

IN THE CIRCUIT COURT FOR MOBILE COUNTY, ALABAMA

STATE OF ALABAMA,

VS.

CARLOS EDWARD KENNEDY.

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CASE NO: CC11-1569-JSJ

defendant.

**SENTENCING ORDER**

The defendant was indicted for one Capital Offense: Murder during the course of a Burglary in the First Degree, Ala. Code § 13A-5-40(4).

The defendant was convicted by a jury of his peers of the capital offense on May 16, 2013.

The defendant has been found guilty of the aforesaid case of capital murder by a jury of his peers in this circuit. A sentencing/penalty hearing was held before the trial jury, after returning a verdict of guilty as indicted. The said jury returned an

advisory verdict fixing the punishment at DEATH. The vote was eleven for death and one for life imprisonment without the possibility of parole.

The Court ordered, received and reviewed a written pre-sentence report. On June 17, 2013 in open court, the State and the defendant were offered the right to present argument concerning the pre-sentence report, which each did. The State and the defendant each presented argument concerning the existence of aggravating and mitigating circumstances and as to the appropriate sentence. These arguments have been considered by the Court.

The Court adjourned the hearing until today's date to consider the testimony and to allow for certain portions of the record to be completed.

The Court has considered all the evidence presented at trial, the pre-sentence report, and at the sentencing hearing, as well as the jury's advisory verdict.

The facts of the crime are horrid but not unduly complicated and are as follows:

On the morning of June 28, 2010, 13-year-old Landon Miller and his sister were supposed to help their grandmother with yard work about 8:30 a.m. when she was to pick them up. When Mrs. White did not arrive, Landon called his mother and it was decided that

he should drive his bike the several blocks to her house to check on her. Mrs. White had not been heard from since the previous evening when the plans were made.

Young Landon Miller had seen his grandmother the night before and had made arrangements for working with her the next morning along with his sister. After all attempts to raise Mrs. White's house by telephone failed he began the bike trip.

Upon arriving at his grandmother's house he was met with something no one should be met with let alone a thirteen year old: evidence of a burglary in the form of a smashed window above the sink. Fortunately, Landon Miller entered Mrs. White's house and after ascertaining a crime had taken place withdrew and phoned his mother. It was providence that he did not see what this defendant had done to his beloved grandmother.

Laurie Miller, Mrs. White's daughter, testified that she had never seen the defendant around Mrs. White's house or in Mrs. White's company. Further, Mrs. Miller testified that it was her mother's habit not to let anyone in her house when she was re-modeling, as she was currently doing.

Oddly, Mrs. White called her daughter about 10:00 p.m. the night before her death telling her that her purse was missing and she was afraid it might have been stolen out of her car.

Mobile Police Officer Michael Bailey testified that he was the first law enforcement officer to arrive at Mrs. White's house on Springhill Avenue in the Midtown section of the City of Mobile. He met Mrs. Miller there at about 10:33 a.m.

Officer Bailey entered Mrs. White's house and came upon what was obviously a bloody crime scene. Realizing that the two Miller children were behind him, he quickly exited the house, contacted EMS, and closed it off as a crime scene.

The Court will spare the family the description of the photos introduced into evidence and described by Officer Bailey. Needless to say, Hollywood could never have envisioned the type of nightmarish scene which Officer Bailey encountered. It is unimaginable that a human being could have committed this kind of atrocity.

Carolyn Davidson, a neighbor, testified that at some point during the night Mrs. White was killed, she heard glass breaking but was really not certain of the time. Further she woke up her husband, Glenn, a Mobile lawyer, telling him it seemed to come from Mrs. White's house.

Glenn Davidson testified that the glass breaking was about midnight, that he went on his back porch, observed Mrs. White's house for some time. After detecting nothing unusual, went back into his house.

Captain Mark Penn of the Mobile Fire Department testified that he went to Mrs. White's house, observed her body, connected a ZOLL monitor, and concluded that Mrs. White was lifeless. Thereafter, Dr. Ballard declared her dead at 10:44 a.m.

Jason Bullock, a crime scene investigator with the Mobile Police Department testified that he collected latent fingerprints from the scene as well as bloodstains from other objects, such as a paper towel, that may have not been connected with Mrs. White.

Finger prints and palm prints matching the defendant were found in Mrs. White's home, placing the defendant at the scene of the crime.

The medical examiner, Dr. Turner, testified that Mrs. White was killed by multiple blunt force trauma to her head and that her body contained defensive wounds.

Patrick Goff, a DNA expert with the Alabama Department of Forensics, testified that State's Exhibits 2a through 2g were all presumptive bloodstains collected from Mrs. White's house which came from a male. Mrs. White was excluded as being the contributor of these presumptive blood samples.

Without going through the endless scientific explanation of DNA evidence, and DNA evidence and testimony has been accepted by

the courts of this State for years. Mr. Goff, a DNA expert, testified that the DNA contained in State's Exhibits 2a through 2g were, in his opinion, that of the defendant.

Thus, the defendant was in Mrs. White's house and was injured there leaving his blood and DNA there.

### **THE AGGRAVATING CIRCUMSTANCES**

In regards to the aggravating circumstances, the Court finds the following:

1. The defendant was not under a sentence of imprisonment when he committed the capital offenses. Therefore, the Ala. Code § 13A-5-49(4) (1975) does not apply.
2. The defendant has not previously been convicted of another capital offense or a felony involving the use or threat of violence to the person . Therefore, the Ala. Code § 13A-5-49(2) (1975) does not apply.
3. The defendant did not knowingly create a great risk of death to many persons. Therefore, the Ala. Code § 13A-5-49(3) (1975) does not apply.

4. The capital offense was committed while the defendant was engaged in the commission of a burglary. Therefore, the Ala. Code § 13A-5-49(4) (1975) aggravating circumstance **does exist and is considered and applied.**
5. The capital offense was not committed for the purpose of avoiding or preventing a lawful arrest or affecting an escape from custody within the meaning of Ala. Code § 13A-5-49(5) (1975). Therefore, the Ala. Code § 13A-5-49(5) (1975) does not apply.
6. The capital offense was not committed for the purpose of pecuniary gain. Therefore, the Ala. Code § 13A-5-49(6) (1975) aggravating circumstance does not exist and does not apply.
7. The capital offense was not committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws. Therefore, Ala. Code § 13A-5-49(7) (1975) does not apply.
8. While the photos presented of Mrs. White were the worst this Court has seen in over 16 years on the bench, it was impossible for the State to offer evidence that this capital offense was especially

heinous, atrocious, or cruel when compared to others. Therefore, the Ala. Code § 13A-5-49(8) (1975) aggravating circumstance does not exist and is not considered.

### **THE MITIGATING CIRCUMSTANCES**

The Court has considered all statutorily enumerated mitigating circumstances as well as any non-statutory mitigating circumstances which might reasonably appertain.

In regards to the statutory mitigating circumstances, the Court finds the following:

1. The defendant does not has a significant history of prior criminal activity within the meaning if Ala. Code § 13A-5-51(1) (1975). The Court, finds that Ala. Code § 13A-5-51(1) (1975) mitigating circumstance does exist and is considered.
2. The offense was not committed while the defendant was under the influence of extreme mental or emotional disturbances. Thus, the Court finds that the Ala. Code § 13A-5-51(2) (1975) mitigating circumstance does not exist and is not considered.

3. The victim was not a participant in the defendant's conduct, and she did not consent to it. Thus, the Court finds that the Ala. Code § 13A-5-51(3) (1975) mitigating circumstance does not exist and is not considered.
4. The victim was not an accomplice in the capital offense. Thus, the Court finds that the Ala. Code § 13A-5-51(4) (1975) mitigating circumstance does not exist and is not considered.
5. The Court finds that the defendant did not act under extreme duress or under the substantial domination of another person when he committed the capital offense. Thus, the Court finds that the Ala. Code § 13A-5-51(5) (1975) mitigating circumstance does not exist and is not considered.
6. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was not substantially impaired. Thus, the Court finds that the Ala. Code § 13A-5-51(6) (1975) mitigating circumstance does not exist and is not considered.

7. The defendant was a 35 year old adult at the commission of the capital offense. Thus, the Court finds that the Ala. Code § 13A-5-51(7) (1975) mitigating circumstance does not exist and is not considered.

The defendant has claimed either during trial or during the sentence hearing a number of non-statutory mitigating circumstances. This Order will address each:

1. The defendant has claimed during the penalty phase by his own testimony that "I had nothing to do with the crime. It wasn't my blood." Further he blamed the Court for persecuting him, denying him the use of a telephone while in jail, and claiming the Court ordered him to be put into a "hole" in Metro Jail. Then he proceeded to insinuate that Mrs. White was his "friend" and that friendship was private and he would not speak of it in Court. The Court finds his testimony bizarre and not worthy of belief. Thus, it is not considered.
2. The Court has considered the defendant's attempt to represent himself and concluded that he was either trying to make a mockery of these

proceedings or stall them. Therefore, the non-cooperation with his lawyers is not considered a mitigating factor.

### **THE JURY'S RECOMMENDATION**

The jury's advisory verdict recommended a verdict of **DEATH**. The jury's vote was eleven for death and one for life without the possibility of parole. The Court has given due consideration and weight to that recommendation.

### **THE SENTENCE**

The Court has weighed the aggravating and mitigating circumstances and weighed the recommendation of the jury. The Court sincerely appreciates the work and service of the jury. The Court **ACCEPTS** the advisory verdict of the jury, and agrees with said jury that the aggravating circumstances in this case outweigh the mitigating circumstances beyond a reasonable doubt and that the punishment should be **DEATH**.

The instrument of the defendant's crime was concluded to be the simple claw hammer. A hammer has been one of the greatest tools for building our civilization.

Hammers have been used for thousands of years to drive nails and wooden pins, to pound together wooden parts, and to position fittings like barrel hoops. Eighteenth-century toolmakers produced many types of hammers.

Specialized hammers of many types were made for particular jobs. Different sizes and designs suited them for tasks ranging from delicately driving in brads to secure small moldings to pounding home the large wooden pegs used to hold together building and ship frames.

It is more than ironic to note, that the instrument of murder in the case at bar, the simple hammer, was one half of the symbol of the most murderous regime in the history of the world--the Soviet Union. Thus, blood and murder is no stranger to the hammer.

The simple hammer was also, ironically, the origin of the gavel, the symbol of western law in justice. The gavel the great symbol of Anglo-American jurisprudence will not let the death of Zoa White escape punishment. For all are equal before the law and all must be punished for any dastardly deeds that they commit.

A message to General Stalin and to Carlos Kennedy: A hammer was not created to snuff out the life of one of God's children as if she were an inanimate object being pulverized. It was made to create; not to destroy.

The greatest English jurist, Lord Blackstone wrote in his Commentaries on the Law of England, Vol. 4, page 397 (1769 Ed.) "It has been well observed, that it is of great importance , that the punishment should follow the crime as early as possible; that the prospect of gratification or advantage , which tempts a man to commit the crime, should instantly awake the attendant idea of punishment. Delay of execution serves only to separate these ideas; and then the execution itself affects the minds of the spectators rather as a terrible sight, rather as a necessary consequence of the transgression."

It is the sincere prayer of this Court that you will meet your maker sooner, rather than later, and not mock this family and community for decades to come.

It is, therefore, the Order of this Court that the defendant, CARLOS KENNEDY be, and he is hereby sentenced to **DEATH** in the manner provided by the laws of this State. Pending such just punishment, the defendant shall be taken into the custody of the Alabama Department of Corrections.

DONE and ORDERED this 25th of September, 2013.

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JOSEPH S. JOHNSTON  
CIRCUIT JUDGE  
13<sup>TH</sup> JUDICIAL CIRCUIT  
MOBILE COUNTY

