IN THE SUPREME COURT OF FLORIDA
CASE NO. SC23-0696
DEATH PENALTY CASE

MICHAEL WAYNE JONES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ANSWER BRIEF OF APPELLEE

ON APPEAL FROM THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

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PRELIMINARY STATEMENT

Appellant, Michael Wayne Jones, the defendant in this case, will be referred to as the "Appellant" or "Jones". 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 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

On the evening of July 10th of 2019, while the children[1] were asleep in their bedrooms, Michael Jones, and his wife Casei Jones, got into a heated argument over Jones' alleged infidelity. During the argument, Casei got a metal baseball bat and hit Jones in the chest with it. Jones took the bat away from Casei and hit her, and just kept hitting her, until she was dead.[2] (TT 969-71; 1008; 1046; 1106).

[1] At the time of the murders Casei and Michael had two children together- Mercalli Jones (age 2) and Aiyana Jones (age 1). (TT 638; 893-94). Casei also had two children from her prior marriage to Richard Bowers- Cameron Bowers (age 11) and Preston Bowers (age 4). (T 635-36; 893-94).

[2] Jones put the bat and the stuff that he used to clean up in a trash bag and tossed it in a dumpster at a business somewhere near Lady

Jones then wrapped Casei's body up in a shower curtain, stuffed the body in a plastic tote, put the lid on it, and put it in the back bedroom that they shared together. (TT 973; 1045).

The very next day, Jones reached out to his ex-wife, Sarah Jones, whom he hadn't spoken to since April of 2018.[3] Jones told her that he and Casei were breaking up and made it very clear that if there was an opportunity he would want to get back together. (TT 779-80). On July 12th, Jones traveled to Palatka to meet with Sarah and brought their kids back to Summerfield to stay with him and the other four kids. (TT 781).

To avoid any questions as to Casei's whereabouts, Jones told Sarah that Casei had moved to live next door to her mother in Deland. (TT 785; 987). Jones made sure to keep his story straight at home as well. Cameron, the only child old enough to question where his mother was, was told that his parents were taking a break and that his mother was at grandma's house. (TT 1008). His secret safe, Jones

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Lake. Police were not able to locate the trash bag as the trash had already been disposed of. (TT 993; 1054).

[3] Jones and his ex-wife shared three children -Jacob (age 9), Noah (age 7), and Ava (age 4).

continued to travel back and forth to Palatka throughout the month of July as he tried to rebuild his relationship with Sarah and their kids. (TT 781-83).

Casei and her ex-husband, Richard Bowers, had a custody arrangement in which Bowers had the boys during the last two weeks of the summer. Those dates were prearranged and discussed between them on the GoDaddy app and Casei was always the one to drop off the kids.[4] Jones realized that the date for the exchange was quickly approaching. To perpetuate the lie that Casei was still alive, Jones used Casei's phone and pretending to be Casei, sent a message to Bowers that she was having back surgery, and that Michael would be dropping off the kids.[5] On July 27th, unaware that Casei's body

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[4]Jesse Newbanks, senior digital forensics technician for the Marion County Sheriff's Office criminal investigations division performed a data extraction on a cell phone belonging to Richard Bowers. He was able to retrieve the messages from Richard Bowers' phone from the GoDaddy App. (TT 952-550). A similar extraction was performed on a cell phone that was seized from Jones when he was arrested in Georgia. (TT 956). A report which contained the Facebook Messenger chats from July 1st of 2019 until the time the phone was analyzed was published to the jury. (TT 958).

[5] Jones also pretended to be Casei while the boys were with their father, sending a text on July 30, that she was "Checking on boys". (TT 678).

lay in a tote decomposing, Bowers met with Jones at the Leesburg mall and took Cameron and Preston back to Georgia for two weeks. (TT 674-79; 974-76; 1045).

That same day, Jones took Mercalli and Aiyana to DeLand to stay with Casei's mom Nikki and her sister Brandi for a prearranged visit. To not cause suspicion as to why he was the one dropping the girls off, Jones used Casei's medical condition as an excuse and told them Casei was home sick due to kidney problems. No one questioned this, as this was a condition Casei had suffered from her whole life. Although originally scheduled to be there for the weekend, Casei's family ended up keeping the girls for two weeks. While Mercalli and Aiyana were with them, and even after they were picked up, Jones sent Casei's family text messages pretending to be Casei. (TT 644-48; 988-89).

With Mercalli, Aiyana, Cameron, and Preston gone and his secret still safe, Jones resumed his life with Sarah and their kids. On August 1st, Jones picked up his three kids from Sarah and brought them back to Summerfield to stay with him until August 11th. (TT 784).

But then things got complicated for Jones. School was starting and that sense of security and control Jones had maintained so far in hiding Casei's murder was coming to an end. (TT 975). Soon, the lengths that Jones took to keep his secret reached a new level.

August 12th was going to be the first day of school, so on August 10th, Jones picked up the boys from Bowers, picked up Mercalli and Aiyana from Deland and returned home with all the kids in tow. (TT 680-84; 1046-47). Jones soon realized that the boys were school age and he worried that people would start asking questions once they went back. After keeping the boys out of school for a week, Jones decided to just choke them out. (TT 892; 975-77).

Cameron was first. (TT 978). While Cameron and Preston were in their rooms sleeping, Jones went into the bedroom. He got on top of Cameron, put his hands around his neck, and started choking him until he was dead. Jones then placed Cameron's body inside a suitcase. (TT 978-79;1005-09).

The next morning, Preston woke up and asked Jones where his brother was. Jones proceeded to kill Preston later that night. Jones entered the bedroom where Preston was sleeping and strangled him as well, this time tightening a zip tie around his neck. Jones then

carried Preston into the bathroom where the water was already running in the bathtub and held Preston's face under water until he drowned. He then got a trash bag, and put Preston's body in it, and left him in the bathroom overnight.[6] (TT 979-80;1008-1012).

After that, Jones continued to carry on like nothing was wrong, traveling to Jacksonville to visit Sarah and their three children every few days, bringing Mercalli and Aiyana with him during those trips. (TT 981). Then the eviction notice came and once again Jones' secret was threatened. (TT 983). Jones got served with papers evicting him from the mobile home, with only five days to get out and deal with the bodies. After the last day being there, that was it. Jones decided he was going to kill the girls too. (TT 981-83).

Unlike Preston and Cameron, Mercalli and Aiyana were awake at the time of the murders. Jones went into the bathroom and filled up the tub with water. Jones then went and got Mercalli who was playing with Ava in the living room, carried her back to the bathroom,

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[6] On August 14th, Ava went to Urgent Care and Jones met Sarah there. At the time Jones had Preston, Mercalli, and Aiyana, but not Cameron. Jones took Ava back to Summerfield with him that day. Jones brought Ava back on the 16th, and this time he only had Aiyana and Mercalli. (TT 786-87).

put her in the tub facedown and he held her there until she died. Jones then returned to the living room and did the same with Aiyana. (TT 982-83). Since they were so small, Jones got one tote and put Mercalli and Aiyana in it together and sealed that up and put that with the tote with their mom, their brother Cameron, and their brother Preston. (TT 1013-15).

Jones then packed up a few things from the mobile home, including the totes, put them in Casei's van and drove to Sarah's in Jacksonville on the 30th.[7] (TT 984, 987). Once there, Jones took on his role as a full-time dad to his three kids with Sarah, while the other four kids' bodies were in totes in the van. He took them to school and shuttled them around in that van. (TT 991).

Meanwhile, Preston's birthday, which was August 22nd, had come and Bowers texted Casei so that he could wish Preston a happy 5th birthday. Casei of course did not respond. Aware that Bowers would persist in his attempts to speak with Preston, Jones responded to Bowers' text the next day. Pretending to be Casei, Jones texted

[7] To conceal the smell, Jones stated that he put plastic around the totes and duct taped them and threw some kitty litter on it. (TT 981-82).

Bowers that Preston was not there with her, but with his cousins until Sunday. He was told to try back on Sunday, but that her phone wasn't receiving calls so they might have to use Michael's phone for the actual call. When Bowers called as planned, there was no response. On September 11th, Bowers texted Casei one last time to check on the boys before he left for his trip to Paris the next day. Again, Casei did not respond. (TT 681-83).

Around the same time, Casei's family started getting worried as well. Cameron's birthday was September 12th and Casei had not posted anything on Facebook, which was highly unusual for her. (TT 642-43; 660-61; 664-65). The family then realized that not only had Casei not posted any new pictures of herself or the children since August, but no one had seen Casei or heard her voice on the phone in months. (TT 649-50; 665). One of Casei's cousins reached out to Bowers through Facebook and told him that Casei was missing and asked if he had heard anything. (TT 684). On September 14th, Casei's mom called the Marion County Sheriff's Office and asked them to do a wellbeing check on Casei. Casei's sister and Richard Bowers reached out to them as well. (TT 649-50;666; 684; 728).

On the evening of September 14th, Detective Chase King, with the Marion County Sheriff's Office responded to the mobile home in Summerfield to conduct a wellbeing check on Casei. (TT 718). He walked to the front door and knocked a couple of times but didn't get a response. When Detective King looked through the windows, he observed that the house was completely empty and that there was a dark red stain on the floor. While he stood outside, he also noticed a strong odor coming from the house. (TT 721-22).

Detective King was able to contact the owner of the trailer, Joseph Petrolino, who informed him of the eviction and that he hadn't heard from them since they vacated the property. Petrolino also gave Detective King permission to enter the home. (TT 723-24). As soon as Detective King walked in the front door he was immediately hit with the smell of decomposition and bleach. In the common area were two buckets, a mop, and a bottle of bleach. Deputy King immediately called the major crimes unit at the Marion County Sheriff's Office. (TT 725).

A search warrant for the home was obtained, and forensic crime scene technicians arrived at the mobile home to process it. (TT 727). Blood swabs from the master bedroom, to include a swab from a wall

and a closet door; blood swabs from master bedroom, air vent and floor; a blood swab from a master bathroom sink and tub; as well as a bodily fluid swab from a baseboard and another from the bathtub were collected by Jamila King (TT 741-754) and processed by forensic DNA technician, Christopher Decker. Three swabs: the one from the master bedroom wall, the master bedroom closet, and the master bedroom air vent, all tested positive for blood. (TT 757-761).

While there, officers were able to learn that a white Chrysler minivan, registered to Casei Jones, was missing and that the back window of that van had been busted out. Based on the suspicious circumstances provided by Casei's family members, a missing endangered BOLO for Casei, her four children, and the van was issued and put out on Facebook. (TT 727-29).

Detective Bradley Bartlett, of the Marion County Sheriff's Office, was assigned as the lead detective in the case. (TT 765). Detective Bartlett reached out to family members to try to locate the family. Attempts were made to call a phone number associated with Michael Jones, but the phone number was either disconnected at the time or was powered off. (TT 768-69). Detective Bartlett eventually located a contact number for Sarah Jones, who he later found out to be the ex-

wife of Michael Jones. On September 15, he left a voicemail for Sarah to return his call. (TT 770; 794.). Sarah called Detective Bartlett back that day. Prompted by Jones, who was standing beside her during the call, Sarah told Detective Bartlett that she had last met with Michael and Casei at a McDonald's in Palatka, Florida. (TT 796; 999). A follow-up investigation with that lead failed to substantiate Sarah's information. (TT 771).

At some point on September 15th, Jones left a message on Detective Bartlett's phone advising him that he had gotten information that they were looking for him and that he would be available on the 16th, around 9:00 in the morning; however, that meeting never occurred. (TT 770-71). Later that evening, Detective Bartlett received information from law enforcement officers in Brantley County, Georgia that Jones had been detained in reference to a single vehicle crash and had confessed to killing his wife. (TT 774).

According to Deputy Bennett, at around 7pm, 911 dispatch received a call from Jones who told them he had wrecked his van into a ravine. (TT 834-38). Deputy Bennett arrived on scene at 7:12 p.m. (TT 840). Deputy Bennett saw Jones and noticed the Florida plate

on the van. As he approached the back of the van to speak with Jones, the wind shifted, and Deputy Bennett was hit with the distinct smell of decomposition coming from the van that's been crashed. Deputy Bennett immediately put his hand on his gun and asked Jones what he was doing in Georgia. In response, Jones told Deputy Bennett that the smell coming from the van was his dead wife, and that he had killed her. (TT 847-48).

A Facebook search conducted by Deputy Bennett showed a BOLO out of Marion County Sheriff's Office for a possibly missing, possibly endangered, Jones, his wife Casei, and four children. In response to this information, Deputy Bennett asked Jones if he had any children. Jones stated he did and that they were with their grandmother. (TT 849-51). A search warrant for the vehicle was requested and Jones was transported to the Brantley County Jail for further questioning. (TT 853).

Jaimie Karnes, a crime scene technician with the Georgia Bureau of Investigations, arrived on scene to process the van. (TT 899-901). A gray tote bin was recovered from inside the van. (TT 905). Human remains were located within the tote in a tucked-type position, clothed in blue shorts, a shirt, and red bra. The remains lay

underneath several mothballs, blankets, and a shower curtain. The remains were turned over to the Brantley County coroner's office, where it was eventually determined that the remains were that of Casei Jones. (TT 906-07; 1098).

Back at the jail, Will Ivey, a field agent with the Georgia Bureau of Investigation, interviewed Jones.[8] (TT 863-64). Jones confessed to killing Casei July 10th after months of marital issues. (TT 882). According to Jones, there had been an incident that day when Casei showed up to his job. That "just trickled over to that evening at home", where an argument ensued when she demanded to look at his phone in relation to accusations of an affair. (TT 880-81). Jones stated that she grabbed a bat from behind a recliner. He grabbed it from her and pushed her. She punched and hit him in his chest and face. Then he just started swinging the bat. (TT 884). He then told Agent Ivey that he wrapped the body up in plastic and put her in a tote. (TT 883). When asked if people were looking for Casei during

[8] The September 15, 2019, interview of Michael Wayne Jones, conducted by Special Agent Ivey, was played for the jury. The jury was also provided transcripts of the recorded conversations. (TT 876-895).

this time, Jones admitted to using her phone to "talk as her" whenever anyone was looking for her. (TT 885). During the interview Jones told Agent Ivey that he was not under the influence of anything when he killed Casei and that he was being treated for and taking medication for depression. (TT 887-88).[9]

Jones eventually confessed to killing all four children "after everything happened with the mother". Jones told Agent Ivey that he "choked" the boys out first when he realized that school was starting and then later "choked" the girls out. Jones eventually went out to the scene with officers and helped them locate the totes which he had hidden about six miles from the crash site. (TT 870-71; 890-92).

Once the totes were located, Jaimie Karnes responded to process that scene as well. (TT 910-11). Upon arrival, Karnes observed that two of the three totes were found covered with sticks, brush, and grass, as if hidden. The first tote bin was blue in color, wrapped in plastic, and secured with gray tape. Once all the wrapping was removed from the tote, a garbage bag containing the remains of

[9] During the interview, Agent Ivey noticed some red marks on Jones' neck, so a photograph of the injury was taken. (TT 889).

two young children was found inside. (TT 914-15). The second tote was wrapped in plastic as well and secured with gray tape. Once all the wrapping was removed from the tote, a red in color suitcase was found inside. Inside the suitcase was a garbage bag containing the remains of a child. (TT 916-17). The third tote was pink in color and wrapped in plastic and secured with gray type, just like the other two totes. Once all the wrapping was removed from the tote, a garbage bag containing the remains of a child was found inside. It also had a litter like material that would be consistent with cat litter. (TT 917-18). The children's bodies were collected by the Georgia coroner and taken to the medical examiner's office. (TT 916). The bodies were later confirmed to be those of Preston, Cameron, Aiyana, and Mercalli. (TT 1097; 1122).

Meanwhile, Detective Bartlett and Lieutenant McQuaig traveled to Brantley, Georgia, and received updates from Brantley County law enforcement officers as they drove. (TT 962). Once they arrived, Detective Bartlett and Detective McQuaig conducted a lengthy

interview with Jones, where he described in detail, the murder of Cameron, Preston, Mercalli, and Aiyana.[10] (TT 961-1057).

As he did with Agent Ivey, Jones gave a backdrop as to his relationship issues with Casei and the circumstances surrounding her death.[11] (TT 968-70; 973) Then Jones discussed the boys. Jones told the detectives about sending them off with their dad, and how he pretended to be Casie. (TT 974). But then, Jones told them, he got them back and he realized school was starting:

> DETECTIVE BARTLETT: Really. So, you get them back about the end of August?
>
> THE DEFENDANT: Yeah. And, you know, school's starting.
>
> [….]
>
> THE DEFENDANT: And then I think it's a about week after school starts. I had them. I just didn't know what to do.
>
> [….]

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[10] The September 16, 2019 interview of Michael Wayne Jones, conducted by Detective Bartlett and Detective McQuaig was played for the jury. The jury was also provided transcripts of the recorded conversations. (TT 965-1032).

[11] Jones told detectives that he smashed Casei's phone and threw it in the dumpster across from City Hall. Efforts made to locate the phone unsuccessful. (TT 990; 1054).

DETECTIVE BARTLETT: Okay. And then so you get the boys back from dad and school starts and school's going on for about a week?

THE DEFENDANT: Yeah.

DETECTIVE BARTLETT: Did you ever take them to school?

THE DEFENDANT: No, not this year.

DETECTIVE BARTLETT: They were enrolled in Fruitland Park but never made it?

THE DEFENDANT: Right.

DETECTIVE BARTLETT: Okay. Then what happens with them?

THE DEFENDANT: I killed them.

[….]

DETECTIVE BARTLETT: Did something happened that made you mad or ..

THE DEFENDANT: Everything's on me.

DETECTIVE BARTLETT: Just the pressure of knowing –

THE DEFENDANT: Just all of it, yeah.

DETECTIVE BARTLETT: -- you have her in the closet and you're worried that somebody at that point's going to know that something's not right, because she hasn't been heard from. You're looking at, what, a month at that point, right?

THE DEFENDANT: Yeah.

(TT 975-78).

> DETECTIVE MCQUAIG: So, at the point you decided to do this, were you angry or with the dad or them or you still angry with the mom or what was your thought process with that? What were you -- just tell me, explain that to me that a little bit, if you don't mind.
>
> THE DEFENDANT: I just was at point of no return, I guess.

(TT 1007-08).

Jones then went into detail as to the murder of the boys and how Cameron was the first to die. (TT 978).

Jones described how he went into Cameron's room while he was asleep and pulled him to the floor where a struggle ensued. At first, Cameron was facedown, and Jones was on top of him choking him. According to Jones, Cameron fought back. During the struggle, Cameron flipped back on his back, facing Jones, kicking so hard that his feet were making noise on the floor. Jones put his knee on Cameron's chest to hold him down and continued to choke him until he was dead and commented that it seemed like forever before Cameron stopped moving. Jones then placed Cameron's body inside a suitcase. (TT 979;1005-09).

Jones said he killed Preston the next day after he started asking where Cameron was. Jones told detectives that since his hands were

sore from strangling Cameron, Jones decided to use a zip tie on Preston[12]. (TT 938). Jones described how he took Preston off the bed while he was sleeping as he had done with Cameron. Jones then cinched the zip tie around his neck and brought him into the bathroom, where the water was already running. And he held Preston face down in that water with that zip tie on until Preston died. He then got a trash bag, and put Preston's body in it, and left him in the bathroom that night in a trash bag. (TT 979; 1008-1012).

And then, according to Jones, things kept on mounting, more and more. And then came the eviction notice. (TT 981).

> DETECTIVE BARTLETT: So, he comes. Anything?
>
> THE DEFENDANT: Serves the papers. It was like five days to get out or whatever. After the last day being there, that was it. I just put the girls in the tub and strangled them.
>
> [….]
>
> DETECTIVE BARTLETT: So, you're basically sitting there contemplating, knowing that eventually you have to do something with the babies, because for one you know you're either, A, going to end up getting caught or you have to do something with them because you can't keep the ruse up?
>
> THE DEFENDANT: Uh-huh.

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[12] Zip ties were recovered from the vehicle. (TT 924).

> DETECTIVE BARTLETT: What stopped you from turning yourself in, just the basic fear that you're going to have to be in the situation that you're in right now?
>
> THE DEFENDANT: Yeah.
>
> [….]
>
> DETECTIVE MCQUAIG: Okay. So, at that point you're at the Belleview Police Department. You say you'd like to turn myself in, and then you can't get up the nerve to turn yourself in, so you go back to the house, to the trailer, I mean.
>
> THE DEFENDANT: No, I think I drove around the rest of the day –
>
> DETECTIVE MCQUAIG: Okay.
>
> THE DEFENDANT: with the girls.
>
> DETECTIVE MCQUAIG: And that night, is that when you decided that that was the end? Okay. So, tell me which one you decided to do.
>
> THE DEFENDANT: I did Mercalli first.

(TT 982; 990-91; 1013-14).

Jones told the detectives that it was early evening and that the girls were both awake and in the living room. He took Mercalli into the bathroom where he already had the tub filled. He put his hands around her throat, put her in the tub face down and held her under.

Jones stated that he did the same with Aiyana. Jones then put them in bags and put both into a tote he had leftover. (TT 1013-15).

> DETECTIVE MCQUAIG: When any of these happened, were you drinking?
>
> THE DEFENDANT: Huh-uh.
>
> DETECTIVE MCQUAIG: You weren't drinking? No alcohol, no drugs, no nothing?
>
> THE DEFENDANT: No.
>
> DETECTIVE MCQUAIG: Clear head?
>
> THE DEFENDANT: (Shakes head.)

(TT 1023-34).

Detectives returned to Marion County the next day to conduct their investigation and interview various witnesses. On September 18th, Jones was transported to Marion County where Detective Barnett conducted a follow up interview with Jones to clarify some things that he had discovered during his investigation.[13] (TT 1034).

[13] The September 18, 2019 interview of Michael Wayne Jones, conducted by Detective Bartlett was played for the jury. The jury was also provided transcripts of the recorded conversations. (TT 1039-1052).

During that interview, Detective Barnett asked Jones again why he did what he did.

> Q: Okay. I'm trying to think of everything to make sure we covered everything. Obviously the one question is, everybody's asked me why. I know -- I understand why Casei. Why the boys, why your daughters?
>
> A: I don't know. It's just everything mounted up. Just seemed like no way out.

(TT 1044).

On October 7, 2019, Jones was indicted by the grand jury of Marion County, Florida. The Indictment charged Jones with the First Degree - Premeditated Murders of his four children, Cameron Bowers (Count One), Preston Bowers (Count Two), Mercalli Jones (Count Three), and Aiyana Jones (Count Four); and the Second-Degree Murder of his wife Casei Jones (Count Five). (R 46-48).

On the same day the indictment was filed, the State filed its Notice of Intent to Seek Death Penalty as to Counts 1-4. In its Notice, the State announced that it intended to prove the following six aggravating factors as set forth in Florida Statute 921.141(6): (b) the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to a person; (e) the capital felony was committed for the purpose of avoiding or

preventing a lawful arrest or effecting an escape from custody; (h) the capital felony was especially heinous, atrocious or cruel; (i) the capital felony was a homicide and was committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification; (1) the victim of the capital felony was a person less than 12 years of age; and (m) the victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim. (R 51-52).

On November 22, 2022, Jones entered a plea of guilty to all five counts. (R 483-488; 737-743; 2874-2883).

The penalty phase of the instant proceeding began on December 5, 2022, with the selection of a jury, which was sworn on December 6, 2022. (TT 4-514). As the events surrounding the murders were relatively undisputed, the penalty phase testimony focused on the *motive* behind the murders. As Defense counsel made clear during opening statements, "We will not be standing before you now nor later to offer excuses, justifications, or defenses. Michael Wayne Jones must be punished for what he has admittedly done. ***It is the answer to the question of why that it's going to take center stage in the***

course of this entire trial. (TT 598). And, of course, to understand the why and the operation of the fragmented mind, ***motive must be explored,*** and its origins discovered. (TT 600).

While the State argued that Jones murdered the children to avoid arrest for the murder of Casei, the defense presented multiple mental health experts to argue that the murders were the result of a psychotic episode; and to support both statutory mental health mitigating circumstances. [14]

Dr. Roberto Zori

Dr. Zori, a clinical geneticist, testified that Jones has a genetic abnormality in his ASXL2 gene. (TT 1179; 1205). While Dr. Zori was allowed to testify in general terms as to how the genetic defect affects behavior in general, he could not opine as to how the genetic defect may have impacted Jones' behavior in relation to the murder of the children as he was not qualified to do so. (TT 1231-32; 1243-44).

[14] Section 921.141(7)(b), Florida Statutes: The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance; section 921.141(7)(f), Florida Statutes: The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.

During cross-examination, Dr. Zori agreed that everyone has genetic abnormalities, and that most genetic abnormalities don't cause any problems whatsoever. Dr. Zori conceded that science does not know the significance of the specific variant that Jones has and that based on the limited research the scientific community has about this variant, mutations in this gene do not always cause problems. (TT 1254-55).

Dr. John Matthew Fabian

Dr. Fabian, a forensic psychologist, and a neuropsychologist testified that he met with Jones four times: October 28th, 2021; January 5th and 6th, 2022; November 9th, 2022, for about 20 hours. He also reviewed different psychosocial records; medical records; VA records; hospital records; brain imaging data; different social services records; and depositions of other experts involved, including their reports. He also spoke with Jones' former wife, Sarah Jones, and his former employers, Casey and Beau Delaporte (TT 1466; 1470). Dr. Fabian testified that he conducted a number of psychological and neuropsychological tests and based on those, he diagnosed Jones with major depressive disorder with psychotic features; alcohol abuse disorder; post-traumatic stress disorder; evidence of unspecified

neurodevelopmental disorder; and a mild neurocognitive disorder, possibly due to traumatic brain injury. (TT 1490-1501). When Dr. Fabian, was asked how "these things have affected Michael Jones during the time that he killed his children", Dr. Fabian replied that "he did not talk to Jones, in fact he was instructed not to". (TT 1506) But he thought for the most part, that Jones was in an erratic mental state at that time. (TT 1508).

On cross-examination, Dr. Fabian agreed that Sarah, the person who was closest to Jones during that time, reported no abnormal behavior from Jones. (TT 1519). Dr. Fabian agreed that most of the life stressors that were going on around this time were caused by Jones' own choices, such as cheating on his wife and stealing from his job. (TT 1513-15). Dr. Fabian also agreed that Jones was put on Wellbutrin to treat the depression caused by the affair and legal issues stemming from the burglary but was inconsistent in taking it. As for alcohol abuse, Dr. Fabian conceded that Jones told him that before he murdered his wife, he was only drinking maybe two to three beers a month and that Jones told detectives that no alcohol or drugs were involved at the time of the murders, and that he was "clearheaded". (TT 1527-28).

Regarding the mild neurocognitive disorder diagnosis, Dr. Fabian stated it was based on several head injuries, which he admitted were self-reported by Jones and not documented. (TT 1529). Dr. Fabian conceded that when Jones filled out a medical history questionnaire for the Navy about a year or two after this alleged football injury, Jones denied ever having a head injury or ever losing consciousness. (TT 1530-31). Dr. Fabian testified that his diagnosis of PTSD was based on two traumatic events, the molestation when Jones was six, and his murdering of his wife. (TT1547). Dr. Fabian conceded that no symptoms of PTSD were included in Jones' Navy medical exam, which included a psychiatric analysis. Dr. Fabian also conceded that when evaluated by mental health professionals in Veteran's Court, Jones denied mental health issues, alcohol abuse, psychotic disorders, military and non-military PTSD, or any anxiety disorders. (TT 1547-49). Dr. Fabian conceded that the evaluation specifically states, "vet denies any trauma-related symptoms associated with the reported molestation". (TT 1550).

As to functional impairment, Dr. Fabian agreed that Jones was able to take his kids to school, pick them up, take care of them,

sometimes managing all seven kids, even after the murders. (TT 1556).

Finally, Dr. Fabian agreed that because he didn't speak with Jones about the offense or the facts surrounding the murders, that there were opinions that he could not arrive at and conclusions he could not come up with. (TT 1521).

Dr. Aaron Filler

Dr. Aaron Filler, a neurosurgeon, testified to inventing diffusion tensor imaging, DTI analysis. (TT 1564; 1580). Dr. Filler testified that he performed a DTI analysis on Jones and that abnormalities were found. The brain areas that were impacted had to do with deficits in social interaction problems, memory deficits, depression, impaired decision-making, anxiety, poor moral judgment, low stress tolerance, and impaired anger control when confronted with situations that are potentially angering. (TT 1599-1613).

During cross-examination, Dr. Filler agreed that scarring is relatively common amongst people, developed in certain locations in the brain as they age. Dr. Filler agreed that not everybody has them, some people have more than others, and they can be caused by a variety of different reasons. (TT 1647). Dr. Filler also agreed that it is

important to clinically correlate neuroimaging with how the person behaves and functions. (TT 1645). Dr. Filler conceded he had not reviewed the police reports associated with the five murders in this case; never reviewed the video interviews Jones gave the police or the transcripts; never reviewed any depositions or witness statements; never spoke or interacted with Jones; and never performed any kind of evaluation of his symptoms or functioning. (TT 1655-56).

Dr. Filler acknowledged that according to the American College of Radiology an MRI with a DTI was not appropriate in this case. (TT 1651; 1654). Dr. Filler agreed that the CT and the MRI from 2017 showed no indication of any brain injury. (TT 1660). Dr. Filler agreed that Jones denied any episodes of unexplained anger, irritation, or frustration with others and denied unexplained intensity of anger which contradicted the DTI. (TT 1668). Dr. Filler testified that the DTI was done after the fainting episodes where he fell and hit his head at the jail and that except for Jones' questionnaire, he could not eliminate any of the injuries as being caused by when he fell at the jail after his arrest. (TT 1672). Dr. Filler agreed that the affair, the burglary, and the lies he told people, which occurred before the fall of 2017, could all be attributed to bad moral judgment and bad

decision making. (TT 1674). Dr. Filler also agreed that regardless of when these brain abnormalities occurred or what symptoms Jones described, none of these issues prevented Jones from living a normal life until he got angry with his wife and killed her. (TT 1675).

Dr. Yenys Castillo

Dr. Castillo, a clinical and forensic psychologist, testified that Jones had ten out of ten adverse developmental mental factors listed in the ACE Study, Adverse Childhood Experiences. These adverse developmental factors increase one's vulnerability to social maladjustment, morality deficit, and poor impulse control. In his opinion, Jones was impacted by trauma and adversity at the time of the murders. (TT 1796; 1902).

During cross-examination, Dr. Castillo admitted that during interviews with Jones, he never asked him about the facts of the murders, nor did he ask what was going through his mind when he murdered Casei and the children. Dr. Castillo stated that those factors did not play a part in his evaluation when determining the significance of adverse factors, as that's "not what he was asked to do". (TT 1904). Dr. Castillo also clarified that you cannot use the Ace Study as a diagnostic tool to diagnose somebody with any mental

disorder, and you cannot predict something as complex as violence by something as simple as ten things. (TT 1909-10).

Dr. Stephen L. Nelson

Dr. Nelson, a pediatric neurologist and epileptologist, diagnosed Jones with a neurodevelopmental disorder. (TT 1970; 2004). Dr. Nelson testified that he believed that at the time that Jones murdered all four children, all his childhood trauma, his traumatic brain injuries, and his genetic mutation, severely affected and negatively impacted the choices he made those days and weeks. Dr. Nelson testified that the combination of a withdrawal from his medications and increased alcohol intake would have made it even worse. Dr. Nelson also indicated that Jones told him that he started hearing voices after he killed his wife, but before he got to the jail. (TT 2004).

On cross-examination, Dr. Nelson indicated that he spent about an hour or an hour and a half with Jones and saw no evidence that he was experiencing any kind of abnormal mental behavior during that meeting. (TT 2007-08). Dr. Nelson admitted that his instructions were not to talk to Jones specifically about the killings, so he could not comment on his mental status at the time of the murders. (TT 2019). Dr. Nelson agreed that based on the evidence Jones took his

Wellbutrin regularly up until the day he murdered Casei Jones, and that Wellbutrin withdrawal wouldn't have any effect on his decision to murder his wife. Dr. Nelson agreed that he conducted a full neurological exam on Jones and that the entire neurological exam was normal. (TT 2021; 2023) Dr. Nelson testified that he would say that Jones' neurological imaging would make him prone to psychosis but would defer whether he was psychotic or not to a psychiatrist. (TT 2023).

Dr. Harold J. Bursztajn

Dr. Bursztajn, a psychiatrist, testified that he had met with Jones more than fifty times over a period of nearly two years.[15] (TT 2033; 2043-44). Dr. Bursztajn testified that Jones suffered from both a mood disorder and thought disorder at the time he killed his four children. The mood disorder being depression and the thought disorder being delusions and hallucinations. (TT 2072-73). Dr. Bursztajn testified that Jones' delusions and hallucinations were most consistent with an illness, called the schizoaffective spectrum.

[15] Dr. Bursztajn was the only one of the several expert witnesses who testified on behalf of Jones who was asked to inquire of Jones about the circumstances of the murders.

According to Dr. Bursztajn, Jones committed the murders of Cameron, Preston, Mercalli and Aiyana because of the delusional belief that the only way to assure their future safety was to obey the hallucinatory voice of his dead wife, Casei, who commanded him to send the children to heaven to be with her. Dr. Bursztajn testified that at the time Jones murdered the children, he had an absolute conviction that Casei would come back to life and that the voices that he was hearing were Casei's voice from heaven. (TT 2049-50). Dr. Bursztajn also testified that he administered two psychological tests to Jones near the beginning of his consultation with him. Dr. Bursztajn administered the Personality Assessment Inventory (PAI) to Jones during Dr. Bursztjan's fourth visit June 2020 and administered the Millon Clinical Multiaxial Inventory (MCMI) at the end of October 2020. Both tests were computer-scored and produced commentary based on Jones' responses to the test questions. (TT 2129-30; 2161).

On cross-examination, Dr. Bursztajn agreed that the PAI included a validity report that warned that Jones's scores indicted inconsistencies in his responses suggesting that Jones may not have answered the test questions in a forthright manner and may have

attempted to portray himself in a negative or pathological manner in some areas. (TT 2162-64). Dr. Bursztajn suggested that PAI's validity report was explained by his opinion that Jones was actively psychotic at the time of testing despite the fact that the PAI's interpretive report concluded that "active psychotic symptoms such as hallucinations or delusions do not appear to be a prominent part of the clinical picture at this time." (TT 2165-67). The MCMI also generated a report based on a computer analysis of Jones' responses which suggested that his responses were inconsistent and that Jones' test results "were of questionable validity due to the possibility of random responding." The MCMI suggested a diagnosis of "major depression/recurrent/severe without psychotic features." (TT 2168-69).

Dr. Bursztjan conceded that based on all the information he had reviewed relating to Jones, including his records from the Navy, the Veteran's Administration and his own interviews with Sarah Jones and Jones' former employers, the first time that Jones had ever reported having delusions, hallucinations or hearing voices was after he was arrested for the murder of Casei Jones and the four children. Dr. Bursztjan agreed that Jones never suggested in his post-arrest

statements to law enforcement officials that he had killed the children because he was hearing a voice that commanded him to take their lives. (TT 2195). Dr. Bursztjan also conceded that, after arriving at the Marion County Jail, Jones was evaluated by a mental health professional and a psychiatrist and was found not to be suffering from any delusions or hallucinations and did not make any mention of hearing voices to the jail medical staff until late November 2019, and even then did not claim that he had been commanded to kill the children by the voice of his dead wife. (TT 2196-99). Dr. Bursztajn also acknowledged that he never met Jones in person. (TT 2158).

The State offered the testimony of Dr. Jason Demery in rebuttal to the evidence presented by Jones.

Dr. Jason Demery

Dr. Demery, a forensic and clinical neuropsychologist, testified that he was present for the testimony of defense witnesses Dr. Fabian, Dr. Filler, Dr. Nelson, and Dr. Bursztjan. Dr. Demery testified that he had conducted a four-hour interview of the Defendant on December 20, 2022, had reviewed all the records that had been provided to the various defense experts, had reviewed all the reports and testing generated by the defense experts, and had reviewed police

reports, witness depositions and the text message evidence related to the instant case. (TT 2271; 2282-84). Dr. Demery testified that over his four hours with Jones, he acted perfectly normal and displayed no signs that he was in the throes of psychosis despite telling Dr. Demery that he had last heard a voice on the day before the interview. (TT 2311).

According to Dr. Demery, when he looked at all the testing results as a whole, Jones' neuropsychological profile was entirely normal, and that Dr. Fabian's own neuropsychological test data showed no evidence of any neuropsychological impairment of any magnitude with Jones. (TT 2299-2300; 2302). He also testified that the tests that were given by Dr. Fabian that measured executive functioning were entirely normal. (TT 2303).

Based on his review of the psychological testing administered to Jones and his own interview with Jones, Dr. Demery testified that he diagnosed Jones with depression but opined that there was insufficient evidence to diagnose him with a psychotic disorder. (TT 2315-16).

Dr. Demery testified that it is very clear that just because a person may have an auditory hallucination, it doesn't automatically

invoke a psychosis-based diagnosis. Dr. Demery testified that Jones describing the voices as a "voice" and then another time as a "thought" led Dr. Demery to believe that the diagnosis was inconclusive. (TT 2318).

Likewise, Dr. Demery did not believe Jones suffered from command hallucinations. (TT 2320). Dr. Demery testified that Jones told him that, during the time period of the murders, he had heard a voice from Casei telling him that the children needed to be brought to her. (TT 2321). Yet, as Dr. Demery testified, Jones literally denied what Casei wanted and said had to be done and, instead, did what he needed to do to avoid detection by law enforcement, like separating the children's bodies so the police might not ask him about them. (TT 2343). Also, when asked what would happen if he failed to obey Casei's voice, Jones told Dr. Demery that that he would feel "anxious" or "scared" or that it "could ruin his day." Rather than reporting that he felt compelled to obey the voice, Jones agreed with Dr. Demery that it would have been better for him to have endured a feeling of anxiousness rather than murdering the children. (TT 2322-23).

Dr. Demery testified that he found no evidence suggesting that Jones was suffering from any type of delusion or delirium during the period of time following the murder of his wife. Dr. Demery explained that his conversations and behavior with Sarah Jones and his efforts to cover up his crimes suggest that Jones was clear-thinking, not operating under any delusion, and was not delirious. (TT 2324;2341). Dr. Demery testified that his review of Jones' video recorded interviews with law enforcement officials similarly revealed no indication that Jones was psychotic; instead, Dr. Demery testified that Jones presented like a normal person who was sad about what had happened and who wanted to come clean about what he had done. (TT 2325-26).

Dr. Demery testified that he did not believe that Jones murdered the children while he was under the influence of extreme mental or emotional disturbance. Dr. Demery explained that "extreme" was a special word saved for very specific situations and that if a person was experiencing an extreme mental disturbance, it would be obvious to everyone around that person. Dr. Demery stated that if you looked at the behavior of him feeding the children; taking care of the children; driving the children around; interacting with other people;

and portraying himself as Casei, this was a clear-thinking individual, who in his opinion was simply trying to thwart the investigation as to the location of Casei at that time. (TT 2344).

Dr. Demery also opined that Jones understood the wrongfulness of what he was doing as evidenced by the cleaning of the trailer, the posing as Casei, and by putting the bodies in a situation where they would be concealed. Jones understood what he did was wrong and was trying not to get caught. (TT 2345).

During closing arguments, as to the "avoid arrest" aggravator,[16] the State argued:

> The first-degree murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
>
> What do we know? What's the reason he killed the children? There's only one reason. School is getting ready to start. He mentions that many times. He knows school is getting ready to start. Cameron and Preston will be telling people they hadn't seen their mom. He said Cameron had been asking every couple of days where his mom was. When they go to school, they have an open house, the teacher asks where's your mom, what are they going to say? I haven't seen her in three months. I haven't seen her in a long time.

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[16] Defense counsel conceded that the State had proven every aggravating factor beyond a reasonable doubt save for the "avoid arrest" aggravator during closing argument. (TT 2508).

> He told Detective Bartlett it seemed like the way out. He had to get rid of them. He told Dr. Demery he hid the bodies of the children so the police wouldn't ask him about them when he was caught. And if he hadn't told them where their bodies were, they may have never been found.
>
> *There's no other reason to kill those children except for self-preservation, no other reason, because we've proven there was no psychosis.*

(TT 2480-81).

The penalty phase concluded on January 12, 2023, with the jury's recommendation of a sentence of death in each of Counts 1- 4. (TT 2608; R 2619-30). For each count, the jury found that the State had proven all six of the aggravators presented, and that the aggravating circumstances outweighed the mitigating circumstances. (R 2619- 30). And for each count, one or more individual jurors found that one or more of the mitigating circumstances was established by the greater weight of the evidence. (R 2619-30).

On February 7, 2023, Jones filed a written waiver of his entitlement to a *Spencer*[17] hearing. On February 23, 2023, the *Spencer* hearing was held, during which the Court conducted a colloquy with Jones and confirmed his knowing and voluntary waiver

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

of his right to present evidence at the *Spencer* hearing. The Court requested and received sentencing memoranda from the State and the defense. Sentencing was subsequently set for April 28, 2023. The trial court sentenced Jones to death on April 28, 2023. (R 2824-2828) (R 2632; T 2623-2624).

This appeal follows.

SUMMARY OF ARGUMENT

Point One: Jones alleges the trial court erred in failing to give a limiting instruction with respect to the "Avoid Arrest" aggravator circumstance. Specifically, Jones argues that because the victims in this case were not law enforcement officers, the jury should have been instructed that "where the victim of the homicide is not a law enforcement officer, they could find this aggravator only if the State had proven beyond a reasonable doubt that that the sole or dominant motive for the murder was to avoid a lawful arrest". However, not every court construction of an aggravating factor must be incorporated into a jury instruction defining that aggravator. *Davis v. State*, 698 So. 2d 1182, 1193 (Fla. 1997). Furthermore, this Court has repeatedly upheld the constitutionality of the standard jury instruction for the avoid arrest aggravator. *Sweet v. Moore*, 822 So. 2d 1269, 1275 (Fla. 2002).

Point Two: Appellant's constitutional challenges to Florida's capital sentencing process have been repeatedly rejected. Florida's capital punishment scheme is constitutional.

Point Three: Appellant asserts that Florida's death penalty statute, section 941.121, violates the Eighth Amendment's

prohibition on cruel and unusual punishment. But the United States Supreme Court has repeatedly held otherwise. This Court is bound, both as a matter of federal and state law, by the United States Supreme Court's precedent to reject this Eighth Amendment challenge to capital punishment.

POINT ONE

THE LOWER COURT DID NOT ERR IN REFUSING THE PROPOSED JURY INSTRUCTION RELATED TO THE AVOID ARREST AGGRAVATOR. [RESTATED]

Jones argues reversal of his death sentence, alleging the trial court erred in denying his request for special jury instructions related to the "Avoid Arrest" aggravator.

A. Standard of Review.

Standard jury instructions are presumed correct and are preferred over special instructions. *Stephens v. State*, 787 So. 2d 747, 755 (Fla.2001). The failure to give special jury instructions does not constitute error where the instructions given adequately address the applicable legal standards. *Id.* A party seeking reversal due to a trial court denial of non-standard jury instructions bears the appellate burden of establishing "a palpable abuse of that court's discretion." *Phillips v. State*, 476 So. 2d 194, 196 (Fla. 1985). Jones has failed to meet said burden.

B. The plain language of the avoid arrest aggravator adequately addresses the applicable legal standards.

The avoid arrest aggravating circumstance, which is also referred to as *witness elimination*,[18] applies when the capital felony was committed for the purpose of avoiding **or** preventing a lawful arrest or to effectuate an escape from custody. *Davis v. State*, 207 So. 3d 142, 170 (Fla. 2016). The appropriate circumstances for finding the avoid-arrest aggravator were articulated by this Court in *Buzia*:

> *Where the victim is not a police officer*, "the evidence [supporting the avoid arrest aggravator] *must prove that the sole or dominant motive for the killing was to eliminate a witness,*" and "[m]ere speculation on the part of the state that witness elimination was the dominant motive behind a murder cannot support the avoid arrest aggravator." However, *this factor may be proved by circumstantial evidence from which the motive for the murder may be inferred, without direct evidence of the offender's thought processes.*
>
> In other cases, this Court has found it significant that the *victims knew and could identify their killer.* While this fact alone is insufficient to prove the avoid arrest aggravator, *we have looked at any further evidence presented, such as whether the defendant used gloves, wore a mask, or made any incriminating statements about witness elimination; whether the victims offered resistance; and whether the victims were confined or were in a position to pose a threat to the defendant.*

[18] *Riley v. State*, 366 So. 2d 19, 22 (Fla. 1978) (holding that the language of the applicable provision encompassed the murder of a witness to a crime as well as law enforcement personnel).

Buzia v. State, 926 So. 2d 1203, 1209–10 (Fla. 2006). (citations omitted) (emphasis supplied). Effectively, the plain language of the "avoid arrest" aggravator focuses on the motivation for the crimes and encompasses the murder of a witness to a crime as well as law enforcement personnel. *Jennings v. State*, 718 So. 2d 144, 151 (Fla. 1998).

C. The requested instruction, and the court's denial thereof.

The standard language as it pertains to the "avoid arrest" aggravator is as follows:

> (e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

Section 921.141(6)(e), Florida Statutes (Fla. 2022).

On November 28, 2022, Jones filed Defendant's First Requested Special Jury Instruction (Avoiding Arrest or Effecting Escape from Custody), pursuant to the holdings in *Nelson v. State*, 850 So. 2d 514 (Fla. 2003) and *Foster v. State*, 778 So. 2d 906 (Fla. 2000). Specifically, Jones requested the following supplemental language to the avoid arrest aggravator:

> Where the victim of the homicide is not a law enforcement officer, the State must prove beyond a

> reasonable doubt that the sole or dominant motive for the murder was to avoid a lawful arrest.

(ROA 493).

The State filed its response on December 14, 2022, countering that Jones failed to provide any argument, reasoning, or authority[19] to explain why the standard instruction was insufficient to fully instruct the jury. The State further argued that the standard instruction informed the jury that the purpose of the homicide must have been to avoid arrest, which is the same information conveyed by the proposed instruction and therefore would be superfluous language for no additional purpose. (TT 614).

The motion was heard at the conclusion of the State's case. The only argument Defense counsel made was that their request was a reasonable modification of the jury instructions. (TT 2413). In denying the request for the instruction, the trial court explained that the modification defense counsel was asking for was the legal threshold to get the aggravator to the jury, not a requirement of the

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[19] While Jones alleged in his motion that the case interpretations **mandated** the supplemental language, *Nelson* only held that the issue as to the adequacy of the avoid arrest jury instruction was not properly preserved and procedurally barred. *Nelson v. State*, 850 So. 2d 514, 524–25 (Fla. 2003).

instruction. The trial court also properly found that the State had met that threshold and that the jury would be instructed on the aggravator. (TT 2415).[20]

D. The lower court did not err in denying Jones' request for a special jury instruction.

Jones submits that the lower court erred in denying the requested instruction. To meet his burden of showing error on appeal, Jones 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. *Hudson v. State*, 992 So. 2d 96, 112 (Fla. 2008) citing *Stephens v. State*, 787 So. 2d 747, 756 (Fla. 2001). This criterion has not been demonstrated. Most notably, the proposed special instruction was adequately covered by the other instructions.

The jury in this case was instructed that it could consider, if established by the evidence, that "the capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting

[20] *See, e.g., Consalvo v. State*, 697 So. 2d 805 (Fla. 1996) (to meet the *legal standard*, the evidence must prove that "the sole or dominant motive for the killing was to eliminate a witness.") (emphasis added).

an escape from custody. (TT 2569). The standard instruction informed the jury that the ***purpose*** of the homicide must have been to avoid arrest, which is the same information conveyed by the ***sole or dominant motive*** proposed instruction. Likewise, the "beyond a reasonable doubt" language in the proposed instruction was redundant. Both the preliminary and final instructions instructed the jurors that each aggravating factor must be proven beyond a reasonable doubt. (TT 566; 2569).

E. The instruction was sufficient to guide the jury in their determination of the presence of the avoid arrest aggravating factor.

This Court has described what must be demonstrated to satisfy the avoid arrest aggravator. However, not every court construction of an aggravating factor must be incorporated into a jury instruction defining that aggravator. *Davis v. State*, 698 So. 2d 1182, 1193 (Fla. 1997). The avoiding arrest factor, unlike the heinous, atrocious, or cruel factor, does not contain terms so vague as to leave the jury without sufficient guidance for determining the absence or presence of the factor. Accordingly, *Espinosa v. Florida,* 505 U.S. 1079 (1992), and its progeny do not require a limiting instruction in order to make

this aggravator constitutionally sound. *Whitton v. State*, 649 So. 2d 861, 867 n.10 (Fla. 1994).

Furthermore, this Court has repeatedly upheld the constitutionality of the standard jury instruction for the avoid arrest aggravator. *Sweet v. Moore*, 822 So. 2d 1269, 1275 (Fla. 2002); *Davis v. State,* 698 So.2d 1182, 1192 (Fla.1997) (rejecting defendant's argument that this Court's construction of avoid arrest aggravator be incorporated into jury instruction because standard jury instruction was legally adequate); *Jackson v. State,* 648 So. 2d 85, 90 (Fla. 1994) (qualifying that not every aggravating factor necessarily requires instruction that incorporates judicial interpretation of that factor); *Whitton v. State,* 649 So. 2d 861, 867 n. 10 (Fla. 1994) (concluding that standard jury instruction for avoid arrest aggravator was not vague and did not require a limiting instruction in order to make this aggravator constitutionally sound).

The standard "avoid arrest" instruction given to the jury was sufficient to guide the jury in their determination of the presence or absence of the aggravating factor, and, as such, there was no violation of the Eighth Amendment.

The challenged instruction was therefore legally adequate, and the trial court acted within its discretion in denying the special instruction.

F. Any alleged error in the submission of an invalid aggravating factor to the jury was harmless.

Even if this Court were to conclude that the "avoid arrest" aggravator was erroneously applied to Jones, any error was harmless, and the death penalty is still appropriate based on the remaining valid aggravating and mitigating circumstances. *See Hill v. State,* 643 So. 2d 1071, 1073 (Fla. 1994) ("when this Court strikes one or more aggravating circumstances relied upon by a trial judge in sentencing a defendant to death, we may conduct a harmless error analysis based on what the sentencer actually found in determining whether the sentence of death is still appropriate."). Under this analysis this Court is required to determine whether there is any reasonable probability that the trial court's error contributed to the sentence of death entered in this case. *See State v. DiGuilio,* 491 So. 2d 1129, 1139 (Fla. 1986).

With the striking of the "avoid arrest" aggravator, five aggravating circumstances, conceded to by defense, remain—

921.141(6): (b) the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to a person; (h) the capital felony was especially heinous, atrocious or cruel; (i) the capital felony was a homicide and was committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification; (1) the victim of the capital felony was a person less than 12 years of age; and (m) the victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.

In reference to "CCP", during closing arguments the State argued the following:

> **Cold, calculated, and premeditated.**
>
> Cameron was asking every couple of days where his mom was. The Defendant knew it was just a matter of time before Cameron told someone his mom was gone. He knows this. The Defendant knows it.
>
> He was choking him and somehow they ended up on the floor and he had to put his knee on Cameron's chest to hold him down while he continued to choke him. Is it cold? Calculated? Was it premeditated? Yeah. It was all of those things.
>
> Was Preston's cold, calculated and premeditated? Even worse than Cameron's. Did he have a prearranged design

to murder Preston? Well, his hands were sore from strangling Cameron. How heightened is the premeditation in this case? He remembered he had zip ties and he went to get one for Preston. And he started that water running in the bathtub before he went into Preston's room. He thought about the zip ties. He started the water in the tub beforehand. And after he had what he needed, then he went in the Preston's room with intent to murder him. The murder of Preston was carefully planned and the product of calm, cool reflection.

Mercalli and Aiyana, he had put them together because he talks about how he killed them one right after the other and put them in the tote together that way. Is this cold, calculated, and premeditated? He'd already murdered the boys, so he had plenty of time -- plenty of time to think about and plan how he wanted to kill the girls. He had plenty of time because there was a sufficient amount of time in between that. They were much younger, smaller, more vulnerable. He didn't need zip ties with them. He could easily kill them by just holding their head under the water. But this time -- and this shows how he's thought about it and he's planned it and how cold it was because with Preston, the tub wasn't filled up yet. He had to fill it up after he got Preston in there, but this time he filled the tub up with water before he went and got the girls. It's full before. And then he picked them up in his arms, and they were awake -- he said they were awake -- and he carries them one by one to the bathtub full of water. Did he have plenty of time for calm and cool reflection while he was doing that, while he carried Mercalli and drowned her and then he went back and got Aiyana who was awake and then walked to the bathtub full of water where he had just killed Mercalli? Is that not cold, calculated and premeditated? It is 100 percent proven beyond a reasonable doubt.

(TT 2483-2489).

As to **“HAC”,** the State argued:

The kind of crime intended to be included as especially **heinous, atrocious or cruel** is one accompanied by additional acts that show that the criminal was consciousless, pitiless and unnecessarily torturous to Cameron Bowers, Preston Bowers, Mercalli Jones and Aiyana Jones.

Let's talk about Mercalli Jones and Aiyana first. Again, this isn't just about the physical pain, this is about mental suffering as well. Drowning is not an immediate death. I think Dr. Skipper talked about that. Mercalli and Aiyana were both awake. Their dad would be the last face they saw before they were put in a tub full of water facedown. The last face they saw was their dad. And Dr. Skipper said a healthy child would struggle. They were healthy. They would struggle while they were being held facedown in a tub of water. She said the shortest amount of time would be 10, 20 seconds, but it could be much longer than that. What were Mercalli and Aiyana thinking while their heads were under water being held by their dad and they couldn't breathe? Imagine the confusion they must have felt knowing the person doing that to them was someone they loved and someone they trusted, not only the physical pain of that not being able to breathe while your head's being held down under water and you're struggling to pull yourself back up, but the emotional pain of knowing who was doing it to you.

Preston. There's a lot of physical and mental suffering here, maybe the most of any of the kids. Mental suffering. His mom's been gone for weeks. He hasn't seen her. He's almost five. He knows his mom's not there. And then he went to bed one night with Cameron in the bed next to him. They shared a bed. And you heard from Richard Bowers how close they were. They were very close. They were together all the time.

> Well, Preston wakes up and Cameron's gone. And the Defendant says Preston asked where's Cameron the next morning. So now his mom's gone and his brother, his best friend, Cameron's also gone. What was that poor child thinking when he woke up to this guy in his bed putting a zip tie on his neck? What was that poor child thinking? His mom's gone, his brother's gone, and now this guy's on him putting a zip tie on his neck. He knew he was going to die. And how long did it take? How long did he know he was going to die? How long does that 4-year-old child know he was going to die? He said it took a lot of minutes for him to die. And Dr. Skipper said it could take -- the minimum amount of time would be ten seconds for him to lose consciousness, the minimum. It could take much longer, which the Defendant said it took minutes. How do you weigh the magnitude of that kind of mental suffering not to mention the physical pain of a zip tie around your neck tight. These are the zip ties that were found in the van. It's the same zip tie that was around Cameron's neck, tight around his neck. What sound did that make? What did he hear as this guy was sitting on top of him and he put this around his neck knowing he was going to die? That's what Preston heard and it took that much because that's how small he was.

(TT 2489-2495).

Given the significant weight that has historically been accorded to the HAC and CCP aggravator, *see Morton v. State,* 789 So. 2d 324, 331 (Fla. 2001) ("CCP and HAC ... 'are two of the most serious aggravators set out in the statutory sentencing scheme.' ") (quoting *Larkins v. State,* 739 So. 2d 90, 95 (Fla. 1999)) compared to the mitigation, there is no reasonable probability that the penalty phase

jury's alleged improper consideration of the "avoid arrest" aggravator contributed to the recommended sentence of death.[21] As the State argued in their closing argument:

> And I just want to be clear on one thing, that you can believe every mitigator they presented, every mitigator ***including "the voices told me to do it"*** and you can still vote for death. Believe everything and still say the aggravating factors outweigh it all and death is appropriate in this case.

(TT 2447).

Moreover, the jury's consideration of the alleged invalid eligibility factor in the weighing process did not produce constitutional error because all the facts and circumstances admissible to establish the "arrest aggravator" were also properly adduced as aggravating facts bearing upon "HAC" and "CCP". They were properly considered whether they bore upon the invalidated eligibility factors or not. *Brown v. Sanders*, 546 U.S. 212, 224 (2006).

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[21] As to mitigation, the trial court found that of the three statutory mitigating circumstances only one (that Jones had no significant history of prior criminal activity) had been established by the evidence; and that 41 of the 54 proposed non-statutory mitigating circumstances had been established by the evidence. Of the 41 established mitigating circumstances, seven were either not mitigating under the facts of this case or entitled to 0 weight. (R 2745-2810).

Accordingly, this claim should be denied.

POINT TWO

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

Jones' next claim disputes the validity of Florida's capital sentencing scheme.

Standard of review: This Court reviews constitutional challenges to statutes de novo. *Braddy v. State*, 219 So. 3d 803, 819 (Fla. 2017).

Jones argues that Florida's death penalty scheme is arbitrary and thus violates the Eighth and Fourteenth Amendment to the United States Constitution under *Gregg v. Georgia*, 428 U.S. 153, 189 (1976), and *Pulley v. Harris*, 465 U.S. 37 (1984). According to Jones, the scheme is arbitrary due to this Court's elimination of proportionality review in *Lawrence v. State,* 308 So. 3d 544 (Fla. 2020), as well as an overprovision of aggravating factors, otherwise referred to by Jones as Florida's "aggravator creep" problem. (IB 54;58). Similarly based constitutional challenges to Florida's death

penalty statute have been consistently rejected.[22] In fact, Jones's arguments mirror those most recently made, and succinctly rejected in *Miller.* In rejecting Miller's claim, this Court held:

> Recently, this Court in *Wells v. State*, 364 So. 3d 1005 (Fla. 2023), upheld a death sentence against a constitutional challenge based on two of the three purported infirmities alleged by Miller, namely "the sheer number of aggravating factors in the statute combined with [this Court's comparative proportionality] holding in *Lawrence*." *Id.* at 1015. *Wells* first noted that this Court, "even with the statute in its current form," had "repeatedly rejected the argument that the death-penalty statute violates the Eighth Amendment because it fails to sufficiently narrow the class of murderers eligible for the death penalty." *Id.* (citing cases). *Wells* then explained that *Lawrence* "d[id] not alter our analysis." *Id.* On that point, *Wells* reasoned that "*Lawrence* recognized that comparative proportionality review was not an integral component of the Eighth Amendment." *Id.* (citing *Lawrence*, 308 So. 3d at 548-50, 552).

Miller v. State, 379So. 3d 1109, 1127 (Fla. 2024).

While Jones invites this Court to reconsider its prior decisions, Jones offers no new or persuasive argument. He offers no reason for this Court to revisit its decision in *Lawrence* and presents no

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[22] *Cruz v. State*, 320 So. 3d 695 (Fla. 2021); *Colley v. State*, 310 So. 3d 2 (Fla. 2020); *Davidson v. State*, 323 So. 3d 1241 (Fla. 2021); *Bell v. State*, 336 So. 3d 211 (Fla. 2022); *Joseph v. State*, 336 So. 3d 218 (Fla. 2022).

significant import of the proportionality issue to the constitutionality of Florida's capital sentencing scheme.

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

POINT THREE

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

Lastly, Jones challenges the validity of the death penalty as a sentencing option.

Standard of review: This Court reviews constitutional challenges to statutes de novo. *Braddy v. State*, 219 So. 3d 803, 819 (Fla. 2017). 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 only authority cited by the appellant to support his argument is Justice Breyer's dissenting opinion in *Glossip v. Gross*, 576 U.S. 863, 908-947 (2015). The actual holding of *Glossip* upheld the practice of judicial execution and fully refutes the appellant's claim. *See also 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 (Fla. 2013).

The High Court has repeatedly held capital punishment constitutional.[23] Historically, the Eighth Amendment was understood to bar only those punishments that added " 'terror, pain, or disgrace' " to an otherwise permissible capital sentence.[24] Appellants 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. [25]

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[23] *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).

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

[25] *Id.* (J. Scalia, concurring).

While Appellant 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.[26] Nor are Appellant'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. [27] 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

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[26] *Id.* (J. Scalia, concurring).

[27] *Id.,* at 901 (J. Thomas, concurring).

tried, are acquitted, or are pardoned.[28] 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. [29]

Appellant 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

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[28] *Id.,* at 896 (J. Scalia, concurring).

[29] *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

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 a true and correct copy of the foregoing Appellee's Answer Brief has been furnished via e-portal to: Robert J. Pearce, III, Assistant Public Defender, **pearce.robert@pd7.org,** 444 Seabreeze Blvd., Suite 210, Daytona Beach, Florida 32118 on this 29th day of April 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 12,825 in compliance with Fla. R. App. P. 9.045, 9.210 and 9.045.

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