boatman’s Sentence of Death is Not Unconstitutional Because
He Allegedly Suffers Mental Illness.

Boatman next argues that because he presented evidence that he suffered from “serious mental illness,” this “renders the death penalty an unconstitutional sentence.” (IB at 121). He cites both

Roper v. Simmons, 543 U.S. 551 (2005) and *Atkins v. Virginia*, 536 U.S. 304 (2002) as support for this argument.

This Court has repeatedly rejected the argument that *Roper* or *Atkins* should be expanded to include claims of mental illness, as have courts in other jurisdictions. In *McCoy v. State*, 132 So. 3d 756, 775 (Fla. 2013), McCoy argued that due to his mental illness he lacked the moral culpability to justify imposing the death penalty and that executing him would be cruel and unusual punishment. He contended that his mental illness placed him in a class of persons similar to those under 18 years old and those with mental retardation. The Court, which had previously rejected this claim multiple times, stated it saw no compelling reason to reconsider its prior decisions:

This Court has consistently rejected this claim. *See Carroll v. State*, 114 So. 3d 883, 886–87 (Fla.), *cert. denied*, — U.S. —, 133 S. Ct. 2762, 186 L.Ed.2d 213 (2013) (rejecting claim that mental illness bars execution and citing numerous prior cases); *Simmons v. State*, 105 So. 3d 475, 510–11 (Fla. 2012) (rejecting claim that persons with mental illness must be treated similarly to those with mental retardation due to reduced culpability); *Barwick v. State*, 88 So. 3d 85, 106 (Fla. 2011) (rejecting “the argument that *Roper* extends beyond the Supreme Court's pronouncement that the execution of an individual who was younger than eighteen at the time of the murder violates the eighth amendment”); *Johnston v. State*, 27 So.

3d 11, 26 (Fla. 2010) (rejecting claim that mentally ill persons are similar to and should be treated the same as juvenile murderers who are exempt from execution); *Lawrence v. State*, 969 So. 2d 294, 300 n. 9 (Fla. 2007) (rejecting the claim that “the Equal Protection Clause requires this Court to extend *Atkins* to the mentally ill”); *Connor v. State*, 979 So. 2d 852, 867 (Fla. 2007) (“To 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.”).

Because McCoy has not presented any compelling reason for this Court to reconsider its established precedent on this issue, we deny this claim.

McCoy 132 So. 3d at 775.

Because Boatman presents no new compelling reason for the Court to reconsider its established precedent on this issue, the Court should reject this argument.

D. The Court Has Eliminated Proportionality Review Because it Violates the Florida Constitution.

Finally, Boatman argues that the Court’s proportionality review should result in his sentence being vacated. However, in *Lawrence*, 308 So. 3d 544 the Court decided just three years ago that comparative proportionality review of death sentences violates the Conformity Clause found in Article I, Section 17 of the Florida Constitution. The Court concluded that because the Conformity

Clause requires that Florida decisions construing Florida's constitutional prohibitions against cruel or unusual punishment and against cruel and unusual punishment conform with decisions of the United States Supreme Court interpreting the prohibition in the Eighth Amendment against cruel and unusual punishment, proportionality review would only be proper if the Supreme Court required proportionality review pursuant to the Eighth Amendment. In reaching its decision, the Court relied on the Supreme Court's decision in *Pulley v. Harris*, 465 U.S. 37, 50-51 (1984), which this Court in *Lawrence* determined held that comparative proportionality review of death sentences is not required by the Eighth Amendment. *Lawrence*, 308 So. 3d at 3.

Because Boatman presents no new compelling reason for the Court to reconsider its recent precedent on this issue, the Court should reject this argument, as well, and deny this claim.

CONCLUSION

Wherefore, the State respectfully requests that this Court affirm the judgment and sentence in this case.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE AND TYPE-
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I HEREBY CERTIFY that this document complies with the typeface requirements of Fla. R. App. P. 9.045(b) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 10 in 14-point Bookman Old Style and has 26,790 words.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of December 2023, I electronically filed the foregoing with the Clerk of the Court by using the e-filing portal system which will send a notice of electronic filing to the following: David J. Joffe, Esquire, Joffe Law, P.A., The 110 Tower Building, 110 Southeast 6th Street, Suite 1700, Ft. Lauderdale. Florida 33301 **davidjjoffe@aol.com.**

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