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IN THE SUPREME COURT OF FLORIDA

STEVEN J. LORENZO,

Appellant

v. **CASE NO. SC23-0539**
L.T. No. 16-CF-008779

STATE OF FLORIDA, **DEATH PENALTY CASE**

Appellee

_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

Citations to the record on direct appeal shall be referred to as “R” followed by the appropriate page number. Citations to transcripts of the penalty phase proceedings shall be referred to as “T” followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

On June 16, 2016, a grand jury in Hillsborough County indicted Appellant, Steven J. Lorenzo, for two counts of first-degree murder; count one related to the premeditated murder of Jason Galehouse on December 19, 2003, and count two involved the premeditated murder of Michael Wachholtz on December 20, 2003. (R.103-05). On August 26, 2016, the State filed a notice of intent to seek the death penalty and notified Appellant that it intended to prove the following four aggravating circumstances: (1) the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person, (2) the capital felony was especially heinous, atrocious, or cruel, (3) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification, and (4) the capital felony was committed while the defendant was engaged in the commission of, or the attempt to commit sexual battery or kidnapping. (R.106-07).

Appellant, in federal custody at the time of the indictment, was not

arraigned until September 27, 2017.[1] At his arraignment before the Honorable Mark D. Kiser, the court allowed the Public Defender's Office to withdraw due to a conflict and appointed the regional conflict office. When given the opportunity to address the court, Appellant indicated that he wished to proceed pro se and began expressing his "sovereign citizen" theory that he was not the person charged in the indictment, the proceedings were a commercial matter, and the court lacked jurisdiction over him. (R.3287-95). The court explained to Appellant that it was not a commercial matter, rather it was a criminal case in which the State was seeking the death penalty. Appellant indicated that he "of course" understood that, he just did not "accept it." (R.3295-96). The court proceeded to conduct an inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975) and subsequently found that Appellant was competent, and his waiver of counsel was knowing and voluntary. (R.3296-309). The court appointed standby counsel for Appellant over his objection. Because

[1] Appellant was convicted in federal court on nine counts of distribution of Gamma-Hydroxybutyric Acid (GHB) with the intent to commit a "crime of violence" and one count of conspiracy to possess with intent to distribute GHB with the intent to commit "crimes of violence." The federal court sentenced Lorenzo to twenty years on each count, to run consecutively for a total of 200 years. (R.2631-35).

Appellant insisted that he would not enter a plea, but rather wanted to "settle" the case, the court entered a not guilty plea for him. (R.3309-10).

The following month, Appellant's standby counsel moved to withdraw based on a conflict. (R.3313-14). The court inquired if Appellant still wanted to proceed pro se and Appellant confirmed that request and again asserted that the court did not have jurisdiction over him. (R.3315-17). The court once again stressed the seriousness of the murder charges and Appellant noted that "of course I understand those charges." (R.3315). The court allowed standby counsel to withdraw and appointed private counsel, Nick Sinardi, to act as standby counsel. (R.3317-19). The court further stated that, based on Appellant's comments at his arraignment and this hearing, the court had concerns about Appellant's competency to proceed and appointed an expert, Dr. Michael Gamache, to evaluate Appellant. (R.3319-20). Appellant stated that he would not speak with any doctor. (R.3320).

Dr. Gamache evaluated Appellant for competency and noted that Appellant did not participate in the evaluation. Dr. Gamache reviewed background information and spoke to detention deputies before concluding that there was "no basis to suspect that the defendant suffers from any gross mental illness that interferes with his capacity for a rational and

factual understanding of the legal proceedings against him. I have not been provided with any history or clinical data that would support the conclusion that his "sovereign citizen" beliefs are the product of an underlying mental illness." (R.189). Based on his evaluation, Dr. Gamache opined that Appellant was competent to proceed. (R.190).

At a court hearing following the issuance of the doctor's competency report, the court indicated that based on his review of the doctor's report and his interactions with Appellant, Appellant was competent to proceed. (R.3324-28). The court inquired if standby counsel or Appellant had anything to add regarding the competency issue, and both stated that they did not. (R.3327). Appellant declined the court's renewed offer for the appointment of counsel.[2] (R.3328-29). Standby counsel thereafter indicated that he had been conferring with Appellant over discovery motions filed by Appellant, and standby counsel asked for a continuance so he could do further research on one of Appellant's motions that he had filed.[3] (R.118-

[2] Appellant remained pro se throughout the proceedings below.

[3] Standby counsel indicated that he had already discussed discovery issues with Appellant and the bifurcated nature of capital trials. Standby counsel stated that Appellant wanted the appointment of penalty phase counsel, but Appellant clarified that he wanted penalty phase counsel to only be "standby." (R.3342-47). At a later hearing, Appellant did not object

129, 135-146, 3329-37). As the parties were addressing potential implications with speedy trial, Appellant volunteered that he would waive speedy trial because it was taking him longer to research issues given his pro se status, but the court allowed him to defer that decision until the next court hearing. (R.3337-38). The court agreed with the parties that they would address Appellant's pro se motions at a future hearing. (R.3333-34).

On December 11, 2017, Appellant filed a pro se motion to dismiss both of his standby attorneys. (R.207-11). At the outset of the hearing on the motion, the court reiterated the offer to have counsel appointed for Appellant, but he continued pro se. Appellant moved to have both standby attorneys removed from his case because they were members of the Florida Bar:

> Bar Association stands for the British Accreditation Registry. It falls under British law. It is a private membership. It is private club, and those that join it become officials of the British government. Whether you believe it or not, that's exactly what it is. That's a foreign jurisdiction. I am not a foreign jurisdiction – I am a sovereign American. I stand on the United States jurisdiction, not on English jurisdiction. . . .

(R.234-36). The court denied Appellant's motion to dismiss standby

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to standby penalty phase counsel hiring a mitigation specialist and "getting things started." (R.3385-87).

counsel.[4] (R.236-38). The court then inquired about Appellant's outstanding discovery motions and Appellant again indicated that he wanted to push those off to a future date so he could have further discussions with standby counsel on those issues. Appellant explained that standby counsel had met with him on those issues and standby counsel stated that he had also explained Appellant's speedy trial rights to him. (R.238-39). Appellant thereafter stated that he wanted to waive his right to a speedy trial. (R.239).

On May 10, 2018, the court conducted a hearing on two pro se motions filed by Appellant and another motion filed by Appellant's sister. (R.3401-40). The court allowed Appellant to present his arguments on the motions, which included a mix of relevant state law arguments as well as sovereign citizen arguments invoking federal civil rules and the Uniform Commercial Code (UCC). Ultimately, the court denied Appellant's motion to dismiss for double jeopardy, and clarified the relief sought on Appellant's motion to invoke full equal protection and due process. (R.296-97, 3402-

[4] A month later, the court denied Appellant's second request to remove standby counsel. (R.3365-73). At this hearing, standby counsel indicated that Appellant had availed himself to the discovery process, and the State had provided discovery, but Appellant did not want to keep it at the jail and counsel agreed to go over it with Appellant. (R.3373-75). At a subsequent hearing, counsel indicated that they provided Appellant with over 4,000 pages of discovery that he had access to at the jail. (R.3429-30).

13). After the court explained that Appellant's sister could not file motions on his behalf, Appellant proceeded to argue the motion which he styled as an order to show cause. The court informed Appellant that he would not address unauthorized motions in the future and explained that Appellant's arguments concerning the UCC and civil law were not applicable in this criminal case. The court denied Appellant's request to dismiss the charges as the court properly had jurisdiction over the two murder charges. (R.296-97, 3427-29).

Prior to changing his plea in late 2022, Appellant filed numerous pro se motions in the trial court, including several motions attacking the constitutionality of Florida's death penalty scheme. (R.310-46, 351-71, 374-80, 418-86, 489-581, 595-687, 709-18, 729-60, 765-94, 1110-1313). In November 2022, Appellant filed three hand-written related pleadings indicating his desire to withdraw his plea of not guilty and enter a plea of guilty, waive the jury for both the guilt and penalty phases, and waive the presentation of mitigation evidence. (R.2194-2258, 2266-81). The State filed a unified response to these three pleadings and noted that Appellant properly cited Florida statutes, rules, and applicable law. (R2285-87).

On December 2, 2022, the Honorable Christopher Sabella[5] conducted a hearing on Appellant's three related motions and, at the outset, the following exchange occurred:

> THE COURT: We were set today, I believe, originally for one of our regularly held status conferences in your case that's scheduled for trial coming up in the beginning of next year.
>
> THE DEFENDANT: Right.
>
> THE COURT: But you filed some pleadings that are very interesting that I decided we should address in person and see if there's anything that we can actually accomplish today. Actually, what you filed was a motion and two notices. Just so that the record is clear, the motion was to withdraw your not guilty plea and to plead guilty to both counts of first degree murder. The second was a notice, and that was to waive phase one, which is guilt phase, and phase two, which is penalty phase, juries in your case. And finally, you filed a notice to waive penalty phase mitigation. Does that sound accurate to you?
>
> THE DEFENDANT: Very accurate, yes.
>
> THE COURT: All right. And you, in fact, drafted these and filed these motions and notices?
>
> THE DEFENDANT: I hand written them, studied them, went through all the case law and wrote it out as clear as I could.
>
> THE COURT: **And let me just say, as always, I'm not surprised that as far as what you just said, citing case law, you are very accurate. There's a lot of things I think that a**

[5] Judge Sabella replaced Judge Kiser in August 2020. (R.3922).

> **lot of people could say about you, but that you're not smart is not one of them.**
>
> THE DEFENDANT: Thank you.
>
> THE COURT: So I've read all of your -- they are handwritten. And I understand that you may not have -- that's the only ability you have in the jail is to hand write. Fortunately, they are written in a manner that I can read, which is not always the case. But I have read them. **And they appear to me to be accurate on the law, well written. Again, as I said, you appear to be very intelligent, which leads me for the first question that I have this morning, which is your representation, your continued desire to represent yourself.** Before I do anything else, I have -- oh, Mr. Sinardi, good morning and welcome.

(R.4437-38) (emphasis added). The court conducted another Faretta hearing and allowed Appellant to continue representing himself pro se. (R.4438-45). The court explained to Appellant that given his waiver of mitigation, the court was going to have the State provide the court with any mitigation it had in its possession and the court intended to appoint an independent mitigation specialist and have her present mitigation. (R.4446-48, 4454-56).

On December 6, 2022, Appellant formally waived his right to a jury for the guilt and penalty phases and, after a detailed colloquy, freely and voluntarily pled guilty to both counts of first-degree murder. (R.2288-96; T.1-63). During the colloquy, the court noted that “I have no concerns about

your competency in representing yourself; in fact, I found that you understand what you are doing, you have plead – you have filed significant pleadings, all having correct citations and relevant citations to authority, and as I said, I have no questions regarding your competency. . . .” (T.17-18). The court then asked Appellant’s two standby attorneys if either of them had concerns about Appellant’s competency and both indicated that they had interactions with Appellant for multiple years and had never had any questions about Appellant’s competency or understanding of the proceedings. (T.18-19).

The State set forth the following as the factual basis for the two counts of first-degree murder:

> On Friday evening, December 19th, 2003, Jason Galehouse attended a Christmas party in Tampa. Mr. Galehouse and his friends, including Justin Laughlin, Jeffery Loehr and Tony Bragg decided to continue the evening at a local club, Club 2606, located at 2606 North Armenia in Tampa, Hillsborough County, Florida. Mr. Galehouse separated from his friends to socialize at Club 2606. As Club 2606 was closing for the night, now early Saturday morning, December 20th, 2003, Jason Galehouse informed his friends that he had met two men, and he planned to leave with them. Jason Galehouse's family and friends have never seen or heard from Jason Galehouse after leaving 2606 with those two men early Saturday morning, December 20th, 2003. Tony Bragg has previously testified that [Defendant] was the person who had spoken with Jason Galehouse at Club 2606 that evening.

Michael Wachholtz lived in an apartment with a friend, Fredrick Van Den Abbeel. Michael Wachholtz had agreed to dog sit Patches for his close friends and former roommates, the Hartfords. After Michael Wachholtz finished work at Bahama Breeze Saturday evening, December 20th, 2003, he left Patches with Mr. Van Den Abbeel for the evening, but Michael didn't come back that evening. The last relative or friend to hear from Michael Wachholtz was a cell phone text from a friend Pete Karahalios[.] [I]t was common for Mr. Wachholtz and his friend to text each other, particularly when they were alone out late at night. The text sent at about 1:30 a.m., Sunday, December 21st, stated merely "On my way home" When Michael Wachholtz did not rerun home, friends and relatives networked and distributed flyers in the area over the holidays asking for help in locating Michael. Michael Wachholtz's body was finally found 17 days later in a parking lot of an apartment complex off West Hillsborough Avenue in unincorporated Hillsborough County.

Michael Wachholtz's badly decomposed body was wrapped in a printed fitted bed sheet and stuffed in the cargo compartment of [his] own Jeep. Joint investigations were initiated into the disappearance of Jason Galehouse and the discovery of the body of Michael Wachholtz by the Tampa Police Department, the Hillsborough County Sheriff’s Office and the Tampa Field Office of the Drug Enforcement Administration.

After speaking with numerous witnesses, the investigation began to focus on [Appellant] who lived at 213 West Powhatan, only a 10-minute drive away from Club 2606. That investigation led to the execution of several search warrants at 213 West Powhatan in the years 2004 and 2005. Among the items taken into evidence were stacks of hard copies of ["AIM"] chats between [Appellant] and persons with different screen names. One of those screen names was "MstrScott" . . . who would later be identified as Scott Schweickert. The instant messaging chats indicated that Schweickert and [Appellant] had met online in October 2003, and had also met face to face on several

occasions, including planning to meet at 213 West Powhatan December 19th, 2003, just hours before the disappearance of Jason Galehouse. The instant messaging chats also indicated their mutual desire to drug and forcibly engage in dominant sex of unsuspecting young men. Schweickert was interviewed by investigators on several separate occasions.

Schweickert acknowledged his acquaintance with [Appellant]. He admitted that he, Schweickert, was with [Appellant] on December 19th, 2003. Schweickert acknowledged that he and [Appellant] met someone at Club 2606, who accompanied Schweickert and [Appellant] back to 213 West Powhatan when Club 2606 closed in the early morning of December 20th, 2003. Schweickert initially denied participating in any forced physical contact with Jason Galehouse and denied any knowledge of the circumstances surrounding the disappearance of Jason Galehouse. Schweickert also initially denied being with [Appellant] the following night, the night that Michael Wachholtz went missing [and] denied knowing anything about the death of Michael Wachholtz. In subsequent statements, Schweickert admitted [to] participating in the killing of Jason Galehouse and Michael Wachholtz and the disposal of the bodies of Jason Galehouse and Michael Wachholtz.

Now, relating to the killing of Jason Galehouse, Schweickert eventually admitted to participating with [Appellant] in the killing of Jason Galehouse. Schweickert admitted that after killing Jason Galehouse at 213 West Powhatan, he and [Appellant] used a reciprocating saw to dismember Jason Galehouse in the garage of 213 West Powhatan, placing each of the dismembered legs, arms, head and torso into garbage bags and then randomly distributing those separate bags in separate dumpsters in nearby neighborhoods.

Upon that information being supplied by Schweickert, a search warrant for the garage at 213 West Powhatan was approved. Investigators used preliminary serology testing and found indications of blood on the garage flooring. . . . The serology

testing found indications of blood on the garage floor, the flooring, which was comprised of cobblestone bricks recessed in the din below. The bricks were sent to the Florida Department of Law Enforcement for DNA testing for comparison with the known DNA profile of Jason Galehouse. Suzanna Ryan, known as Suzanna Uhlery at that time, was a DNA expert at the FDLE. Ms. Ryan has testified that the DNA profile of the suspected blood from the cobblestone flooring of [Defendant's] garage at 213 West Powhatan matches the DNA profile of Jason Galehouse, and the chances of this DNA sample being of someone else is one in the trillions. A gas mask, often used in sexual domination, was also found at [Appellant's] residence, 213 West Powhatan, during one of the court-authorized searches. Ms. Ryan conducted DNA testing on the gas mask found in a black bag in [Appellant's] bedroom at 213 West Powhatan. Ms. Ryan has also testified that the DNA profile of the gas mask matched the DNA profile of the known DNA profile of Jason Galehouse, and the chances of that DNA profile is of some person other than Jason Galehouse is one in trillions. No parts of the body of Jason Galehouse have ever been found.

. . .

Now, moving onto the killing of Michael Wachholtz. In later statements, Schweickert admitted to remaining at 213 West Powhatan all day Saturday, December 20th, 2003. Schweickert and [Appellant] then returned to Club 2606 late Saturday night, early Sunday morning December 21, 2003. There, they met Michael Wachholtz, who was alone at Club 2606. They invited Michael Wachholtz to return with them to 213 West Powhatan. Schweickert can identify the person depicted in photographs as the person who was killed by [himself] and [Appellant].

Michael Wachholtz drove his Jeep and followed along with Schweickert and [Appellant] to 213 West Powhatan. [Appellant] provided a drink to Michael Wachholtz, who soon became essentially helpless in defending [himself against] the torture and sexual assault and the killing at the hands of [Appellant]

and Schweickert. After killing Michael Wachholtz, Schweickert and [Appellant] went about the task of cleaning the body of Michael Wachholtz in other areas of the West Powhatan residence which may leave clues to the murder. [Appellant] also took pictures of the lifeless Michael Wachholtz at 213 West Powhatan.

After the photographs were taken, [Appellant] and Schweickert wrapped the body of Michael Wachholtz in a bed sheet and placed the body in the cargo area of Michael Wachholtz's Jeep Cherokee.

Schweickert drove Michael Wachholtz's Jeep and followed [Appellant], who was driving [Appellant's] own Jeep. Michael Wachholtz and his Jeep were left in the same parking lot where it was found along with [the body of] Michael Wachholtz 17 days later, January 6th, 2004. The color and print of the fitted sheet wrapping Michael Wachholtz matches the color and print of a bed top sheet found at 213 West Powhatan.

Investigators were also able to download photographs stored in [Appellant's] computer and camera, which were seized in one of the search warrants. The photographs included 20 photographs timestamped all within a few minutes of 5:00 a.m., Sunday, December 21st, 2003. The photos showed the apparent lifeless, sometimes contorted body of Michael Wachholtz, including evidence of a sexual battery in various positions inside [Appellant's] house at 213 West Powhatan. Michael Wachholtz's roommates and friends have identified Michael as the person depicted in those photographs. [Appellant] and his federal attorney were shown those photographs. [Appellant] agreed that those photographs appeared to have been taken at 213 West Powhatan, and that one of the photos appears to include [Appellant's] hand posing the lifeless body of Michael Wachholtz; [Appellant], however, denied recalling Michael Wachholtz or anything occurring at his residence in the early morning hours of Sunday, December 21, 2003.

> Although Schweickert initially denied knowing about the killing of Michael Wachholtz, in later statements, Schweickert admitted participating with [Appellant] in killing Michael Wachholtz. The autopsy confirmed the identity of Michael Wachholtz as the person found in the Jeep on January 6th, 2004, however, the decomposed condition of his body limited more details regarding the cause of death.

(T.31-40; R.2807-10).

Following the court's acceptance of Appellant's guilty plea, the court ordered the preparation of a PSI and the court expressed the desire to appoint an independent mitigation specialist. However, given the backlog of cases following the COVID pandemic, Appellant's standby penalty phase counsel indicated that it would be very difficult to find a mitigation specialist who could work on the case in a timely fashion. (T.47-52). When the court inquired if the prosecutor had any suggestions, the prosecutor noted that Appellant had filed an extensive mitigation document and the court had already ordered the Department of Corrections to prepare a comprehensive PSI.[6] (T.52-53). The court agreed that the appointment of a mitigation

[6] The prosecutor praised Appellant's knowledge of the law regarding this decision as set forth in Appellant's hand-written pleading: "And so, the position of the State is, based upon the clear case law that Mr. Lorenzo is very knowledgeable of -- if you want to talk about knowing and intelligent, the legal definition, there will be a picture of Mr. Lorenzo in the dictionary." (T.53).

specialist was not required under existing case law and ordered the State to provide the court with any mitigation it had in its possession, including anything presented at Appellant's federal sentencing hearing. (T.54-55). Appellant indicated that he did not want the court to consider the mitigation report his standby penalty phase attorney had previously prepared and submitted to the State in March, 2020. (T.60-62; R.2645-761). The court stated that they would address that issue at the upcoming penalty phase. (T.61-62).

On February 6-7, 2023, the court conducted a penalty phase proceeding. Over Appellant's objection,[7] the State presented testimony concerning the aggravating circumstance of Appellant's prior felony convictions involving the use or threat of violence to another person stemming from his convictions in federal court. (T.87-106). All seven of these victims reported similar experiences of meeting Appellant and eventually being unknowingly drugged, and while incapacitated or unconscious, bound and sexually abused by Appellant. (T.147-64, 166-83, 356-75, 377-400, 401-32, 441-68, 469-93). In addition to presenting

[7] Although Appellant was actively seeking a death sentence as he stated during his opening argument, he nevertheless objected to testimony regarding his federal convictions.

testimony from the victims of Appellant's federal crimes, the State presented testimony from law enforcement officers regarding the investigation of the murder of the two victims in the instant case and from Appellant's co-defendant. (T109-34, 139-44, 185-254).

Appellant's co-defendant, Scott Schweickert, testified that he entered into a plea agreement with the State after being charged with two counts of first-degree murder. Schweickert agreed to testify against Appellant in exchange for life sentences on the two counts of first-degree murder.[8] (T.259-61). Schweickert met Appellant in October 2003 in an AOL instant message chat room as they were both located in central Florida and interested in bondage and sadomasochism. (T.263-65). The two men chatted for a few weeks and began discussing different scenarios involving "kidnapping, keeping, training, torturing, possibly selling off, and if we couldn't sell off, disposing of an individual." (T.269). The two men met in person and did a "dry run" by finding a submissive individual online and engaging in a consensual bondage session. (T.274-78). Afterwards, the two men continued communicating online and discussed kidnapping and

[8] Schweickert was also convicted in federal court for offenses involving the two victims and was serving a forty-year federal sentence as a result. (T.260).

submitting individuals for longer periods of time.

On Friday, December 19, 2003, Schweickert travelled to Tampa and the two men planned to meet some individuals Schweickert had previously communicated with, but those individuals did not show up. (T.280-83). The two men then changed plans and decided to seek someone out to kidnap, sexually abuse, and then murder. (T.284-86). They decided to go to "2606," a club known to cater to gay individuals, and near closing time around 3:00 a.m., met Jason Galehouse who agreed to go back to Appellant's home to engage in bondage. (T.286). Schweickert testified that Galehouse agreed to being strapped to the bed and, after engaging in some bondage activity, Schweickert went to the bathroom and returned to find Appellant choking Galehouse to death. Schweickert held Galehouse's legs down during the struggle. (T.288-89). Afterwards, the two men placed the body in a tarp in a trailer outside Appellant's home. After going out for breakfast, the two men went to Home Depot and bought supplies and returned to the house and took the body into the garage and dismembered it with a reciprocating saw and placed it into multiple contractor bags. (T.292-96). Late Saturday afternoon, they drove around Tampa, and disposed of the body parts in multiple dumpsters. (T.296-301).

After driving around and disposing of the body parts, the two men returned to 2606 to find another victim to murder. This time they met Michael Wachholtz and he agreed to go to Appellant's house with them "to party." (T.301-04). Schweickert and Appellant discussed drugging Wachholtz's drink with GHB once at the house. After making the drinks, Schweickert went to the bathroom and returned when Appellant began yelling for his assistance. Schweickert assisted Appellant in holding Wachholtz down while they sprayed a can of Maximum Impact onto a rag and then held it to Wachholtz's mouth until he became unconscious. (T.305-06). They proceeded to strip off Wachholtz's clothes and placed him in handcuffs. When Wachholtz began coming into consciousness, they placed tape over his mouth and stuffed the rag into his anus. Wachholtz soon lost consciousness and died. The men wrapped his body in a sheet and put it in the victim's car and drove to an apartment complex and left the car. (T306-12).

At the outset of the second day of the penalty phase proceedings, the court addressed the mitigation report prepared by standby counsel which was given to the prosecutor in March 2020. (T.347-49). The court stated that, because the State had an obligation under Florida case law to provide

the court with any mitigation it had in its possession, the court wanted a copy of the mitigation report. The prosecutor indicated that he did not have a copy readily available and inquired whether standby counsel had a copy of the document. (T.348). Standby counsel indicated that Appellant had instructed him not to provide anything to the State. The prosecutor indicated he would look for his copy of it and provide it to the court. (T.348-49). Subsequently, the prosecutor located his copy of the mitigation report and it was admitted, without objection, as a "Court Exhibit." (T.433-34, 526).

On February 20, 2023, the court conducted a Spencer hearing and inquired if Appellant had any information he wanted the court to consider prior to sentencing. Appellant stated that he had reviewed the transcripts from the penalty phase:

> And I know you have got the mitigation package, you did take that, which I didn't want you to do but you took it, and that's great, that's fine. The Supreme Court would have backed you up anyway, I already know that. So that's fine. So you have that, so there is nothing really I need to add because that kind of put me over the top there of what I was willing to do.

(T.566-67).

On February 24, 2023, the court imposed death sentences for each count of murder. The court found that the State had established four

aggravating circumstances beyond a reasonable doubt as to each murder count and gave each of the aggravating factors "great weight:" (1) the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person, (2) the capital felony was especially heinous, atrocious, or cruel, (3) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification, and (4) the capital felony was committed while the defendant was engaged in the commission of, or the attempt to commit sexual battery or kidnapping. (R.2528-47).

Because Appellant waived the presentation of all mitigation evidence, the court examined the entire record to determine if any mitigating circumstances existed.[9] The court found the existence of the following mitigating circumstances under the "catch-all" provision of Florida Statutes, section 921.141(7)(h) dealing with "any other factors" in Appellant's

[9] In performing this review, the court found potential mitigation contained in the PSI prepared by the Department of Corrections, standby counsel's March 23, 2020 mitigation report, Appellant's pro se "Mitigation Notice" filed on December 14, 2021, and Appellant's pro se "Defenses Notice of Mitigation and Objection for Court Considerations at Sentencing Hearing" filed on January 18, 2023. (R.2523, 2548).

background that would mitigate against an imposition of the death penalty: (1) as a child, Appellant had a close relationship with his siblings and his mother (slight weight), (2) Appellant's mother was an alcoholic (slight weight), (3) Appellant was a habitual drug user (moderate weight), (4) Appellant received an electrical degree and maintained employment in that field (slight weight), (5) Appellant was part of a tight-knit neighborhood and was a good neighbor (slight weight), and (6) Appellant has been a productive, model inmate while incarcerated (slight weight). (R.2547-61). The court concluded that any of the aggravating factors, even standing alone, heavily outweighed the mitigation and sentenced Appellant to death on both counts of murder.

SUMMARY OF THE ARGUMENT

Issue I: Appellant claims that the trial court violated his Sixth and Fourteenth Amendment rights by allowing him to represent himself when he did not understand the nature of the proceedings against him. Contrary to Appellant's assertions, the record clearly establishes that Appellant knowingly and intelligently waived his right to appointed counsel. Shortly after Appellant's arraignment, the trial court found Appellant competent to proceed pro se. Over the next five years, Appellant filed numerous relevant pleadings and made countless court appearances wherein he made appropriate legal arguments. While Appellant frequently pursued "sovereign citizen" legal arguments in conjunction with his other relevant legal arguments, the entirety of the record clearly establishes that Appellant understood the nature of the criminal proceedings against him. In fact, when Appellant ultimately decided to change his plea to guilty, and to waive the penalty phase jury and the presentation of mitigation evidence, both the prosecutor and the trial judge praised Appellant's knowledge of the law and understanding of the proceedings. Because the record clearly refutes any argument that Appellant was not competent to represent himself, this Court should deny Appellant's claim.

Issue II: Appellant's argument that the trial court violated Appellant's constitutional rights by ordering the State to provide mitigation evidence is without merit. Appellant waived the presentation of all mitigating evidence, and the trial court ordered the State to provide any possible mitigation in its possession, including a "mitigation report" prepared by Appellant's standby counsel and given to the State years earlier when requesting that the State consider a plea deal for life sentences. Appellant did not object at the penalty phase when the Court admitted the report as a Court's exhibit, and thus Appellant has not preserved this issue for appellate review. Even if preserved, the court did not abuse its discretion by admitting and considering the mitigation report.

Issue III: Competent, substantial evidence supports the lower court's determination that Appellant competently, knowingly, voluntarily, and intelligently pled guilty to two counts of first-degree murder.

ARGUMENT

ISSUE I

THE RECORD CLEARLY ESTABLISHES THAT APPELLANT WAS COMPETENT TO REPRESENT HIMSELF THROUGHOUT THESE PROCEEDINGS.

Appellant argues that the trial court violated his right to a "fair trial" under the Sixth and Fourteenth Amendments by allowing him to proceed pro se because he allegedly did not understand the nature of the proceedings against him. According to Appellant, the record establishes that he did not understand the nature of the criminal proceedings as evidenced by his "sovereign citizen" legal theories wherein he cited to the Uniform Commercial Code (UCC) and other civil laws in his pro se pleadings and in court appearances,[10] and when he expressed dismay at the State when negotiating a possible plea deal. Contrary to Appellant's assertions, a review of the record on appeal clearly demonstrates that

[10] Sovereign citizen defendants often argue that they are not subject to the government's jurisdiction and that the government holds them pursuant to commercial jurisdiction, and in order to secure their release, they need to settle unpaid debts. See generally United States v. Jones, 65 F.4th 926, 928 (7th Cir. 2023); Barber v. Bay County Sheriff's Office Jail Facility, 308 So. 3d 254, 254-55 (Fla. 2020) (noting that the sovereign citizen theory "has no basis in law" and "no court in the country has ever found sovereign citizen arguments to have any merit").

Appellant understood the nature of the proceedings and was competent to waive his right to counsel.

This Court reviews a trial court's determination of competency under the abuse of discretion standard and will uphold the court's resolution of any factual disputes if supported by competent, substantial evidence. Larkin v. State, 147 So. 3d 452, 464 (Fla. 2014). "An abuse of discretion occurs when 'the trial court applie[s] the incorrect legal standard' in assessing whether a defendant is not competent to waive his right to counsel." Losada v. State, 260 So.3d 1156, 1161 (Fla. 3d DCA 2018) (quoting Loor v. State, 240 So. 3d 136, 142 (Fla. 3d DCA 2018)). Furthermore, "where, as here, the errors alleged on appeal were not preserved, reversal is warranted only if the defendant establishes fundamental error." Noetzel v. State, 328 So. 3d 933, 945 (Fla. 2021).[11]

The standard for competency to stand trial is the same standard of competence required to plead guilty and waive the right to assistance of counsel, i.e., whether the defendant has "sufficient present ability to consult

[11] Appellant has failed to preserve any issue on appeal regarding his competency and right to self-representation so he must establish fundamental error. As this Court recently noted, "[f]undamental errors are few and rare." Figueroa-Sanabria v. State, 366 So. 3d 1035, 1055 (Fla. 2023).

with his lawyer with a reasonable degree of rational understanding" and has "a rational as well as factual understanding of the proceedings against him." Id. at 946 (quoting Dusky v. United States, 362 U.S. 402, 402 (1960) and citing Godinez v. Moran, 509 U.S. 389, 391, 398, 402 (1993)).

While the Sixth and Fourteenth Amendments provide for the appointment of counsel for an accused defendant, the United States Supreme Court ruled in Faretta v. California, 422 U.S. 806, 835 (1975), that a criminal defendant has the right to self-representation at trial when he voluntarily and intelligently elects to do so. If the defendant makes an unequivocal request to represent himself, the trial court is obligated to conduct a Faretta inquiry to determine whether the defendant is knowingly and intelligently waiving his right to court-appointed counsel; a decision made with the defendant's eyes open. Faretta, 422 U.S. at 835; see also Tennis v. State, 997 So. 2d 375, 378 (Fla. 2008).

At his arraignment on September 27, 2017, Appellant requested to represent himself and argued that the court lacked jurisdiction over him and that he did not want to enter a plea because this was a commercial matter. When the court explained to Appellant that it was not a commercial matter, rather it was a criminal case in which the State was seeking the death

penalty for two counts of first-degree murder, Appellant indicated that he "of course" understood that, he just did not "accept it." (R.3295-96). The court proceeded to conduct a Faretta inquiry with Appellant, wherein he indicated that he clearly understood the ramifications and risks in proceeding without court-appointed counsel. (R.3294-308). Appellant stated that he was fifty-eight years old, spoke and understood English, had a college degree, and had never been diagnosed or treated for a mental illness. (R.3305-07). The trial court concluded that Appellant was competent to waive counsel and that his waiver was knowing, voluntary, and intelligent. (R.3309). The court also appointed standby counsel for Appellant over his objection. (R.3309-10).

At the next scheduled court hearing the following month, the court inquired if Appellant still wanted to proceed pro se and Appellant confirmed that request and again asserted that the court did not have jurisdiction over him. (R.3315-17). The court once again stressed the seriousness of the murder charges and Appellant noted that "of course I understand those charges." (R.3315). The court allowed standby counsel to withdraw based

on a conflict and appointed Nick Sinardi to act as standby counsel.[12] (R.3317-19). The court further stated that, based on Appellant's comments at his arraignment and at this hearing, the court had some concerns about Appellant's competency to proceed and appointed an expert, Dr. Michael Gamache, to evaluate Appellant. (R.3319-20).

Dr. Gamache evaluated Appellant and noted that Appellant did not participate in the evaluation. Dr. Gamache reviewed background information and spoke to detention deputies before concluding that there was "no basis to suspect that the defendant suffers from any gross mental illness that interferes with his capacity for a rational and factual understanding of the legal proceedings against him. I have not been provided with any history or clinical data that would support the conclusion that his "sovereign citizen" beliefs are the product of an underlying mental illness." (R.189). Based on his evaluation, Dr. Gamache opined that Appellant was competent to proceed. (R.190).

At a court hearing on December 4, 2017, the court indicated that,

[12] The court appointed Brian Gonzalez as standby penalty phase counsel in December 2017. (R.214). Throughout their five plus years of significant time consulting with Appellant as standby counsel, neither attorney ever expressed any concerns regarding Appellant's competency to represent himself or his ability to understand the nature of the proceedings.

based on his review of Dr. Gamache's report and his own interactions with Appellant, Appellant was competent to proceed pro se. (R.3324-28). The court inquired if standby counsel or Appellant had anything to add regarding the competency issue, and both stated that they did not. (R.3327).

In December 2021, a year before changing his plea, Appellant filed a pro se "Mitigation Notice" noting that his standby counsel, on his behalf, had previously offered to plead guilty in exchange for the State not seeking the death penalty. (R.2070-71; 2646-70). According to Appellant, even if the State had accepted that offer, he would not have honored it and would have only pleaded nolo contendre because he "has always maintained, and still does, that he has never killed anyone." (R.2072). In his notice, Appellant expressed his desire to be sentenced to death for a variety of reasons, including his quality of life while incarcerated and his knowledge that this Court, rather than a district court of appeal, would review his case if he was sentenced to death. (R.2072-84).

Following the filing of Appellant's "mitigation notice," there were discussions about the State possibly not seeking the death penalty. At a January 7, 2022 hearing, the State requested additional time to discuss

Appellant's "Mitigation Notice" as their office was meeting with the victims' family. Additionally, the prosecutor indicated that he would speak to standby counsel Nick Sinardi about another factor which could potentially affect the State's decision, but the prosecutor did not want to discuss the issue in open court.[13] (R.4343).

At the next hearing on January 21, 2022, the prosecutor indicated that they were going to continue to seek the death penalty and were not going to accept any proposal for negotiation from Appellant. (R.4353). Appellant stated that he was withdrawing his offer, and he would not negotiate with the State. (R.4354). Appellant indicated that he had only given the State a "very small portion" of information, and they were not getting anymore. As far as Appellant was concerned, the defense had given up too many comforts and benefits. Appellant then stated that he did

[13] Appellant states in his brief that he gave conflicting statements regarding his wish for a life sentence over death and noted that Appellant "referenced a counteroffer from the State to agree to a life sentence in exchange for information about other victims where there is not other reference to such an offer in the record." Initial Brief at 42. Obviously, plea negotiations are not conducted in open court.

not want the State to withdraw the death penalty.[14] (R.4354-55).

In late 2022, Appellant filed pleadings indicating a desire to plead guilty, waive the penalty phase jury and waive the presentation of mitigation evidence. Following the court's finding of competency in 2017, until his change of plea in December 2022, there was never a question regarding Appellant's competency to represent himself from his standby attorneys, the prosecutors, or the two judges who presided over his case over the five-year period.

In fact, when Appellant filed his pro se pleadings seeking to plead guilty and waive the penalty phase jury and presentation of mitigating evidence, both the prosecutor and the presiding judge praised Appellant's intelligence and understanding of the judicial process.[15] (R.2498; 4437-38).

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[14] Shortly after this hearing, Appellant filed a "Defense Mitigation Rejection Notice" lamenting the State's rejection of a plea offer when Appellant would not provide information on additional victims. (R.2142-58).

[15] The prosecutor noted that Appellant's pro se motion to waive mitigation evidence, which Appellant stated that he had researched and written himself (R.4437-38), included "an excellent recitation of the law on this issue." The prosecutor further noted that "based upon the clear case law that Mr. Lorenzo is very knowledgeable of – if you want to talk about knowing and intelligent, the legal definition, there will be a picture of Mr. Lorenzo in the dictionary." (R.2497-98). The presiding judge also stated that he was not surprised that Appellant had drafted these "very accurate"

At his actual change of plea hearing on December 6, 2022, the trial judge once again reiterated that he "had no concerns" about Appellant's competency; "in fact after questioning you many times, I found that you understand what you are doing, you have plead – you have filed significant pleadings, all having correct citations and relevant citations to authority, and as I said, I have had no questions regarding your competency." (T.17-18). The court then inquired of standby counsel and they both expressed "zero concerns" with Appellant's competency. (T.18-19).

Appellant now vaguely argues that the court violated Appellant's right to a "fair trial" by allowing him to continuously represent himself. Compare Noetzel v. State, 328 So. 3d 933 (Fla. 2021) (noting the three different standards involved in determining whether: (1) a defendant is competent to stand trial or plead guilty and waive his right to assistance of counsel; (2) whether a competent defendant's waiver of the right to counsel is knowing, voluntary, and intelligent; and (3) the competency standard to conduct trial proceedings without the assistance of counsel). Although Appellant does not specify the exact basis of his argument that the court denied his

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and "well written" pleadings because Appellant appears "very intelligent." (R.4437-38).

constitutional rights, it appears that Appellant's complaint is centered on an argument that Appellant's sovereign citizen legal theories and dismay over plea negotiations established that he did not understand the nature of the criminal proceedings against him. Such an argument is clearly without merit.

As previously set forth, the trial court conducted a detailed Faretta inquiry with Appellant at his arraignment and found that Appellant was competent and knowingly and intelligently waived his right to appointed counsel. At the next hearing, the court expressed concern over Appellant's competency and appointed an expert to examine Appellant. The court subsequently found Appellant competent based on the expert's report and the court's interactions with Appellant. Once a court has found that a defendant has knowingly and intelligently waived the right to counsel, "the dictates of Faretta are satisfied, the inquiry is over, and the defendant may proceed unrepresented." Noetzel, 328 So. 3d at 948. Under the facts of this case, the court clearly acted within its sound discretion in determining that Appellant was competent and was knowingly and intelligently waiving the right to counsel.

Although the right to self-representation at trial is almost absolute

under Faretta, a trial judge may deny even the most unequivocal request to waive counsel in limited circumstances. One common situation, not applicable here, is where the defendant abuses the court system by demonstrating an unwillingness to abide by the rules of criminal law or courtroom procedure and/or by being disruptive. See McCray v. State, 71 So. 3d 848, 868 (Fla. 2011). Another circumstance is when a defendant is so mentally ill that he is not competent to conduct trial proceedings by himself. In Indiana v. Edwards, 554 U.S. 164, 177 (2008), the United States Supreme Court ruled that a trial judge may deny the defendant's request to waive counsel and represent himself if the defendant suffers from a severe mental illness to the point he is not competent to conduct trial proceedings by himself. Following Edwards, this Court amended Florida Rule of Criminal Procedure 3.111(d)(3) to authorize "trial courts to force counsel upon a competent criminal defendant who has waived the right to counsel and seeks to represent himself at trial in the limited instance where the defendant 'suffer[s] from severe mental illness to the point where [he] is not competent to conduct trial proceedings by himself.'" Noetzel, 328 So. 3d at 949 (quoting Fla. R. Crim. P. 3.11(d)(3)).[16]

[16] This Court noted that this is a "somewhat higher" standard than the

In the instant case, there is no indication that Appellant suffers from *any* mental illness, let alone a "severe" one that rendered him incompetent to proceed. When questioned at the Faretta inquiry, Appellant denied ever being diagnosed or treated for any mental illness. (R.3306). Dr. Gamache, who examined Appellant for competency, noted that he could not determine whether Appellant's sovereign citizen beliefs were the product of mental illness because Appellant would not cooperate with his evaluation. (R.188). However, in his thirty years of experience and history of dealing with about a dozen inmates espousing such beliefs, Dr. Gamache did not find that the defendants exhibited any other symptoms that would be consistent with a psychotic condition. (R.188-89). Based on Dr. Gamache's experience, as well as empirical research on the subject, he concluded that defendants expressing sovereign citizen beliefs typically have the capacity to understand criminal proceedings and assist an attorney. Ultimately, the doctor concluded that Appellant's sovereign citizen beliefs were simply to forestall and obstruct the legal proceedings. (R.189-90).

Even assuming the "somewhat higher" competency standard announced in Edwards and Florida Rule of Criminal Procedure 3.111(d)(3)

Dusky competency standard. Noetzel, 328 So. 3d at 946.

applies to Appellant's case when he pleaded guilty,[17] the record clearly establishes that the court acted within its sound discretion in not forcing counsel upon Appellant at any time throughout these proceedings. Appellant knowingly and intelligently waived the right to appointed counsel and his periodic references to sovereign citizen legal theories did not rise to the level of establishing that he had a "severe mental illness" requiring the court to force counsel upon Appellant. The record establishes that Appellant always understood the nature of the capital proceedings and the risks associated with self-representation. Because competent, substantial evidence supports the trial court's conclusion that Appellant was competent to proceed and knowingly and intelligently waived his right to appointed counsel, this Court should deny Appellant's claim.

[17] See Noetzel, 328 So. 3d at 949-50 (noting that rule 3.111 applies when the defendant is "conduct[ing] *trial proceedings* by himself") (emphasis added).

ISSUE II

APPELLANT FAILED TO PRESERVE ANY ISSUE FOR APPELLATE REVIEW REGARDING THE TRIAL COURT'S INTRODUCTION, AS A COURT'S EXHIBIT, OF A MITIGATION PACKET PREPARED BY STANDBY COUNSEL FOLLOWING APPELLANT'S WAIVER OF THE PRESENTATION OF MITIGATING EVIDENCE.

Appellant claims that the trial court violated his Sixth, Eighth, and Fourteenth Amendment rights at the penalty phase by introducing into evidence, as a Court's exhibit, a mitigation report prepared by Appellant's standby counsel. Appellant did not raise a contemporaneous objection to the introduction of this exhibit and has therefore failed to preserve it for review. Furthermore, even if preserved, the trial court had an obligation to order the State to provide any mitigating evidence in its possession given Appellant's waiver of mitigation. Thus, there can be no showing of an abuse of the trial court's discretion in admitting this exhibit; much less fundamental error requiring remand for a new penalty phase.

As this Court stated in Bell v. State, 336 So. 3d 211, 217 (Fla. 2022), "this Court reviews a trial court's consideration of mitigation evidence for abuse of discretion. Foster v. State, 679 So. 2d 747, 755 (Fla. 1996). And, where a defendant fails to preserve—by specific objection—the trial court's alleged errors, this Court will only reverse where there is a showing of

fundamental error. See Hopkins v. State, 632 So. 2d 1372, 1374 (Fla. 1994)."

In the instant case, Appellant represented himself pro se throughout the entirety of the proceedings below -- from his arraignment in 2017 until he was sentenced to death in February 2023. Early on, the trial court appointed standby guilt and penalty phase attorneys for Appellant. In March, 2020, Appellant's standby penalty phase counsel prepared a "mitigation report" on Appellant's request and behalf, and provided it to the State Attorney's Office in the hope that the State would consider a plea agreement to life sentences. (R.2646-70; T.433-34). Subsequently, late in 2022, Appellant changed his plea to guilty and waived the penalty phase jury and waived the presentation of all mitigation. (R.2197-259, 2266-81).

After the court accepted Appellant's guilty plea on December 6, 2022, the court discussed the upcoming penalty phase. (T.47-62). The court ordered the preparation of a comprehensive PSI and asked the State to turn over any potential mitigating evidence in its possession. (T.47-55). The court also discussed his desire to appoint an independent mitigation specialist. However, given the backlog of cases following the COVID pandemic, Appellant's standby penalty phase counsel informed the court

that it would be very difficult to find a mitigation specialist who could work on the case in a timely fashion. (T.47-52). When the court inquired if the prosecutor had any suggestions, the prosecutor noted that the record contained an extensive mitigation document filed by Appellant and the court had already ordered the Department of Corrections to prepare a comprehensive PSI. (T.52-53). The court agreed that the appointment of a mitigation specialist was not required under existing case law and ordered the State to provide the court with any mitigation it had in its possession, including anything presented at Appellant's federal sentencing hearing. (T.54-55). Appellant indicated that he "was not down with" the court considering the mitigation report his standby penalty phase attorney had previously prepared and submitted to the State in March, 2020. (T.60-62; 2645-761). The court stated that they would address that issue at the upcoming penalty phase. (T.61-62).

On February 6-7, 2023, the court conducted the penalty phase proceedings. At the outset of the second day, the court addressed the mitigation report prepared by standby counsel which was given to the State Attorney's Office in March 2020. (T.346-49). The court stated that, because the State had an obligation under Florida case law to provide the court with

any mitigation it had in its possession,[18] the court wanted a copy of the mitigation report. The prosecutor indicated that he did not have a copy readily available and inquired whether standby counsel had a copy of the document. (T.348). Standby counsel indicated that Appellant had instructed him not to provide anything to the State. (T.349). The prosecutor indicated he would look for his copy of the report and would provide it to the court. (T.348-49). Subsequently, the prosecutor located his copy of the mitigation report and it was admitted, *without objection*, as a "Court Exhibit." (T.433-34).

Appellant now asserts that the trial court abused its discretion when it admitted and considered the mitigation report prepared by standby counsel over Appellant's objection. As noted, however, Appellant did not raise a contemporaneous objection at the penalty phase to the trial court admitting this exhibit. While Appellant stated at his plea hearing months earlier that he "was not down with" the court considering this report, the judge made it clear at that time that the parties would address that situation at the upcoming penalty phase. Appellant never raised an objection at the penalty

[18] See Muhammed v. State, 782 So. 2d 343, 363-64 (Fla. 2001); Bell v. State, 336 So. 3d 211, 217 (Fla. 2022).

phase when the court discussed and admitted this exhibit.[19] Accordingly, the instant claim is unpreserved and Appellant must establish fundamental error. Bell v. State, 336 So. 3d 211, 217 (Fla. 2022). Appellant has failed to establish *any* error, much less fundamental error. See Marquardt v. State, 156 So. 3d 464, 490 (Fla. 2015) (noting that the defendant could not establish any reversible error requiring a new sentencing proceeding when the defendant waived the presentation of mitigation evidence and the court ordered the defendant's standby counsel to present mitigating evidence over the defendant's objection that it violated his attorney-client privilege).

This Court has routinely recognized that competent capital defendants have the right to control the mitigation evidence presented and can waive the presentation of such evidence. See Hamblen v. State, 527 So. 2d 800, 804 (Fla. 1988) (stating that "all competent defendants have a right to control their own destinies"); Boyd v. State, 910 So. 2d 167, 189-90 (Fla. 2005) (noting that "[w]hether a defendant is represented by counsel or

[19] Appellant erroneously states that "the trial court ordered standby counsel to put the mitigation packet prepared by standby counsel in to evidence." Initial Brief at 48. Rather, following this Court's case law, the trial court noted that *the State* had the obligation to present this evidence as standby counsel had previously provided it to the prosecutors almost three years before the penalty phase.

is proceeding pro se, the defendant has the right to choose what evidence, if any, the defense will present during the penalty phase"). However, this Court has also held that "a capital defendant's mitigation waiver 'does not eliminate the court's responsibility to consider mitigating evidence in the record.'" Fletcher v. State, 343 So. 3d 55, 58 (Fla. 2022) (quoting Bell v. State, 336 So. 3d 211, 217 (Fla. 2022)). As this Court noted in Bell, when a capital defendant, like Appellant, waives the right to present any mitigating evidence and invites a death sentence, "the trial court must order the preparation of a comprehensive PSI and require the State to put into the record any mitigating evidence in its possession." Bell, 336 So. 3d at 217 (citing Muhammad v. State, 782 So. 2d 343 (Fla. 2001)).

In Marquardt v. State, 156 So. 3d 464, 491 (Fla. 2015), this Court noted that the procedure set forth in Muhammad has served the state well for over a decade in ensuring reliability, fairness, and uniformity in the imposition of death sentences when the defendant waives mitigation. This Court continued to follow Muhammad and held that, in cases where the defendant waives the presentation of mitigation, trial courts should continue to order the preparation of a comprehensive PSI and require the State to place in the record all evidence in its possession which is mitigating. Id.

This Court further stated that if the mitigation evidence alerts the trial court to the probability of significant mitigation, the court has the discretion to either call its own witnesses or, in modification of Muhammad, the court could appoint special counsel to call witnesses to present mitigation evidence. Marquardt, 156 So. 3d at 491 (receding from Muhammad to "the extent we stated that the trial court could utilize standby counsel to present mitigation").

In the instant case, the court complied with these requirements by ordering the preparation of a comprehensive PSI and requiring the State to produce any mitigating evidence in its possession, including transcripts from Appellant's federal sentencing proceeding and the mitigation report given to the State by standby counsel in 2020. Appellant cannot show that the court abused its discretion in following this Court's precedent, much less the requirement of establishing fundamental error.

In sentencing Appellant to death, the court found the existence of four aggravating circumstances beyond a reasonable doubt as to each murder count and gave each of the aggravating factors "great weight:" (1) the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person, (2) the capital felony

was especially heinous, atrocious, or cruel, (3) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification, and (4) the capital felony was committed while the defendant was engaged in the commission of, or the attempt to commit sexual battery or kidnapping. (R.2528-47).

In examining the mitigation contained in the record, including the mitigation provided by the State, the court found the existence of the following mitigating circumstances: (1) as a child, Appellant had a close relationship with his siblings and his mother (slight weight), (2) Appellant's mother was an alcoholic (slight weight), (3) Appellant was a habitual drug user (moderate weight), (4) Appellant received an electrical degree and maintained employment in that field (slight weight), (5) Appellant was part of a tight-knit neighborhood and was a good neighbor (slight weight), and (6) Appellant has been a productive, model inmate while incarcerated (slight weight). (R.2547-61). None of these six mitigators were based solely on the mitigation report produced by standby counsel, but rather, most

were based on the mitigation report and the PSI.[20] Thus, even if the court had not ordered the State to provide the mitigation report, it would not have affected the trial court's findings on any aspect of mitigation. Because Appellant has failed to establish any error, much less fundamental error, this Court should deny the instant claim.

[20] Five of the six mitigators were based on the mitigation report and the PSI; the mitigator involving Appellant's habitual drug use was based on those two items as well as the defendant's pro se pleading. (R.2558).

ISSUE III

COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTS THE LOWER COURT'S DETERMINATION THAT APPELLANT COMPETENTLY, KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY ENTERED HIS GUILTY PLEA.

In capital cases, this Court has an independent obligation to ensure the evidence is sufficient to support a conviction. Damas v. State, 260 So. 3d 200, 215 (Fla. 2018). When a defendant pleads guilty, this Court's mandatory sufficiency review "shifts to the knowing, intelligent, and voluntary nature of that plea." Id. (quoting Altersberger v. State, 103 So. 3d 122, 128 (Fla. 2012)). "Proper review requires this Court to scrutinize the plea to ensure that the defendant was made aware of the consequences of his plea, was apprised of the constitutional rights he was waiving, and pled guilty voluntarily." Winkles v. State, 894 So. 2d 842, 847 (Fla. 2005) (quoting Ocha v. State, 826 So. 2d 956, 965 (Fla. 2002)).

This Court has affirmed guilty pleas in death penalty cases where the defendant: was told he was entitled to a jury at both the guilt and penalty phases of trial; was told a judge alone would determine his sentence if he elected to waive a jury; was told the only sentencing options for first-degree murder were life or death; stated he understood the ramifications of his plea and was not being threatened or coerced; and was not on any

medication that would impair his understanding. Id.; see also Davidson v. State, 323 So. 3d 1241, 1250-51 (Fla. 2021) (noting that the trial court conducted an extensive colloquy with defendant and he also signed a "written plea form acknowledging the forfeiture of certain trial-related rights and attesting to the voluntary nature of the plea").

Competent, substantial evidence supports the lower court's determination that Appellant knowingly, voluntarily, and intelligently plead guilty. Appellant read and signed a plea form that reiterated his charges and possible sentences, including death.[21] (R.2288-93). The plea form specifically stated the constitutional rights he was waiving: the right to remain silent; right to trial; right to compel witnesses; right to confront witnesses; his right against self-incrimination; and his right to appeal judgment related matters. (R.2288-92). When he signed the plea form, Appellant certified his plea was not a result of coercion, intimidation, or threats, and that he had not been promised anything as a part of his plea. Finally, Appellant certified he understood a penalty phase would be conducted where the State would have the burden of proving aggravating

[21] Appellant also signed a "Waiver of Right to Trial by Jury and Waiver of Penalty Phase Jury." (R.2295-96).

factors, where he could put on mitigation, and where a judge would weigh the proven aggravating or mitigating factors to determine whether to impose life or death. (R.2288-92). In addition to reviewing and signing this plea form, the trial judge conducted an extensive colloquy with Appellant and went over all of the rights that he was forfeiting by pleading guilty and waiving his right to a jury. (T.1-47). Additionally, as previously discussed in Issue I, when discussing Appellant's competency to plead, the court noted that he had "no concerns" about Appellant's competency and confirmed that neither of Appellant's standby attorneys had any concerns either. (T.17-19).

As the record clearly establishes that Appellant competently, knowingly, voluntarily, and intelligently pled guilty to two counts of murder, and the evidence of his guilt is overwhelming as detailed in the State's factual basis, this Court should affirm his convictions and death sentences.

CONCLUSION

WHEREFORE, the State respectfully requests that this Honorable Court AFFIRM Defendant's convictions and sentences of death.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February, 2024, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: A. Victoria Wiggins, Assistant Public Defender, Polk County Courthouse, 255 North Broadway, 3rd Floor, Bartow, Florida 33831; **appealfilings@pd10.org** and **vwiggins@pd10.org**.

/s/ Stephen D. Ake
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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that this document complies with the typeface requirements of Fla. R. App. P. 9.045 because this document has been prepared in a proportionally spaced typeface using Microsoft Word 10 in 14-point Arial. I further certify that this document complies with Fla. R. App. P. 9.210 because this document contains 10,207 words.

/s/ Stephen D. Ake
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