IN THE SUPREME COURT OF FLORIDA
CASE NO. SC23-1000
DEATH PENALTY CASE

DONALD O. WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ANSWER BRIEF OF APPELLEE

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

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

DORIS MEACHAM
Senior Assistant Attorney General
Florida Bar No. 63265
Office of the Attorney General
444 Seabreeze Blvd., 5th Floor
Daytona Beach, Florida 32114
Telephone: (386) 238-4990
Facsimile: (386) 226-0457
doris.meacham@myfloridalegal.com
E-Service:
cappapp@myfloridalegal.com
COUNSEL FOR APPELLEE

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES

STATUTES

RULES

PRELIMINARY STATEMENT

Donald Otis Williams, the defendant in this case, will be referred to as the "Appellant" or "Williams". 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., “(R1).” The trial transcript will be referred to as “TT” and then the page number, i.e., “(TT1).” Williams’ brief shall be referred to as “IB” followed by the page number.

STATEMENT OF THE CASE AND FACTS

Initial Trial and Appeal

The relevant facts concerning the 2010 first-degree murder of eighty-one-year-old Janet Patrick is recited in this Court’s opinion in the direct appeal:

The Guilt Phase

> The victim, Janet Patrick, was last seen alive on October 18, 2010, after shopping for groceries at Publix near her home in Lake County, Florida. The defendant, Donald Otis Williams, through both security video and eyewitness testimony, was identified as accompanying her at Publix and getting into the passenger seat of her vehicle, a white Chevrolet Impala. Multiple witnesses testified that they later saw Williams in a white Chevrolet similar to the one owned by the victim. One of the witnesses, an acquaintance of Williams, testified that Williams borrowed his shovel in the days following the victim's disappearance, and never returned it. On October 23, a law enforcement

officer found Williams in Polk County, Florida sitting in the victim's car with her credit cards in his pocket.

While in police custody, Williams gave interviews to the media, in which he admitted to being with the victim at Publix but denied harming her. He told the press that he and the victim were abducted by an unidentified assailant. Williams claimed that during the abduction, both he and the victim were in the trunk and prayed together, and the victim told Williams that she was afraid something “too personal” for Williams to discuss with the press was going to happen to her. According to Williams, the assailant beat the victim and eventually stopped the car somewhere in Polk County, where he ordered Williams to put the victim on the ground. Williams claimed that he was then able to escape in the victim's car.

Law enforcement officers investigated Williams' story about an assailant but were unable to corroborate it. Witnesses who interacted with Williams in the days following the victim's disappearance testified that there was no indication that he had been abducted. Williams eventually repudiated the story. The day after Williams' press interviews, law enforcement found the victim's nude, partially skeletonized remains in Polk County beneath two tires in a wooded area a mile and a half from Williams' former residence, where he lived from 1991 to 1996.

Crime scene investigators documented and processed the scene where the body was found. They found the victim's grocery shopping list next to her remains. There were drag marks that lined up to where the body was found. Officials did not find any jewelry on or near the body or inside the car, nor did they find the victim's wallet or purse. The body itself was unclothed, with the exception of a pair of socks and a medical alert necklace, and severely decomposed.

The medical examiner, Dr. Barbara Wolf, performed the autopsy and reviewed the victim's medical records, photos

from the crime scene, Lake County Sheriff's Office reports, laboratory reports, and interviews that Williams gave to the media. Because of the condition of the victim's body when it was found, Dr. Wolf testified that the cause of death could not be determined, but ruled out accidental death and opined that the manner of death was homicide. Carlton Jane Beck Findley, an expert in forensic entomology, determined that the victim most likely died between sunrise on October 19, 2010, and sunset on October 20, 2010. Katie Skorpinski, an expert in forensic anthropology, examined the remains at the C.A. Pound Human Identification Lab at the University of Florida and found that the body had no fractures from around the time of death, no signs of thermal damage, and no other perimortem damage.

Crime scene investigators processed the victim's automobile. Testifying at trial, they explained the various items that were recovered from the vehicle. In the trunk, they found two separate pieces of trunk carpeting, the spare tire cover from beneath the trunk carpeting, a spare tire locking device, and a piece of plastic irrigation tubing. In the passenger compartment, they found another piece of plastic irrigation tubing on the front passenger floorboard, a towel on the dashboard, one pair of green and white shorts on the backseat, two pairs of underwear briefs—one inside of the other—on the backseat, one pair of jeans on the floor in front of the driver's seat, a walking cane, and various other items.

Later, in a nearby cemetery, where some of Williams' family members were buried, law enforcement found the shovel that Williams had borrowed from his acquaintance in the days after the victim's disappearance. Tubing similar to that which was found in the victim's vehicle was found near the shovel. An expert in the field of trace evidence analysis testified that the tubing found at the cemetery appeared to have been stretched and had

characteristics consistent with being connected to the piece of tubing that had been in the trunk.

Dr. Mohammad Amer, an expert in DNA profiling, then testified regarding the scientific significance of these items. He testified that objects recovered from inside the trunk of the victim's vehicle contained blood stains that matched the victim. Specifically, on the carpeting of the trunk, Dr. Amer testified about a stain that "gave chemical indications for the presence of blood," which had a mixed DNA profile, with the major DNA profile of this stain matching the victim's profile. The other profile was indeterminate. The major DNA profile matching the victim had a frequency of occurrence for unrelated individuals of one in 620 quadrillion Caucasians, one in 45 quintillion African–Americans, and one in 170 quadrillion Southeastern Hispanics.

Dr. Amer testified that the spare tire cover also had a stain giving "chemical indications for the presence of blood" that had a partial DNA profile that matched the victim with statistical chances of the partial profile occurring in the population of one in 12 Caucasians, one in 31 African–Americans, and one in 10 Southeastern Hispanics. The spare tire locking device had four stains that gave "chemical indications for the presence of blood," three of which resulted in partial profiles matching the victim. In two of the stains, the statistical chances of finding the partial profile were one in 470 Caucasians, one in 1.7 billion African–Americans, and one in 290 million Southeastern Hispanics. In the third stain, the statistical chances of the profile being found in the population were one in 1 billion Caucasians, one in 4.1 billion African–Americans, and one in 500 million Southeastern Hispanics. There were also two stains inside the trunk lid, which both "gave chemical indications for the presence of blood" that matched the victim's DNA profile. In one of those stains, the frequency of occurrence of that DNA

profile was one in 2 quadrillion. In the other stain, the frequency of occurrence was one in 310 quadrillion.

Dr. Amer also testified about various items found inside the interior of the victim's vehicle. He tested some of the items and found DNA that matched Williams' DNA profile. These items included the towel that was found on the dashboard, which contained Williams' complete DNA profile. The chances of this DNA profile occurring in the population were one in 2.5 quintillion Caucasians, one in 3.5 quintillion African–Americans, and one in 19 quintillion Southeastern Hispanics. Dr. Amer also tested the pair of green and white shorts found in the backseat, which contained a hair. The shorts contained cells with a partial profile matching Williams, with the chances of appearing in the population of one in 18 quadrillion, and the hair contained a partial profile matching Williams, with the chance of finding it in the population of one in 290,000.

Dr. Amer also testified regarding other items found in the interior of the vehicle that contained the DNA of both Williams and the victim. Specifically, these items were the pair of jeans that was found on the floor in front of the driver's seat and the two pairs of underwear briefs, which had been found lying, one inside of the other, on the backseat. Dr. Amer swabbed the “friction points” of the jeans—inside of the crotch area, inside the pockets, and the waistband area—and found DNA with a mixed profile matching Williams and the victim. The major contributor to the mixed profile matched Williams, with chances of being found in the population of one in 2.5 quintillion Caucasians, one in 3.5 quintillion African–Americans, and one in 19 quintillion Southeastern Hispanics. The minor contributor matched the victim with chances of being found in the population of one in 160,000 Caucasians, one in 290,000 African–Americans, and one in 160,000 Southeastern Hispanics.

Dr. Amer also testified about hairs that were on both of the pairs of briefs that had been found. One of these hairs matched Williams, and two hairs matched the victim. Inside one of these pairs of briefs, Dr. Amer found a semen stain in the front crotch area, and the DNA profile of the semen stain matched Williams with chances of this profile being found in the population of one in 3.9 quintillion. Dr. Amer noted that it is not uncommon to find semen in the crotch area of a male's underwear. Inside the pair of briefs containing the semen stain, Dr. Amer also found a mixture of epithelial cells (skin cells). The victim and Williams were included as possible contributors to the mixture of skin cells with chances of being found in the population of one in forty.

Inside the crotch area of the other pair of briefs, Dr. Amer found a mixture of skin cells matching the victim and Williams with statistical chances of their DNA profile being found in the population of one in 2.8 million. On cross-examination, conducted by the defendant, who represented himself for most of the guilt phase, Dr. Amer acknowledged that it could be possible for DNA to transfer if someone touched someone with their hands and then put their hands somewhere else, or if two items of clothing from two different people were commingled. Although the DNA mixture of the defendant and victim was located on the inside of the briefs, Dr. Amer also acknowledged that it is not uncommon to obtain a mixed profile on an outer garment, and this would be possible on an article that was touching a car seat that had been used for a long time.

Dr. Amer was recalled via telephone the day after he testified in person and was asked by the prosecutor whether he could determine if the skin cells resulted from vaginal secretions. He testified that he could not determine whether the skin cells came from that source.

Sally Streeter, Williams' probation officer, testified that Williams did not have a place to live as of October 8, 2010.

Williams' brother wired Williams fifty dollars on Saturday, October 16, and told him that he would not be sending any more money. Williams later told a detective that on October 18, the day he was with the victim at Publix, he was wearing multiple layers of clothing, including two pairs of underwear and shorts under a pair of jeans. This description was consistent with the articles of clothing found inside the vehicle by crime scene investigators and tested for DNA by Dr. Amer.

In his defense case-in-chief, Williams called witnesses to support his position that he was suffering from a mental illness or seizures at the time of the crime. These witnesses included family members, who testified about Williams' behavior and experiences since they had known him, and two people who saw him and the victim in Publix on the day of the victim's disappearance. He also called psychiatrist Dr. Alan S. Berns, who testified that he had diagnosed Williams with bipolar affective disorder with associated psychotic features and post-traumatic stress disorder (PTSD). Dr. Berns testified that, after meeting with Williams in 2012 and reviewing some of Williams' medical records, he determined Williams had a history of alcohol abuse, cannabis use, and possible use of ephedra. On cross-examination, Dr. Berns testified that, in his professional opinion, Williams was not legally insane at the time of the offense.

Williams called forensic psychologist Dr. Steven N. Gold, who also testified—based on his review of Williams' records, a meeting with Williams in 2013, and speaking with Williams' family members—that Williams had bipolar disorder and PTSD. Finally, Williams called neurologist Dr. Jean Cibula, who specializes in epilepsy and had conducted a week-long epilepsy assessment of Williams in 2012. Dr. Cibula testified that she was unable to document objective evidence of a seizure disorder.

After calling these witnesses, Williams requested that the trial court reappoint the former defense counsel who represented him for approximately two years prior to his decision to represent himself in the beginning of 2013. When defense counsel resumed representation, they recalled two witnesses who had testified during the State's case-in-chief, as well as Corporal Tamara Dale, who reviewed the security footage from the residential development where the victim lived but was unable to verify whether the victim's vehicle entered or exited.

The State presented several witnesses in rebuttal, including individuals who interacted with Williams close to the time of the crime, who testified that he did not appear to be suffering from mental illness or hallucinations. The State also offered its own experts, including Dr. Ava Land, a clinical psychologist, and Dr. Rafael Perez, a psychiatrist, who both disputed the diagnosis of bipolar disorder. Instead, both experts diagnosed the defendant with antisocial personality disorder and alcohol abuse, and Dr. Perez additionally thought Williams might be malingering.

The jury found Williams guilty of one count of robbery, one count of kidnapping, and one count of first-degree felony murder.

The Penalty Phase

During the penalty phase, the State called the victim of Williams' previous carjacking arrest to establish the prior violent felony aggravating factor. The carjacking victim testified that Williams forced himself into her vehicle and sexually assaulted her. She further testified that she had agreed to Williams pleading to carjacking as opposed to sexual battery and kidnapping to avoid testifying in court at that time. The State presented victim impact evidence through testimony of the victim's friends and

acquaintances and photographs and a poem that the victim carried with her.

Williams called his brothers, Randy and David Williams, who both testified about Williams' childhood and their abusive father. Additionally, Williams' son, Ron Jon Williams, and Williams' longtime girlfriend, Shirley Kay Harvey, testified in mitigation. Williams also presented mental mitigation. He called Dr. Gold again, who opined that Williams suffered from, among other things, PTSD, severe substance abuse, and bipolar disorder. Dr. Gold also stated that Williams would qualify for the statutory mitigating circumstances that he was under the influence of an extreme mental or emotional disturbance at the time of the crime and that his capacity to appreciate the criminality of his conduct was substantially impaired.

Similar to Dr. Gold, Dr. Berns testified again during the penalty phase, stating that Williams had bipolar disorder as well as brain abnormalities from a history of head injuries. As a result, Dr. Berns opined that Williams might have problems with impulse control and qualifies for the statutory mitigating circumstance that his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired.

Williams called Dr. Eric L. Mings, a neuropsychologist who reviewed Williams' records and performed neuropsychological testing on Williams in 2012. Dr. Mings testified that Williams' MRI and PET scans were consistent with bipolar disorder, and the neuropsychological test results reflected a deterioration in brain functioning that could be the result of seizures or alcohol abuse. He also concluded that Williams suffered from mild neurocognitive disorder as a result of a traumatic brain injury in an area of the brain associated with emotions that control behavior. He concluded that, consistent with the statutory mitigating circumstance, Williams' capacity to appreciate

the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired.

At the conclusion of the penalty phase, the jury recommended that Williams be sentenced to death by a vote of nine to three after completing a special verdict form, which showed that the jury unanimously found the following aggravating factors: Williams was on felony probation at the time of the murder; Williams was previously convicted of a felony involving the use of violence; the murder was committed while Williams was involved in a kidnapping; and, the victim was particularly vulnerable due to advanced age or disability. However, after being told by the trial court that the jury only needed to fill out the mitigation verdict form if it found the listed mitigating circumstances by a majority of the jury, the jury left that form completely blank.

The trial court held a *Spencer* hearing during which the State called Dr. Land, who testified that after watching videos from a Dollar General Store depicting Williams approaching another elderly woman and reviewing the statements of the employees at Publix, there was no indication of a reaction consistent with a flashback. Dr. Land, who had interviewed Williams, testified that, during her interviews with him, Williams never told her that he had been sexually abused by his father but, instead, stated that he had been sexually abused by three people, one of whom was his stepmother, who assaulted him inside a white car.

In its sentencing order, the trial court found and gave great weight to each of the following four statutory aggravating factors: (1) Williams was on felony probation at the time of the murder; (2) Williams was previously convicted of a felony involving the use or threat of violence; (3) the murder was committed while Williams was involved in a kidnapping; and (4) the murder victim was particularly vulnerable due to advanced age or disability. These were

the same aggravating factors that the jury found unanimously as indicated by its special verdict form. In addition, the trial court found that the State had proven the aggravating factor that the murder was committed for pecuniary gain and afforded it some weight. The jury found this aggravating factor by a vote of nine to three.

The trial court found one statutory mitigating circumstance—that Williams' capacity to conform his conduct to the requirements of the law was substantially impaired. As to this mitigating circumstance, the trial court explained in detail the conflicting experts' testimony and concluded:

> This Court is faced with experts looking at the same facts and coming to very different conclusions. This Court finds, however, that even with the differing diagnoses proffered by the experts, it would be reasonable to conclude that under any of the diagnoses, the Defendant would fulfill the criteria for this mitigator. Dr. Land's definition of antisocial personality disorder being a person who does not conform to what is expected in society. It involves a lot of rule-breaking, deceitfulness and a lack of moral judgment. It is also characterized by a lack of empathy or an inability to feel compassion for the victims of an individual's actions. This Court finds that pursuant to either set of diagnoses, the Defendant has proven this mitigator by the greater weight of the evidence.

However, the trial court rejected the statutory mitigating circumstance that the crime was committed while Williams was under the influence of extreme mental and emotional disturbance, explaining:

> As an initial matter, this Court must address the issue of the Defendant's veracity. The record

is replete with instances of the Defendant fabricating stories to serve his purpose. A primary example is his fabrication that Ms. Patrick and he were kidnaped by a black man behind the Publix store. There are numerous other examples .... Thus, this Court finds it cannot rely on evidence to support a mitigator if it is solely based on the Defendant's truthfulness. This Court finds there must be some independent evidence other than the words of the Defendant to support the finding of a mitigator.

Respectfully, as stated above, this Court finds this mitigator has not been proven by the greater weight of the evidence. This Court had five very well qualified experts who could not agree on a diagnosis of the Defendant. This Court finds it significant [that] the defense experts did not view the videos showing the interaction of the Defendant and Ms. Patrick on the day Ms. Patrick disappeared. Dr. Gold concluded the Defendant *554 killed Ms. Patrick while under the influence of extreme mental or emotional disturbance. Moreover, Dr. Gold admitted the Defendant never told him what he was thinking or feeling at the time the crime was committed. It is not apparent that any of the experts asked the Defendant about his actions at the time of the crime. Thus, it is mere speculation as to what occurred at the time of the abduction and death of Ms. Patrick. Moreover, the basis for Dr. Gold's, Dr. Bern's and Dr. Ming's diagnoses was, in large part, the Defendant relating of his symptoms. As noted above, this Court finds this to be very problematic and unreliable. This Court finds this mitigator was not proven by the greater weight of the evidence and accords it no weight.

> The trial court also found thirteen nonstatutory mitigating circumstances and afforded each the following weight: (1) Williams manifested appropriate courtroom behavior (slight weight); (2) he served in the Marines (slight weight); (3) he abused drugs and alcohol from an early age (some weight); (4) he would be a model prisoner (some weight); (5) he suffered physical, mental, and emotional abuse as a child (some weight); (6) he was involved in a serious collision which resulted in a broken leg (little weight); (7) his father and grandfather were abusive alcoholics (some weight); (8) his father abused his mother in his presence (some weight); (9) he suffered head injuries while growing up (some weight); (10) he was a good father (slight weight); (11) he was a good companion to the mother of his child (slight weight); (12) he was a hard worker (slight weight); and (13) he helped others (some weight).3 After this evaluation of the aggravating factors and mitigating circumstances, the trial court sentenced Williams to death, concluding that the aggravating factors far outweighed the mitigating circumstances.

Williams v. State, 209 So. 3d 543, 548–54 (Fla. 2017) (footnotes omitted).

On direct appeal, Williams alleged that the trial court erred in (1) failing to give counsel adequate time to properly prepare the case after reappointment; (2) allowing the medical examiner to testify as to matters beyond her medical expertise; (3) allowing the jury to hear that Williams had a criminal past during the guilt phase; (4) permitting prosecutorial misconduct during voir dire and closing arguments; (5) allowing the State to introduce evidence of Williams'

prior violent felony and argue for an unsupported aggravating factor in the penalty phase; (6) allowing the introduction of improper victim impact evidence; (7) denying jury instructions and a verdict form enumerating each nonstatutory mitigating circumstance; (8) the aggravating factors failed to narrow the field of persons eligible for the death penalty; and (9) he was entitled to relief based on *Ring v. Arizon*a, 536 U.S. 584 (2002). *Williams v. State*, 209 So. 3d 543, 554–55 (Fla. 2017).

After briefing and oral argument had taken place in this case, the United States Supreme Court decided *Hurst v. Florida*, 577 U.S. 92 (2016). Through supplemental briefing, Williams argued that he was entitled to relief on the *Ring* claim based on *Hurst.* This Court affirmed Williams' convictions for first-degree murder, kidnapping, and robbery, but reversed his sentence of death and remanded for a new sentencing proceeding pursuant to *Hurst.*[1] *Id.* at 567.

RESENTENCING

On March 14, 2017, the State filed a Notice of Intent to Seek Death Penalty in the resentencing. In its Notice, the State announced

[1] This Court denied Williams' guilt phase claims and found sufficient evidence to sustain Williams' first-degree felony murder conviction.

that it intended to prove the following five aggravating factors as set forth in Florida Statute 921.141(6): (1) The capital felony was committed by a person previously convicted of a felony and on felony probation; (2) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person; (3) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit kidnapping; (4) The capital felony was committed for pecuniary gain; and (5) The victim of the capital felony was particularly vulnerable due to advanced age or disability. (R51-52)

On March 15, 2017, the trial court held a status conference to address the pending resentencing trial. (R5669) Judge Nacke advised Williams that he had the right to have an attorney represent him. Williams announced his desire to represent himself. (R5672) The court then advised Williams:

> **THE COURT**: Okay. And, Mr. Williams, do you understand that an attorney has the training and education and experience with the law to file appropriate motions, again, before trial and during trial? Your attorney -- an attorney could make sure witnesses have been subpoenaed and call witnesses on your behalf and question those witnesses for you, can cross-examine any witnesses that the State

might, lawyers are familiar with the Rules of Evidence, and also the Criminal Rules of Procedure, as well as the general law, and would be able to assist you in that way. Your attorney could pick a jury for you or with your assistance, aid you in selecting a jury to try the case. Your attorney would know particular questions that might be asked of prospective jurors to determine if they are suitable for this type of case.

And do you understand that your attorney would have access, a lot more access to legal research, again, would be able to get the necessary paperwork completed for you so that witnesses could be subpoenaed on your behalf and questioned at the trial? Your attorney could subpoena and have witnesses deposed. Although I know this is just a new penalty phase, there still may be new witnesses or witnesses that need to be deposed. Do you understand all of those things that your attorney could do for you if you were represented by an attorney?

MR. WILLIAMS: Your Honor, I understand that some attorneys can do that, and I understand some attorneys cannot do that. What I'm saying is that there are some attorneys that are not as efficient as other attorneys.

(R5672-5673)

After conducting the *Faretta*[2] hearing, the court allowed Williams to proceed pro se and appointed the Public Defender's Office as standby counsel. (R5674-5677)

[2] *Faretta v. California*, 422 U.S. 806 (1975).

Standby Counsel

On August 22, 2017, the court held a hearing on the Public Defender's Office motion to withdraw as standby counsel. At that hearing Williams waived the appointment of the Public Defender's Office as standby counsel. The court advised that should Williams want an attorney to represent him, regional conflict counsel would be appointed. Williams declined the offer and asked that the issue of whether he wanted standby counsel appointed, be addressed at another time. (R578-588; 640)

An order setting the case for jury trial on June 4, 2018, was filed by the trial court on December 18, 2017. (R790-791) Williams filed a Motion for Standby Counsel on February 20, 2018. (R908) The Office of Criminal Conflict Regional Counsel, 5th District was appointed on March 9, 2018, as standby counsel. (R928). In April 2018, the Office of Criminal Conflict Regional Counsel was allowed to withdraw as standby counsel, and Candace A. Hawthorne was appointed as new standby counsel.

On July 19, 2018, the trial judge issued an order allowing standby counsel Candace A. Hawthorne to withdraw due to imputed conflict and appointed Ana Gomez Mallada as standby counsel.

(R1094) Ana Gomez-Mallada then moved to withdraw because she was not death certified. On April 28, 2020, Attorney Ana Gomez-Mallada was replaced by Attorney Jason Wise, who remained standby counsel for the remainder of the proceedings. (R2581)

Mitigation Specialist/Private Investigator

On May 10, 2017, the trial court authorized costs for a private investigator, after finding Wiliams indigent for costs. (R169-172) On June 20, 2017, Williams moved for the appointment of a mitigation investigation specialist. (R219) In August 2017, the trial court appointed Brantley Investigations to serve as mitigation specialist/investigator per Williams' request. (R641-644)

On March 19, 2018, Williams filed a motion to terminate the services of Brantley Investigations as the defense mitigation specialist and investigator. (R939-940) On April 11, 2018, Williams filed a Motion for Expedited Order Regarding Change of JAC Investigator and Mitigation Specialist. In his motion Williams requested change of JAC provider Brantley Investigations as mitigation specialist to Louise K. Godfrey as mitigation specialist and change of JAC provider Brantley Investigations as investigator to Sean Fisher as investigator. (R952)

A hearing on both motions was held on April 16, 2018. Williams advised the court that since being moved from Lake County Detention Center back to Florida State Prison, he had not heard from Investigator/Mitigation Specialist Jimmie Brantley; that the last time they spoke was December 5 at the jail. (R5429; 5466) Williams stated that he personally knew Ms. Brantley and her daughter were suffering with health issues. (R5473-5474)

The court advised Williams that as Williams knew from prior experience, changing investigators required him to go through JAC and that he needed to provide them with any motions or hearings. (R5468) Williams responded that he understood; that the JAC usually didn't have a position with investigators, but that mitigation specialists were a "little different". (R5469) The trial court expressed concern that Brantley Investigations may have already expended the money allotted from JAC. (R5473) Williams then stated he terminated the relationship in December. As far as billing, the last thing Brantley Investigations submitted was on December 7th for the November billing. Williams advised the trial court that the additional $5000 he had requested and received from JAC had not been billed. (R5473-5474) The court again reminded Williams that JAC would need to be

notified and given the opportunity to respond, to which Williams complained that "we're looming on a court date in June" and that contacting the JAC would probably eat up another month. (R5483) On April 20, 2018, the court reappointed Louise Godfrey as Williams' new mitigation specialist and Sean Fisher, as Williams's new investigator. (R972)

On May 30, 2018, Judge Nacke informed the parties he was retiring. He informed everyone that the trial would be moved until the first of 2019, when the new judge would become death qualified.[3] (R5957-5961) Williams' case was reassigned to Judge Hill on August 3, 2018. (R1325) At the status hearing held July 16, 2018, Judge Nacke set the trial for May 20, 2019. (R121; R4689)

On August 18, 2018, the parties convened for a hearing with Judge Hill. Judge Hill put on the record that Williams already had a *Faretta* hearing with Judge Nacke, who allowed Williams to represent himself. Williams was again reminded he had the right to avail

[3] At the status hearing held July 16, 2018, Judge Nacke set the trial for May 20, 2019. (R121; R4689) On April 10, 2019, Williams' ore tenus motion to continue the trial was granted; the trial was reset to December 2, 2019. ((R134; R4525-26)

himself of counsel. Williams declined counsel. (R5522) During the hearing, Mr. Bass of the Public Defender's Office appeared and informed the new judge as to the discovery issues in the case. He alerted the court that Williams had continued to assert that he never received discovery. To obviate any future appellate issues, their office agreed to reproduce all the discovery in the case as to avoid any claim that he hadn't received everything. They were also willing to provide all the prior depositions that were taken in the case again to avoid any appellate issues. Williams was provided with death penalty trial case file records from the Public Defender's Office in open court. (R5519-5539) Each document provided was recited into the record. (R5529-5532) The discovery was handed to Mitigation Specialist Godfrey at the request of Williams, who agreed to go through all the discovery and notify the court if any documents were missing. (R5534)

On April 10, 2019, Williams' ore tenus motion to continue the trial was granted; the trial was reset to December 2, 2019. (R134; R4525-26)

On June 13, 2019, Mitigation Specialist Godfrey filed a Motion to withdraw, after suffering a stroke. (R1580) She was discharged by

the court on June 18, 2019. (R1582) The trial judge issued an order appointing Dr. Shari Schwartz as a mitigation specialist to replace Louise Godfrey on September 11, 2019. (R1727)

On June 25, 2019, Investigator Fisher moved to withdraw from the case upon Williams' request. Investigator Fisher stated that all investigative issues and projects requested by Williams to date had been completed and none were pending. Additionally, Williams had both personally and in writing informed him that he no longer wished for him to be his investigator. (R1599, 1606) An order appointing Casey Gallagher, of Premier Investigations and Forensics, as Williams' new investigator was filed November 5, 2019. (R1878-1880) In December 2019, the trial judge issued an order directing that Williams' private investigators have "private physical priority access and private phone priority access" to him, as well as "access to the DVDs and CDs currently in the custody of the Union Correctional Institution". (R1884)

On October 24, 2019, the resentencing trial was reset to April 13, 2020. (R1870; R4935-36)

On January 16, 2020, Mitigation Specialist Dr. Shari Schwartz was discharged by the court at the request of Williams. Williams

informed the court that Dr. Shari Schwartz had injured herself and could no longer continue with his case. (R4302; 4307; 1928-1932) Williams also informed the court that Investigator Gallagher was asking to withdraw as well, and that he had secured the services of Investigator Jake Ross. (R4307-4310) Williams was asked if he had a replacement mitigation specialist, which he did not:

> **MR. WILLIAMS:** I have no names to put on a motion for mitigation specialist, Your Honor. I sent over two dozen requests to different -- the JAC authorized contractors for mitigation specialists. So, I've done everything I could.

(R4320-4321) In response to Williams' difficulty on securing a mitigation specialist, the court reminded Williams once again that he had the right to have counsel appointed at any time. Williams once again declined. (R4324-4327) The court set the case for another hearing on January 30, 2020, so that Jake Ross could appear on the record to verify he was accepting Williams' case. On January 30, 2020, the status hearing was held, and Mr. Ross did not appear. (R4427-4428) At the request of Williams, the court issued an order appointing Colleen Quinn as Williams' new mitigation specialist/investigator, thus replacing Dr. Shari Schwartz and Gallagher. (R1966; 4323)

On February 26, 2021, the parties appeared for a status hearing before a new judge, Judge Davis.[4] The court addressed whether Williams currently had a mitigation specialist and what the posture was regarding evaluations with Dr. Krop and Waldman. (R4446) Standby Counsel Wise informed the court of the issues Williams had regarding mitigation specialists but that Investigator Donnie Peacock had been currently working on the case and Wise had met with him several times. (R4447) Williams then informed the court that he had no mitigation specialist or investigator. (R4450) The court inquired as to whether Williams wanted them. Williams stated he did. However, when the court asked if Williams would allow standby counsel to contact JAC to authorize one, Williams declined. (R4455-4456)

The State requested that the court enter an order requiring proof that Williams had reached out to contact mitigation specialists and other experts:

> **MR. NUNNELLEY**: But I think we do need some sort of a cutoff date that something has been done and, you know,

[4] Between March 2020 and February 26, 2021, no hearings were set as jurisdiction was relinquished to this Court regarding the States' Motion to Reinstate the Death Penalty.

if not, there needs to be some consequences for it can't, we can't let this case just sit.

THE COURT: Mr. Williams, I think that that's fair. Since you are not going to take advantage of having an attorney on the outside who would easily be able to contact JAC and do the research and get you a mitigation or mental health expert, if that's what you want, or an investigator, if you want to handle all of that, that's fine, but I agree, by March 31st you need to contact JAC to see what they're willing to cover, and if they have any objections to your requests, and then we'll take it from there as far as who is it you're going to be hiring. And probably by our May date I would like to see that you have retained whoever you're going to retain. They may not have completed their efforts, obviously, by May, but I would like to know who it is that you're going to be relying on for whatever it is that you want to hire that the JAC is willing to pay for.

[.....]

But for right now, because you're choosing to represent yourself, and that's completely fine, and we only have standby counsel, and you are limiting what you wish for standby counsel to do, the onus on getting approval from the JAC and finding, lining up experts who will be willing to be retained is on your plate at this point.

MR. WILLIAMS: Okay, Your Honor.

(R4462)

Williams, as well as the State, was given until April 15, 2021, as a cutoff date to file any motions and set the next court date for May to address all pending motions and to set the trial for resentencing. (R4467)

On April 5, 2021, Williams filed a motion to replace Mitigation Specialist Colleen Quinn, with Felica Sullivan who had "outstanding professional holdings in court throughout the state". (R2365) At the April 19, 2021, hearing, per Williams' request, the court appointed Shotwell Investigations as Williams' investigator, and Felicia Sullivan as Williams' mitigation specialist. (R5634-5635; 5641) The court then cautioned Williams that from now on he could not just fire or release the court appointed individuals:

> **THE COURT**: If I hear that, you know, Ms. Sullivan is not working out or Mr. Shotwell is not working out or doing what you want, that's fine, you can file a motion. I'll set a hearing, and based on that hearing, very similar to a kind of Nelson inquiry in my mind I'll determine whether or not they can be relieved and whether or not we are going to find anybody else for you.

(R5642)

At the status hearing held May 27, 2021, the State and Williams agreed to set the trial for June 2022. (R4594; 5387)

At the December 6, 2021, status hearing, Williams voiced his frustrations with the court regarding his difficulty getting information in a timely manner. The court again reminded Williams of the disadvantages of representing himself and to reconsider having Mr. Wise take over representation for this resentencing, to which

Williams declined. (R4973) The court then discussed the upcoming resentencing and scheduling order. Williams expressed concerns about being prepared for resentencing in June 2022 and his mitigation specialist's timeline. (R4975-4978) The judge advised she would not schedule a trial around the schedule of a mitigation specialist but would consider it a request for a continuance. (R4978) Judge Davis stated that although she believed that Williams was competent, she was going to order a court evaluation out of an abundance of caution. (R4989) The parties agreed to reschedule the resentencing to November 28, 2022. (R4980)

On January 3, 2022, the trial court issued an order appointing Dr. Scot D. Machias an expert for a competency evaluation. (R2991) The evaluation was completed on January 24, 2022. In the evaluation report, Dr. Scot D. Machias noted that:

> Williams was asked about the possible disadvantages of representing himself. He named several disadvantages of representing himself including not knowing about the law as well as an attorney due to their training. He stated that he may also be perceived negatively by the jury for representing himself. Williams was asked about his reasons for choosing to represent himself. He reported that despite the disadvantages of representing himself, he believed that no one would represent his case like him, and he would do more for himself than any attorney would do for him. In this regard, he spoke about past experiences

> when he believed that his attorney at the time was not acting in his best interest. He added that if he was to lose his case, he would take solace in that he lost because of himself and not because of anyone else. Voluntarily, Mr. Williams indicated that he was not being forced or coerced to represent himself. Rather, he implied that that he was making a free and deliberate choice. It also did not appear that his decision was being made based upon paranoid delusions.
>
> In summary, Mr. Williams is choosing to represent himself with a general understanding of the tasks involved and an appreciation of certain disadvantages of waiving his right to counsel. It is also noted that he does not have deficits in verbal comprehension, memory, and concentration that would interfere with his ability to serve as his own counsel. Therefore, the opinion is offered that Donald Williams is ***competent represent himself and proceed in his case.***

(R3025-3030)

At the status hearing on April 20, 2022, Williams informed the court that he needed a new investigator, as the last time he had heard from Investigator Shotwell was November 22, 2021. (R5367-5368) Investigator Shotwell appeared at the hearing and stated that he had family health related issues. Shotwell also expressed concerns over getting reimbursed for tasks investigators don't usually perform. (R5368-5369) Mr. Knight also appeared at the hearing as Williams' requested replacement investigator. (R5370) The court authorized

the replacement and arranged for Shotwell to hand over all documents to Knight. (R5371)

On June 29, 2022, Williams filed a Motion for Replacement Mitigation Specialist, asking to replace Ms. Sullivan as she had filed a motion to withdraw due to Covid-19 issues. Williams requested JAC approved mitigation specialist Joanna Johnson, and additional funds. (R2288) At the status hearing held July 20, 2022, JAC agreed to the substitution. JAC also agreed to approving an additional $5000 to the already $22,065 Williams had expended for mitigation specialist services. (R5140) The State's motion to continue was granted, with a five-month extension for any deadlines, and a trial date to be determined.

During the December 28, 2022, status conference, Williams advised the court that he had filed a motion to dismiss Ms. Johnson and to appoint another mitigation specialist as he had not heard from her since meeting her several months ago. Williams stated that he was trying to find a replacement but that out of the list of JAC contractors that specialize in mitigation specialists, 99 out of 100 do not work with a prose litigant. Standby Counsel Wise told the court that many mitigation specialists, including the mitigation specialist

that he knew personally, will not work with pro se defendants. Wise informed the court that he would contact mitigation specialist Carol Springer and check with other mitigation specialists. (R5124-5125)

As Williams was having difficulty with securing a mitigation specialist, and for the record, the court reminded Williams once again that he had the right to be represented by counsel and asked Williams if he still wanted to represent himself at this point. (R5127) Williams stated he was going to continue to represent himself. The court then agreed to substitute the mitigation specialist, but cautioned Williams to make sure there was somebody that was available to take the job. (R5128) To make sure Williams was not missing a deadline, the court reminded Williams that March 1st was the deadline for disclosure of any mental health experts.[5] (R5125-5126)

Motion for Continuance

On February 23, 2023, Williams filed a motion for a six-month continuance stating, "*because of the inability to secure a mitigation*

[5] The court extended the deadline to March 8, 2022, to allow Williams to determine whether he was calling Dr. Maher or Dr. Gold as mental health experts. (R5230-5231)

specialist from the JAC approved listings, the defendant moves the Honorable Court for a 6-month extension of time for defendant to secure evaluations and examiners for examinations of predetermined physical and psychological disorders". (R3633) At the hearing on the motion, Williams advised the court he was asking for continuance so that he could acquire the assistance of evaluators to evaluate him, instead of relying on a mitigation specialist to do so. Williams' motion was denied. (R5280-5284)

Trial

On April 3, 2023, at the commencement of the penalty phase trial, Williams advised the court he was waiving a jury trial and that he was waiving mitigation. (TT 7; 11) The court conducted a *Faretta* hearing, and after finding Williams competent to proceed, accepted his waiver of a jury trial and asked that Mr. Wise continue as standby counsel. (TT27-32) A Stipulation and Waiver of Jury trial was signed by Williams and the State and filed in open court. (R3722)

The court conducted another *Faretta* hearing regarding Williams' waiver of mitigation. The trial court noted for the record Williams' objection to the denial of the continuance and request for a continuance as a basis for his waiver of mitigation. (TT30)

The bench trial proceeded with opening statements from the State, with Williams reserving his opening statement. (TT57-64) After presentation of its witnesses, the State rested. (TT677) Williams waived opening statements and formally rested. (T679) The parties then discussed mitigation. The trial judge declined to appoint special counsel to present mitigation, finding that a tremendous amount of mitigation was presented in the original trial. (T680-681) Williams waived a *Spencer*[6] hearing and the court ordered a Pre-Sentence Investigation ("PSI"). (T684) The State then presented closing argument, with Williams waiving his closing argument. (TT684-85)

The trial judge issued a sentencing order finding that the State proved beyond a reasonable doubt the existence of four aggravating factors: Williams was on Felony Probation; Prior Violent Felony; Felony Murder (Kidnapping); and Vulnerable Victim Due to Advanced Age. (R3911-3915) The court did not find that the capital felony was committed for pecuniary gain.[7] (R3914)

---

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

[7] The original trial court found that the State had proven the aggravating factor that the murder was committed for pecuniary gain and afforded it some weight.

As to mitigation, the trial court considered the PSI and record, including mitigation evidence that was presented in the original proceedings. The trial court found two[8] statutory mitigating circumstance—that Williams' capacity to conform his conduct to the requirements of the law was substantially impaired; and that the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. As to these mitigating circumstances, the trial court concluded:

> **2. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. 8921.171 (7)(b). Fla. Stat. (2019).**
>
> The Florida Supreme Court has defined this mitigating circumstance as "less than insanity, but more emotion than the average man, however inflamed." *Foster v. State*, 679 So. 2d 747, 756 (Fla. 1996). During the original proceedings, the defense experts opined that Mr. Williams suffered from PTSD, bipolar disorder, severe chronic substance abuse, and some degree of brain injury, leading to a constant state of extreme mental or emotional disturbance. The record showed numerous instances of mental health professionals diagnosing Mr. Williams with bipolar disorder. Dr. Land, Court appointed expert, disagreed with the PTSD and bipolar diagnosis, but added that Mr. Williams meets the criteria for antisocial

[8] In Williams first penalty phase, the trial court rejected the statutory mitigating circumstance that the crime was committed while Williams was under the influence of extreme mental and emotional disturbance

personality disorder. Dr. Mings did not agree with the antisocial personality disorder diagnosis but stated Mr. Williams's history is not inconsistent with such a finding. Mr. Wegener testified in the original proceedings that he noticed Mr. Williams talking a lot while he was with Ms. Patrick inside the Publix. Mr. Wegener also testified that Mr. Williams was very animated during that time, like he was doing a little dance. Ms. Peggy Snead also testified that she witnessed Mr. Williams outside the Publix before he came in contact with Ms. Patrick. Ms. Snead testified that Mr. Williams struck up a conversation with her while she was waiting to use the ATM. Ms. Snead also testified that Mr. Williams jumped up from the bench and approached Ms. Patrick, and that he was adamant in assisting her with her shopping. The behavior of Mr. Williams could reasonably be viewed as part of a manic episode of bipolar disorder.

Elements of planning and steps taken to conceal actions can negate a finding of extreme mental or emotional disturbance at the time of the offense. *Ault V. State*, 53 So. 3d 175, 189 {Fla. 2010). The Court does not believe that law enforcement finding Ms. Patrick's body in an isolated wooded area covered by two discarded tires rises to the level of elements of planning or steps to conceal actions on the part of Mr. Williams sufficient to negate a finding of this mitigating circumstance'". No other evidence shows that Mr. Williams planned his actions or tried to conceal his actions. Additionally, the interview with media that Mr. Williams conducted after his arrest points more toward antisocial personality disorder characteristics than purposeful actions negating this mitigator.

The Court finds that this mitigating circumstance has been reasonably established by the greater weight of the evidence, and it is given considerable weight.

5. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct

to the requirements of law was substantially impaired. S921.141(7)(e) Fla. Stat. (2019).

The Florida Supreme Court has defined this mitigating circumstance as "mental disturbance which interferes with but does not obviate the defendant's knowledge of right and wrong." *Perri v. State*, 441 So. 2d 606, 608 (Fla. 1983). During the original proceedings, defense experts opined that Mr. Williams suffered from post-traumatic stress disorder (PTSD), bi-polar affective disorder, and bilateral hippocampal edema; along with chronic alcohol abuse and cognitive impairment, that led to their opinion that Mr. Williams met the requirements of this mitigating circumstance. Dr. Land, Court appointed expert, had a contradictory opinion to PTSD and bi-polar disorder. Dr. Land opined that Mr. Williams suffers from antisocial personality disorder, meaning that a person does not conform to what is expected in society. This disorder involves rule breaking, deceitfulness, and a lack of moral judgment, along with lack of empathy toward others. The record is replete with instances of deceitfulness on the part of Mr. Williams, one instance of which is the story told to the media about himself and Ms. Patrick being carjacked when they left the Publix parking lot. The Court finds that Dr. Land's opinion regarding an antisocial personality disorder diagnosis to hold more weight than those of the defense experts based upon the Court's review of the record. While the experts disagree on a consistent diagnosis for Mr. Williams, all the experts agree that Mr. Williams's ability to conform his conduct to the requirements of law is substantially impaired.

Generally, "a defendant's purposeful actions after the crime indicating that the defendant was aware of the criminality of his conduct may be sufficient to reject a defendant's claim that this mitigator applies." *Bright v. State*, 299 So. 3d 985, 1006 (Fla. 2020). The Court does not believe that law enforcement finding Ms. Patrick's body in an isolated wooded area covered by two discarded tires rises to the level of purposeful actions on the part of Mr.

> Williams sufficient to reject the finding of this mitigating circumstance. Mr. Williams remained in Central Florida living in the victim's car. These actions do not support a purposeful action to conceal his involvement. Additionally, the interview with media that Mr. Williams conducted after his arrest points more toward antisocial personality disorder characteristics than purposeful actions negating this mitigator.
>
> The Court finds that this mitigating circumstance has been reasonably established by the greater weight of the evidence and gives it significant weight.

(R3915-3921)

The trial court also found fifteen[9] nonstatutory mitigating circumstances and afforded each the following weight: 1) Defendant manifested appropriate courtroom behavior (some weight); 2) Defendant served in the Marine Corps (slight weight); 3) Defendant was a good probationer (slight weight); 4) Defendant suffered physical, mental, and emotional abuse as a child (moderate weight); 5) Defendant was struck by a car resulting in a shattered leg (some weight); 6) Defendant has a family and personal history of alcohol abuse (some weight); 7) Defendant has a family and personal history of mental illness (considerable weight); 8) Defendant witnessed his mother being abused by his father (some weight); 9) Defendant

[9] Thirteen nonstatutory mitigating circumstances were found in Williams' first trial.

suffered head injuries while he was growing up (some weight); 10) Defendant was a good father (slight weight); 11) Defendant was a loving companion to Shirley Kay Harvey (slight weight); 12) Defendant was a hard worker (slight weight); 13) Defendant helped others when he could (slight weight); 14) Defendant has witnessed two deaths (some weight); 15) Defendant is in poor health (slight weight). (R3921-3929)

After this evaluation of the aggravating factors and mitigating circumstances, the trial court sentenced Williams to death, concluding that the aggravating factors far outweighed the mitigating circumstances. (R3930)

This appeal follows.

SUMMARY OF THE ARGUMENTS

ISSUE I: The motion to continue filed and argued by Williams in the trial court was for a six-month continuance to secure an *evaluator*, not another mitigation specialist. No argument has been made toward that end in his appeal. Williams' argument is beyond the scope of the very clear objection at trial. Regardless, even if the alleged error had been properly preserved, this claim would still fail as Williams was not entitled to a continuance based on his difficulties in securing yet another mitigation specialist.

ISSUE II: Williams' waiver of penalty phase jury and waiver of mitigation evidence were both voluntary.

ISSUE III: Williams' argument that that the trial court "erred by not assuring Williams had access to his discovery material" is not properly before this Court on appeal. Regardless, the State did not violate either the spirit or the technical requirements of the criminal discovery rules. *Wilcox v. State*, 143 So. 3d 359, 376 (Fla. 2014). There is no need for this Court to clarify or recede from *Wilcox.*

ISSUE IV: Florida's Death Penalty Scheme is constitutional.

ARGUMENT

POINT ONE

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED WILLIAMS' MOTION TO CONTINUE.

On February 23, 2023, Williams filed a motion for a six-month continuance stating, "*because of the inability to secure a mitigation specialist from the JAC approved listings, the defendant moves the Honorable Court for a 6-month extension of time for defendant to secure evaluations and examiners for examinations of predetermined physical and psychological disorders*". (R3633)

On February 28, 2023, Williams' motion for continuance was addressed. (R4143) Williams began by once again alerting the court that mitigation specialists would not take his case because he was pro se. (R5271) The court and the State then sought clarification:

> **THE COURT**: So as I understand it, your --the argument is you're requesting a continuance of the trial in order to obtain a mitigation specialist?
>
> **MR. WILLIAMS**: No, Your Honor.
>
> **THE COURT**: No?
>
> **MR. WILLIAMS**: No. I'm asking for continuance that -- so that I may acquire the assistance of evaluators to evaluate me, instead of relying on a mitigation specialist to do so.

(R5273-5274)

MR. WILLIAMS: But there's nothing more -- there's nothing more valuable on a -- on a penalty phrase proceeding than having a fresh evaluator, a fresh examiner than -- than the penalty phase is concerned.

MR. NUNNELLEY: Well, Judge, we've already this morning -- and I'm a little bit confused about why I'm hearing this now. We've already dealt with the issue of evaluations with Drs. Gold and Maher. And now -- we hear Dr. Harry Krop's name, maybe Dr. Krop is someone that can be engaged, I don't know. But we have -- we're not at the point of Mr. Williams not having the opportunity to get an evaluator, he's got two that have already seen him; the lady at Shands that the epilepsy lady, Cibula -- or however she pronounces it -- is a third. So I'm not sure what the Defendant wants at this point.

I mean, if he doesn't want things – these doctors who've already seen him involved, then he needs to say so now and ask the Court to appoint somebody new. He doesn't need to burn off eight more days into the month of March and back the State into a corner where we're having to scramble to get everything done that we have to do to accommodate a late disclosed expert.

By agreeing to March the 8th, I was giving him the benefit of the doubt, but now it sounds like, you know, I'm -- he's trying to take advantage of that and bring up yet another expert who's going to appear later on when I've got no opportunity to prepare for rebuttal and no opportunity to collect to even engage a rebuttal State expert. I mean, you know, enough is enough.

(R5277-5278)

The trial court subsequently denied Williams' motion for continuance explaining:

> **THE COURT:** So you have had ample opportunity, if you had chosen to get a new evaluator, you could have done so by now. It was your choice to rely on a mitigation specialist. That was part of the decision you have made as counsel representing yourself.
> [.....]
> Mr. Williams, I am not inclined to grant any continuances at this point. Granting a continuance is squarely within the discretion of the trial court. You said that the most crucial person was a mitigation specialist. I would suggest the most crucial person is a licensed Florida Bar attorney who is qualified to handle death penalty cases. You have had the opportunity to have Mr. Wise represent you, you continue to choose to represent yourself, as is your constitutional right. My right to grant a continuance or not. I am denying your motion for a continuance. We will be ready to go, all your witnesses that are experts need to be disclosed by March the 8th. I think that's it.

(R5280-5284)

In the instant case Williams argues that the trial court abused its discretion when it denied Williams' motion to continue to *secure a mitigation specialist*. (IB at 29; 32) This Court has previously stated that to preserve an error for review on appeal, a contemporaneous objection must be made at the trial level at the time the alleged error occurred. [10] *F.B v. State,* 852 So. 2d 226, 229 (Fla. 2003); *J.B. v. State,* 705 So. 2d 1376, 1378 (Fla. 1998). Furthermore, for a challenge to

[10] The trial court noted the denial of the continuance for the record prior to trial. (TT30)

be cognizable on appeal, it must be the specific contention asserted as a legal basis for the objection below. *Steinhorst v. State,* 412 So. 2d 332, 338 (Fla. 1982). *Wilcox v. State*, 143 So. 3d 359, 372 (Fla. 2014).

To be clear, in his motion Williams noted that the underlying "cause" (IB at 33) for the motion to continue was the lack of mitigation specialists willing to work with Williams. However, the reason for seeking the continuance and what was argued by Williams at the motion hearing was a six-month continuance to secure an *evaluator*, not another mitigation specialist. No argument has been made toward that end in his appeal. Rather Williams' argument encompasses the court's abuse of discretion in its denial of a mitigation specialist. Williams' argument is beyond the scope of the very clear objection at trial. Because the record clearly shows that Williams' motion to continue was limited to the request for an evaluator, and because Williams' argument here is regarding a request for a mitigation specialist, the issue was not properly preserved, and this claim is procedurally barred. *Spann v. State*, 857 So. 2d 845, 852 (Fla. 2003) Regardless, even if the alleged error had been properly preserved, this claim would still fail as Williams was

not entitled to a continuance based on his difficulties in securing yet another mitigation specialist, especially when the failure to maintain one was of his own doing.

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

In efforts to convince this Court that the trial court abused its discretion in denying his motion for continuance, Williams suggests that *Brown v. State*, 38 So. 3d 212 (Fla. 2nd DCA 2010) is instructive. *Brown*, however, is entirely distinguishable from this case. *Brown* concerns continuances where defendants are seeking *counsel* of their choice, a constitutional right, vs. the services of a mitigation

specialist. While Williams stresses the importance of a mitigation specialist, the appointment of a mitigation specialist is not required in cases in which the death penalty is sought, and the defendant is indigent, and certainly not constitutionally required. *Jones v. State*, 212 So. 3d 321 (Fla. 2017).

Irrespective of that, the record reflects that the trial court appointed Williams a mitigation specialist ***and*** an investigator in 2018; the trial court never once denied Williams' multiple motions seeking to replace the appointed mitigation specialists and investigators; nor did the trial court oppose any of the multiple motions to incur additional costs filed by Williams. *Crim. Specialist Investigations, Inc. v. State*, 58 So. 3d 883, 885 (Fla. Dist. Ct. App. 2011). As noted by the State:

> **MR. NUNNELLEY**: Given what Mr. Williams is saying about a mitigation specialist, I believe it would be appropriate for the Court to judicially notice the records of this Court that will show when and how many mitigation specialists have been appointed for Mr. Williams. And also to judicially notice when and how many private investigators have been appointed for Mr. Williams' assistance.
>
> I know that there have been multiple hearings that the state was not present for, that's -- that's perfectly fine, but it's not as if Mr. Williams has not had a private investigator. I know how much money JAC

> has spent on private investigators and it's quite a lot of money. Same thing with mitigation specialists.
>
> The court records reflect when those appointments have taken place and to my knowledge, I have heard no evidence other than assertions from the defendant that these mitigation specialists would not work with him. I don't know what the Court may have heard.
>
> **MR. WILLIAMS:** Your Honor, may I respond, please?
>
> **THE COURT**: It's not necessary, thank you. I'm very aware of the position of Mr. Williams on the mitigation specialists. The Court would take judicial notice of all of the appointments. I also note that there have not been orders relieving mitigation specialists, although any time Mr. Williams has asked I have appointed a mitigation specialist.
> This last time there was not a name presented and I had no indication other than from Mr. Williams that the woman that is currently appointed as his mitigation specialist was not willing to do the job. So thank you from the state. I will take judicial notice.

(TT41-43)

Williams has not demonstrated an abuse of discretion requiring remand for a new penalty phase where Williams had over 6 years to prepare his case and preparation was required only for a resentencing where mitigation had already been fully developed. In terms of any injustice, the record certainly supports a finding that even if the request for the continuance had been granted, it was clear that Williams was not going to be able to secure a mitigation

specialist. As to foreseeability, the record certainly supports a finding that the loss of the court-appointed mitigation specialist Johanna Johnson was foreseeable. Williams knew that mitigation specialists did not want to work with pro se defendants as evidenced by his own testimony to the court as well as that from Standby Counsel Wise. In fact, when agreeing to substitute mitigation specialists, the court cautioned Williams to make sure there was somebody that was available to take the job. And when the court advised Williams to allow standby counsel to help him secure a mitigation specialist, Williams declined. Moreover, based upon the representations made in Williams' motion and at the hearing on his motion for continuance, the request for a continuance was a dilatory tactic. After finally realizing he was not going to be able to get a mitigation specialist, Williams decided to change his tactics and request an evaluator. As to inconvenience to the State, as the case had already lingered for six years there was demonstrable prejudice to the State regarding securing witnesses for trial if the motion to continue was granted for another unknown length of time. And again, as the motion for the continuance was for an evaluator, the State would have to be able to depose these new expert witnesses. In applying this Court's

precedent to the trial court's deliberate and thoughtful address of this issue, no abuse of discretion occurred. *Garner v. Langford*, 55 So. 3d 711, 714 (Fla. 1st DCA).

Even if this Court were to find an abuse of discretion, Williams has failed to allege how the court's ruling resulted in undue prejudice. Williams has not indicated what the mitigation specialists that he had prior to Ms. Johnson failed to accomplish, which would have necessitated the appointment of another one. It's not like Williams started from scratch. Williams had the benefit of the extensive mitigation records from his original capital penalty phase. And although Williams ultimately waived mitigation, the court considered the extensive mitigation from his original capital penalty phase trial. *Wells v. State*, 364 So. 3d 1005, 1013 (Fla. 2023).

In sum, Williams cannot demonstrate that the trial court abused its discretion in denying his motion for continuance where, as aptly described by this Court in *Jones*, "[t]he inability of counsel to prepare for trial and offer such assistance as defendant might request was not due to any action of the court or of the standby counsel. The fault lies squarely on defendant…". *Jones v. State*, 449 So. 2d 253, 257 (Fla. 1984). This is especially true where Williams

did not plead specific prejudice, and none can be extracted from the face of the record. Whatever harm Williams believes he suffered, was of his own doing by choosing to represent himself even after multiple warnings from the court and multiple opportunities to retain counsel.

Because Williams failed to demonstrate if or how he was prejudiced, or how the lack of a continuance affected his penalty phase, he cannot establish that the trial court abused its discretion, and this claim should be rejected.

POINT TWO

WILLIAMS' WAIVER OF A PENALTY PHASE JURY TRIAL AND WAIVER OF MITIGATION EVIDENCE WERE KNOWING AND VOLUNTARY.

Williams next argues that he should be entitled to relief because his waiver of penalty phase jury and waiver of mitigation evidence was not voluntary. The waiver of the right to a jury trial involves a pure question of law which is reviewed *de novo*.[11] *Williams v. State*, 10 So. 3d 660, 661 (Fla. 4th DCA 2009). A trial court's acceptance of a defendant's waiver of the presentation of mitigation evidence is

[11] Williams applied the abuse of discretion standard as to the waiver of jury. (IB at 45)

reviewed for an abuse of discretion. *Robertson v. State*, 187 So. 3d 1207, 1212 (Fla. 2016).

A defendant has a constitutional right to represent himself. *Faretta v. Califorina,* 422 U.S. 806, 819–21 (1974). Williams had proceeded pro se since the start of the proceedings in 2017 pursuant to a *Faretta* hearing. After alerting the court of his wish to waive a jury and waive mitigation, the court conducted two more *Faretta* hearings, and again determined that Williams was clearly competent to represent himself. (TT28; 32) Thus, Williams was entitled to control the overall objectives of his defense, including the decision to waive a jury and disavow mitigation, which were both knowing and voluntary.

Waiver of Jury Trial

A challenge to the voluntariness of a defendant's waiver of the right to a penalty-phase jury must be preserved in the trial court through a motion to withdraw the waiver. *Griffin v. State*, 820 So. 2d 906 (Fla. 2002). Williams did not preserve this error for appeal by first raising it in the trial court. Regardless, the record shows that Williams' waiver was knowing and voluntary.

To obtain a valid oral waiver of a defendant's right to jury trial, the trial court "must conduct a colloquy that 'will focus a defendant's attention on the value of a jury trial and … make a defendant aware of the likely consequences of the waiver.' " *Morris v. State*, 680 So. 2d 544, 545 (Fla. 1st DCA 1996) (quoting *Tucker v. State*, 559 So. 2d 218, 220 (Fla. 1990)). The record shows that Williams orally proclaimed his desire to proceed with a bench trial and executed a written waiver of his right to a penalty phase jury. The trial court also conducted a colloquy to ensure that Williams understood the nature and importance of the rights he intended to relinquish. (R4147; 4178) (TT7; 11; 21)

Williams, however, attempts to obtain relief under this claim based upon allegations that the waiver of a jury trial was not voluntary because he was not prepared to go to trial; because of alleged death threats made to him and his family; and the absence of state-funded mitigation support. (IB at 48) All of Williams' assertions are disproved when the facts are viewed in total. Nevertheless, none of Williams' excuses have any bearing on the knowing and intelligent nature of the waiver of his right to a penalty phase jury. The fact of the matter is that Williams made a choice to waive a jury trial after

Williams was advised on the record of his right to a penalty phase jury and the consequences of waiving that right as required by law; and Williams further attested to his informed waiver in writing as reflected by the record. *Lynch v. State*, 254 So. 3d 312, 321 (Fla. 2018).

Waiver of the Presentation of Mitigation Evidence

After addressing Williams' waiver of jury trial, the court then addressed Williams' waiver of mitigation. Williams refused to sign the waiver of mitigation form provided by the State and stated that the only reason he was waiving mitigation was because of his denial of a mitigation specialist. (TT38) Even after the court found that there was an affirmative waiver of wanting to put on any mitigation, the court proceeded with the State's case with the caveat that they would readdress the mitigation issue again. If Williams decided that he did have some information he wanted the court to be aware of and present as mitigation, he would be given the opportunity to do so. (TT48) Williams declined again. At the conclusion of the State's case, Williams stated that he "would like to waive every entitled right that we have from now on. If it's a *Spencer* hearing, if it's a PSI, if I could waive the PSI I will". (TT683-84)

Williams' argument that the lack of a mitigation specialist prevented Williams from developing mitigation on his own is disputed by the record as discussed in Point One. Williams had years to develop mitigation along with the support of numerous mitigation specialists that were appointed to him. None of Williams' arguments negate the fact that the waiver was knowingly, voluntarily, and intelligently made.

Moreover, even if the court erred on this point, any error would be harmless beyond a reasonable doubt. This was not a first-time trial where the court was completely unaware of any mitigation. Although Williams was pro se during the guilt phase in his first trial, Williams was represented by counsel during the penalty phase and mitigation was fully presented. The court relied on the full trial transcript of the prior proceedings that included mental health experts, family members, and his friends. (TT23) The trial court carefully reviewed the record and not only found the original statutory mitigating factor to be present but found a second. *Allen v. State*, 662 So. 2d 323, 330 (Fla. 1995).

Williams is not entitled to relief on this claim.

POINT THREE

WHETHER THIS COURT SHOULD RECEDE FROM *WILCOX V. STATE* AND DIRECT THAT CAPITAL PRO SE DEFENDANTS BE GIVEN THE ABILITY TO VIEW DISCOVERY BEFORE TRIAL.

For a challenge to be cognizable on appeal, it must be the specific contention asserted as a legal basis for the objection below. *Steinhorst v. State,* 412 So. 2d 332, 338 (Fla. 1982). In the absence of a proper objection, a trial court cannot be held in error for failing to follow a principle of law never voiced. *See Castor v. State,* 365 So. 2d 701 (Fla. 1978).

At trial, Williams did not articulate a specific and contemporaneous objection to the introduction of the discovery, other than he had not seen the CD's and that according to him, it amounted to fundamental error. No discovery violation was claimed, no *Richardson*[12] hearing was had, and Williams was given the opportunity to view the evidence. Now Williams argues that "the trial court failed to conduct an appropriate inquiry into his unequivocal request for self-representation, constituting per se reversible error" and that the trial court "erred by not assuring Williams had access

[12] *Richardson v. State*, 246 So. 2d 771 (Fla. 1971).

to his discovery material." (IB at 30; 60). Since Williams did not present this latter argument to the trial court, it is not properly before this Court on appeal. Regardless, the State did not violate either the dictates of *Faretta*, or the spirit and technical requirements of the criminal discovery rules. *Wilcox v. State*, 143 So. 3d 359, 376 (Fla. 2014).

This Court has repeatedly recognized that Florida's criminal discovery rules are designed to facilitate a truthful fact-finding process and to prevent surprise and trial by ambush. *See Binger v. King Pest Control,* 401 So. 2d 1310, 1314 (Fla. 1981); *Kilpatrick v. State,* 376 So. 2d 386, 388 (Fla. 1979). To ensure full and fair discovery, parties must both comply with the technical provisions of the discovery rules and adhere to the purpose and spirit of those rules in the criminal and civil contexts. *Scipio v. State,* 928 So. 2d 1138, 1144 (Fla. 2006); *see also Binger,* 401 So. 2d 1310, 1314 (Fla. 1981). Further, this Court emphasized in *Binger* that the "search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal. Those relevant facts should be the determining factor rather than gamesmanship, surprise, or superior

trial tactics." *Id.* 1313 (quoting *Dodson v. Persell,* 390 So. 2d 704, 707 (Fla. 1980)).

During the February 28, 2023, hearing the State put on the record that witnesses testifying at the resentencing proceeding would be the same witnesses who testified at trial; the evidence they intended to offer at the resentencing proceeding, apart from any potential expert rebuttal evidence, was going to be the evidence already in the possession of the Lake County Clerk; no new physical evidence or witnesses were anticipated. Essentially, the State's presentation in the case was going to be very much like the original guilt proceeding, and that there was an available transcript of it. (R5162-5163)

During the bench trial, to avoid any misrepresentations by Williams that he was not provided the discovery from the original trial, the State put on the record that at the August 28, 2018, pre-trial hearing, Williams was provided with the death penalty trial case file records from the Public Defender's Office in open court. (R5517-5539) Each document provided was recited into the record. (R5529-5532) The discovery was handed to Mitigation Specialist Godfrey at the request of Williams, who agreed to go through all the discovery

and notify the court if any documents were missing. (R5534) A discovery form that was a certification of documents that were provided was filed with the court. That form was signed by PD Bass, by Williams, and by Investigator Godfrey. The State advised the court that on the third page listed as Pages 142 to 210 were LCSO property receipts which Williams stated he never received. (TT459-460)

> **MR. WILLIAMS:** There's supposed to be 62 CDs. I've never seen any of those. The boxes that contain probably over 100,000 documents, I've only been -- I've only seen 5,000 of them. I had 3,000. Ms. Godfrey sent me 2,000 before she had a stroke. These -- these were produced in open court on August 28, 2018, five years after the trial. And I've never seen them since. Five years. The state and the Court promised me that would have six months with this -- all this evidence to review this evidence. The state offered it, the Court agreed to it, but yet I've never seen any of it ever because it's transferred from one – one mitigation specialist having a stroke, the other one having back problems, another one went to a private detective or a private investigator that Your Honor had on Zoom hearings that had mental problems and then we finally got them over to Mr. Knight afterwards.
> But I have never ever seen any of those documents that Mr. Wise has custody over other than the 5,000 that I've had, but 5,000 is -- it's less than two percent of the total -- the whole total of these documents. And I've never seen any of these any of these and there's supposedly a cassette that's in this -- in here that no one knows where it's at.
>
> **MR. CAMUCCIO:** Your Honor, all we can do is turn it over to him and he's acknowledged that it was turned over to him and his defense team and we're ready to proceed with the next witness.

(TT463-464)

Williams then stated to the judge that it was fundamental error to deny him evidence. The judge then told Williams that she would set up a time for him to review the evidence. (TT466)

Under Florida Rule of Criminal Procedure 3.220(b)(1)(a), the prosecutor has an obligation to disclose to the defendant and to provide the defendant with an opportunity to "inspect, copy, test, and "photograph" the statements of "all persons known to the prosecutor to have information that may be relevant to any offense charged or any defense thereto." The State, the trial court and the PD's office went above and beyond to accommodate Williams regarding the disclosure of discovery and adhered to the rules of procedure. The State did not violate either the spirit or the technical requirements of the criminal discovery rules. *Wilcox v. State*, 143 So. 3d 359, 376 (Fla. 2014)

As to Williams allegations that the court failed to apprise him of the pitfalls related to proceeding pro se, that is clearly disputed by the record. A *Faretta* inquiry, the first of many, was conducted on March 15, 2017, when the trial court held a status conference to

address the pending resentencing trial. (R5669) Judge Nacke advised Williams that he had the right to have an attorney represent him. During the *Faretta* hearing, Williams indicated that he understood he would be limited to the legal resources available to him in custody, and that he would not receive special treatment from the prosecution. When Williams announced his desire to represent himself, the court provided Williams with standby counsel, an investigator and a mitigation specialist. Throughout the rest of the proceedings up to the day of trial, Williams was reminded repeatedly that he had a right to counsel by every judge he came before. Williams did not heed the advice. Each time Williams voiced frustration or concern over discovery issues or problems securing mitigation specialists and investigators, the trial court advised Williams to retain counsel. Williams did not heed the advice. The trial court advised Williams to take advantage of the services of standby counsel. Williams did not heed the advice.

As in *Wilcox v. State*, 143 So. 3d 359, any surprise or lack of preparation Williams encountered with discovery are attributable only to Williams' conscious decision as an incarcerated capital defendant to represent himself, and not to a failure of the State to

disclose available information. *See Behr v. Bell*, 665 So. 2d 1055, 1056 (Fla. 1996) (a defendant who represents himself has the entire responsibility for his own defense).

Lastly, there lacks any compelling argument made by Williams to recede from *Wilcox*. At issue in *Wilcox* was whether the State's refusal to transcribe a recorded statement for Wilcox constituted a violation of Florida's discovery rules and, if so, whether the violation materially hindered Wilcox's trial preparation or strategy. *Wilcox v. State*, 143 So. 3d 359, 375 (Fla. 2014). This Court held that the State did not violate either the spirit or the technical requirements of the criminal discovery rules as the rules did not require the State to produce and disclose information which was not within the State's actual or constructive possession. *Sinclair v. State,* 657 So. 2d 1138, 1141 (Fla. 1995). Williams' argument that *Wilcox* allows the State to provide a "DVD with unreadable discovery materials" is an inaccurate and distorted interpretation of this Court's holding. There is no need for this Court to clarify or recede from its holding.

Williams is not entitled to relief on this claim.

POINT FOUR

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

Williams' next claim disputes the validity of Florida's capital sentencing scheme. This Court reviews constitutional challenges to statutes de novo. *Braddy v. State*, 219 So. 3d 803, 819 (Fla. 2017).

Williams 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 Williams, 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. Similarly based constitutional challenges to Florida's death penalty statute have been consistently rejected.[13] In fact, Jones's arguments mirror those most recently made, and succinctly rejected in *Miller.* In rejecting Miller's claim, this Court held:

---

[13] *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).

> 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, 379 So. 3d 1109, 1127 (Fla. 2024).

While Williams invites this Court to reconsider its prior decisions, Williams offers no new or persuasive argument. He offers no reason for this Court to revisit its decision in *Lawrence* and presents no significant import of the proportionality issue to the constitutionality of Florida's capital sentencing scheme.

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

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Honorable Court affirm Williams' convictions and sentences.

Respectfully Submitted,

ASHLEY MOODY
ATTORNEY GENERAL

s/DORIS MEACHAM
Senior Assistant Attorney General
Florida Bar No. 63265
Office of the Attorney General
444 Seabreeze Blvd., 5th Floor
Daytona Beach, Florida 32114
Telephone: (386) 238-4990
Facsimile: (386) 226-0457
doris.meacham@myfloridalegal.com
E-Service: cappapp@myfloridalegal.com
COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing APPELLE'S ANSWER BRIEF has been furnished via e-portal to: **George D.E. Burden**, Assistant Public Defender, Email: burden.george@pd7.org, gosney.steve@pd7.org, appellate.efile@pd7.org, 444 Seabreeze Blvd., Suite 210, Daytona Beach, FL 32118 on this 26th day of June 2024.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this response is 14-point Bookman Old Style, and word count is 14,228 in compliance with Fla. R. App. P. 9.210 and 9.045.

s/DORIS MEACHAM
Senior Assistant Attorney General
Florida Bar No. 63265