

Sample Sentencing Orders

Sample 1

The defendant entered a plea of guilty before this court on October 19, 2000, to the first degree murders of Roseanna Morgan and Leah Caday as well as to one count each of armed burglary of a dwelling and kidnapping. On that same date the defendant waived his right to a penalty phase jury and the court allowed the penalty phase to commence at a non-jury hearing on January 8, 2001. The parties presented matters in aggravation and mitigation during the penalty phase hearing. A Spencer hearing was scheduled for February 6, 2001, and additional evidence was taken. Victim impact statements were presented but the court has not considered them in arriving at the sentence to be imposed. The defendant was given an opportunity to be heard regarding the sentences to be imposed and he made a statement. The parties stipulated to submit written final arguments and sentencing memoranda and the court has read them and considered them. The court now finds as follows:

FACTS

The defendant and Roseanna Morgan had an affair that lasted several months. The defendant, who was unemployed and who was being supported by his wife, obtained three credit cards that he used to establish Roseanna Morgan in an apartment. He also bought her an automobile. He ran up over \$6,000.00 in credit card debt as a result of this affair. Roseanna Morgan was also married. Her husband was employed in Saudi Arabia. He returned home and, on February 9, 1999, she decided to resume relations with him. This upset the defendant and on March 3, 1999, he wrote a letter to his wife in which he disclosed the affair in detail and announced his future plans. In the letter the defendant stated,

“I am sorry. I am very despondent and depressed beyond description. There has been recent events which drove me to this.

“I want you to send copies of letter & card and pictures to her family, mom and dad in Hawaii...I want them to have a sense of why it happened, some decent closure, a reason and understanding, they are good parents like yours. I want them to know what she did, the pain she caused, that it was not just a random act of violence.

“I had three credit cards I got by myself - Chase Visa, People’s Mastercard, MBNA Visa. She had no good credit, and I helped her buy car, ‘85 Buick, get apt in Rosecliff and buy things for apt, pay bills, she was paying on cards and would have paid them little by little. She was responsible. Suddenly she decided to get back with husband on Feb 9. She is afraid of him, or custody of kids or something. Suddenly just a week after she gave me that card, it was over.....She promised to pay credit cards, her bills and she made payment February 18 on one, but I cannot live with that worry. The Chase Visa is \$6,000 - I feel she will not pay all. So between the worry about bills, you finding out and your anger and possibly getting thrown out on street, our sad life lately and the pain of losing her, and losing my dream which seemed so close, I feel there is no way out for me. I am sorry for all the pain, suffering, expense, embarrassment and hardship I will cause and give to you.....

“That is why she must pay the price. She built me up, made me love her, loved me, gave me that card on Feb 6 then on 9th she ended it. You cannot tell someone words like that, then expect them to turn off like a switch. Then there’s the \$ worry.”

The evidence presented establishes that subsequent to February 6, 1999, the defendant made numerous attempts to regain Roseanna Morgan’s favor and even had conversations with her husband on the subject. One of Roseanna Morgan’s coworkers saw the defendant at their place of employment. By then, he was stalking her.

On the afternoon of March 5, 1999, the defendant carefully packed three firearms and ammunition into a black bag. Then he carried the black bag and firearms to Roseanna Morgan’s apartment. He waited outside the apartment for her to come home. Leah Caday, Roseanna Morgan’s teen age daughter, came home first. In describing the incident the defendant stated, “I was waiting for her. Her

daughter come home and we went in the apartment.” The defendant held Leah in the apartment with one of the firearms in view for thirty to forty minutes. The defendant admits that Leah was thoroughly terrified during this ordeal. He stated, “I put the gun down on the table and the daughter was just terrified. She says ‘why are you doing this to me?’” When Roseanna Morgan returned to the apartment the defendant met her at the front door and shot her several times in the legs while she was standing in the hallway. Another shot entered her eye and exited her neck. Then the defendant dragged her into the apartment while she was screaming for help and administered a coup de grace by firing a bullet into her brain. Meanwhile, a neighbor called 911 and notified the police.

After shooting Roseanna Morgan, the defendant telephoned his wife and told her what he had done. The defendant's wife testified that during this conversation she heard Leah screaming in the background. Then he dispatched Leah with one shot in the back that killed her almost instantly. He notified his wife of the second murder and told her where to find the letter he had written to her. She obtained the letter and called 911. The defendant called the Sanford Police Department. During that call he made a statement about the incident to the dispatcher.

After the police were notified, two officers attempted to investigate but when they tried to enter the apartment a shot was fired and they retreated. The SWAT team arrived and, after negotiations, the defendant was arrested without further incident.

Based upon the testimony presented and the other evidence in the case, the court concludes as follows:

AGGRAVATING FACTORS
(ROSEANNA MORGAN)

The capital felony was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.

The facts that tend to establish this aggravating factor are: (1) the defendant’s letter to his wife in which he asked her to notify Roseanna Morgan’s parents about “the pain she caused,” that the homicide was not “a random act of violence” and that she had to “pay the price;” (2) the defendant carefully packed three firearms in a black bag along with ammunition and took them with him to Roseanna Morgan’s apartment; (3) the passage of time between the date of the letter and the killing; (4) the passage of time while the defendant held and terrorized Leah while awaiting Roseanna Morgan’s return and (5) the coup de grace.

The defense presented a psychologist, Dr. Jacqueline Olander, who opined that the defendant’s motive in going to the apartment was to commit suicide in front of Roseanna Morgan. Dr. William Riebsame, a psychologist presented by the state, disagreed. It was his opinion that the defendant’s motive was a murder-suicide and that the defendant simply did not carry out the second part of the plan. Dr. Riebsame’s opinion is more supportive of the evidence in the case and it is accepted by the court. The contents of the defendant’s letter set forth a murder suicide plan without saying as much in so many words. It would have been unnecessary for Roseanna Morgan’s parents to be notified “about the pain she caused” or that the killing “was not just a random act of violence” or “(t)hat is why she must pay the price” unless the defendant fully intended to kill her. But for the actions of Joyce Fagan, the dispatcher for the Sanford Police Department, and Stephanie Ryan, the hostage negotiator, the defendant may have carried out the second part of his plan. These two individuals had extensive conversations with the defendant after the murders and dissuaded him from harming himself or anyone else.

The court finds this aggravating circumstance to have been established beyond a reasonable doubt. The mental mitigation presented by the defendant has been carefully considered by the court in light of the holding in *Alameida v. State*, 748 So.2d 922 (Fla. 1999). The court is convinced that the defendant was sufficiently in control of his faculties to plan and carry out the murder of Roseanna Morgan. Accordingly, this aggravating circumstance is given great weight.

The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

The contemporaneous conviction for a violent crime cannot generally be used to support this circumstance. However, if more than one victim is involved, this circumstance can be considered. *King v. State*, 390 So.2d 315 (Fla. 1980); *Pardo v. State*, 563 So.2d 77 (Fla. 1990); *Stein v. State*, 632 So.2d 1361 (Fla. 1994). Since there were two victims in this case, this aggravating factor has been established beyond a reasonable doubt. However, since Roseanna Morgan was the first victim to be killed, this aggravator is given only moderate weight.

The capital felony was committed while the defendant was engaged in aggravated child abuse, burglary or kidnapping.

This aggravating circumstance invokes the ancient and much criticized “felony-murder rule.” See, *Aaron v. State*, 299 N.W.2d 304, 13 A.L.R.4th 1180 (Mich. 1980); Fletcher, *Reflections on Felony Murder*, 12 S.W.U.L.R. 413 (1980-1981); Gegan, *Criminal Homicide in the Revised New York Penal Law*, 12 N. Y. L. Forum 565, 586 (1966); Moreland, *Kentucky Homicide Law with Recommendations*, 51 Ky. L. J. 59, 82 (1962). For instance, in *People v. Phillips*, 64 Cal.2d 574, 582-583, 51 Cal.Rptr. 225, 415 P.2d 353, 360 (1966), the court stated,

"We have thus recognized that the felony-murder doctrine expresses a highly artificial concept that deserves no extension beyond its required application. Indeed, the rule itself has been abandoned by the courts of England, where it had its inception. It has been subjected to severe and sweeping criticism."

The evidence established that the defendant gained entry into the apartment with the intent to commit murder so the homicide was committed during an armed burglary. This aggravating circumstance has been proven beyond a reasonable doubt. The defendant formed the intent to kill Roseanna Morgan before he entered the apartment. Just how he gained entry, whether it was by force after he met Leah Caday or after he convinced her to allow him in, is immaterial. Entry gained by trick or fraud will support conviction for burglary, because consent to enter obtained by trick or fraud is actually no consent at all and, therefore, the entry is unauthorized. *Gordon v. State*, 745 So.2d 1016 (4th DCA 1999), rehearing denied, cause dismissed, 751 So.2d 50.

The evidence does not establish that Roseanna Morgan was killed during a kidnapping⁶⁹⁷ or as a result of child abuse.⁶⁹⁸

Since the felony-murder rule merely provides an alternative theory to first degree murder by premeditation and since armed burglary was part of the defendant’s premeditated plan, this aggravator is given little weight.

The capital felony was committed for the purpose of avoiding or preventing a lawful arrest.

This aggravating factor is refuted by all of the evidence as to the murder of Roseanna Morgan and the court determines that it has not been established beyond a reasonable doubt.

The capital felony was especially heinous, atrocious or cruel.

In order for a crime to be especially heinous, atrocious or cruel it must be both conscienceless or pitiless and unnecessarily torturous to the victim. *Richardson v. State*, 604 So.2d 1107 (Fla. 1992); *Hartley v. State*, 686 So.2d 1316 (Fla. 1996); *Zakrzewski v. State*, 717 So.2d 488 (Fla. 1988); *Nelson v. State*, 748 So.2d 237 (Fla. 1999). Generally, this circumstance does not apply to shooting deaths that are instantaneous or nearly so. *Lewis v. State*, 398 So. 2d 432 (Fla. 1981); *Clark v. State*, 613 So.2d 412 (Fla. 1992) *Robertson v. State*, 611 So.2d 1228 (Fla. 1993); *Kearse v. State*, 662 So.2d 677 (Fla. 1995). There are exceptions to the general rule but they do not apply here. Roseanna Morgan was shot a number of

times over a relatively short period of time. There is no evidence that the defendant engaged in extreme and outrageous depravity as exemplified by a desire to inflict a high degree of pain or the utter indifference to or the enjoyment of the suffering of another. *Buckner v. State*, 714 So.2d 384 (Fla. 1998).

In considering all of the circumstances of this case, the court finds this aggravating factor has not been proven beyond a reasonable doubt.

AGGRAVATING FACTORS
(LEAH CADAY)

The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

As stated above, the contemporaneous conviction for a violent crime cannot generally be used to support this circumstance. However, if more than one victim is involved, this circumstance can be used. *King v. State*, 390 So.2d 315 (Fla. 1980); *Pardo v. State*, 563 So.2d 77 (Fla. 1990); *Stein v. State*, 632 So.2d 1361 (Fla. 1994). Since there were two victims in this case, this aggravating factor has been established beyond a reasonable doubt. And, since Leah Caday was the second victim to be killed, this aggravator is given great weight.

The capital felony was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.

The evidence does not establish beyond a reasonable doubt that the defendant premeditated the murder of Leah Caday.

The capital felony was committed while the defendant was engaged in aggravated child abuse, burglary or kidnapping.

This aggravating circumstance also invokes the felony-murder rule. Leah Caday was under the age of eighteen years. In fact she was thirteen. The legislature, through the operation of the felony-murder rule, has made the killing of any child her age first degree murder. The killing was also committed during the course of an armed burglary. An objective view of the facts surrounding the killing of Leah Caday results in the conclusion that her killing was an afterthought - an act imminently dangerous to another and evincing a depraved mind regardless of human life. But for the felony-murder rule, such a killing would be second degree murder. Since the killing has already been elevated from second degree murder to first degree murder, the amount of weight given to this aggravating factor should be substantially less than great weight. However, considering all of the circumstances of this aggravator, the court assigns moderate weight to it.

The capital felony was committed for the purpose of avoiding or preventing a lawful arrest.

This aggravating circumstance is not permitted to be found absent "strong evidence." In cases where the victim is not a law enforcement officer it must be "the sole or dominant motive for the murder." *Preston v. State*, 607 So.2d 404 (Fla. 1992). However, this aggravator has been allowed in cases where the only motive for the killing appears to be the elimination of a witness. In *Willacy v. State*, 696 So.2d 693 (Fla. 1997), for instance, the victim surprised the defendant during a burglary and he killed her. The court reasoned there was little reason to do so other than to eliminate her as a witness. In contrast, in *Zack v. State*, 753 So.2d 9 (Fla. 2000), the murder was premeditated and elimination of the witness was only incidental to the premeditated plan.

The murder of Leah Caday was not premeditated. In order to find the existence of this aggravator there must have been no other logical reason for the defendant to kill Leah except to eliminate her as a

witness. This, of course, requires a finding that sometime after Roseanna Morgan's murder the defendant changed his mind about committing suicide and decided to escape detection by killing Leah. The taped conversation with the dispatcher is evidence that he had no such intent. It was the defendant who called the police, confessed to the killings and made arrangements for his subsequent arrest without incident. It would be illogical for the defendant to kill Leah in order to eliminate her as a witness and then confess to the crime moments later. Accordingly, the court finds that the murder of Leah Caday was for a reason or reasons other than to avoid or prevent a lawful arrest.

The capital felony was especially heinous, atrocious or cruel.

Leah Caday was confined in the apartment with the defendant for between thirty and forty minutes before her mother came home. During that time she was terrified of the defendant and his gun. After her mother came home she watched in horror while her mother was brutally murdered. Virginia Lynch heard her screaming in the background during the first phone call the defendant made to her. She had time to contemplate her impending death. See, Hannon v. State, 638 So.2d 39 (Fla. 1994). Fear and emotional strain may be considered as contributing to the heinous nature of the murder, even when the victim's death is almost instantaneous. Preston v. State, 607 So.2d 404 (Fla. 1992). The heinous, atrocious, or cruel aggravating circumstance may be proven in part by evidence of the infliction of "mental anguish" which the victim suffered prior to the fatal shot. Henyard v. State, 689 So.2d 239 (Fla. 1997). The actions of the defendant prior to shooting Leah qualify her murder as especially heinous, atrocious and cruel. This aggravating circumstance has been established beyond a reasonable doubt and is given great weight.

MITIGATING CIRCUMSTANCES

The crime for which the defendant is to be sentenced was committed while he was under the influence of extreme mental or emotional disturbance.

The experts called by the defense and the state presented evidence on this mitigating circumstance. They did not agree with each other. Dr. Olander believed the defendant was under the influence of extreme mental or emotional disturbance. Dr. Riebsame believed the disturbance to be less than extreme. Dr. Riebsame's testimony is the most credible. The defendant was emotionally disturbed. His girlfriend had decided to return to her husband and this meant loss of a sex partner for whom he had strong feelings. However, he was able to plan his course of action and carry out all but the suicide portion of the plan. The court gives the emotional disturbance suffered by the defendant moderate weight.

The defendant's capacity to conform his conduct to the requirements of law was substantially impaired.

The experts, Dr. Olander and Dr. Riebsame, agreed that the defendant's capacity to conform his conduct to the requirements of law was impaired. They disagree on the degree of impairment. Dr. Olander believes the defendant has a schizoaffective disorder. Dr. Riebsame did not believe the defendant has a schizoaffective disorder. He noted that the defendant did not suffer delusions or have difficulty recalling events about the murders. He testified that it is usual for a person with such a disorder to report a very bizarre description of events that makes sense to him or her but not to anyone else. Dr. Riebsame's testimony on this issue is the most credible and is accepted by the court. The fact that the defendant's capacity to conform his conduct to the requirements of law was impaired, but not substantially impaired, is given moderate weight.

The defendant has no significant history of prior criminal activity.

This mitigating factor has been established and is not controverted. However, the circumstances of this double murder, including the murder of the second victim, "mitigate against" this factor and it is given little weight. *Ramirez v. State*, 739 So.2d 568 (Fla. 1999).

Any other aspect of the defendant's character or background.

The defendant suffered from mental illnesses at the time of the offense.

The expert witnesses agreed that the defendant has a depressive disorder and that he had this condition at the time of the offense. The evidence also established that he has a personality disorder not otherwise specified with paranoid features, obsessive-compulsive features and passive aggressive features. As previously stated, while Dr. Olander believes the defendant to have a schizoaffective disorder, Dr. Riebsame disagrees and the court has accepted Dr. Riebsame's opinion. The defendant's personality disorders are given little weight.

The defendant was emotionally and physically abused as a child.

The evidence established that the defendant's father was a strict disciplinarian who insisted upon the defendant reporting to him every half hour if he was playing or "sign in" if the father was not present. The experts disagreed about whether this amounted to emotional and physical abuse but the court considers this mitigating factor to have been established. However, since there is no real connection between this mitigator and the murders, it is given little weight.

The defendant has a history of alcohol abuse.

The defendant reported a history of alcohol abuse to Dr. Olander and there is no evidence to the contrary. However, the defendant was neither under the influence of alcohol at any time during the events that led up to the murders nor at the time of the murders themselves so this mitigator is given little weight. *Mahn v. State*, 714 So.2d 391 (Fla. 1998).

The defendant has adjusted well to incarceration.

There is no direct evidence of this mitigating factor. However, the court has observed the defendant during these proceedings and views this mitigator as having been established but assigns little weight to it.

When possible, the defendant has sought gainful employment.

The defendant has been employed during much of his lifetime. He has been a truck driver, a transit authority policeman, a security guard and a bus driver. He was not employed at the time of the murders. He took care of the two young children while his wife worked as income provider. This mitigating circumstance has been established but it is given little weight.

The defendant cooperated with the police.

The evidence is clear that the defendant remained at the scene of the murders and made several statements implicating himself in the murders. While the evidence contradicts the defendant's version of the events as being accidental, the court agrees that the degree of cooperation given resulted in the guilty

pleas entered in this case. The fact that this case did not have to be tried convinces the court to give this mitigator moderate weight.

Other mitigating factors:

During the Spencer hearing the defendant made a statement in which he expressed remorse for his actions and stated that he has been a good father to his children and intends to continue being as good a father as he can while in prison. The court accepts these factors as mitigating but assigns little weight to them.

Summary

To summarize, the court finds the following aggravating and mitigating factors and assigns the weight given to each:

Aggravating Factors

(Roseanna Morgan)

The capital felony was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. - Great weight.

The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person. - Moderate weight

The capital felony was committed while the defendant was engaged in aggravated child abuse, burglary or kidnapping. - Little weight

Aggravating Factors

(Leah Caday)

The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person. - Great weight

The capital felony was committed while the defendant was engaged in aggravated child abuse, burglary or kidnapping. - Moderate weight

The capital felony was especially heinous, atrocious or cruel. - Great weight

MITIGATING CIRCUMSTANCES

The crime for which the defendant is to be sentenced was committed while he was under the influence of a mental or emotional disturbance. - Moderate weight

The defendant's capacity to conform his conduct to the requirements of law was impaired. - Moderate weight

The defendant has no significant history of prior criminal activity. - Moderate weight

The defendant suffered from mental illnesses at the time of the offense. - Little weight

The defendant was emotionally and physically abused as a child. - Little weight

The defendant has a history of alcohol abuse. - Little weight

The defendant has adjusted well to incarceration. - Little weight

The defendant cooperated with the police. - Moderate weight

Other mitigating factors including the defendant's expression of remorse, he has been a good father to his children and his intention to maintain his relationship with his children while in prison. - Little weight

Having reviewed all of the aggravating and mitigating circumstances the court finds that the aggravating circumstances outweigh the mitigating circumstances for the murders of Roseanna Morgan and Leah Caday. Accordingly,

IT IS THE JUDGMENT OF THIS COURT:

1. For the murder of Roseanna Morgan the defendant is sentenced to be put to death in the manner prescribed by law.
2. For the murder of Leah Caday the defendant is sentenced to be put to death in the manner prescribed by law.
3. For the crime of armed burglary of a dwelling defendant is sentenced to serve a term of imprisonment in the Department of the Corrections of the State of Florida for his natural life.
4. For the crime of kidnapping the defendant is sentenced to serve a term of imprisonment in the Department of Corrections of the State of Florida for his natural life.
5. The sentences are to run concurrent with each other and the costs are waived.
6. The defendant is given 757 days credit for time served.

ORDERED at Sanford, Seminole County, Florida, this 3rd day of April, 2001.

Sample 2

The defendant was tried before this court on February 3, 2001 - February 7, 2001. The jury found the defendant guilty of all three counts of the Information (Count I - Murder in the First Degree; Count II - Involuntary Sexual Battery; Count III - Burglary to a Residence). The same jury re-convened on February 10, 2001, and evidence in support of aggravating factors and mitigating factors was heard. On February 11, 2001, the jury returned a ten to two recommendation that the defendant be sentenced to death in the electric chair. On February 11, 2001, the court requested memoranda from both counsel for the state and counsel for the defendant. The memoranda were received from both sides on March 13, 2001. On March 20, 2001, the court held a further sentencing hearing where both sides made further legal argument. The court set final sentencing for this date, March 27, 2001.

This court, having heard the evidence presented in both the guilt phase and penalty phase, having had the benefit of legal memoranda and further argument both in favor and in opposition of the death penalty finds as follows:

A. AGGRAVATING FACTORS

1. The capital felony was committed by a person under sentence of imprisonment. The defendant, JOHN DOE, was sentenced to twenty years in prison for the crime of armed robbery in 1978. He was released on parole in 1985. His parole was due to expire on March 3, 1998. This homicide occurred on April 10, 1991. Since the defendant was on parole when this murder was committed, the defendant was under a sentence of imprisonment when he committed this capital felony. This aggravating circumstance was proved beyond a reasonable doubt.
2. The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

The defendant was convicted in 1978 of the crime of armed robbery. Additionally, in 1989 the defendant was convicted of the crime of aggravated assault. Both of these felonies involve the use or threat of violence to another person. This aggravating circumstance was proved beyond a reasonable doubt.

3. The capital felony was committed while the defendant was engaged in the commission of, or attempt to commit, or escape after committing a sexual battery.

The defendant was charged and convicted of committing a sexual battery on the victim of the homicide. The evidence shows the victim, an 81 year old woman living alone, had tears to vagina and rectum. The medical examiner testified these injuries were inconsistent with consensual intercourse. The defendant's own statement admits he raped the victim. The

⁶⁹⁷ Berry v. State, 668 So.2d 967 (1996). (If, during commission of robbery, the defendant confines the victims by simply holding them at gunpoint, or if the defendant moves the victims to different room in apartment, closes the door, and orders them not to come out, a kidnapping conviction cannot stand.); Brown v. State, 719 So.2d 955 (Fla. 4th DCA 1998). (For a kidnapping conviction to stand, the resulting movement or confinement: (1) must not be slight, inconsequential, and merely incidental to the other offense; (2) must not be of the kind inherent in the nature of the other offense; and (3) must have some significance independent of the other offense in that it makes the other offense substantially easier to commit or substantially lessens the risk of detection.)

⁶⁹⁸ Roseanna Morgan was over the age of eighteen.

capital felony was committed, therefore, while the defendant was engaged in the commission of asexual battery. This aggravating circumstance was proved beyond a reasonable doubt.

4. The capital felony was committed for pecuniary gain.

The defendant was charged and convicted of the crime of burglary. The facts of the case show the defendant broke into the victim's house with the intent to steal. His statement to the detectives indicates this was his intent when he broke into the house. He left the house with over \$10,000.00 in cash that was hidden under the victim's mattress. Therefore, the capital felony was committed for pecuniary gain. This aggravating circumstance was proved beyond a reasonable doubt.

5. The capital felony was especially heinous, atrocious, or cruel.

The victim in this case had gone to bed for the evening. The defendant, who had worked for the victim in the past, knew the victim kept large sums of money on hand. He decided to break into her house and steal her money, which he needed to support his extensive drug habit. After crawling in through the living room window, the defendant proceeded to look through the victim's house for this cash. When he was unable to find it, he woke the victim and demanded her money. She told him it was under her mattress. After retrieving the money, the victim demanded that the defendant leave her house. According to the defendant's own statement to the detectives in this case, he then decided he wanted more than money. He threw the victim to the ground and demanded sex from her. She refused. He ripped her nightgown off and had vaginal intercourse with her. When she begged him to stop, and cried out in pain, he beat her and taped her mouth shut so her cries could not be heard. He then proceeded to take her knitting needles and puncture her breasts. According to the medical examiner, the victim had over thirty such puncture wounds on her breasts. Then and performed anal sex on the victim. Throughout the ordeal, he kept telling the victim if he was not pleased with her performance, he was going to kill her. Finally, the defendant strangled the victim with an electrical cord. This entire ordeal lasted over 1 ½ hours, and the victim, according to the medical examiner, put up quite a struggle and experienced excruciating pain. She was conscious throughout and surely knew of her impending doom when the defendant wrapped the cord around her throat and began to choke the life out of her. This murder was indeed a conscienceless, pitiless crime, which was unnecessarily torturous to the victim. Since the defendant admitted these facts, and the evidence fully supports his admission, the aggravating factor that the capital felony was especially heinous, atrocious, or cruel has been proved beyond a reasonable doubt.

6. The state has asked the court to find two additional aggravating factors - that the capital felony was committed for the purpose of avoiding or preventing a lawful arrest for the crimes of Burglary and Involuntary Sexual Battery and that the murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. Part of the defendant's statement was that he never intended to harm the victim, but only to steal her money. He stated that something inside him just "snapped" and he could not explain why he committed the acts of rape and murder. He believed it had to be because he was "strung out" on cocaine and had consumed both alcohol and cocaine prior to these crimes. While the state certainly has an argument that these two aggravating factors apply, it cannot be said that either of them has been proved beyond a reasonable doubt. Therefore, the court neither finds, nor has it considered, either of these aggravating factors.

None of the other aggravating factors enumerated by statute are applicable to this case and this court has not considered them.

Nothing except as previously indicated in paragraphs 1-5 above was considered in aggravation.

B. MITIGATING FACTORS

Statutory Mitigating Factors

In its sentencing memorandum, the defendant requested the court to consider the following statutory mitigating circumstances:

1. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

Three doctors testified during the penalty phase of the trial. Two were called by the defendant, and one was called by the state. These doctors differed on the extent, and even the existence of any mental disturbance of the defendant at the time of the murder. However, on one thing they all agreed - the defendant was not under the influence of any extreme mental or emotional disturbance at the time of this crime. This court allowed the defendant to argue this circumstance to the jury, but now finds that neither the totality of the facts, nor any expert or non-expert testimony suggests the defendant was under the influence of extreme mental or emotional disturbance when he committed this murder. This mitigating circumstance does not exist.

2. 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.

Two doctors testified that the defendant had been a cocaine addict and alcoholic for many years. They believed the defendant had ingested these substances prior to this entire episode and that because of his addiction and the use of both cocaine and alcohol during the day and night of this crime, that his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. The doctor for the state found the defendant did appreciate the criminality of his conduct, which is why he believed the defendant murdered the victim - to avoid being caught and prosecuted for his vicious sexual assault on the victim. He did admit the defendant suffered from alcohol and cocaine abuse, and acknowledged the defendant may have been "high" at the time of the crime. He believed this may have "clouded" the defendant's ability to conform his conduct to the requirements of law, but did not feel the defendant was so intoxicated or so under the influence of drugs that his capacity was substantially impaired.

The facts of this case, the defendant's statements, and the testimony of two of the three experts, coupled with the lack of any known or suspected sexual abnormality or sexual violence in the defendant's past, cause this court to be "reasonably convinced" - the test for a mitigating factor - that the defendant's capacity to conform his conduct to the requirements of law was substantially impaired. Accordingly, this mitigating circumstance exists.

The court has given this circumstance significant weight since it appears the defendant was acting out of character in committing this homicide.

3. The age of the defendant at the time of the crime.

At the time this murder was committed, the defendant was thirty-four years old. All three doctors said the defendant's I.Q. was normal, and he was in no way retarded. Accordingly, the defendant's emotional age is consistent with his actual age. The defendant's age at the time of the crime is not a mitigating factor.

Nonstatutory Mitigating Factors

The defendant has asked the court to consider the following nonstatutory mitigating factors.

- 1) Family background
- 2) Abuse of the defendant as a child
- 3) Defendant's remorse
- 4) Voluntary confession
- 5) Good conduct in jail
- 6) Defendant's alcohol and, drug abuse
- 7) The fact that it would cost less to imprison defendant for life than to execute him

1)&2) The testimony of defendant, as well as of his sister, brother, mother, and the three expert witnesses showed that an alcoholic father abused the defendant and his other family members physically. This abuse stopped when the parents divorced when the defendant was ten years old. The abuse was not extreme, nor was the defendant singled out any more than the other siblings. Neither the defendant's brother nor sister has ever been arrested for any crime. Thus, while the court finds the abuse suffered by the defendant at the hand of his father and the fact that the defendant came from a broken home to be mitigating circumstances, the court gave them little weight in the weighing process.

3)&4) The defendant appears to be truly remorseful for what he has done. This is evident by the fact that he turned himself into the police and gave a voluntary confession. His tape-recorded confession displays much grief. He has written a letter of sincere apology to the victim's family, against his attorney's advice. The police admitted in the penalty phase that the defendant was not a suspect when he turned himself in and agreed to cooperate. Both the defendant's remorse, and his voluntary confession are recognized mitigating circumstances. They have both been proved by the evidence. This court gave them both substantial weight.

5) There is no doubt that the defendant's good conduct in jail may be a mitigating factor. In this case, however, the defendant has not shown this to exist. During his tenure in prison for his Armed Robbery conviction, he once attempted escape, and had six disciplinary reports prior to his parole. Since being incarcerated for the instant offense, he has participated in a hunger strike, has accumulated two disciplinary reports, and was finally moved to isolation because of abusive behavior toward the guards. Although his recent behavior has improved dramatically, and he has been moved back to general population with no additional difficulties, the court does not find that it has been reasonably established by the evidence that the defendant's jail conduct is good.

6) It has been established by the evidence that the defendant suffers from both alcoholism and drug addiction. This disease is recognized as a mitigating circumstance. The court has given this factor some weight in her consideration of defendant's sentence.

7) The defendant asked to present evidence to the jury that it would cost the taxpayers of Florida significantly less to imprison the defendant for the alternative sentence of life imprisonment without possibility of parole for twenty-five years than to execute him. The court did not allow the jury to hear this testimony. The defendant proffered the testimony for the record to preserve his appellate rights. He now asks the court to consider the proffered testimony and declare this a nonstatutory mitigating factor. The proffered testimony suggests the defendant's assertion is correct. However, the Florida Supreme Court does not recognize this as a nonstatutory mitigating factor, and this court has accordingly not considered it as such.

8) The defendant asked the court to find the statutory mitigating factor that he was under the influence of extreme mental or emotional disturbance when he committed this murder. For the reasons previously expressed, the court declined to do so. However, there was testimony, while in conflict, that the defendant was suffering from some mental or emotional disturbance when this murder was committed. The crux of the testimony was that the defendant's use of alcohol and drugs over a period of time has taken a toll on the defendant's mind and body. The court does consider this as a nonstatutory mitigating factor. Since the court has given weight to the defendant's alcohol and drug use and addiction both as a statutory mitigating factor (defendant's capacity was substantially impaired) and as a nonstatutory mitigating factor (see paragraph 6 above), the court gives it only little weight as an additional nonstatutory mitigating factor.

The court has very carefully considered and weighed the aggravating and mitigating circumstances found to exist in this case, being ever mindful that human life is at stake in the balance. The court finds, as did the jury, that the aggravating circumstances present in this case outweigh the mitigating circumstances present.

Accordingly, it is:

ORDERED AND ADJUDGED that the defendant, JOHN DOE, is hereby sentenced to death for the murder of the victim, DOROTHY JONES. The defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of this sentence as provided by law.

DONE AND ORDERED in _____ County, Florida, this 27th day of March 2001.

JUDGE _____

Copies furnished to:

State Attorney
Counsel for Defendant
Defendant