IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA

VS. CASE NO.: 07-33-CFFA

CORNELIUS BAKER,

Defendant.
_____/

SENTENCING ORDER

On August 25, 2008, the Defendant, Cornelius Baker, was convicted by a jury of the crimes of First Degree Murder, Home Invasion Robbery, Kidnapping and Aggravated Fleeing and Eluding a Law Enforcement Officer.

On August 28, 2008, the same jury recommended, by a vote of nine (9) to three (3), that the Court sentence the Defendant to death.

On November 21, 2008, the Court held a Spencer hearing and allowed each side to present additional evidence and arguments to the Court.

Pursuant to Section 921.141 of the Florida Statutes, this Court is required to consider each and every aggravating and mitigating circumstance set forth by the statute, as well as any and all non-statutory mitigating circumstances. Having heard all of the evidence introduced during the course of the sentencing proceeding and the Spencer hearing, and having reviewed and considered each party's sentencing memorandum this Court now address each of the aggravating and mitigating factors at issue in these proceedings:

AGGRAVATING FACTORS

1. The crime for which the Defendant is to be sentenced was committed while he was engaged in the commission of, or an attempt to, commit the crime of home invasion robbery or kidnapping.
2. The capital felony was committed for pecuniary gain.

When a homicide occurs during the course of a robbery, the felony-murder aggravator and the pecuniary-gain aggravator cannot both apply. Francis v. State, 808 So.2d 110, 136-137 (Fla. 2001). As a result, the home invasion robbery/kidnapping theory and the pecuniary gain aspect will be considered together as one aggravating factor. The State has proven beyond a reasonable doubt that the Defendant entered the home with the intent to commit robbery. The Co-Defendant, Patricia Roosa, knocked on the door and when the victim, Elizabeth Uptagrafft, opened the door she was immediately pistol whipped by the Defendant, Cornelius Baker. The gun went off wounding the victim in the head. The home was ransacked for approximately two hours and various pieces of jewelry and phones were taken. The Defendant then kidnapped Elizabeth Uptagrafft, stole her car and went to various banks to obtain cash with her ATM card. The Court finds the existence of this merged aggravator and gives it great weight.

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

In this case the evidence shows beyond a reasonable doubt that Elizabeth Uptagrafft was brutally murdered at point blank range after suffering through an extraordinarily prolonged and tortuous ordeal. After opening the door to her home she was pistol whipped; the gun went off with the bullet grazing the side of her head causing

a serious, painful gash. Ms. Uptagrafft then watched as her mother, Charlene Burns, who suffers from chronic pulmonary disease and uses oxygen tubes to breathe, was choked and kicked by Cornelius Baker. Ms. Uptagrafft's son was also pistol whipped and knocked to the ground. The three were held at gunpoint by Co-Defendant Patricia Roosa for approximately two hours while Cornelius Baker ransacked the home.

Before being forced to leave her home at gunpoint, Ms. Uptagrafft was compelled to change from her bloody clothes and to cover her bleeding wound with a hat. Cornelius Baker took the time to go to his motel room, steal money from Ms. Uptagrafft's checking account and to shop for marijuana in Bunnell while Ms. Uptagrafft lay bleeding in the backseat. The Defendant then drove to a remote area and let Ms. Uptagrafft out of the vehicle; he then returned to the vehicle. Shortly thereafter Cornelius Baker again got out of the car and chased down Elizabeth Uptagrafft as she attempted to run from her captors. Cornelius Baker caught up to her and shot her twice. The medical examiner testified Ms. Uptagrafft was first shot in the neck; the bullet entering the left neck/shoulder area and traveling almost straight down exiting the left lower back. The fatal wound to Ms. Uptagrafft's forehead was delivered from within 18 inches and while she was still alive.

In order for a crime to be especially heinous, atrocious or cruel it must be both conscienceless or pitiless and unnecessarily tortuous to the victim. Richardson v. State, 604 So.2d 1107 (Fla. 1992). 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. Lynch v. State, 841 So.2d 362, 369 (Fla. 2003) citing Preston v. State, 607 So.2d 404 (Fla. 1992). The Florida Supreme Court has consistently held that "fear,

emotional strain, and terror of the victim during the events leading up to the murder may make an otherwise quick death especially heinous, atrocious, or cruel." Id. at 369, citations omitted.

In this case Elizabeth Uptagrafft was subjected to hours of absolute hell. One cannot begin to image what physical and emotional anguish she experienced from when she was first pistol-whipped, watched her family brutalized and held at gunpoint, was then kidnapped, driven around for hours, released to run for her life only to be chased down and shot between the eyes. The Court finds this murder was shockingly evil, outrageously wicked and with utter indifference to the suffering of Elizabeth Uptagrafft; this aggravating factor has been proven beyond a reasonable doubt. This factor warrants great weight.

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

The Florida Supreme Court has established a four-part test to determine whether this aggravating factor is justified: "(1) the killing must have been the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); and (2) the defendant must have had a careful plan or prearranged design to commit murder before the fatal incident (calculated); and (3) the defendant must have exhibited heightened premeditation (premeditated); and (4) there must have been no pretense of moral or legal justification." Lynch at 371, citing Evans v. State, 800 So.2d 182, 192 (Fla.2001) (quoting Jackson v. State, 648 So.2d 85, 89 (Fla.1994)).

The evidence proves beyond a reasonable doubt that the four-part test has been satisfied: after releasing Elizabeth Uptagrafft, Cornelius Baker returned to the car, spoke briefly to Patricia Roosa, the Co-Defendant, then decided to go back after Elizabeth

Uptagrafft. He chased her down and killed her. She was in a remote location unable to summon help, there where two witnesses back at the Holly Hill home who had both seen the Defendants for an extended time, the Defendant had already taken everything he possibly could from Elizabeth Uptagrafft – but her life. This further demonstrates the murder was committed without any pretense of moral or legal justification.

In light of the mitigating factors to be discussed, this Court notes that a defendant can be emotionally and/or mentally disturbed but still have the ability to experience cool and calm reflection, make a careful plan or prearranged design to commit murder, and exhibit heightened premeditation. Lynch at 372 citing Evans, 800 So.2d at 193. This factor warrants great weight.

STATUTORY MITIGATING FACTORS

1. 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 defense presented considerable evidence concerning the Defendant's background, as well as his medical and psychiatric history. The evidence establishes that the Defendant has Borderline Intellectual Functioning, Developmental Articulation Disorder, and Attention Hyperactivity Disorder, which was first diagnosed in 1994, when he was 7 years old. At that time his full scale IQ was tested at 74. Report of J. Jeff Oatley, Ph.D., pediatric psychologist. The Defendant had failed kindergarten and first grade and was placed in special education classes in second grade. He took Ritalin from age 7 until 15 with seemingly no improvement. Over the years the Defendant underwent multiple evaluations prompted by his poor academic progress and inappropriate behavior at school, including many fights. The evidence presented both in the reports, as well as

testimony, was that the Defendant was picked on by his peers because of the loss of sight in one eye and also a lazy eye. This was put forth as a possible cause for the fights. Most reports also note impulsive behavior to be a problem.

The evidence also documented a dysfunctional family situation. The Defendant's mother had failed to seek medical attention for his eye injury; the delay in seeking treatment resulted in the Defendant's loss of vision. Additionally, both parents suffered from drug and alcohol problems and provided little, if any, supervision of their children. The mother engaged in alcohol and drug abuse during her pregnancy with the Defendant. The father lived in another county, had little or no contact with the Defendant; he was incarcerated for sexually abusing an older brother and sister of the Defendant. Following his untended eye injury, the Defendant was removed from his mother's custody and lived first with his great-grandmother, then grandmother. He had little contact with his mother while living with these grandmothers. He is the fourth generation of his family to be raised in the projects in Bunnell.

Cornelius Baker also had an extensive history of drug and alcohol abuse from an early age. He acknowledged almost daily use of cannabis since age 12, use of ecstasy and alcohol addiction by the age of 16.

Following his arrest in this case the Defendant was evaluated by Dr. Harry Krop. Dr. Krop reached the opinion that as the result of neuropsychological testing he performed, along with the results of a PET scan that the Defendant suffers from significant brain damage. No other of the numerous reports even suggested the possibility of brain damage. Dr. Krop's report also notes that there is no evidence of a thought disorder, mood disturbance or psychotic process. The Defendant's most recent

IQ test placed his full scale IQ at 81, the low-average range. He obtained a verbal IQ of 84 and a performance IQ of 83.

The Defendant's co-defendant, Patricia Roosa, his girlfriend of years testified that he was able to communicate and function in daily life as a normal member of society. She also testified that he was not panicked or out of control, nor was he under the influence of drugs or alcohol at the time of the offense. In an evaluation dated April 24, 2002, ACT clinical specialist Rhonda McEntire noted the Defendant has a "strong street sense". As this Court found as an aggravator, the Defendant was capable of committing this crime in a cool, calculated and premeditated manner.

Clearly, the Defendant has some mental and emotional disturbances but this Court does not find the crime was committed while the Defendant was under the influence of *extreme* mental or emotional disturbances. The Court gives this mitigator some weight.

2. <u>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.</u>

While this Court has found sufficient evidence to establish that the Defendant suffered from mental and emotional disturbances, it did not affect his ability to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. The Defendant expressed to the co-defendant that he knew he was in trouble. He was attempting to get rid of evidence in a dumpster when spotted by the police. The Defendant then led the police on a high-speed chase and hid under a bed before being captured. Dr. Krop's evaluation of July 6, 2007 found the Defendant to be competent to proceed to trial and that there was no indication that he was insane at the time of the

offense. These facts establish that the Defendant appreciated the criminality of his conduct. This factor is given little weight.

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

The Florida Supreme Court stated that the "fact that a murderer is twenty years of age, without more, is not significant." *Garcia v. State,* 492 So.2d 360, 367 (Fla.), *cert. denied,* 479 U.S. 1022, 107 S.Ct. 680, 93 L.Ed.2d 730 (1986). Here the Defendant was 20 years old at the time of the offense; additionally Dr. Krop testified that the Defendant had a mental age of 15, and that his mental age would never change. The Court considered that testimony, as well as the numerous reports and testimony referred to in this order. This Court finds that although the Defendant had a troubling past, it is not unique; and, although immature, there was no evidence presented that he was unable to take responsibility for his acts and appreciate the consequences of them at the time of the murder. In fact the evidence demonstrated that the Defendant was very capable of planning an offense for pecuniary gain and carrying that plan out. He was capable of planning to get rid of the evidence against him. He knew he was in trouble and ran from the police. His age is given some weight.

4. The Defendant acted under extreme duress or under the substantial domination of another person.

The testimony presented was that Cornelius Baker committed the offenses with his girlfriend and co-defendant Patricia Roosa. The Defendant's sisters testified during the penalty phase that Ms. Roosa was controlling and often bossed Cornelius Baker around. However, they were not present at the time the offenses were committed. During his interview the Defendant stated "[Patricia Roosa] didn't really want to go". Ms. Roosa

also testified that the home invasion was the Defendant's idea. More significantly Elizabeth Uptagrafft's mother, Charlene Burns, testified that Cornelius Baker was in charge while the family was held hostage. The Court finds Cornelius Baker did not act under extreme duress, nor was he under the substantial domination of another person. Therefore, this mitigator does not apply.

NON-STATUTORY MITIGATING FACTORS

The existence of any other factors in the defendant's background that would mitigate against the imposition of the death penalty:

1. The Defendant suffers from brain damage, low intellectual functioning, and drug abuse and these factors are compounded by each other.

The Court incorporates paragraphs 1 and 2 of the statutory mitigating factors for purpose of this discussion. Cornelius Baker has lived a life troubled by low intellectual functioning, compounded by a difficult and neglected childhood, and enhanced by his choice to abuse drugs and alcohol. The Court finds this factor to be entitled to some weight.

2. The Defendant suffers from fetal alcohol exposure and was born into an abusive household and was neglected as a child.

While there was evidence that the Defendant's mother drank and used illegal drugs while she was pregnant, there is no evidence that the Defendant was ill at birth or suffered from fetal alcohol syndrome. As to verbal and physical abuse the testimony of the Defendant and his sisters was that Cornelius Baker was "spanked" by their mother when she was drunk. In his interview with Dr. Krop, the Defendant stated his father and grandmother verbally berated him, calling him names such as "one eye", "midnight" and

"ugly". Cornelius Baker represents he was physically abused by his parents and grandmother – that he was beat with a "palmetto rod", an extension cord, switches, combs and brushes.

The evidence demonstrates that he suffered from neglect: that he was unsupervised, had no structured activities outside of school and lacked effective role models or parenting. His grandmother did participate in his school evaluations; and it was noted that motivation for treatment of Cornelius Baker was good on her behalf. Many agencies were involved with Cornelius Baker during his school years without much success. He participated in outpatient therapy, case management services and medication management through ACT from his early childhood, until they were interrupted as a result of his numerous arrests and incarcerations. This mitigator is given some weight.

3. The Defendant is remorseful.

Evidence of Cornelius Baker's remorse is not particularly compelling. He and various family members did testify that he was remorseful. Defense counsel argues that Mr. Baker's remorse was evident from the time he was caught but it is impossible to tell if his concern was for the victim or for himself. Counsel argues the Defendant further demonstrated his remorse by leading the investigators to Elizabeth Uptagrafft's body; that was only after he bargained with the investigators to allow him to have a cigarette and a kiss from his co-defendant girlfriend Patricia Roosa. This mitigator is given little weight.

4. The Defendant was well behaved and displayed appropriate demeanor during all Court proceedings.

Defense counsel asserts that Mr. Baker's appropriate/good behavior during all the Court proceedings demonstrates that he is capable of functioning well in a structured environment and therefore he would not be a danger or threat to anyone if he is ordered to serve Life in Prison without the Possibility of Parole. Evidence that the defendant would not pose a danger if spared (but incarcerated) must be considered potentially mitigating. Valle v. State, 502 So.2d 1225 (Fla. 1987), citing Skipper v. South Carolina, 476 U.S. 1 (1986). This Court is hesitant to predict the future based on this factor alone but does give it little weight.

5. The Defendant's Confession and Cooperation with the Police.

The Court notes the Defendant did provide a confession to the police and did cooperate with them subject to his aforementioned demands, and finds this warrants some weight.

CONCLUSION

This Court has now discussed all the aggravating factors and mitigating factors. In weighing the aggravating factors against the mitigating factors the Court understands that the process is not simply one of arithmetic. This Court has looked to the nature and quality of the aggravators and mitigators and finds the aggravating factors in this case far outweigh the mitigating factors.

SENTENCE

As to Count I of the Indictment, the First Degree Murder of Elizabeth Uptagrafft, I sentence you, Cornelius Baker, to Death.

As to Count II of the Indictment, Home Invasion Robbery with a Firearm, the Court sentences you to Life Imprisonment.

As to Count III of the Indictment, Kidnapping, the Court sentences you to Life Imprisonment.

As to Count VI of the Indictment, Aggravated Fleeing and Eluding a Law Enforcement Officer, the Court sentences you to 15 years.

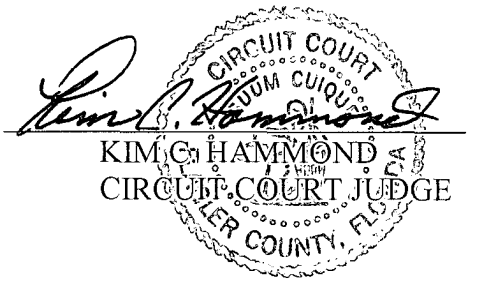
These sentences shall run consecutive to each other and consecutive to the sentence of death.

It is Ordered that you, Cornelius Baker, be taken by the proper authority to the Florida State Prison, and be kept in close confinement until the date your execution is set.

It is further Ordered that on such scheduled date, you, Cornelius Baker, be put to death.

You are hereby notified this sentence is subject to automatic review by the Florida Supreme Court.

DONE and ORDERED in Chambers, Kim C. Hammond Justice Center, this 4th day of March, 2009.



KIM C. HAMMOND
CIRCUIT COURT JUDGE

Copies to:

Matthew Phillips, Esquire
Public Defenders Office

Christopher A. France, Esquire
Office of the State Attorney