

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN
AND FOR CHARLOTTE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA

vs.
WILLIAM TULENKO
Defendant

CASE NUMBER: 24-1205-CF(SHM)(RJM)

**STATE'S MEMORANDUM IN SUPPORT OF
THE IMPOSITION OF THE DEATH PENALTY**

COMES NOW, the STATE OF FLORIDA, by and through the undersigned Assistant State Attorneys, and hereby requests that this Honorable Court impose the death penalty upon the defendant, William Tulenko, for the murder of James Howze. As grounds therefore, the State would submit the following:

FACTS OF THE CRIME

On February 29, 2024, William Tulenko, the defendant, committed one (1) count of First Degree Murder by strangling James Howze (Howze) in violation of *Florida Statute §782.04(1)*. The defendant and Howze were housed in the same cell at Charlotte Correctional Institution (CCI). The defendant and Howze had been cellmates since August 22, 2023. The defendant, in his post Miranda confession, explained that he killed his roommate at Santa Rosa Correctional Institution and asked to receive the death penalty. The State Attorney's Office in Santa Rosa did not seek the death penalty in that case and instead charged the defendant with Second Degree Murder. That case was still pending at the time of this homicide. After the murder in Santa Rosa, the defendant explained that he had been researching death penalty cases and found a case where two (2) inmates coerced someone into letting them tie him up and then killed him. The defendant thought that the next time, "I'll gain his trust, I'll tie him up and I'll kill him."

According to the defendant's statement, the morning of the homicide the defendant woke Howze up and they smoked K2 (synthetic cannabinoid). The defendant had started tearing a piece of sheet that he intended to use to tie Howze up. After tearing the first piece, the defendant had the idea to have Howze help him tear the sheet into strips, so Howze would unknowingly help prepare the ligatures that were eventually used in his murder.

Once the ligatures were prepared, the defendant then asked Howze to show the defendant the A-frame choke hold that they had previously practiced on each other. The defendant got on his knees and allowed Howze to get behind him to show the A-frame choke. The defendant told Howze that he was performing the choke hold improperly and asked Howze to let the defendant show him “a little trick.” Once Howze was kneeling in front of the defendant, the defendant locked his arm around Howze’s neck. At that time the defendant said to Howze, “Today you die.” Howze in return said, “Please don’t,” but was unable to finish saying the word “don’t.”

The defendant in his statement explained that Howze “was choking, gasping for air.” The defendant explained that he held the choke hold until the weight of Howze’s body and the defendants’ fatigue caused them to fall forward in the cell. The defendant eventually tied a ligature around Howze’s mouth. At that point, the defendant moved Howze into his bed on the bottom bunk and tied a ligature around Howze’s neck and a separate ligature around his hands.

At approximately 6:50am, Kara Williams (Williams), a Correctional Service Consultant, went to see Howze to see if he wanted to make a statement regarding his Institutional Classification Team interview. When Williams called out for Howze in his cell, the defendant responded that Howze didn’t have a statement. Williams continued to call out for Howze without a response. At some point Williams ordered the defendant to get on his bunk. Once Williams was able to look into the cell door window, it appeared that Howze was in the bottom bunk bed with a blanket over him. At that point the defendant began to cover the window in the cell door so that Williams could no longer see into the cell. The defendant told Williams, “He’s alive now. If you keep fucking with me, I’m going to kill him.”

Williams called in her observations from the cell to a supervisor. Several corrections officers arrived at the cell and were able to get the defendant to uncover the window. The defendant submitted to hand restraints and was removed from the cell. Howze was found on the bottom bunk with ligatures around his mouth, neck, and hands. Only the defendant and Howze were located in that cell.

On March 1, 2024, an autopsy was performed on Howze by Medical Examiner Dr. Russell Vega. Dr. Vega found the manner of death to be homicide, and the cause of death was asphyxia and strangulation.

After the homicide, the defendant wrote letters to various state agencies and the family members of Howze. The defendant wrote to Howze’s mother, Ms. Deborah Coon, explaining how

he killed Howze. (*State's Exhibit 16*). Additionally, the defendant wrote to the State Attorney's Office that covers Charlotte County. In that letter the defendant again described in detail how he killed Howze. (*State's Exhibit 17*).

PROCEDURAL HISTORY AND REQUIREMENTS

The defendant was indicted on July 26, 2024 for one (1) count of First Degree Murder pursuant to *Florida Statute §782.04(1)* (Clerk's Docket Number 4), and a capias was issued for the defendant's arrest (Clerk's Docket Number 5). The defendant was served with the capias on August 22, 2024 (Clerk's Docket Number 17).

On August 23, 2024, First Appearance was conducted where the Public Defender was provisionally appointed (Clerk's Docket 21). At First Appearance, the State filed a Motion for Pretrial Detention (Clerk's Docket 20). The defendant was held no bond until the Motion for Pretrial Detention was conducted (Clerk's Docket 21). On August 26, 2024, the defendant's affidavit of indigency was granted and the Public Defender's Office entered a Notice of Appearance. On August 28, 2024, the State's Motion for Pretrial Detention was granted (Clerk's Docket 38).

The State filed a Notice of Intent to Seek Death Penalty on September 10, 2024 (Clerk's Docket Number 42). The Notice of Intent to Seek Death Penalty contained four (4) aggravating factors:

- Florida Statute Section §921.141(6)(a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
- Florida Statute Section §921.141(6)(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- Florida Statute Section §921.141(6)(i) The capital felony was especially heinous, atrocious, or cruel.
- Florida Statute Section §921.141(6)(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

On January 13, 2025, the defendant filed a Motion for Waiver of Counsel (Clerk's Docket 58). On February 10, 2025, the Court reserved ruling on the defendant's Motion for Waiver of Counsel and appointed three (3) doctors to evaluate the defendant's competency (Clerk Docket 64). On

August 12, 2025, the Court found the defendant competent to proceed, agreeing with the three (3) appointed doctors (Clerk's Docket 104). After the Court declared the defendant competent to proceed, the defendant withdraw his Motion to Waive Counsel (Clerk's Docket 103). On November 6, 2025, with the Public Defender's Office as counsel, the defendant pled guilty to one (1) count of First Degree Murder (Clerk's Docket Number 118-119). The defendant also waived his right to have a jury seated to hear the penalty phase (Clerk's Docket Number 117).

On January 9, 2026, the Public Defender's Office filed a Certification of Conflict (Clerks' Docket 147). On February 3, 2026, the Court granted the Public Defender's Motion to Withdraw. At that motion, the defendant requested to represent himself and a *Faretta* inquiry was conducted. At the end of the inquiry, the Court was satisfied that the defendant was knowingly, intelligently and voluntarily waiving his right to counsel.

On February 18, 2026, with the defendant representing himself, the penalty phase commenced, and the State completed their presentation of the aggravating factors. On February 19, 2026, at the beginning of the second day of the penalty phase the defendant requested an attorney. The Office of Regional Counsel was appointed, and the penalty phase was postponed until March 9, 2026. On February 26, 2026, the Office of Regional Counsel filed a Motion to Withdraw as Counsel (Clerk's Docket Number 172). On March 2, 2026, the Motion to Withdraw was granted and the defendant again requested to represent himself (Clerk's Docket Number 175). A *Faretta* inquiry was conducted and the Court again determined that the defendant was knowingly, intelligently, and voluntarily waiving his right to counsel. On March 9, 2026, the penalty phase commenced with the defendant presenting his mitigating circumstances.

Pursuant to *Florida Statute §921.141(3)(b)*, the Court must independently weigh the aggravating factors and mitigating circumstances and impose a sentence of life imprisonment or death. If the Court imposes a sentence of death, it must set forth in writing its findings upon which the sentence of death is based. In order to impose a sentence of death, the Court must find that aggravating factor(s) are sufficient to warrant a sentence of death and that there are insufficient mitigating circumstances to outweigh the aggravator factors.

The Court's determination must be supported by specific written findings of fact based upon its review and consideration of the trial records and the sentencing proceedings. The Court may only consider aggravating factors which the State has proven beyond a reasonable doubt; the Court

may neither refuse to consider nor be precluded from considering any relevant mitigating circumstance(s).

In its written order, the Court must weigh the aggravating factors and expressly consider within its order each established mitigating circumstance. The weight given to each mitigating circumstance is within the province of the Court. Where a death sentence is imposed, written findings supporting the sentence are required and must be made at or within 30 days of the rendition of the judgment and sentence. Failure to do so will result in a sentence of life imprisonment. *Florida Statute §921.141(4)*.

AGGRAVATING FACTORS

The State has proven, through evidence, the following statutory aggravating factors beyond a reasonable doubt:

1. **The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation. F.S. §921.141(6)(a) (2026)**

William Tulenko murdered James Howze on February 29, 2024 and was indicted by a Charlotte County Grand Jury for First Degree Murder on July 26, 2024. Tulenko was previously convicted in the Circuit Court of the Thirteenth Judicial Circuit of Florida of Robbery, a second degree felony, *Florida Statute §812.13* and Grand Theft of a Motor Vehicle, a third degree felony, *Florida Statute §812.014* on September 16, 2017 following a jury trial. Judge Kimberly Fernandez sentenced Tulenko to 30 years Department of Corrections on the Robbery as a Violent Career Criminal and a Prison Releasee Reoffender and five (5) years Department of Corrections concurrent on the Grand Theft Motor Vehicle. Case number 2017-CF-004074-A. *State's Exhibit 32*. The Pre-Sentence Investigation returned on the instant case also confirms this fact, however, in an abundance of caution, the certified sentencing documents were also admitted. *Rodgers v. State*, 948 So.2d 655 (Fla. 2006). On February 29, 2024, Tulenko was under sentence of imprisonment for that conviction when he murdered James Howze.

The State submits that this aggravating factor has been proven beyond a reasonable doubt and should be accorded **GREAT** weight.

2. **The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person. F.S. §921.141(6)(b) (2026)**

William Tulenko murdered James Howze on February 29, 2024 and was indicted by a Charlotte County Grand Jury for First Degree Murder on July 26, 2024. On June 7, 2024, Tulenko pled *nolo-contendere* to one count of Second Degree Murder, a punishable by life felony, *Florida Statute §782.04* and to one count of Possession of Contraband/Weapon In Or Upon the Grounds of a State Correctional Institution, a second degree felony, *Florida Statute §944.47* in the Circuit Court of the First Judicial Circuit of Florida. Judge Clifton Drake sentenced Tulenko to life in prison as a Prison Releasee Reoffender on the murder charge and 269.85 months in prison on the contraband charge, all sentences to run concurrently. Case number 22000357CFMXAX. *State's Exhibit 30.*

The defendant was convicted of the violent felony in the First Circuit prior to his being *sentenced* in the instant case. This is the material fact which allows the State to seek this aggravator. “It is clear that the Legislature referred to ‘previous convictions’ and not ‘previous crimes’” when considering this aggravator. *Elledge v. State*, 346 So.2d 998, 1001 (Fla. 1977).

Proof is required by this section that the prior felony did, in fact, involve the use or threat of violence. Felonies that are not, *per-se*, violent may include robbery and burglary given the peculiar facts of each case. *Mahn v. State*, 714 So.2d 391 (Fla. 1998); *Mann v. State*, 453 So.2d 784 (Fla. 1984); *Barclay v. State*, 470 So.2d 691 (Fla. 1985); *Johnson v. State*, 465 So.2d 499 (Fla. 1985) Although one might assume that murder is, in fact *per-se* violent, the State submitted in *Exhibit 31* a certified copy of the charging document in 22000357CFMXAX which alleges that on October 2, 2021, defendant Tulenko killed and murdered Jeffery Williams, a human being, *by stabbing him with a sharp object.* (emphasis added) Hence, it has been proven that the prior felony did involve the use of violence.

This section does not require that the prior violent felony must have been perpetrated upon the same victim as the one murdered. Defendant posited that by the phrase “. . . violence to *the* person” (emphasis added) instead of “. . . violence to [a][another] person” must mean that this aggravator requires Tulenko to have committed a violent felony against James Howze. This argument weighs against the entirety of Florida jurisprudence considering this aggravator and would render the aggravator useless. The fact that Florida has never assessed a remoteness limit to the prior violent felony aggravator presumes that the universe of victims to be considered is not

limited to a mere one. *See Kelly v. Dugger*, 597 So.2d 262, 264 (Fla. 1992) (“because the death penalty statute is silent as to the time or place of the previous conviction, even a conviction remote in time may properly be considered as aggravating”); *Thompson v. State*, 553 So.2d 153, 156 (Fla. 1989) (a 1950 rape conviction counts as prior violent felony aggravation for a 1982 murder); *Rose v. State*, 787 So.2d 786, 800-01 (Fla. 2001) (a 1969 breaking and entering conviction counts as prior violent felony aggravation in a 1998 resentencing).

The State submits that this aggravating factor should be accorded **GREAT** weight. This Court has additional support for such a finding in *Hess v. State*, 794 So.2d 1249 (Fla. 2001) wherein the Supreme Court noted that a violent crime committed *before* the homicide in question carries more weight than if the violent crime was committed after the homicide.

3. The capital felony was especially heinous, atrocious, or cruel. F.S. §921.141(6)(h) (2026)

The Florida Supreme Court has consistently defined this aggravating factor as follows: “Heinous” means extremely wicked or shockingly evil. “Atrocious” means outrageously wicked and vile. “Cruel” means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of the suffering of others. The kind of crime intended to be included are those homicides accompanied by such additional acts as to set the crime apart from the norm of capital felonies, particularly the conscienceless or pitiless crime which is unnecessarily tortuous to the victim. *Francis v. State*, 808 So.2d 110 (Fla. 2001) *citing Nelson v. State*, 748 So.2d 237 (Fla. 1999); *Hartley v. State*, 686 So.2d 1316 (Fla. 1996). *See also State v. Dixon*, 283 So.2d 1 (Fla. 1973); *Smalley v. State*, 546 So.2d 720 (Fla. 1989); *Cheshire v. State*, 568 So.2d 908 (Fla. 1990). Murders which “evinced extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another” fall within this aggravating factor, considered one of the most “weighted” aggravators within Florida law. *Hall v. State*, 87 So.3d 667 (Fla. 2012) *cert. denied* 568 U.S. 985 (2012) and *King v. State*, 89 So.3d 209 (Fla. 2012).

James Howze died by asphyxia and strangulation. This is unrefuted in the record. Florida jurisprudence has long held “that strangulation creates a *prima facie* case for this aggravating factor . . .” *Orme v. State*, 677 So.2d 258, 263 (Fla. 1996). *See also Michael v. State*, 437 So.2d 138, 142 (Fla. 1983) *cert. denied*, 465 U.S. 1013, 104 S. Ct. 1017, 79 L.Ed 246 (1984).

The evidence of strangulation is uncontroverted. Dr. Vega, found evidence of ocular petechiae, a fractured hyoid bone and larynx cartilage, and ligature markings.

Defendant does not dispute that the victim died by strangulation but does dispute the length of time the victim was conscious while being murdered. Defendant claims, incredibly, that the victim was rendered unconscious within a second of the chokehold being applied. Defendant attempts to defeat this aggravator by arguing the victim could not have suffered and could not have recognized his impending death. The only exception to a HAC finding when strangulation is the cause of death are in those instances when the victim was unconscious or semiconscious at the time of strangulation. *Rhodes v. State*, 547 So.2d 1201 (Fla. 1979). Dr. Vega testified that in his expert opinion, there was no evidence to establish that the victim immediately suffered from unconsciousness. No contributing medical factors existed that would have accounted for instant unconsciousness. Although common that a medical examiner could never pinpoint the *exact* length of time a person could suffer from death by strangulation, Dr. Vega opined that based on human physiology, it generally takes, *at a minimum*, seven to eight seconds before a person loses consciousness, even accounting for instantaneous loss of blood flow and obstruction of blood to the brain.

On February 29, 2024, the defendant confessed to practicing the choke-hold with the victim just before the murder. Howze practiced on the defendant, then, upon being told that Howze was doing it incorrectly, Tulenko convinced Howze to allow him to demonstrate. It was then, knowing that CSC Kara Williams was eventually meeting with Howze to discuss his close management status, that Tulenko started to strangle Howze. Howze started to gasp for air. Howze performed the safety “tap out” instructing Tulenko to stop. He did not. Defendant then told the victim that he was going to die and the victim responded “please don’t!”

The defendant completely changed his account of the incident during the penalty phase hearing. *See supra*. The State submits that the defendant’s self-serving recantation is an attempt to manipulate this Court.

The defendant’s own statement on February 29 (*State’s Exhibit 13*) corroborates Dr. Vega’s findings and supports the vast medical and physiological scholarship regarding death by strangulation. There can be no *reasonable* doubt that the victim was aware of his impending death. HAC applies if the victim was “acutely aware of his or her impending death for even mere seconds.” *Buzia v. State*, 926 So.2d 1203 (Fla. 2006).

Defendant repeatedly admitted through letters and other statements against his penal interest that he had long planned on killing Howze by this method of strangulation. During the penalty phase, he changed his story ostensibly to defeat the cold, calculated and premeditated aggravator (*see infra*). However, to the extent that his now-conflicting version of events militates against a finding of the HAC aggravator, the Court is cautioned that it cannot disregard what is otherwise a *prima facie* case of a heinous, atrocious or cruel killing. The Court may consider defendant's self-serving and changeable story as mental mitigation to *simply weigh* against the HAC aggravator. *Mann v. State*, 420 So.2d 578 (Fla. 1982) *cited in Orme, supra* at 263.

Although the defendant has introduced doubt into the account of the victim's death, it is not a reasonable doubt. Therefore, the State submits that this aggravating factor should be accorded **GREAT** weight.

4. The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. F.S. §921.141(6)(i) (2026)

In order to establish this aggravator, the evidence must show that the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold), and that the defendant had a careful plan or prearranged design to commit murder before the fatal incident (calculated), and that the defendant exhibited heightened premeditation (premeditated), and that the defendant had no pretense of moral or legal justification. *Jackson v. State*, 648 So.2d.85, 89 (Fla. 1994). This aggravating circumstance focuses on the manner in which the crime was executed, and it can be indicated by the circumstances if they point to such facts as the advance procurement of the murder weapon, lack of resistance or provocation, or the appearance of a killing carried out as a matter of course. *Stein v. State*, 632 So.2d 1361, 1366 (Fla. 1994).

From the moment defendant committed murder in Santa Rosa Correctional Institution October 2, 2021, he insisted that he be indicted for that crime and that the State should seek the death penalty. The consequence for not pursuing the death penalty in that case, as recounted numerous times, methodically and calmly, in letters and statements by the defendant, was that he would surely kill again. This fact, in itself, may not satisfy CCP given the general nature of the threat and the remoteness in time. *Perry v. State*, 801 So.2d 78 (Fla. 2001). However, the evidence presented shows, beyond a reasonable doubt, that once the defendant was transferred to Charlotte

Correctional in October, 2023 and placed in a cell with James Howze, that the defendant determined to murder Howze. This period, four months, allowed the defendant to befriend and entice Howze into a friendly and trusting relationship. Four months, not remote in time. James Howze as the target, no longer a generalized threat as discounted in *Perry*, but now specific prey for murder. For CCP, this Court must focus on the defendant's state of mind, not Howze's state of mind, nor the method of the killing. *Johnson v. State*, 465 So.2d 499 (Fla. 1988).

Heightened premeditation was proven by the statements and letters provided by the defendant, including, importantly, his confession on February 29. The defendant researched ways in which to kill Howze to assure that statutory aggravators would apply giving the State a good-faith ability to seek the death sentence. The defendant narrowed the time-frame and purposefully chose the date of execution. The defendant narrowed the victim. The defendant devised and carried out a plan, coolly executed, upon calm reflection, with prearranged design. The defendant rendered the victim so trusting that Howze provided no resistance or provocation. *See Jackson, supra* at 85. *See also Preston v. State*, 444 So.2d 939 (Fla. 1984); *Cruse v. State*, 588 So.2d 983 (Fla. 1991) (killing had the appearance of being carried out "as a matter of course").

The defendant presents absolutely no evidence of pretense of moral or legal justification for his actions. Absent any evidence, including an incredible or subjective belief of the defendant to justify this murder, this particular prong of CCP has been established. *Banda v. State*, 536 So.2d 221 (Fla. 1988); *Jackson v. State*, 704 So.2d 900 (Fla. 1997).

The State submits that the evidence of cold, calculated, and premeditated is well-supported by the evidence, and has been proven beyond reasonable doubt. This aggravator should be accorded **GREAT** weight.

MITIGATING CIRCUMSTANCES

The record reflects that the defendant made a knowing, intelligent and voluntary waiver of the presentation of mitigation evidence. He then changed his mind and presented lengthy testimony in the form of a prepared speech challenging some aggravators and arguing in mitigation of the death sentence. The Court had previously ordered a Presentence Investigation Report which was completed by the Department of Corrections and accepted by the parties, with some revisions, during the penalty phase.

Through the discovery process, the State received documents from the prior Hillsborough County case (*supra*) which referenced potential mitigating circumstances related to abuse, drug

use, and dysfunctional family dynamics. The State was prepared to, upon order of the Court, introduce those documents, among others, pursuant to the authority of *Fitzpatrick v. State*, 900 So.2d 495 (Fla. 2005). However, as indicated, the Defendant presented mitigating circumstances during his case-in-chief and introduced some of the same records that the State would have introduced if ordered.

The victim was a participant in the defendant's conduct or consented to the act. F.S. §921.141(7)(c) (2026)

It is the State's position that the mitigation presented by the defendant falls only under *Florida Statute §921.141(7)(h)* and no other subsection of that statute. However, the Court referenced *Florida Statute §921.141(7)(c)*, a statutory mitigator which considers that a victim was a participant in the defendant's conduct or consented to the act. The record indicates that the victim frequently submitted to demonstrations of choke holds performed by the defendant while they were cellmates at Charlotte Correctional – always with safety checks in place. The record is silent that the victim consented or “participated” in his own death. The defendant never indicated to the victim that the victim would eventually die in this manner. There was no reason for the victim to suspect that fate. This circumstance applies only when the victim engages in a transaction that in and of itself would be likely to result in the victim's death. A reasonable person would not conclude that, play-acting choke holds for months, conducted safely and responsibly, the victim “consented” to his demise. *Wournos v. State*, 676 So.2d 972 (Fla. 1996). For these reasons, the State submits that *Florida Statute §921.141(7)(c)* is inapplicable. For his part, when the Court asked whether this statutory mitigator should be considered in light of the evidence presented, the defendant demurred and informed the Court that he did not believe the mitigator should apply:

THE DEFENDANT: My review of the statute, I don't believe that there's any other statutory mitigators present.

THE COURT: So are you in agreement with the State that the – C, the victim was a participant in the Defendant's conduct or consented to the act: you don't believe that that the should be considered by the Court?

THE DEFENDANT: I don't believe it should because he didn't consider – he wasn't . . . Say that again, Your Honor. Can you repeat –

THE COURT: The language reads the victim was a participant in the defendant's conduct or consented to the act.

THE DEFENDANT: That last part, he did not consent to my

killing of him.

THE COURT: Sure. But do you believe that that is a –

THE DEFENDANT: No, I do not.

THE COURT: All right.

THE DEFENDANT: And I concur with the State that there is no statutory mitigation.

Transcript of Proceedings, March 10, 2026 (p. 65 – 1.25 through p. 66 – 1.21)

Nonetheless, should this Court, *sua sponte*, decide to consider *Florida Statute §921.141(7)(c)* in weighing mitigation, the State would lodge a formal objection, submits that this statutory mitigator was not proven by the greater weight of the evidence and should be afforded **NO** weight.

From the testimony offered, evidence produced and the defendant’s closing argument, the State submits that the following statutory mitigating circumstance was established:

The existence of any other factors in the defendant’s background that would mitigate against the imposition of the death penalty. F.S. §921.141(7)(h) (2026)

The Defendant’s evidence of mitigation falls under *Florida Statute §921.141(7)(h)*. This subsection of the statute is commonly termed the “catch-all” mitigator. To address the evidence of mitigating circumstances, the State has grouped like mitigating circumstances together into four (4) broad categories: 1) circumstances surrounding the Defendant’s childhood and upbringing; 2) circumstances surrounding the Defendant’s mental health and head trauma; 3) circumstances surrounding the Defendant’s drug use and addiction, and; 4) circumstances surrounding the Defendant’s adult behaviors and relationships. The Florida Supreme Court has explained that the “proposed non-statutory circumstances should generally be dealt with as categories of related conduct rather than as individual acts.” *Gonzalez v. State*, 136 So. 3d 1125, 1166 (Fla. 2014) quoting *Campbell v. State*, 571 So. 2d 415, 419 (Fla. 1990)

This case is similar to the facts in *Kearse v. State*, 770 So. 2d 1119, 1133 (Fla. 2000). In *Kearse*, the defense counsel listed 40 non-statutory mitigating facts. *Id.* The court categorized those factors as relating to Kearse’s “difficult childhood and his psychological and emotional condition because of it.” *Id.* The Florida Supreme Court found that the trial court did not abuse its discretion in grouping the non-statutory mitigating circumstances in this manner. *Id. citing Reaves v. State*, 639 So.2d 1, 6 (Fla.1994) (finding that trial judge reasonably grouped several proffered non-statutory mitigating factors into three factors).

Circumstances surrounding the Defendant’s childhood and upbringing:

- The Defendant was exposed to bad parenting.
- The Defendant had an explosively violent alcoholic father.
- The Defendant was young when exposed to strip clubs.
- The Defendant experienced sexual abuse when he was young.
- The Defendant experienced instability in life when he was young.
- Growing up the Defendant had physical conflicts with stepfather.
- Growing up the Defendant had feelings of displacement and rejection from his father.
- The Defendant also had love, proper guidance, and positive influences in life.
- The Defendant was instilled with a sound set of morals, respect of people, and value of family.
- The Defendant was a good athlete.
- The Defendant has self-esteem issues and insecurity issues.
- The Defendant’s parents divorced when he was nine (9) years old.
- The Defendant was physically and emotionally abused by his mother and stepfather.

This case is similar to the facts of *Bright v. State*, 299 So. 3d 985, 997 (Fla. 2020). In *Bright*, the trial court grouped the non-statutory catchall mitigators into six categories, found each established, and assigned no or little weight to each category. “Specifically, the trial court found: (1) Bright was the victim of child abuse and neglect (no weight); (2) Bright’s military career (little weight); (3) Bright’s history of drug and alcohol abuse (little weight); (4) Bright’s positive relationships with others (little weight); (5) Bright’s good and mannerly behavior during court proceedings (no weight); and (6) Bright’s behavior while incarcerated (no weight).” *Id.* Regarding the trial court’s assignment of no weight to Bright’s childhood abuse and neglect, the Florida Supreme Court found that the trial court simply placed the mitigation evidence in the context of the other evidence presented. *Id.* The Court found that the trial court did not abuse its broad discretion in assigning no weight to this mitigating circumstance. *Id.*

The Florida Supreme Court in *Caylor* addressed the “dysfunctional family” mitigator. *Caylor v. State*, 78 So. 3d 482, 497 (Fla. 2011). The Court supported the trial court’s assigning little weight to this mitigator where the evidence was that the defendant’s parents abused drugs,

the defendant was experimenting with drugs by age 13, and there was physical and psychological abuse. *Id.*

The State submits that the non-statutory mitigator group of the circumstances surrounding the Defendant's childhood and upbringing was proven by the greater weight of the evidence, however this mitigator should be given **LITTLE** weight.

Circumstances surrounding the defendant's drug use and addiction:

- The defendant was young when exposed to alcohol and drugs.
- The defendant ended up injecting heroine.
- The defendant was using drugs daily at the time of the homicide of Howze.
- Dr. McClain reported there were indications of substance abuse issues.
- The defendant reported to Dr. McClain that he used marijuana, powder cocaine, and crack cocaine from age 13 until March 2017; intermittent use of heroin from 1997 until 2016; intermittent use methamphetamines from 1997 until 2017.
- The defendant reported to Dr. McClain's that he attempted inpatient substance treatment in 2013 but did not complete it.
- The defendant was using drugs when he committed the crimes in Hillsborough County Case 17CF00407A.

The evidence in this case does support that the defendant was using drugs regularly before he was incarcerated, as well as while incarcerated within the Department of Corrections. The defendant's prior drug use and abuse history is similar to the facts in *Preston* where the Court rejected the non-statutory mitigator finding that the defendant's drug and alcohol use did not even rise to the level of a non-statutory mitigator. *Preston v. State*, 607 So.2d 404, 411-12 (Fla. 1992).

The Florida Supreme Court has upheld a trial court's rejection of the mitigators that the defendant was under the influence of extreme mental or emotional disturbance and that the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law, where a defendant ingested drugs. *Cook v. State*, 542 So. 2d 964, 971 (Fla. 1989). The defendant in *Cooks* argued that he had ingested cocaine, marijuana, and alcohol which caused him to have diminished capacity. *Id.* The Florida Supreme Court found no reason to disturb the trial court's rejection where the record contains positive evidence that the mental capacity was not severely diminished on the night of the killings. *Id.*

This case, like in *Cooks*, provides positive evidence that the defendant's mental capacity was not severely diminished the night he killed James Howze. Although evidence showed that the defendant smoked molly and K2 at some point before the crime, the defendant was still able to tear one ligature preparing for the murder, engage Howze to tear the remaining ligatures, trick Howze into a position where the defendant could place him in a choke hold, talk with Howze to let him know that he was going to die, hold Howze in the choke hold, tie a ligature around Howze's mouth, get Howze into bed, cover Howze up with a blanket, and tie the remaining two (2) ligatures on Howze. The defendant placed Howze under the blanket so that the guards doing checks did not know anything was wrong. Defendant in his statement explained that he intended to keep the death of Howze hidden so that he could secure more drugs before being transferred. Additionally, hiding the death of Howze allowed the defendant to eat not only his own breakfast but also Howze's. Clearly the defendant's mental capacity was not diminished by his drug use.

The Florida Supreme Court has recognized that while a proffered mitigating factor may be technically relevant and must be considered by the sentencer because it is generally recognized as a mitigating circumstance, the sentencer may determine in the particular case at hand that it is entitled to no weight for additional reasons or circumstances unique to that case. *Trease v. State*, 768 So. 2d 1050, 1055 (Fla. 2000). The Court in *Trease* further explained:

For example, while being a drug addict may be considered a mitigating circumstance, *see Mahn v. State*, 714 So.2d 391, 401 (Fla.1998), that the defendant was a drug addict twenty years before the crime for which he or she was convicted may be sufficient reason to entitle the factor to no weight. *See Kormondy v. State*, 703 So.2d 454, 457 (Fla.1997) (The trial judge found that "although the fact of Kormondy's drug addiction is established by the evidence, the Court finds that his addiction is not reasonably established as a non-statutory mitigating factor and gives it no weight.") (vacating the death sentence on other grounds).

The State submits that the non-statutory mitigator group of the circumstances surrounding the defendant's drug use and addiction was proven by the greater weight of the evidence however this mitigator should be given **LITTLE** weight as it is clear from the evidence that in spite of his drug use the defendant was in control of his actions.

Circumstances surrounding the defendant's mental health and head trauma:

- The defendant has never really been evaluated for a mental health condition because the defendant has manipulated the evaluations.
- The defendant believes he has some deeply rooted psychological and/or personality disorders from unresolved traumas in his life.
- A cellmate gave the defendant the idea to inflame the homicide in Santa Rosa so that the defendant would be charged with first degree murder and sentenced to die. This thought took root and was impossible to eradicate.
- The defendant acknowledges he has a very bad anger problem and explosive temper.
- The defendant wants to focus on healing and growth.
- Dr. McClain reported there were indications of psychiatric issues noting that the defendant presented with paranoid ideation.
- The defendant reported to Dr. McClain multiple head injuries, a history of auditory and visual hallucinations, nightmares/flashbacks to being sexually and physically abused, and mood swings.
- Dr. McClain reported diagnostic impressions of: schizoaffective disorder- bipolar type, posttraumatic stress disorder, cannabis use disorder, and stimulant use disorder.
- The defendant attempted and considered suicide previously.
- The defendant has anxiety around people and experiences panic attacks.

Although there has been references to the defendant's mental health condition, the defendant himself admitted that he has manipulated his mental health evaluations in order to get the medications he wanted. With that information in mind it cannot be said that the non-statutory mitigator group of the circumstances surrounding the defendant's mental health and head trauma were proven by the greater weight of the evidence. All the above information for this group is self-reported from the defendant and therefore cannot be relied upon as accurate information.

The State submits that the non-statutory mitigator group of the circumstances surrounding the defendant's mental health and head trauma was not proven by the greater weight of the evidence however to the extent that it was proven at all this mitigator should be given **LITTLE to NO** weight.

Circumstances surrounding the defendant's adult relationships and behavior:

- The defendant is now maintaining meaningful relationships with family and friends.
- For a short period of time, the defendant was in the military.
- The defendant has taken responsibility for his actions.
- The defendant loves life.
- The defendant has not perjured himself in court.
- The defendant is not affiliated with any racial groups, gangs, or organizations.
- The defendant felt shame and was embarrassed by the December 8, 2021 letter.
- The defendant feels badly for the letter he wrote to Howze's mom Ms. Coon.
- The defendant is sorry for his actions.
- The defendant is a Christian.
- The defendant has three (3) children.
- The defendant received his certificate for offset lithography.
- The defendant experienced sexual abuse while incarcerated.
- The defendant obtained his GED.
- The defendant has experienced homelessness.
- The defendant is one (1) of ten (10) grandchildren who all love him.

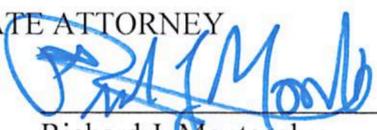
In *Newberry* the Florida Supreme Court found that the trial court did not abuse its discretion in finding that five (5) mitigating circumstances were established but were “not mitigating.” *Newberry v. State*, 288 So. 3d 1040, 1049 (Fla. 2019). Specifically, the trial found the following circumstances were not mitigating: (1) Newberry struggles with depression; (2) Newberry's ineligibility for parole if sentenced to life in prison; (3) Newberry's placement in special education classes as a child; (4) Newberry's loving relationship with his family; and (5) Newberry's poor impulse control. *Id.*

In this case, much like the case in *Newberry*, the mitigating circumstances showing the defendant's adult relationship and behavior are not truly mitigating. The State submits that the non-statutory mitigator group of the circumstances surrounding the defendant's adult relationships and behavior was proven by the greater weight of the evidence however this mitigator group should be given **LITTLE to NO** weight.

CONCLUSION

WHEREFORE, the STATE OF FLORIDA hereby submits that each aggravating factor alleged has been proven beyond a reasonable doubt, should be given **GREAT** weight. Further, each of the aggravating factors alleged, and proven beyond a reasonable doubt are sufficient to warrant a sentence of death. The weight of the aggravated factors far exceeds the aggregate weight of the mitigating circumstances in this case. Accordingly, the State of Florida respectfully recommends that this Honorable Court impose a sentence of death against William Tulenko the Defendant on the count of First Degree Murder as alleged in the indictment.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to the **Honorable Shannon McFee**, Circuit Court Judge, Charlotte County Justice Center, 350 E. Marion Avenue, Punta Gorda, Florida 33950; and to **William Tulenko**, Defendant *pro-se*, c/o Charlotte County Jail by United States Mail/Hand Delivery/Electronic Transmission this 20 day of March, 2026


Richard J. Montecalvo
Chief Assistant State Attorney