

**IN THE SUPREME COURT OF FLORIDA
CASE NO. SC2023-0320
DEATH PENALTY CASE**

MARK H. WILSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ANSWER BRIEF OF APPELLEE

**ON APPEAL FROM THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY, FLORIDA**

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TABLE OF CONTENTS

CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS.....	1
SUMMARY OF ARGUMENTS	32
ARGUMENT	36
POINT ONE	
WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW BY ALLOWING THE JURY TO CONSIDER THE “COLD, CALCULATED, AND PREMEDITATED” AGGRAVATING FACTOR.	36
POINT TWO	
THE TRIAL COURT PROPERLY CONSIDERED AND REJECTED MITIGATING EVIDENCE THAT WILSON WAS INTOXICATED BY METHAMPHETAMINE AT THE TIME OF THE MURDERS.....	40
POINT THREE	
THE TRIAL COURT PROPERLY ADMITTED VICTIM IMPACT EVIDENCE THAT SHOWED THE RESULTANT LOSS TO THE FAMILY BY THE VICTIMS’ DEATH.	48
POINT FOUR	
THE TRIAL COURT PROPERLY DENIED WILSON’S REQUEST FOR A SPECIAL INSTRUCTION THAT “LIFE MEANS LIFE”.	54
POINT FIVE	
THE TRIAL COURT PROPERLY DENIED WILSON’S REQUEST FOR A SPECIAL INSTRUCTION TO AMEND THE DEFINITION OF MITIGATING CIRCUMSTANCES.....	60
POINT SIX	

THE TRIAL COURT PROPERLY DENIED WILSON’S REQUEST FOR A SPECIAL INSTRUCTION ON MERCY.	61
POINT SEVEN	
THE TRIAL COURT PROPERLY DENIED WILSON’S REQUEST FOR A SPECIAL INSTRUCTION ON THE ROLE OF SYMPATHY..	65
POINT EIGHT	
THIS COURT NO LONGER PERFORMS PROPORTIONALITY REVIEW.....	68
POINT NINE	
FLORIDA’S DEATH PENALTY SCHEME IS CONSTITUTIONAL AND PROPERLY NARROWS THE CLASS OF DEATH-ELIGIBLE DEFENDANTS.	72
POINT TEN	
THE CONSTITUTION DOES NOT PROHIBIT THE STATES FROM ‘DEATH QUALIFYING’ JURIES IN CAPITAL CASES.	76
POINT ELEVEN	
CAPITAL PUNISHMENT DOES NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT OF THE FEDERAL CONSTITUTION.	77
CONCLUSION	81
CERTIFICATE OF SERVICE.....	82
CERTIFICATE OF COMPLIANCE	82

TABLE OF AUTHORITIES

PAGE(S)

CASES

<i>Adams v. Texas</i> , 448 U.S. 38 (1980).....	77
<i>Alston v. State</i> , 723 So. 2d 148 (Fla.1998).....	36
<i>Ault v. State</i> , 866 So. 2d 674 (Fla. 2003).....	75
<i>Baker v. State</i> , 71 So. 3d 802 (Fla. 2011).....	49
<i>Baze v. Rees</i> , 553 U.S. 35 (2008).....	78, 79
<i>Bonifay v. State</i> , 680 So. 2d 413 (Fla. 1996).....	51
<i>Bright v. State</i> , 299 So. 3d 985 (Fla. 2020).....	44
<i>California v. Brown</i> , 479 U.S. 538 (1987).....	68
<i>Cliff Berry, Inc. v. State</i> , 116 So. 3d 394 (Fla. 3rd DCA 2012)	57
<i>Coday v. State</i> , 946 So. 2d 988 (Fla. 2006).....	45, 54
<i>Correll v. State</i> , 184 So. 3d 478 (Fla. 2015).....	78
<i>Davidson v. State</i> , 323 So. 3d 1241 (Fla. 2021).....	75
<i>Douglas v. State</i> , 878 So. 2d 1246 (Fla. 2004).....	43
<i>Downs v. Moore</i> , 801 So. 2d 906 (Fla. 2001).....	64
<i>Duest v. State</i> , 855 So. 2d 33 (Fla. 2003).....	37
<i>Flowers v. State</i> , 158 So. 3rd 1009 (Miss. 2014)	63

<i>Ford v. State</i> ,	
802 So. 2d 1121 (Fla. 2001).....	41
<i>Glossip v. Gross</i> ,	
576 U.S. 863 (2015).....	77, 78, 79, 80
<i>Gregg v. Georgia</i> ,	
428 U.S. 153 (1976).....	78
<i>Hitchcock v. Dugger</i> ,	
481 U.S. 393 (1987).....	45
<i>Hudson v. State</i> ,	
992 So. 2d 96 (Fla. 2008).....	54
<i>Hunter v. State</i> ,	
660 So. 2d 244 (Fla. 1995).....	67
<i>Jackson v. State</i> ,	
127 So. 3d 447 (Fla. 2013).....	49
<i>Kight v. State</i> ,	
512 So. 2d 922 (Fla. 1987).....	32
<i>Lawrence v. State</i> ,	
308 So. 3d 544 (Fla. 2020).....	34
<i>Lockett v. Ohio</i> ,	
438 U.S. 586, (1978).....	45
<i>Lockhart v. McCree</i> ,	
476 U.S. 162 (1986).....	76, 77
<i>Loyd v. State</i> ,	
379 So. 3d 1080 (Fla. 2023).....	51, 52
<i>Lynch v. State</i> ,	
841 So. 2d 362 (Fla. 2003).....	75
<i>Mann v. State</i> ,	
112 So. 3d 1158 (2013).....	78
<i>Mansfield v. State</i> ,	
911 So. 2d 1160 (Fla. 2005).....	38
<i>McCleskey v. Kemp</i> ,	
481 U.S. 279 (1987).....	78
<i>Middleton v. State</i> ,	
220 So. 3d 1152 (Fla. 2017).....	40
<i>Miranda v. Arizona</i> ,	
384 U.S. 436 (1966).....	8
<i>Moore v. State</i> ,	
820 So. 2d 199 (Fla. 2002).....	64

<i>Nibert v. State</i> , 574 So. 2d 1059 (Fla. 1990).....	32
<i>Payne v. Tennessee</i> , 501 U.S. 808 (1991).....	33
<i>Proffitt v. Florida</i> , 428 U.S. 242 (1976).....	78
<i>Saffle v. Parks</i> , 494 U.S. 484 (1990).....	68
<i>San Martin v. State</i> , 705 So. 2d 1337 (Fla. 1997).....	76, 77
<i>Sievers v. State</i> , 355 So. 3d 871 (Fla. 2022).....	49
<i>Simmons v. South Carolina</i> , 512 U.S. 154 (1994).....	57
<i>Smith v. State</i> , 28 So. 3d 838 (Fla. 2009).....	40
<i>Spencer v. State</i> , 615 So. 2d 688 (Fla. 1993).....	28
<i>Spencer v. State</i> , 645 So. 2d 377 (Fla.1994).....	32, 48
<i>Stephens v. State</i> , 787 So. 2d 747 (Fla. 2001).....	passim
<i>Trease v. State</i> , 768 So. 2d 1050 (Fla. 2000).....	45
<i>United States v. Mayweather</i> , 991 F.3d 1163 (11th Cir. 2021).....	60
<i>United States v. Morrison</i> , 529 U.S. 598 (2000).....	80
<i>Wainwright v. Witt</i> , 469 U.S. 412 (1985).....	77
<i>Willacy v. State</i> , 696 So. 2d 693 (Fla.1997).....	36
<i>Williams v. State</i> , 967 So. 2d 735 (Fla. 2007).....	39
<i>Woodbury v. State</i> , 320 So. 3rd 631 (Fla. 2021)	34, 63
<i>Zack v. State</i> , 753 So. 2d 9 (Fla. 2000).....	67

STATUTES

Fla. State Stat. § 921.141	48
Fla. State Stat. § 921.141 (2)(a)	73
Fla. State Stat. § 921.141 (2)(b)(2) (2019).....	74
Fla. State Stat. § 921.141 (2)(c) (2019).....	74
Fla. State Stat. § 921.141 (3)(a) (2019).....	75
Fla. State Stat. § 921.141 (7) (2019)	74
Fla. State Stat. § 921.141 (7)(e)	30
Fla. State Stat. § 921.141 (8)	33, 49

RULES

Fla. R. App. P. 9.045, 9.210 and 9.045.....	82
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OTHER AUTHORITIES

Florida Standard Jury Instruction (Crim.) 7.10, 7.11..	18, 56, 60, 61
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PRELIMINARY STATEMENT

Appellant, Mark H. Wilson, the defendant in this case, will be referred to as the "Appellant" or "Wilson". Appellee, the State of Florida, the prosecution below, will be referred to as the "State." The record below will be referred to as "R" and then the page number, i.e., "(R 1)." The supplemental record below will be referred to as "SR" and then the page number, i.e., "(SR 1)." The trial transcript will be referred to as "TT" and then the page number, i.e., "(TT 1)." Appellant's brief shall be referred to as "IB" followed by the page number.

STATEMENT OF THE CASE AND FACTS

Sarah and Chad Baker had recently moved to the Melrose area of Putnam County with their three children, Tayten (age 14), Robert (age 12), and Landon (age 4) to be closer to their family. (TT 41-43) Sarah's father Andrew Benson and stepmother Deborah (Debbie) Benson, lived just around the corner. (TT 45; 102) Sarah's sister, Cindy and Wilson lived about a 5-7-minute drive away.¹ (TT 46-47)

¹ Cindy and Wilson had a 14-month-old daughter Kaitlyn. (TT 52)

At the time of the homicides there was no power at the Wilson home.² Consequently, Sarah and Chad invited Cindy, Kaitlyn, and Wilson to move in with them temporarily. (TT 53) They resided in a separate building on the property adjacent to the main house. They came into the main house for meals, to use the bathroom, and to do laundry. (TT 50-51) Cindy, Kaitlyn, and Wilson moved into the Baker's home the Friday before the homicides. (TT 55)

On August 25, 2020, the Baker family enjoyed a normal late summer day. Chad Baker had departed on his trucking route for the week. School had not yet begun for the children. Earlier in the day they worked together to hang some shelves in the gaming room. Later they all went to the grandparents' home to use the pool. (TT 57-58) Both Tayten and Robert were big fans of online gaming. However, the Internet signal varied throughout the house. The best reception was available in the living room and the adjacent pool table room. The boys both settled down for the evening in the living room and the adjacent pool table room with their respective phones. (TT 50-51; 61)

² Sarah Baker described the house as being infested with fleas and generally not a healthy environment for Kaitlyn. (TT 53)

Tayten was having trouble with his phone and was using Sarah's phone on the evening of August 25. (TT 63)

Cindy and Wilson discussed the next day with Sarah. Cindy had a doctor's appointment for pregnancy testing. Sarah gave them \$10 for gas money and asked them to stop at the store the next day to pick up some coffee. (TT 59-60) Later, Sarah sat outside with Wilson. She noticed Wilson sharpening a filet knife. She observed nothing out of the ordinary and went to bed around 2 AM early on the morning of the 26th. She woke briefly in the middle of the night when Robert came in to see her. (TT 61-62) She fell back asleep and woke up again when her younger child, Landon, crawled into bed with her. (TT 63)

Sarah went to get her phone from the boys and walked past Robert in the living room. He appeared to be asleep under a blanket. As she entered the pool table room, she saw a blood trail around the end of the pool table. Alarmed, she ran over to Tayten, who also had a blanket on him. When she ripped the blanket off, she discovered Tayten lying face down in a pool of blood. Sarah shook him, saying his name. Sarah went to lift him up to see what was wrong and saw a gaping hole in his neck. (TT 64-65)

There was a door in that room which led outside and directly to where Cindy and Wilson were living. Sarah ran out of that door to get help, to get Cindy, and to call 9-1-1. But when she got to the outbuilding, that door was locked. And that door was never locked. (TT 66) Sarah started banging on the door screaming for Cindy, kicking, trying to get in, but no one answered her. So quickly, in her panic, Sarah ran back to the house to alert Robert and to use his phone to call 911. She discovered that he was also dead, and, in that moment, Sarah started screaming at the top of her lungs. She grabbed Landon and exited the home. *Id.* She used her husband's truck to drive to her parents' home to call 911. (TT 67)

Debbie Benson was up that morning. This was during COVID time, so she was up, doing online schooling with her boys, when Sarah busted through her door, hysterically screaming, "The boys are dead, the boys are dead!" (TT 68; 106) This woke up Sarah's father, Andrew Benson as well. (TT 68) Debbie decided to drive over to the house to see what Sarah was talking about because it just didn't make sense. (TT 106-07) Sarah stayed behind with Landon and her dad. (TT 68)

On the way to the Baker home, Debbie called 9-1-1 and was on the line with them when she found her nephews inside the house. It was so difficult to process what had happened, that she told 9-1-1 that she thought that dogs must have attacked them. (TT 107-08) Sarah's father arrived at the house shortly after. (TT 109)

Putnam County deputies Sara Wernick and Shaun Valdiva were the first to arrive at the scene. (TT 86) An ad hoc SWAT team entered the property to secure the premises and confirm the boys were deceased. (TT 87-89) After securing the premises they withdrew. (TT 126; 354) Detective Klayton Usina was the lead homicide detective assigned to the case. He arrived shortly after the scene had been cleared and obtained a search warrant. Detective Usina observed Wilson at the scene, kind of squatted down off to the side by himself, barefoot. Wilson was crying and violently shaking his head back and forth. (TT 353-54)

The Florida Department of Law Enforcement (FDLE) was called out to gather the evidence at the scene pursuant to the warrant. They documented the condition of the two bodies, as well as that of the remainder of the home. (TT 127-150; 163-215) Underneath Tayten's body they located a \$10.00 bill. (TT 209) In the adjacent guest home,

they located a knife and sheath which was wrapped up in some placemats and appeared to have blood on it. They also found a hammer. In the trash outside the home, they found paper towels which were also soaked with blood. (TT 195-98;202-03) Inside the home they found a letter written by Wilson. (TT 188;190-91)

Two days later, after the home was returned to the family, a family member found a black hooded sweatshirt which contained Robert Baker's phone. The sweatshirt also appeared to have blood on it. Law Enforcement retrieved the sweatshirt and submitted it into evidence. (TT 316)

On the day the bodies were discovered, law enforcement began interviewing the family as well as Wilson. Deputy Higgenbotham interviewed Wilson three times that day. All three interviews were recorded.³ (TT 220-224) In all three of these interactions with Wilson, Deputy Higgenbotham observed Wilson to be responsive. Based on his training and experience, he did not have any concerns that Wilson was impaired or unable to understand him. (TT 224)

³ All three recordings were admitted into evidence and published to the jury. (TT 225)

At some point in the next 24 hours, Wilson met with his mother, Chrissy Adkins. (TT 337-38) Ms. Adkins told him he needed to set things straight and take a lie detector to exonerate himself. Wilson told her he could not do that. She asked him "[d]id you hurt those babies?" He admitted, "[y]es Mom, I did it." (TT 339) Ms. Adkins tried to collect herself and decided she needed to go to the police. (TT 341) Ms. Adkins went to an outpost station closest to her house and told them she believed that her son had hurt the babies on Shiloh Road. She was then asked to follow a deputy to the main sheriff's office in Putnam County. Once there she was interviewed and ultimately agreed to wear a wire and meet with her son to elicit a confession because it was the right thing for "Tayten, Robert and Mark." (TT 342)

Ms. Adkins met with her son while wearing a wire.⁴ Detective Usina and Sergeant Guy were monitoring the conversation from a nearby undercover vehicle. (TT 358) Ms. Adkins and Wilson drove around for a while. Wilson ultimately said that he "thought he was supposed to do it." He claimed that he was getting too many mixed

⁴ The recorded conversation was admitted into evidence and published to the jury. (TT 345)

signals and that he and Cindy agreed he would kill the boys while Cindy would kill Sarah and Landon. He also claimed he did it because he was afraid of being turned into DCF. (TT 344; 359-366) After hearing this, the law enforcement officers made a traffic stop, moved in, and arrested Wilson. *Id.*

Wilson was then taken to the Criminal Investigations Bureau (CIB) where he was advised of his *Miranda*⁵ rights. Wilson indicated that he understood his rights and agreed to an interview.⁶ (TT 373-76) Wilson described what he and Cindy had done the day of the homicide. He described in detail their trip to the grandparents' home, to the convenience store, and to the doctor's office. He was able to describe the streets they took and details both in the convenience store and at the doctor's office. He even described having sexual relations with Cindy early that morning and the medication she was taking for an upset stomach. (TT 432-35; 449; 472-75) When confronted with questions about the murders, Wilson tried to avoid

⁵ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁶ The recorded interview was admitted into evidence and published to the jury. (TT 368)

responsibility and denied knowing who committed the murders. Detectives presented Wilson with the letter found by law enforcement, which was dated August 26th. (TT 485) Wilson stated he wrote the letter because he loved Cindy and that if they ever split up, he wanted her to know that he would never try to take their daughter away from her. (TT 486) Wilson continued to deny any involvement until he was confronted with the recorded wire interview with his mother and assertions that Cindy was confessing. (TT 492-97) Shortly afterwards, Wilson began to talk. (TT 508) Wilson claimed that he believed the two boys were sexually abusing his daughter Kaitlyn. Wilson also suggested that perhaps they were having sexual relations with Cindy.⁷ Wilson also claimed the boys were responsible for Kaitlyn having a busted lip. (TT 511; 513) In the end Wilson asserted that since they were abusing his family, he had to kill them. (TT 514) Then, Wilson, for the first time in this confession, began to claim that he was "f ... ed up on meth." He claimed that he and Cindy

⁷ Law enforcement investigated the allegation about abuse to Kaitlyn. There was no evidence of either sexual or physical abuse to the young child. There was, likewise, no evidence of an incestuous relationship between Cindy and the boys. (TT 587-588)

had been doing meth(amphetamine) for three days straight leading up to the homicides. (TT 521)

After a three-hour break from about 3:00 P.M. to 6:00 P.M., when they let Wilson sleep, the detectives returned to questioning him. (TT 541-43) Wilson then began to talk about the murders. Wilson admitted that both boys were asleep when he began the attack. Wilson admitted he killed Tayten first and then Robert. Wilson claimed, however, that he "blacked out" and did not remember any of the other details. (TT 539; 545-50; 553; 561-63; 566; 568-69) Wilson ultimately identified the hammer and knife he had used and agreed with one of the detectives that he had used the hammer first. (TT 554-55, 559) He further agreed that he hit each of the boys with the hammer multiple times then cut their throats. (TT 572, 578) When detectives asked Wilson why he hit Tayten so many times and then cut his throat, Wilson agreed that "he was pissed because he thought they were fucking with Kaitlyn and that Cindy was covering for them". (TT 569-70) Wilson told detectives that he was wearing black and red basketball shorts, a black hoodie and Nike brand shoes

that day.⁸ Neither the shorts nor shoes were ever found, and Wilson never explained where they were. (TT 563-65) During the interview, Wilson consented to DNA samples being taken from him. (TT 540)

FDLE conducted both fingerprint and DNA analysis. The bloody handprint on the wall was identified as belonging to Tayten Baker. It was consistent with his right palm. (TT 633-35) There were no prints identified on the knife, its sheath, or the hammer. No prints of value were obtained from the paper towels. (TT 629-32) However, DNA analysis was successful.⁹ There was DNA on the hammer consistent with Tayten's DNA profile. (TT 648-49) The knife was tested at two locations. Material presumptively identified as blood was tested near the base of the handle. It was consistent with Tayten Baker. (TT 652-53) On the handle near the blade there was a mixture of samples including that of both Tayten and Robert. (TT 654) The sheath was tested at two locations. The first location near the opening had blood

⁸ Detectives recovered store surveillance from the convenience store Wilson stated he went to with Cindy for coffee and doughnuts. In the video Wilson is seen wearing black and red basketball shorts, a black hoodie sweatshirt, and light-colored Nike tennis shoes. (TT 580-81)

⁹ Buccal swabs were received from Robert Baker, Tayten Baker, Cynthia Guinan, Wilson, Sarah Benson, and Chad Baker. (TT 645-46)

identified with Tayten. Results were inconclusive as to Wilson at this location. At the other location, however, the mixed sample included DNA of both Tayten and Wilson. (TT 655-56) Several placemats were tested. These had been wrapped around the knife when it was found. Placemat 1 had one stain which included DNA matching Tayten and Wilson. Another location on the mat was tested as a "handler" sample that was not part of a blood stain. It resulted in DNA including both Robert and Tayten as well as DNA from Wilson. Placemat 2 contained a mixture of DNA from both Tayten and Wilson. The back of the same mat revealed DNA including that of Wilson, Robert, and Tayten as well as Cindy. (TT 658-66) The paper towels were tested as well. On five out of six towels the blood stains tested as a match for Tayten. (TT 666-70) The black hoodie included Robert and Tayten's blood and Wilson's DNA. (TT 670-76)

The Medical Examiner (ME) Dr. Padraig Bulic conducted an autopsy on August 27.¹⁰ (TT 247) Robert Baker had two distinct sets of fatal wounds. Robert had a large, incised wound to the neck which

¹⁰ In the period between the autopsy and trial, Dr Bulic passed away. Testimony in court was received from Dr. James Fulcher, another medical examiner in the 7th Circuit. (TT 247)

transected both the carotid arteries and jugular veins on both sides of his neck as well as his larynx and the large muscles supporting the head. There were also three smaller incised wounds. The large wound started at the front of the neck and extended all the way to the spine. A mark was found on the 3d cervical vertebrae indicating the knife which had created the incised wound had struck the vertebrae. The "satellite wounds" to the large wound suggested to the ME that the person inflicting the large wound had used a sawing motion back and forth to achieve the depth of the primary wound (all the way to the vertebrae). The wound suggested as many as 5-6 different entries by the knife in the process of cutting. (TT 257-60) There was also an additional wound to the left side of the jaw which suggested the knife had been inserted and twisted in forming that wound. (TT 262-63) Robert also had numerous impact injuries to his skull. These included blunt force trauma to the right side of his head and over his right eye. He also had a more severe wound, a depressed skull fracture, corresponding to the blunt trauma on the right side of his head. The ME opined that the depressed skull fractures would have resulted in loss of consciousness due to bruising to the brain. There were also other skull wounds with bone fragments pushed

inward. The ME opined that these wounds were consistent with an injury inflicted by the round face of a hammer. (TT 263-68) The blunt force injuries to Robert's head were also potentially fatal injuries. They may not have resulted in immediate death but could result in death due to brain swelling. The ME found no injuries below Robert's neck. He did note that there was a major loss of blood, which suggested that Robert's heart was still beating when the neck injuries were committed. The evidence overall supported a proposition that the head injuries were inflicted first, likely resulting in unconsciousness. The neck injuries followed while he was still alive, but likely not conscious. (TT 269-70)

Tayten Baker suffered similar sets of dual injuries. The ME found three large, incised wounds on Tayten as well as eight superficial lacerations. The three large wounds were in a "V" shape on the neck and consisted of as many as 11-12 different slices, likely in a sawing motion as described with Robert. These wounds transected the right-side carotid and jugular. There was also a mark on Tayten's third cervical vertebrae consistent with a knife striking the vertebrae. (TT 275-78) The ME opined that after this wound, and its resulting loss of blood, Tayten would have had at most 20-30

seconds of consciousness. (TT 279) He suffered a total of 20 stabbing wounds. Regardless of the precise time, it was evident from both the autopsy and other evidence that Tayten was alive for some period after the initial cuts. (TT 279-83) Tayten also had suffered multiple blunt force trauma to his head and trauma to his lip. This last trauma appeared to have been caused by his face being forced against another surface, likely the ground, while the back of his head was struck. He was found face-down on the floor. There were three distinct blunt force wounds to the back of Tayten's head. One was near his ear. The other two displayed the same curvilinear shape as Robert and were consistent with being struck by a hammer. At least one of the wounds clearly displayed a clean "punched out" shape of skull consistent, to the naked eye, with the shape of a hammer's head. (TT 283-88) The two wounds to the occipital scalp also resulted in a depressed skull fracture. That fracture, as with Robert, would have resulted in unconsciousness. (TT 290-91) As with Robert, these were likely not immediately fatal but could have resulted in death due to brain swelling. There was a total of at least seven blows to Tayten' s head documented by the ME. Tayten also had an incised wound on one of the fingers of his right hand. The medical examiner

opined that the location on the palmar surface of the hand suggested a defensive posture seeking to keep the blade away from his body. (TT 292)

In addition, the ME examined the photographs of the blood trail in the pool table room. The blood trail started at the end of the pool table and then extended around the table to the point where Tayten's body was found. On the wall near Tayten's final position there was a bloody handprint on the wall near the electrical outlet. Other evidence revealed that the print belonged to Tayten. The ME opined that such a print suggested Tayten was alive when the print was placed there. The evidence overall strongly suggested that the attack on Tayten commenced with knife wounds inflicted at the end of the pool table and completed with the hammer wounds near the other end of the table on the side near the wall where the handprint was found. (TT 294-95)

On October 20, 2020, a Putnam County Grand Jury returned a True Bill and a four count Indictment against Wilson for the First Degree Murder of Robert Baker and Tayten Baker (Counts I and II);

Burglary with an Assault or Battery (Count III)¹¹, and Burglary of a Dwelling while Armed (Count IV) which were alleged to have occurred on or about August 26, 2020.¹² (R 119- 20)

On the same day the indictment was filed, the State filed its Notice of Intent to Seek Death Penalty. (R 123) In its Second Amended Notice of Intent to Seek the Death Penalty, the State announced that it intended to prove four statutory aggravating factors as to each murder victim. (R 145-146) As to each victim, the State alleged a prior conviction for another capital felony; that the murders were committed while engaged in a burglary (the “felony-murder” aggravator); that the murders were especially heinous, atrocious, or cruel (“EHAC”); and that the murders were cold, calculated, and premeditated (“CCP”). (R 145-146) Regarding the first of those aggravating factors, as to each victim the State relied on the contemporaneous death of the other victim. (R 2078, 3410) The State ultimately pursued the EHAC aggravator only as to Tayten. (R 2100)

¹¹ That count was eventually nolle prossed. (R 1740, 2142, 2169)

¹² The jury was eventually instructed solely on the “remaining in” theory. (TT 791; R 1151)

Prior to trial defense counsel filed several pretrial motions pertaining to the death penalty. (R 280-84; 287-99) The court denied the motions. (R 598; 645-46) Defense counsel also filed several pre-trial motions seeking modifications to the standard jury instructions. Defense counsel filed a motion that would advise incoming panels of that “life is life”. (R 191-93) The motion was granted in part only to the extent that the trial judge agreed to read the standard jury instruction before voir dire. (R 1860-64, R 640) Defense counsel also motioned for a mercy instruction. (R 198-99) In denying the motion, the court noted that the case law was clear that an additional instruction on mercy was not required or necessary and that nothing precluded defense counsel from arguing the proposed language to the jurors, which defense counsel did during closing argument. (R 603; 1868; 2293-94; 2300) Defense counsel’s motion to exclude the word “sympathy” from the penalty phase jury instructions was denied as well. (R 244-45; 606) In another motion, defense counsel moved the court to strike the “reasonably” qualifier from both Standard Instructions 7.10 and 7.11., which defines “mitigating circumstances”. (R 266-68) The court denied that motion as well. (R 604) Defense also moved to exclude or limit victim-impact evidence,

advance disclosure of the statements, and a pretrial determination of the admissibility of all "victim impact the State proposed to introduce". (R 222-29) The court granted defense counsel's requested advance disclosure. (R 330-331)

Guilt phase proceedings began on Monday October 10, 2022. During opening statements, the State argued that the evidence was going to prove to beyond a reasonable doubt that Sarah and Chad's boys were dead; that Wilson did it; and that he premeditated it. (TT 35) The defense argued in their opening statement that this was not a case of first-degree premeditated murder. That Wilson did what he thought he had to do to protect his child, protect his family, because Wilson believed that the boys were molesting his daughter. (TT 39)

After the State rested, the defense moved for judgement of acquittal. (TT 679) As to premeditation the defense argued that the repeated statements by Wilson regarding his actions clearly pointed to an impulsive overreaction and not premeditation. Defense suggested a second-degree murder count was appropriate. (TT 694) In denying the motion as to premeditation, the court found that the allegation that Wilson changed weapons in the middle of the homicide was strong circumstantial evidence of an opportunity to

reflect and to form premeditation all by itself, aside from the other circumstances. Secondly, the court found the fact that there were two victims indicated the same opportunity and was a question for the jury. (TT 695) The defense rested without presenting any witnesses. (TT 697) Prior to closing arguments, the jury was instructed that there were two ways in which Wilson could be convicted of first-degree murder. One was known as first-degree premeditated murder, and the other as first-degree felony murder. (TT 757)

During closing arguments, the defense once again argued that the State failed to meet their burden of proving premeditated first-degree murder. That Wilson was doing what he thought would protect his daughter from what he thought was further abuse. (TT 840; 842; 846)

At the end of the jury charge, the parties noticed an error in the instructions that were just read to the jury:

MS. DUNTON: Yes. In 3.12 we only had one of the four paragraphs. There's three -- there's three standards. And then this is actually the give, if we're proceeding on both theories of first-degree murder, premeditated, and felony, which was explaining what --

(TT 868)

The court re-instructed the jury that to return a verdict of guilty as charged, it did not need to reach unanimity as to either theory. (T 869-70). After two hours of deliberations, the jurors sent out the following question:

Verdict form lists 3 choices of 1st degree –
1) Premeditated and felony murder
2) Only premeditated
3) Only felony

But, instructions state if 1st – not necessary for all to agree on premeditation. So – if we are not unanimous as to premeditation which line on the form do we use?

(R 1118; T 878)

THE COURT: The jury asked a very good question. Do you want to pull up your verdict forms?

THE COURT: It doesn't precisely match the form, perhaps. So the instruction was -- I think our form does not match that instruction.

MR. LEWIS: I mean, we just need to add in an additional line to the last one, guilty of first-degree murder.

THE COURT: Actually, it would be to the first one.

MR. SMITH: Yeah.

THE COURT: And actually we would be taking out

MS. DUNTON: Change the language.

THE COURT: -- take out the word "both" because they don't need to find both according to 3.12.

MS. DUNTON: Oh, you're right.

MS. PEOPLES: Isn't the both what 3.1 is addressing where there

MS. DUNTON: No.

THE COURT: Well, yes and no. We're both saying the same -- we're both saying the same thing. You're right. The jury would be finding, it sounds like, that they unanimously agree that one of those two theories applies. So therefore, option one would be the correct block to check.

The language may be confusing them in that they think that they have to both unanimously vote for both theories on option one, which is not what 3.12 told them. Again, the jurors are smarter than all of us.

MS. DUNTON: Yeah. Looks like it.

[.....]

THE COURT: I'm proposing amending the verdict form.

MS. DUNTON: because they have caught an error that we didn't catch, essentially.

(R 877-880) The State agreed with the court, but the defense objected and sought an interrogatory asking the jurors whether they were unanimous as to either theory. (T 880-82) The court agreed with the State that the law did not require such an interrogatory. The court

re-instructed the jury that it did not need to reach unanimity as to either theory, and provided it with the new verdict form:

THE COURT: For your convenience, the necessary verdict form has been prepared and revised for your use. As to Count I, the first option now reads guilty as charged of first-degree murder, contrary to Florida Statutes. Option 2 is guilty as charged of only first-degree premeditated murder, contrary to Florida Statutes. Option 3, guilty as charged of only first-degree felony murder, contrary to Florida Statutes.

(T 883-84; R 1165-66) The jury retired at 6:31 and returned verdicts of guilty as charged on all counts. On the murder counts, the jury checked the box for the general verdict of “guilty of first-degree murder.” *Id.*

Prior to commencement of the penalty phase, the defense filed a motion to preclude an instruction, or argument, on the “cold, calculated, and premeditated” (“CCP”) aggravating factor. In its motion, defense counsel argued that since the jury was unable to agree that premeditation has been proved beyond a reasonable doubt in the guilt phase, it would be unable to agree that the heightened premeditation required for the CCP aggravator had been proved beyond a reasonable doubt. (R 1300-03) In denying the motion, the court agreed with the State that the jurors’ question might not have

reflected their ultimate verdict and that it was unclear which of the two victims it applied to. (R 2082-84)

The penalty phase commenced on October 24, 2022. The State presented five victim-impact statements (R 2254-59, 2260-62, 2264-67, 2268-74, 2276- 89) and relied on prior testimony to establish the aggravating factors. To establish mitigating circumstances, the defense presented several witnesses (to include experts). The testimony submitted by the defense primarily involved opinions regarding Wilson's childhood, family, mental health, substance abuse, and trauma. A large focus of the defense's presentation during the penalty phase was on the childhood trauma that Wilson experienced.

The defense called Dr. Michael Quinones who opined that Wilson did not have positive "modeling" by adults in his life and described several events that would be considered traumatic. (R 2836-37) Dr. Quinones did not inquire of Wilson how his childhood impacted him as an adult or whether it played a role in his decisions to murder two children. (R 2862-63)

The defense also called pediatric neurologist Dr. Stephen Nelson who testified to the effects of childhood trauma on the brain. (R 2740,

2754-56, 2766-70) Dr. Nelson opined that due to sleep deprivation and voluntary drug abuse, Wilson was under the influence of extreme mental or emotional disturbance at the time of the murders. (R 2771-72) He further testified that due to the same factors, Wilson was at that time unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. However, Dr. Nelson never asked Wilson about the homicide. (R 2772-73)

Dr. Susan Skolly-Danziger, a pharmacist and toxicologist, testified that methamphetamine is more potent than cocaine; that its effects include paranoia, and can include delusions and hallucinations; and that its effects last some 10 to 15 hours, whereupon the drug converts to amphetamine, which has its own effects. (R 2348, 2403) The effects Dr. Skolly-Danziger spoke about were the general effects that can happen to someone, not necessarily Wilson as Dr. Skolly-Danziger never asked Wilson about the homicide. (R 2420; 2428) Specifically, Wilson never described hallucinating to Dr. Skolly-Danziger. (R 2430)

The State called forensic psychologist Dr. William Meadows and psychiatrist Dr. Tonia Werner in rebuttal. Dr. Meadows testified that he evaluated Wilson. Dr. Meadows testified that when he met with

Wilson, Wilson perceived no memory problems, no delusional thought or other psychotic symptoms, and no mania. Dr. Meadows testified that he started by asking Wilson about the day and night before the murders and continued into the early morning hours of the 26th and all the way through the following day and his arrest. (R 3149-53) Dr. Meadows testified that Wilson could provide great detail about his actions and things that occurred the night before, the morning of and shortly after the murders of Tayten and Robert. But Wilson lacked any knowledge of the facts and circumstances surrounding the murders. The "selective memory" claimed by Wilson was not consistent with any known memory issues and was not credible:

Dr. Meadows: But that amnesia is not going to be selective for the most negative parts of your case. And it's not certainly going to start when you kill somebody, then stop while you're going shopping and going to a medical center, and then start again when you provide a confession to your mother, then start again when you lie to the police.

(R 3166-67)

Wilson even denied knowing facts and circumstances during his evaluation that he previously admitted to law enforcement. Dr. Meadows explained that when you see that, "it's usually malingering.

It's usually someone who is trying to fake you out because that's not how the human brain works". Dr. Meadows testified that Wilson's presentation with the officer and his recordings were also not consistent with him being high on meth. (R 3168)

Dr. Meadows testified that he did not believe that Wilson was under the influence of extreme mental or emotional distress at the time of the killings.

Dr. Meadows: And I'll give you the basis. There's an audio of him confessing to a plan to do this. That is completely inconsistent with somebody who either had some psychosis, amnesia or emotional distress. What did he do after he killed the two kids, he went and hid the murder weapon. Then he goes out into the community while these dead children are in the home. He's going back to the officer trying to rationalize things because he knows that they're on to him.

(R 3171-73) Dr. Meadows did not find that Wilson was impaired in appreciating the criminality of his actions, or in conforming his conduct to the requirements of law. (R 3183-86) Rather, Dr. Meadows diagnosed Wilson with antisocial traits and testified that he suspected antisocial personality disorder was present. (R 3180) Dr. Meadows testified that when he challenged Wilson with inconsistencies in his story, Wilson stopped talking to him. (R 3174)

At the conclusion of the penalty phase, the jury unanimously found that the State had proven all seven of the Aggravating Factors (three for Robert Baker; four for Tayten Baker) beyond a reasonable doubt. The jury unanimously found these factors were sufficient to enter a sentence of death. The jury found that Wilson proved one or more mitigating circumstances by a preponderance of the evidence. The jury unanimously found, however, that the aggravating factors outweighed the mitigating circumstances.¹³ The jury then made a final unanimous finding that the appropriate sentence should be death. (R 3483, 3486-87, 1413-18)

On December 20, 2022, the trial court convened for purposes of conducting its *Spencer*¹⁴ hearing. (R 2105-32) The State did not present any additional testimony. The court heard additional evidence from the defense, which included an unsworn statement by Wilson as follows: "Your Honor, I am sorry for all that I have done. If I could take it back, I would. Sara, Kaitlyn, Mom and all the families

¹³ The trial court instructed the jury on 44 specific mitigating circumstances. These included two statutory circumstances and 42 non-statutory factors. (R1431)

¹⁴ *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

I am sorry." (R 2118) A presentencing report was prepared and transmitted to the court. (SR 5255-63) The parties submitted Sentencing Memoranda to the court as well. (R 1426-53; 1454-1475)

The trial court issued its written sentencing order on January 27, 2023.¹⁵ (R 1688-1735) As to the homicide of Robert Baker, the court gave each of the three aggravating factors great weight.¹⁶ (R 1697-1702) As to the homicide of Tayten Baker, the court gave each of the four aggravating factors great weight.¹⁷ (R 1702-1705).

The defense argued in its sentencing memorandum that the statutory mitigating factor set out in Section 921.141(7)(b) was present, *i.e.*, "the capital felony was committed while the defendant was under the influence of extreme mental or emotional

¹⁵ In its analysis, the court included both the State and defense arguments from their respective sentencing memoranda.

¹⁶ As to Robert, the State alleged a prior conviction for another capital felony; that the murders were committed while engaged in a burglary (the "felony-murder" aggravator); and that the murders were cold, calculated, and premeditated ("CCP").

¹⁷ As to Tayten, the State alleged a prior conviction for another capital felony; that the murders were committed while engaged in a burglary (the "felony-murder" aggravator); that the murders were especially heinous, atrocious, or cruel ("EHAC"); and that the murders were cold, calculated, and premeditated ("CCP").

disturbance.” (R 1441) The Court found that Wilson’s mental health and childhood conditions, in the abstract, were all proven, but there was insufficient proof to conclude that at the time of the attack Wilson was under the influence of extreme mental or emotional disturbance. (R 1706-08)

The defense also argued for the presence of a second statutory mitigating factor, i.e., that Wilson’s capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. (R 1442) In finding that this statutory mitigator was not proven and affording it no weight, the court agreed that the long-term effect of the adverse childhood experience, long term substance abuse and his other diagnoses could cause situations such as hyper arousal, impaired decision making and an overreaction to stimuli; however, there was no proof of a correlation from those conditions to an actual impairment on the night of August 25-26. (R 1709-10) Wilson also asserted in his Sentencing Memorandum that he acted under extreme duress or under substantial domination of another person.” (Fla. Stat. § 921.141 (7)(e). The court found this statutory mitigator was not proven and afforded it no weight. (R 1710-11) The court then

addressed the non-statutory mitigating factors argued by the defense. (R 1711-33).

The court determined that the aggravating factors heavily outweighed the mitigating circumstances presented, and the court sentenced Wilson to death. The court also sentenced Wilson to life in prison on Count IV. (R 1735; 1743-45).

This appeal follows.

SUMMARY OF ARGUMENTS

Point one. The “cold, calculated, and premeditated” aggravating factor should have gone to the jury, as Wilson was convicted of first-degree murder. Additionally, there was competent, substantial evidence to support the “cold, calculated, and premeditated” aggravating factor.

Point two: The trial court considered all evidence presented by Wilson to establish the mitigating circumstance that Wilson was intoxicated by methamphetamine at the time of the offenses; however, based on the evidence disputing that circumstance, the trial court afforded the mitigating factor no weight. Whenever a reasonable quantum of competent, uncontroverted evidence of mitigation has been presented, the trial court must find that the mitigating circumstance has been proved. *Spencer v. State*, 645 So. 2d 377, 385 (Fla.1994) (citing *Nibert v. State*, 574 So. 2d 1059, 1062 (Fla. 1990)). However, a trial court may reject the proffered mitigation if the record provides competent, substantial evidence to the contrary. *Spencer; Nibert; Kight v. State*, 512 So. 2d 922, 933 (Fla. 1987).

Point three: The victim impact statements were properly admitted as they were within the parameters of *Payne*¹⁸ and did not fall within one of the proscribed categories of victim impact evidence delineated in section 921.141(8).

Point four: The trial court did not err when it denied Wilson's request for a special jury instruction that "life means life". Wilson failed to show that his proposed special instruction was supported by the evidence; not adequately covered by the other instructions; and a correct statement of the law and not misleading or confusing.

Point five: The trial court did not err when it denied Wilson's request for a special jury instruction to amend the definition of "mitigating circumstance". Wilson failed to show that his proposed special instruction was supported by the evidence; not adequately covered by the other instructions; and a correct statement of the law and not misleading or confusing.

Point six: The trial court did not abuse its discretion in declining to give a special jury instruction on mercy drafted by the defense. Standard jury instructions are preferred, and Wilson even

¹⁸ *Payne v. Tennessee*, 501 U.S. 808 (1991).

concedes that this claim is precluded by this Court's opinion in *Woodbury v. State*¹⁹, which pointed out the standard jury instructions already contain a mercy instruction, even if that exact word is not used.

Point seven: The standard penalty phase jury instructions, which included an instruction that the jury may consider "the existence of any other factors in [the defendant's] character, background, or life or the circumstances of the offense that would mitigate against the imposition of the death penalty," sufficiently obviated the need for a specific instruction regarding sympathy.

Point eight: This Court has consistently rejected similar requests for its reconsideration of *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020). And this Court should again do so here.

Point nine: Wilson's constitutional challenges to Florida's capital sentencing process have been repeatedly rejected. Florida's capital punishment scheme is constitutional and properly narrows the class of death-eligible defendants.

¹⁹ *Woodbury v. State*, 320 So. 3d 631 (Fla. 2021)

Point ten: The Constitution does not prohibit the states from ‘death qualifying’ juries in capital cases.

Point eleven: Wilson's constitutional challenges to Florida's capital sentencing process have been repeatedly rejected. Florida’s capital punishment scheme is constitutional.

ARGUMENT

POINT ONE

WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW BY ALLOWING THE JURY TO CONSIDER THE “COLD, CALCULATED, AND PREMEDITATED” AGGRAVATING FACTOR.

Wilson first argues that the trial court erroneously instructed the jury on the CCP aggravating factor because “of the jury’s revelation that it did not, in fact, unanimously find that the defendant premeditated the killings”. (IB at 35) When evaluating claims alleging error in the application of aggravating factors, this Court does not reweigh the evidence to determine whether the State proved each factor beyond reasonable doubt. *See Alston v. State*, 723 So. 2d 148, 160 (Fla.1998). Rather, this Court must “determine whether the trial court applied the right rule of law for each aggravating circumstance and, if so, whether competent substantial evidence supports its finding.” *Id.* (quoting *Willacy v. State*, 696 So. 2d 693, 695 (Fla.1997)). The “cold, calculated, and premeditated” aggravating factor should have gone to the jury, as Wilson was convicted of first-degree murder. Additionally, there was competent, substantial evidence to support the “cold, calculated, and premeditated” aggravating factor.

What is evident from the record is that the jury asked a question during deliberations that suggested that some of the jurors were considering finding premeditation as the basis for First-Degree murder, while others found felony murder as the basis. (R 1118) The court proposed a new form substituting the confusing language; and the jury came back with the general verdict of “guilty of first-degree murder”.

Where a jury returns a general verdict of guilty of first-degree murder, without indicating which theory or theories it relied on, the State is free to pursue the CCP aggravating factor. *Duest v. State*, 855 So. 2d 33, 45 (Fla. 2003). And as the judge noted, “the State will have to maintain the higher level of premeditation in order to prove CCP, or at least make the argument to that regard, and if the jury is not unanimous, then they won’t find on the aggravator.” (R 2083-84)

In the sentencing order the trial judge incorporated the events surrounding the jury question in finding CCP:

(3) The first-degree murder was committed in a cold, calculated, and premeditated (CCP) manner, without any pretense of moral or legal justification.

The Defendant's argument on this factor centers on a question from the jury at the close of the case on the merits. Specifically, the Defendant attacks the heightened premeditation necessary to find this factor and cites to the

jury's question. The jury asked a question during deliberations that suggested that some of the jurors were considering finding premeditation as the basis for First-Degree murder, while others found felony murder as the basis. (See DIN 258) In the merits phase, a jury may find an individual guilty of first-degree murder under a theory of either felony murder or premeditated murder. No special verdict is required. The merits jury here ultimately entered a general verdict which does not specify whether they found felony murder or premeditated murder. (See DIN 260). Indeed, under existing Florida law, the jury may return a finding of guilty of first-degree murder even if they disagree as to whether premeditation or felony murder is proven. See *Mansfield v. State*, 911 So. 2d 1160 (Fla. 2005) and Standard Jury Instruction 3.12.

e) The Court finds that in the penalty phase, the jury reflected on the evidence and concluded that the Defendant did indeed, premeditate and plan this murder. The Defendant's argument that they could not have found sufficient additional premeditation to sustain CCP is not founded. The Court specifically notes that other than his own claims, there is no objective evidence demonstrating that the Defendant was impaired at or near the time of the offense. No one who observed him reported or suggested that he was acting as if were under the influence of substances.

The overall sequence of events argued by the State has been convincingly proven. The Defendant's argument is that he had concluded the Baker boys presented a threat to him and his family. The Court finds that he planned these homicides with precision, even, apparently taking the time to sharpen the filet knife in front of the boy's mother the night before. He took the time, in the middle of the murders, to change weapons to make sure the victims were dead. Finally, the Court concludes there wasn't the slightest pretense of moral justification. Robert was asleep and defenseless. Tayten was awake, but brutally butchered as he sought to escape and perhaps call for help. Neither of these boys did anything to the

Defendant to justify this crime. The Court finds this factor proven beyond and to the exclusion of a reasonable doubt and affords it GREAT WEIGHT.

(TT 1701-02)

The trial court properly submitted the CCP aggravating circumstance to the jury based on the verdict of first- degree murder, the court applied the correct rule of law for the CCP aggravating circumstance, and there was competent substantial evidence in the record to support the finding.

Even if this Court were to find that the CCP aggravator should not have been submitted to the jury, any error is harmless. *Williams v. State*, 967 So. 2d 735, 765 (Fla. 2007). As to the homicide of Robert Baker, the court gave each of the two remaining aggravating factors, prior conviction for another capital felony; and the “felony-murder” aggravator, great weight. (R 1697-1702) As to the homicide of Tayten Baker, the court gave each of the three remaining aggravating factors, prior conviction for another capital felony; the “felony-murder” aggravator; and that the murders were especially heinous, atrocious, or cruel (“EHAC”), great weight. (R 1702-1705). The court further noted that Tayten's death was especially cruel and undoubtedly painful and on Count II of the indictment regarding the death of

Tayten, the trial court found that the finding on heinous atrocious and cruel by itself was sufficient to find for death. *Middleton v. State*, 220 So. 3d 1152, 1172 (Fla. 2017), citing *Smith v. State*, 28 So. 3d 838, 868 (Fla. 2009) (holding that the trial court's erroneous finding of the CCP aggravator was harmless because the sentencing order provided that “any one of the aggravators found (except the felony probation aggravator) was sufficient to outweigh the mitigating circumstances).

This claim should be denied.

POINT TWO

THE TRIAL COURT PROPERLY CONSIDERED AND REJECTED MITIGATING EVIDENCE THAT WILSON WAS INTOXICATED BY METHAMPHETAMINE AT THE TIME OF THE MURDERS.

Wilson argues the court declined to consider relevant mitigating evidence that at the time of the murders he was intoxicated by methamphetamine. The standards of review governing mitigating circumstances are well-settled: 1) Whether a particular circumstance is truly mitigating in nature is a question of law and subject to de novo review by this Court; 2) whether a mitigating circumstance has been established by the evidence in a given case is a question of fact

and subject to the competent substantial evidence standard; and finally, 3) the weight assigned to a mitigating circumstance is within the trial court's discretion and subject to the abuse of discretion standard. *Ford v. State*, 802 So. 2d 1121, 1135 (Fla. 2001). The court considered all mitigating circumstances provided by Wilson and determined that the evidence proved that Wilson formed a detailed plan, took steps to prepare for the homicide, and took steps to cover it up when complete. (R 1723)

In its sentencing memorandum, the defense argued that Wilson was on a drug binge for days, and that his actions in the homicide were in response to the allegation that the decedents had sexually assaulted his daughter, and this allegation came from a trusted source his girlfriend, Cynthia Guinan. Wilson's paranoia, lack of sleep and sexual assault allegation created a deep fear for the safety of his daughter, and so great was this fear that he acted under the extreme mental and emotional disturbance to take the life of the two decedents to "stop sex with his daughter". (R 1441) Wilson also argued that his actions were under the domination of Cindy. (R 1442) Lastly, Wilson argued that he experienced drug psychosis proximate to the offence. (R1442)

With that background, Wilson alleges the court failed to consider his “bizarre statements” of sexual abuse made during his confession on the afternoon and evening of the day following the murders *as proof* that Wilson had “been affected by a whopping amount of a powerful mind-altering substance” at the time of the murders. (IB at 42; 45). It appears as a chicken or the egg which came first argument. In this case did the drug induced paranoia come first and then cause the “belief there was sexual abuse” or did the information that there was sexual abuse already exist which then prompted Wilson to kill while under a drug psychosis. Nowhere in the defense sentencing memorandum does Wilson present those statements as mitigating evidence to prove intoxication. Clearly, Wilson’s entire defense has been predicated on those allegations of sexual abuse.

In terms of whether Wilson was a user of methamphetamine, the trial court found that the mitigating circumstance that Wilson abused methamphetamine as an adult was proven. The court also accepted testimony as to the serious deleterious effects, in general, of methamphetamine. This circumstance was afforded slight weight. (R 1725-26; 1708;1710). However, the court found that this drug

induced psychosis that Wilson presented as a defense to his actions was not supported by the evidence. *Douglas v. State*, 878 So. 2d 1246, 1260 (Fla. 2004) (finding the trial court did not err in rejecting proposed mitigator because no evidence was presented that defendant was impaired by alcohol at the time of the crime). In reaching that conclusion, the court considered all mitigation provided by Wilson and specifically addressed Wilson's reasoning for what he did. In fact, the court noted, "Wilson's argument is that he had concluded the Baker boys presented a threat to him and his family. Wilson planned these homicides with precision, even, apparently taking the time to sharpen the filet knife in front of the boy's mother the night before. He took the time, in the middle of the murders, to change weapons to make sure the victims were dead". (TT 1701-02)

And while Wilson alleges that defense expert Dr. Skolly-Danziger testified, without contradiction, that paranoia and delusions can accompany intoxication by the drug in question, the effects Dr. Skolly-Danziger spoke about were the general effects that can happen to someone, not necessarily Wilson. (R 2428) Dr. Skolly-Danziger never asked Wilson about the homicide and Wilson never

described hallucinating to Dr. Skolly-Danziger. (R 2420; 2430) Indeed, even when expert opinion evidence is presented, it may be rejected if that evidence cannot be reconciled with the other evidence in the case. *Bright v. State*, 299 So. 3d 985, 1006 (Fla. 2020).

Dr. Meadows, who did talk to Wilson about the crime, testified that he did not believe that Wilson was under a meth induced psychosis.

Dr. Meadows: And I'll give you the basis. There's an audio of him confessing to a plan to do this. That is completely inconsistent with somebody who either had some psychosis, amnesia or emotional distress. What did he do after he killed the two kids, he went and hid the murder weapon. Then he goes out into the community while these dead children are in the home. He's going back to the officer trying to rationalize things because he knows that they're on to him.

(R 3171-73) Dr. Meadows further testified that Wilson's presentation with the officer and his recordings were not consistent with him being high on meth. (R 3168)

The court specifically noted, and the evidence showed, that other than his own claims, there was no objective evidence demonstrating that Wilson was impaired at or near the time of the offense. No one who observed him reported or suggested that he was acting as if were under the influence of substances. A mitigator may

... be rejected if the testimony supporting it is not substantiated by the actions of the defendant, or if the testimony supporting it conflicts with other evidence.” *Coday v. State*, 946 So. 2d 988, 1003 (Fla. 2006). As stated in its sentencing order, the court found that the overall sequence of events argued by the State had been convincingly proven.

The United States Supreme Court has held that a sentencing jury or judge may not preclude from consideration any evidence regarding a mitigating circumstance that is proffered by a defendant in order to receive a sentence of less than death. *See Hitchcock v. Dugger*, 481 U.S. 393, 394 (1987); *Lockett v. Ohio*, 438 U.S. 586, 604, (1978). Nevertheless, these cases do not preclude the sentencer from according the mitigating factor no weight. While a proffered mitigating factor may be technically relevant and must be considered by the sentencer because it is generally recognized as a mitigating circumstance, the sentencer may determine in the particular case at hand that it is entitled to no weight for additional reasons or circumstances unique to that case. *Trease v. State*, 768 So. 2d 1050, 1055 (Fla. 2000).

In finding that the statutory mitigator “the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.” was not proven and affording it no weight, the court stated:

e) The Defendant argues that he was under the influence of methamphetamine. There is scant proof of this. All contemporaneous observations indicate he was not under the influence. The Defendant argues his memory of the events was impaired by the methamphetamine use. There is also scant proof of this. Instead, there is proof of a claim selective memory. He remembers every detail of the morning, to include sexual relations with Cindy Guinan, the details of the drive to the convenience store and to the doctor, and the stay at the doctor's office. Yet he cannot recall the moments of the attack, or the actions he took immediately afterwards to clean himself and the weapons and hide the weapons. The Court listened to the audio recording of the three short interviews on the day of the attack. There is no indication of the influence of drugs or altered thinking. Indeed, he wanted to make sure he "had his story straight" when he spoke to the detective.

f) The allegations about the threats to Kaitlyn and the sexual relationship between the boys and Cindy are simply unbelievable. The Court finds them without any foundation in fact. To the extent the Defendant may have even considered them as true, the Court cannot afford those absurdities any evidentiary value.

(R 1706-08)

In finding that the statutory mitigator that Wilson's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired was not proven and affording it no weight, the court stated:

d) As noted above, the Defendant suffers from a myriad of disorders including severe substance use disorder, potentially PTSD, and the long-term effects of childhood abuse.

This Court has received independent training on adverse childhood experiences at judicial college. That there is a potential for long term physical and psychological effects from that abuse is beyond question and has been proven. The missing piece, that the Court has searched for based on the Defendant's extensive presentation of evidence, is proof of any connection from the significant history to his actions on the night of August 25-26. The events of that night are truly incomprehensible under any rational analysis. The Defendant's experts all posited that the long-term effect of the adverse childhood experience, long term substance abuse and his other diagnoses could cause situations such as hyper arousal, impaired decision making and an overreaction to stimuli.

e) The Court finds however, that there is no proof of a correlation from those conditions to an actual impairment on the night of August 25-26. There are several data points. First, there is little contemporaneous proof, other than the Defendant's self-serving claims, that he was actually under the influence of methamphetamine as he claimed. In the Defendant's *Spencer* hearing materials, there is evidence that Cindy Guinan tested positive for amphetamines approximately 48 hours after the murders. This is consistent with his claim that he and Cindy were using methamphetamine contemporaneously with the murder. However, there is no other corroboration. Indeed, the Court finds the greater quantum of evidence

suggests that even if he had used methamphetamine, it was not having the deleterious effect his arguments suggest. Nor is there evidence of any of the other psychiatric diagnoses coming to the fore. He claims memory deficit, yet is able to describe, in what the Court found to be exquisite detail, everything around the murders. The Court finds the State's experts convincing when they assert that there is no scientific evidence supporting the kind of selective amnesia the Defendant claims.

(R 1709-10)

The trial court did not err in finding that Wilson's proposed mitigation was not mitigating in nature. While Wilson argues that drug-induced psychosis overtook him is in fact a plausible explanation of events, the record provided competent, substantial evidence to the contrary. *Spencer v. State*, 645 So. 2d 377, 385 (Fla. 1994).

No relief is warranted.

POINT THREE

THE TRIAL COURT PROPERLY ADMITTED VICTIM IMPACT EVIDENCE THAT SHOWED THE RESULTANT LOSS TO THE FAMILY BY THE VICTIMS' DEATH.

Wilson's third point involves a challenge to the victim impact evidence. The admission of victim impact testimony is governed by section 921.141, of Florida Statutes, which permits the prosecution

to introduce victim impact evidence to the jury that is designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. § 921.141 (8), Fla. Stat. A trial court's decision to admit victim impact evidence is reviewed for an abuse of discretion. *Baker v. State*, 71 So. 3d 802, 817 (Fla. 2011). This Court "regularly upholds the admission of victim impact evidence that falls within the statutory definition." *Sievers v. State*, 355 So. 3d 871, 886 (Fla. 2022). The victim impact evidence presented in this case was not unnecessarily emotional or inflammatory. The objected to statement made no mention of Wilson or the crime. It did not ask for a specific sentence or punishment. It made no mention of revenge or retribution. *Jackson v. State*, 127 So. 3d 447, 473 (Fla. 2013). Rather, the evidence presented in this case was limited to the type of evidence specified in section 921.141(8), Florida Statutes.²⁰

²⁰ Section 921.141(8), Florida Statutes (2022), provides that in a capital case, once the prosecution has provided evidence of one or more aggravating factors, the prosecution may present victim impact evidence and that: Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and

Before the penalty phase began, the court and counsel convened to consider defense objections to three of five written victim-impact statements the State had provided. (R 2201-12) After hearing argument, the court sustained some of counsel's objections to Sarah Baker's statement and Kelli Cocco's statement which referenced the crime scene. (R 2204-07) However, the court overruled an objection to Deborah Benson's statement. The statement at issue was on page four of Benson's statement which referenced a bad car crash her stepdaughter was involved in and the death of her other stepdaughter. (R 2208-11) Defense counsel's position was that the "unrelated tragedies" failed to meet the purpose of victim impact evidence as it "doesn't deal with the two victims in the case." (R 2209) The State argued that the statement "explains one of the reasons why the Bakers came here. I mean, it's not speaking anything to Mr. Wilson." (R 2208-09) The court denied the defense's request, explaining that "you can't understand the context of the impact on this family without understanding that history". (R 2211)

the appropriate sentence shall not be permitted as a part of victim impact evidence.

This Court construes “loss to the community’s members” as including the emotional impact of a murder on family members. *E.g.*, *Bonifay v. State*, 680 So. 2d 413, 419-20 (Fla. 1996). The bad car crash Ms. Benson’s stepdaughter was involved in, and the death of her other stepdaughter directly related to the victims in this case. *Loyd v. State*, 379 So. 3d 1080, 1093 (Fla. 2023). Those tragedies are what set in motion what would ultimately lead to the deaths of Robert and Tayten, and Ms. Benson will forever live with the guilt that she is responsible for the death of those children:

"Two weeks is all we got with them. I live hard with the guilt of pushing them to move up here, with the what-ifs. What if they had stayed down there? Would this have happened there? Why? Why did this happen to them? Our family has truly been shattered over the senseless loss. None of us are okay anymore, and I can't imagine that there is ever a way to truly heal after such a horrific tragedy."

(R 2284) Wilson has not established, and cannot establish, an abuse of discretion in the trial court's admission of the victim impact evidence.

Nevertheless, even if this Court were to find error, it must be deemed harmless. *Loyd v. State*, 379 So. 3d 1080, 1093 (Fla. 2023). The court read the jury instruction on victim impact evidence which advised the jury that it could not consider victim impact evidence as

an aggravating factor. (R 2243; 3382) Defense counsel specifically asked the jurors if they could follow the law and not consider victim impact in making their decision for a life penalty or a death penalty. (R 4042-45) The jurors were provided physical copies of the instructions as well. Most importantly, the two “tragedies” were not the focus of Deborah Benson’s victim impact testimony. Nor was the reference to the “tragedies” exploited by the State. *Loyd* at 1093.

Ms. Benson began her statement with how her and Sarah’s “story started”. How back in 2005, when she became pregnant with her first son, Sarah announced a month later that she was pregnant with Tayten. As she told the jury, “I wasn't too thrilled at first about being pregnant with my teenage stepdaughter, but that's the way our story started. Three weeks after I became a mother, Tayten was born, and he made me a grandmother. Sarah had Robert the following year, and then I had my second son, and then together we had four crazy, wild boys whom I loved fiercely”. Deborah’s statement continued to talk about how two years later she was still in denial that they were gone. (R 2276) She spoke of trips the family took and the holidays that were spent together. (R 2277) She went on at length describing both Tayten and Robert, who they were and who they might have

become. (R 2278-2283) Deborah then spoke about her stepdaughter's car crash and the death of her other stepdaughter, which came to be a pivotal moment in everyone's life, including Tayten and Robert.

"We vowed to spend as much time as we could with each other from now on for Andrea, and that was when we began to try to convince Sarah and Chad to move up here with the boys. It took a whole year to get her to say yes. She was torn between not wanting to be with her family up here -- I'm sorry. She was torn between wanting to be with her family up here, but not wanting to take her boys out of the only school they've ever been to. She really wanted them to grow up in the same town with the same friends for their whole childhood. However, we convinced her that it would be so much better for the boys if they were here with their cousins and uncles and all of us, and that family really is everything. After a whole year of bugging and bugging, they finally agreed to sell their house and move up here.

(R 2284) Ms. Benson's statement then goes on for pages, talking about all the plans that the family made, the last day spent together at the pool, and the extreme loss everyone in the family has felt since their deaths. (R 2284-89) The crash and death were a passing reference to the reason for the move amidst pages of memories of the boys; of who they were and who they could have been and the extreme loss the family now deals with every day.

Accordingly, this claim must be denied.

POINT FOUR

THE TRIAL COURT PROPERLY DENIED WILSON'S REQUEST FOR A SPECIAL INSTRUCTION THAT "LIFE MEANS LIFE".

In point four, Wilson argues that the trial court abused its discretion in denying a special instruction which would have advised that in Florida, "life without the possibility of parole" in fact means that no release is possible except in extraordinary circumstances. (IB at 3). *Hudson v. State*, 992 So. 2d 96, 112 (Fla. 2008). The "failure to give special jury instructions does not constitute error where the instructions given adequately address the applicable legal standards." *Coday v. State*, 946 So. 2d 988, 994 (Fla. 2006) (*quoting Stephens v. State*, 787 So. 2d 747, 755 (Fla. 2001)).

On May 5, 2022, defense counsel filed a Motion for Preliminary Jury Instruction ("Life" Means "Life"). (R191) In that motion, defense counsel moved the court to instruct incoming panels of the venire that "*in the State of Florida a life sentence is in fact a life sentence. Despite anything you may have heard or read elsewhere, there is no legal mechanism for anyone convicted of first-degree murder in Florida to receive parole, or to be released from imprisonment absent a personal pardon or order of clemency from the Governor.*" According to

defense counsel, the motion was based on a 2016 study which showed that 40.2% of Floridians believe that a sentence of “life without the possibility of parole” in fact allows release. (R 192)

At the hearing on the motion, defense counsel argued that the language would serve as reminder that “life means life”, as “there are many that still thinking that a life sentence means that they're going to be paroled in a few years, or even 20”. (R 1859) The State argued that the standard jury instructions already repeatedly advised the jury that the only two penalties to choose from are death or life without the possibility of parole, and specifically objected as to relevancy of the last sentence.

MS. DUNTON: I don't agree with this instruction as written, though, because the last sentence, specifically -- I mean, there are other mechanisms for someone to get out, and none of that is relevant. And, I mean, there's appeals and different appellate options, and none of that is relevant into their consideration.

What's important is that they know, because it's a death case, that there's two punishments, that life is life without the possibility of parole. They're told that over and over again, so I don't see the need for anything additional.

(R 1859-60) In response, defense counsel conceded to removing the last sentence. *Id.*

The motion was granted in part only to the extent that the trial judge agreed to read the standard jury instruction before voir dire. The motion was denied as to the language requested, noting that in preliminary instruction 7.10 the jury is already informed that a life sentence is life imprisonment without the possibility of parole and that the instruction is repeated sufficient times within the standard instructions that the jury should be adequately instructed. (R 1860-64, R 640)

To meet his burden of showing error on appeal, Wilson must show that his proposed special instruction was supported by the evidence, not adequately covered by the other instructions, and a correct statement of the law and not misleading or confusing. *Stephens v. State*, 787 So. 2d 747, 756 (Fla. 2001). Wilson has failed to show that the requested special instruction satisfies any of the three elements of the test enunciated in *Stephens*.²¹

²¹ Wilson's allegations that the State did not argue that the first or second *Stephens* factors were not met does not translate to a concession by the State to those factors. As all three factors must be met, the State argued the most obvious factor, which was that the standard jury instructions already covered the subject matter of the requested instruction.

As to the first factor identified in *Stephens*, Wilson fails to show that he introduced any evidence entitling him to a jury instruction. The only evidence relied on by Wilson to support the instruction is an unsubstantiated study about Florida residents in general, taken almost ten years ago. That “evidence” has no bearing on Wilson’s case or to the actual jurors who served in his trial. While Wilson notes that the State did not dispute the accuracy of the “salient statistic” relied on by the defense, the State did argue the lack of relevancy to the instruction which was based on that study. (R1860)

The second *Stephens* factor is not met in this case either. The standard jury instructions not only adequately and repeatedly defined that life means “life without the possibility of parole”, but the trial court took the additional step of agreeing to read the standard instruction before voir dire as well. *Simmons v. South Carolina*, 512 U.S. 154 (1994) (trial court refused to instruct the jury that life means “life without parole” but instructed the jurors that the terms “life imprisonment” and “death sentence” were to be understood to have their plain and ordinary meaning). The record clearly shows that this jury knew “life is life” as the arguments made by counsel exemplified the definition given by the court. *Cliff Berry, Inc. v. State*, 116 So. 3d

394, 412 (Fla. 3rd DCA 2012). Defense counsel made clear during voir dire that regardless of parole eligibility, a life sentence does not contemplate release:

MS. PEOPLES: So if an individual is given a life sentence in Florida, okay, on a capital case, a *life sentence is a life sentence. So they're never released, never paroled.* And this is since 1994 on a death case that they spend the rest of their natural days in custody. All right? Meaning that once they *die in custody* and the medical examiner confirms the cause of death, only then can the family collect the body of that person. Okay? Life means life in Florida. Never released, never paroled. Everyone still with me? All right.

(R 4047)

MR. SMITH: No. As I said in the beginning, there are two - - when someone is convicted of first-degree murder, there are two choices. There's either the death penalty or life in prison without the possibility of parole. As Ms. Dunton said earlier, that means that *person dies in prison*. They will never walk out of prison. All right?

(R4424)

MR. SMITH: There's the death penalty and there's life in prison without the possibility of parole, which means that person will die in prison. They will never step foot out of prison again, all right?

(R 4782)

Defense counsel reminded the jury again in penalty-phase opening and closing:

MS. PEOPLES: We're going to ask you to spare his life. We're going to ask that you spare his life and punish all of his days with a life penalty. A life penalty is not three meals and a bed. A life penalty is prison, because, in Florida, a life sentence is life. He'll never be released. Never paroled. Punished and placed far away until his last breath. And then, when his body is cold and a medical examiner has confirmed his death, then, and only then, released.

(R 2302)

MS. PEOPLES: So, the state of Florida, since '94, a life sentence is life. They're never released. They're never paroled. They're in prison until their natural death and a life sentence is a life sentence. It's punishment that we're asking you to do. We're not asking you to give him a break. But a life sentence in prison means that he will take his last breath in prison.

(R 3477)

As to the third *Stephens* factor, Wilson's special instruction was not only inaccurate but highly likely to mislead and confuse the jury. The proposed instruction specified that that there was "no other mechanism for anyone convicted of first-degree murder in Florida to receive parole, or to be released from imprisonment absent a personal pardon or order of clemency from the Governor". Not only was that an inaccurate statement as an appeal is another viable option, but that portion of the instruction would be misleading because a jury could be confused by the references to parole eligibility, pardons, and

clemency- methods for someone to get out of prison-that are not at issue here. *United States v. Mayweather*, 991 F.3d 1163, 1184 (11th Cir. 2021).

For all these reasons, this claim must be denied.

POINT FIVE

THE TRIAL COURT PROPERLY DENIED WILSON'S REQUEST FOR A SPECIAL INSTRUCTION TO AMEND THE DEFINITION OF MITIGATING CIRCUMSTANCES.

Wilson argues that the trial court should have granted the request for a special instruction to amend the definition of mitigating circumstances. Standard jury instructions are presumed correct, are preferred over special instructions, and the decision to give the standard instruction and deny the special instruction is reviewed on an abuse of discretion standard. *Stephens v. State*, 787 So. 2d 747, 755-6 (Fla. 2001).

Florida's preliminary and final standard jury instructions for use in the penalty phase reads as follows:

[a] mitigating circumstance may include any aspect of the defendant's character, background, or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

Fla. Std. Jury Instr. (Crim.) 7.10, 7.11.

Trial counsel requested a special jury instruction requesting the court to strike the "reasonably" qualifier from both Standard Instructions 7.10 and 7.11. The motion was denied after hearing arguments from both parties. (R 604; 1868-70) No reasonable justification for reconsideration of this issue has been offered.

The jury was properly instructed with the current instructions approved by this Court. The jury instructions were not confusing, contradictory, or misleading. The "reasonable" qualifier does not suggest an emotional response other than that of reason. Furthermore, mitigation is a subjective and individual decision. As the State argued, "If one juror doesn't feel like the fact that, for example, a defendant's father, let's say, had a criminal history or their mother was an alcoholic, maybe they don't reasonably feel like that is mitigating". (R 1870)

Wilson's claim for relief on this issue should also be denied.

POINT SIX

THE TRIAL COURT PROPERLY DENIED WILSON'S REQUEST FOR A SPECIAL INSTRUCTION ON MERCY.

First, Wilson misrepresents the standard of review on this issue. Trial counsel was requesting a nonstandard, special jury instruction

on the issue of mercy. Specifically, defense counsel filed Motion for Special Penalty Phase Jury Instruction Re: Mercy. Standard jury instructions are presumed correct, are preferred over special instructions, and the decision to give the standard instruction and deny the special instruction is reviewed on an abuse of discretion standard, not *de novo*. *Stephens v. State*, 787 So. 2d 747, 755-6 (Fla. 2001).

Florida's standard jury instructions used at the end of the penalty phase instructs the jurors that, "Regardless of the results of each juror's individual weighing process—even if you find that sufficient aggravators outweigh the mitigators—the law neither compels nor requires you to determine that the defendant should be sentenced to death." See Fla. Std. Jury Instr. (Crim.) 7.11. In the motion, defense counsel argued for the addition of the following language, "*You may always consider mercy in making your determination whether the defendant should be sentenced to death or to life in prison without the possibility of parole.*" (R 198-99) In denying the motion, the court noted that the case law was clear that an additional instruction on mercy was not required or necessary and that nothing precluded defense counsel from arguing the proposed

language to the jurors, which defense counsel did during closing argument.²² (R 603; 1868; 2293-94; 2300).

Wilson acknowledges that the relief sought on this point is precluded by *Woodbury*, and he is simply trying to exhaust a claim in state court for later litigation in federal court. Nevertheless, Wilson offers no compelling argument for this court to reverse its ruling other than a remark made by the Mississippi Supreme Court which Wilson misconstrues. The Mississippi Supreme Court took issue with the defendant's description of D-39 as a "mercy instruction", not the instruction itself. The court ultimately held that the judge did not err in refusing the proposed instruction as the jury was given the option to sentence the defendant to life without parole or to impose the death penalty if it found that the aggravating circumstances outweighed the mitigating circumstances. *Flowers v. State*, 158 So. 3rd 1009, 1066 (Miss. 2014), *cert. granted, judgment vacated on other grounds*.

As here, the standard penalty phase jury instructions sufficiently obviated the need for a specific instruction regarding

²² This Court has specifically acknowledged this as the "mercy instruction". See *Woodbury v. State*, 320 So. 3rd 631, 655 (Fla. 2020).

mercy, and the trial court's ruling is consistent with this Court's precedent rejecting claims of entitlement to an instruction on mercy. *See Downs v. Moore*, 801 So. 2d 906, 913 (Fla. 2001) (rejecting Downs' claim that he was entitled to a mercy instruction and stating that "[t]his Court has held that the 'catch-all' standard jury instruction on nonstatutory mitigation when coupled with counsel's right to argue mitigation is sufficient to advise the jury on nonstatutory mitigating circumstances"); *Moore v. State*, 820 So. 2d 199, 210 (Fla. 2002) ("We have also held appellate counsel is not ineffective for failing to argue that the trial court erred in refusing to give a penalty phase jury instruction that the jury could properly consider mercy during its deliberations when the court gives the standard penalty phase jury instructions and advises the jury that it can consider any other aspect of the defendant's character and any other circumstances of the offense.").

The trial court did not abuse its discretion in giving the standard jury instructions, and this Court has already found that a special mercy instruction is not required but is in fact already a part of the standard instructions regardless. This claim should be denied.

POINT SEVEN

THE TRIAL COURT PROPERLY DENIED WILSON'S REQUEST FOR A SPECIAL INSTRUCTION ON THE ROLE OF SYMPATHY.

First, Wilson misrepresents the standard of review on this issue. Trial counsel was requesting a nonstandard, special jury instruction on the issue of sympathy. Standard jury instructions are presumed correct, are preferred over special instructions, and the decision to give the standard instruction and deny the special instruction is reviewed on an abuse of discretion standard, not *de novo*. *Stephens v. State*, 787 So. 2d 747, 755-6 (Fla. 2001).

Defense counsel moved to exclude the word “sympathy” from the penalty phase jury instructions. (R 244-45) The motion was heard on June 26, 2023:

THE COURT: No. 15 is the issue of using the word "sympathy," which is DIN No. 103. That flies right in the face of one of the standard instructions. The jurors are told not to...

MS. DUNTON: Right.

THE COURT: -- basically, to base their verdict on feeling sorry for anyone, I think is the language that's used.

MS. DUNTON: I think their purpose is addressed with mercy, which they are allowed to sort of point out, but

that's different than sympathy, which, like you said, is cautioned against.

[....]

MR. SMITH: the argument in regard to allowing us to talk about sympathy during the penalty phase would be in regards to, you know, a juror should be able to consider anything they feel to be mitigating. We don't know what a juror could consider to be mitigating. That's up to each individual juror and they give -- each individual juror gives whatever weight they want to that mitigating factor. So, we would just ask that we'd be able to argue to the jury that they'd be allowed to consider sympathy as a mitigating factor when they're making that determination, as a nonstatutory mitigator.

MS. DUNTON: I did-- if they're allowed to use that word versus mercy, I did-- I'll cite these cases, which we can re-read them. *Valle, V-a-1-1-e, v. State*, 581 So. 2d 40, Wilson was appealing some of the words the prosecution used. And in that case the Court held that the state can properly argue that the defense has failed to establish a mitigating factor, not that something shouldn't be a mitigating factor but that they failed to establish it. And we may also argue that a jury should not be swayed by sympathy.

So I just don't want that to then, in turn, preclude us from arguing against that if they go there. We aren't allowed to argue that they can't consider mercy. So the case touched on it, but there's really nothing on it directly on point.

THE COURT: Yeah. Standard paragraph 8 in 3.10, Rules for Deliberation, says, "*Your verdict should not be influenced by feelings of prejudice, bias, or sympathy. Your verdict must be based on the evidence and on the law contained in these instructions.*"

THE COURT: We never define "sympathy" for them. If I tell them that their verdict must not be based on sympathy, and then I tell them that they can base it on sympathy, that would seem to be inconsistent, so Defense?

MR. SMITH: I have no other argument, Judge.

THE COURT: You're certainly free to argue mercy, but I'm going to deny this one.

(R 1880-82)

And while Wilson argues that the court abused its discretion in denying his proposed special instruction, the jury instruction at the penalty phase did not include the word "sympathy". The jury was instructed that "Your decisions should not be influenced by *feelings of prejudice or racial, or ethnic bias*". Your decisions must be based on the evidence and the law contained in these instructions. (R 1410, 3403) Therefore, any argument is moot.

Even so, the trial court acted within its discretion to deny Wilson's proposed special instruction, as this Court has repeatedly ruled that the standard jury instructions are sufficient and is consistent with this Court's precedent rejecting similar claims regarding jury instructions on the role of sympathy. *Zack v. State*, 753 So. 2d 9, 23–24 (Fla. 2000); *Hunter v. State*, 660 So. 2d 244, 253 (Fla. 1995).

Wilson himself acknowledges that the United States Supreme Court has also held that a jury instruction which generally precludes the jury from considering sympathy does not violate the federal Eighth Amendment. *California v. Brown*, 479 U.S. 538 (1987). (R 244) Wilson's position that jurors who react sympathetically to mitigating evidence may interpret the instruction as barring them from considering that evidence altogether is unavailing. 479 U.S. at 548-49 (Brennan, J., dissenting). (R 245) The objectives of fairness and accuracy are more likely to be threatened than promoted by a rule allowing the sentence to turn not on whether the defendant, in the eyes of the community, is morally deserving of the death sentence, but on whether the defendant can strike an emotional chord in a juror. *Saffle v. Parks*, 494 U.S. 484, 495, 110 S. Ct. 1257, 1264, 108 L. Ed. 2d 415 (1990).

This claim must be denied.

POINT EIGHT

**THIS COURT NO LONGER PERFORMS
PROPORTIONALITY REVIEW.**

Wilson asks this Court to recede from its decisions in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020) and *Cruz v. State*, 372 So. 3d

1237 (Fla. 2023), where it abandoned proportionality analysis in direct appeals in capital cases. (IB at 65). While Wilson invites this Court to reconsider its prior decisions, Wilson offers no new or persuasive argument for this Court to revisit its decision in *Lawrence* and *Cruz* and presents no significant import of the proportionality issue to the constitutionality of Florida's capital sentencing scheme.²³

The United States Supreme Court has explained that a death penalty statute that limits the number of death-eligible crimes, requires bifurcated proceedings, and demands proof of at least one aggravating factor, gives the jury broad discretion to consider mitigating circumstances, and provides the jury with standards to guide its use of aggravating and mitigating information, is sufficient to minimize "the risk of wholly arbitrary, capricious, or freakish" death sentences. *Pulley v. Harris*, 465 U.S. 37, 45 (1984). Florida's death penalty system does all those things and more.

²³ *Miller v. State*, 379 So. 3d 1109, 1127 (Fla. 2024); *Wells v. State*, 364 So. 3d 1005, 1015 (Fla. 2023); *Bevel v. State*, 376 So. 3d 587, 597 (Fla. 2023); *Loyd v. State*, 379 So. 3d 1080, 1097 (Fla. 2023); *Reynolds v. State*, 373 So. 3d 1124, 1128 (Fla. 2023); *Covington v. State*, 348 So. 3d 456, 480 (Fla. 2022).

Florida limits the death penalty as a possible penalty for first-degree murder which encompasses both premeditated murder and felony murder, but the murder statute limits the underlying felonies § 782.04(1)(a), Fla. Stat. (2021); *Foster v. State*, 258 So. 3d 1248, 1252 (Fla. 2018) (explaining capital murder in Florida). Florida, by case law, has trifurcated proceedings, not merely bifurcated proceedings. Florida has a guilt phase and a penalty phase in front of the jury as is typical of capital trials, but then Florida has another bench penalty phase where the defendant can present sensitive mitigation, such as illegal drug abuse, to the judge alone. *Spencer v. State*, 615 So. 2d 688 (Fla. 1993). Most importantly and unlike many other state's death penalty statutes, Florida's death penalty statute is jury sentencing plus judge sentencing. § 921.141, Fla. Stat. (2021). Under the death penalty statute, amended by the Florida Legislature in the wake of *Hurst*, a Florida capital jury must find each aggravating factor unanimously. § 921.141(2)(b)(2), Fla. Stat. (2021). The judge is bound by the jury's findings regarding the aggravating factors. § 921.141(3)(a), Fla. Stat. (2021) ("The court may consider only an aggravating factor that was unanimously found to exist by the jury."). If the jury does not "unanimously find at least one aggravating factor,

the defendant is ineligible for a sentence of death." § 921.141(2)(b)(1), Fla. Stat. (2021). And under Florida case law, the prosecution is limited to statutory aggravating factors and may not present non-statutory aggravating factors. *Oyola v. State*, 158 So. 3d 504, 509-10, 513 (Fla. 2015) (reversing because the trial court improperly relied on non-statutory aggravation which "cannot be harmless" under Florida law and remanding for a new penalty phase). But there is no limit on the type of mitigating circumstances that a defendant may present under the "catch-all" statutory mitigating circumstance. § 921.141(7)(h), Fla. Stat. (2021) ("the existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty"). The jury then finds mitigating circumstances and whether the aggravation "outweighs" the mitigation before making a sentencing recommendation to the judge. § 921.141(2)(b)(2), Fla. Stat. (2021).

Given this Court's clear directive that proportionality review of capital cases is not required by the Eighth Amendment, this claim should be denied.

POINT NINE

FLORIDA’S DEATH PENALTY SCHEME IS CONSTITUTIONAL AND PROPERLY NARROWS THE CLASS OF DEATH-ELIGIBLE DEFENDANTS.

Wilson acknowledges that this Court rejects the arguments made on this point (IB at 68), but nevertheless argues that that Florida’s capital-sentencing scheme fails to suitably narrow the class of eligible persons for the death sentence because of the number of statutory aggravators; and that it is applied in a vague and inconsistent manner. *See Miller v. State*, 926 So. 2d 1243, 1259-60 (Fla. 2006) (rejecting the argument that “Florida’s capital sentencing statute fails to provide a necessary standard for determining that aggravating circumstances ‘outweigh’ mitigating factors, does not define ‘sufficient aggravating circumstances,’ and does not sufficiently define each of the aggravating circumstances”). While Wilson invites this Court to reconsider its prior decisions, Wilson offers no new or persuasive argument for this Court to revisit its prior decision’s.²⁴

²⁴ *Miller v. State*, 379 So. 3d 1109, 1127 (Fla. 2024)); *Wells v. State*, 364 So. 3d 1005, 1015 (Fla. 2023); *Bevel v. State*, 376 So. 3d 587 (Fla. 2023); *Loyd v. State*, 379 So. 3d 1080, 1097 (Fla. 2023); *Bell v.*

A capital sentencing scheme, either through legislatively enumerated aggravating factors or through legislatively mandated guilt-phase findings, must genuinely narrow the class of persons eligible for the death penalty. *Zant v. Stephens*, 462 U.S. 862, 877 (1983). This narrowing of cases is a “constitutionally necessary function” of state death penalty statutory schemes. *Id.* at 878. The existence of an aggravating factor is only the first step in the process Florida uses to narrow the number of first-degree murder cases that result in the death penalty to only the worst of the worst.

Under the statute used to sentence Wilson, a jury must make multiple decisions before returning a verdict for the death penalty. First, they must unanimously determine that at least one aggravating factor has been proven beyond a reasonable doubt; they can only choose from those presented by the prosecution, and the prosecution is limited by a statutory list of specific aggravators. Fla. Stat. § 921.141 (2)(a);(6) (2019). Before they even start the weighing process, they then must unanimously find that any aggravators they found

State, 336 So. 3d 211 (Fla. 2022); *Cruz v. State*, 320 So. 3d 695 (Fla. 2021); *Colley v. State*, 310 So. 3d 2, 15-16 (Fla. 2020).

are sufficient on their own to warrant the death penalty. See Fla. Standard Jury Inst. 7.11 (“If you do unanimously find the existence of at least one aggravating factor and that the aggravating factor[s] [is][are] sufficient to impose a sentence of death, the next step...”)(emphasis added). After making this unanimous determination, the jurors make individual determinations about which, if any mitigating factors were proven by a preponderance of the evidence. *Id.* In addition to a list of statutory mitigating circumstances, the defense is permitted to present, “the existence of any other factors in the defendant’s background that would mitigate against imposition of the death penalty,” and so the defense is not limited in any way as to what they can present in mitigation. Fla. Stat. § 921.141 (7) (2019). The jury must then make another unanimous finding, this time that whatever aggravators they unanimously found outweigh any mitigators they each individually found to exist. Fla. Stat. § 921.141 (2)(b)(2) (2019). After all this, their job is still not done; they must then unanimously find, after unanimously agreeing that the aggravators outweigh the mitigators, that the appropriate punishment is death. Fla. Stat. § 921.141 (2)(c) (2019). Even after all these findings were made by a jury, the judge still has the authority

to impose a life sentence instead of death; the judge, however, cannot override a life verdict. Fla. Stat. § 921.141 (3)(a) (2019). This lengthy narrowing process is a far cry from Wilson’s suggestion that the only inquiry that matters is the existence of one aggravating factor.

Wilson further argues that three aggravating factors in particular, “CCP”; “prior conviction”; and during the course of a felony, have themselves significantly expanded. (IB at 69-70). Similarly based constitutional challenges have also been consistently rejected. *Lynch v. State*, 841 So. 2d 362, 374 (Fla. 2003) (upholding CCP aggravating factor as constitutional); *Davidson v. State*, 323 So. 3d 1241, 1250 (Fla. 2021)(rejecting argument that the prior-violent-felony aggravator is unconstitutional because it is overbroad and impermissibly vague); and *Ault v. State*, 866 So. 2d 674, 686 (Fla. 2003) (rejecting the argument that the murder in the course of a felony aggravator is unconstitutional because it constitutes an automatic aggravator and does not narrow classes of persons eligible for the death penalty).

As this claim is defeated as a matter of law, this Court must deny relief.

POINT TEN

THE CONSTITUTION DOES NOT PROHIBIT THE STATES FROM ‘DEATH QUALIFYING’ JURIES IN CAPITAL CASES.

Wilson next argues that the Supreme Court should revisit its views on death-qualification. Once again, no relief is warranted on this claim, which has been repeatedly rejected by this Court as well as the United States Supreme Court.

The United States Supreme Court has explicitly rejected the argument that death qualification deprives a defendant of a jury comprised of a fair cross section of the community. *Lockhart v. McCree*, 476 U.S. 162, 176–77 (1986). This Court has similarly recognized that there is no constitutional infirmity in the “death qualification” of a jury in a capital case. *See San Martin v. State*, 705 So. 2d 1337, 1343 (Fla. 1997) “Indeed, any group ‘defined solely in terms of shared attitudes that render members of the group unable to serve as jurors in a particular case may be excluded from jury service without contravening any of the basic objectives of the fair-cross-section requirement.’” *San Martin v. State*, 705 So. 2d 1337, 1343 (Fla. 1997), *citing Lockhart*, 476 U.S. at 176-77.

The United States Supreme Court also noted in *Lockhart* that not all prospective jurors who oppose the death penalty are subject to removal for cause in capital cases; "only those who cannot and will not conscientiously obey the law with respect to one of the issues in a capital case." *San Martin*, 705 So. 2d at 1343, *citing Lockhart*, 476 U.S. at 176. The standard for determining when a prospective juror may be excluded for cause because of his views on capital punishment is whether the views would "prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Wainwright v. Witt*, 469 U.S. 412, 424 (1985) 31 (*quoting Adams v. Texas*, 448 U.S. 38, 45 (1980)).

This claim is meritless and foreclosed by binding precedent.

POINT ELEVEN

CAPITAL PUNISHMENT DOES NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT OF THE FEDERAL CONSTITUTION.

Lastly, Wilson challenges the validity of the death penalty as a sentencing option. Once again, no relief is warranted on this claim, which as Wilson acknowledges, has been repeatedly rejected by this Court. (IB at 75). *Glossip v. Gross*, 576 U.S. 863, 908-947 (2015);

Baze v. Rees, 553 U.S. 35, 47 (2008); *Proffitt v. Florida*, 428 U.S. 242, 247 (1976); *Correll v. State*, 184 So. 3d 478 (Fla. 2015); *Mann v. State*, 112 So. 3d 1158, 1162 (2013).

The High Court has repeatedly held capital punishment constitutional.²⁵ Historically, the Eighth Amendment was understood to bar only those punishments that added “ ‘terror, pain, or disgrace’ ” to an otherwise permissible capital sentence.²⁶ Wilson’s attempt to redefine “cruel” to mean “unreliable,” “arbitrary,” or causing “excessive delays,” and “unusual” to include a “decline in use,” offers up a white paper devoid of any meaningful legal argument.²⁷

²⁵ *Baze v. Rees*, 553 U.S. 35, 47 (2008) (“We begin with the principle, settled by *Gregg*, that capital punishment is constitutional” and observing it “necessarily follows that there must be a means of carrying it out.”) (emphasis added but citation omitted); *McCleskey v. Kemp*, 481 U.S. 279, 299-319 (1987) (rejecting an Eighth Amendment as-applied challenge to the death penalty based on a study and observing the “Constitution does not require that a State eliminate any demonstrable disparity that correlates with a potentially irrelevant factor in order to operate a criminal justice system that includes capital punishment” and that “the Constitution does not place totally unrealistic conditions” on the use of capital punishment); *Gregg v. Georgia*, 428 U.S. 153 (1976) (holding the punishment of death for the crime of murder did not violate the Eighth Amendment).

²⁶ *Glossip v. Gross*, 576 U.S. 863, 894–95 (2015) (J. Scalia, concurring) (citing *Baze v. Rees*, 553 U.S. 35, 96 (2008)).

²⁷ *Id.* (J. Scalia, concurring).

While Wilson draws a connection between unreliability and the number of exonerations to date, the reality is that it is the convictions, not punishments, that are unreliable.²⁸ Nor are Wilson's claims regarding the arbitrary application of the death penalty compelling. The argument that death sentences do not necessarily correspond to the "egregiousness" of the crimes, but instead appear to be correlated to "arbitrary" factors, such as the locality in which the crime was committed, fails to respect the values implicit in the Constitution's allocation of decision-making in this context.²⁹ We rely on juries to make judgments about the people and crimes before them. The fact that these judgments may vary across cases is an inevitable consequence of the jury trial. But when a punishment is authorized by law—if you kill you are subject to death—the fact that some defendants receive mercy from their jury no more renders the underlying punishment "cruel" than does the fact that some guilty individuals are never apprehended, are never tried, are acquitted, or

²⁸ *Id.* (J. Scalia, concurring).

²⁹ *Id.*, at 901 (J. Thomas, concurring).

are pardoned.³⁰ As for the argument that delay undermines the penological rationales for the death penalty by subjecting inmates to long periods on death row, life without parole is an even lengthier period than the wait on death row; and if the objection is that death row is a more confining environment, the solution should be modifying the environment rather than abolishing the death penalty.³¹

Wilson also claims capital punishment violates the Eighth Amendment because it is contrary to the “evolving standards of decency. The evolving standards of decency standard certainly does not require that States in the majority adopt the view of States in the minority. Moreover, basing the evolving standards of decency on mere trends undermines the States’ independent sovereignty, which is at its highest when the issue concerns a state’s police powers and the criminal law. *United States v. Morrison*, 529 U.S. 598, 618 (2000) (noting police power was denied to the National Government and reposed in the States by the Founders); *United States v. Lopez*, 514

³⁰ *Id.*, at 896 (J. Scalia, concurring).

³¹ *Id.*, at 896 (J. Scalia concurring).

U.S. 549, 561, n.3 (1995) (“Under our federal system, the States possess primary authority for defining and enforcing the criminal law” citing cases). Florida should not be required to do what other states have done based merely on trends in those other states.

As this claim is defeated as a matter of law, this Court must deny relief.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Honorable Court affirm Wilson’s convictions and sentences.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellee's Answer Brief has been furnished via e-portal to: Nancy Ryan and Kathryn Rollison Radtke, Assistant Public Defenders, 444 Seabreeze Boulevard, Ste. 210, Daytona Beach, Florida 32118, email: ryan.nancy@pd7.org, and radtke.kathryn@pd7.org, on this 20th day of May 2024.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this Answer Brief is 14-point Bookman Old Style, and word count is 16,599 in compliance with Fla. R. App. P. 9.045, 9.210 and 9.045.

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