IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

STATE OF ALABAMA,	*	
	*	
V.	*	CASE NO.: CC 08-4437 JSJ
MICHAEL BRAGG WOOLF,	*	
	*	
Defendant.	*	

AMENDED SENTENCING ORDER

This matter comes before the Court by virtue of the Opinion and Order of the Alabama Court of Criminal Appeals dated May 2, 2014, which that Court affirmed the Defendant's conviction but remanded this case for an amended sentencing order consistent with the Opinion from the Court of Appeals. The Defendant was indicted for the capital offense in Count 1 of intentionally causing the death of two or more persons by one act or pursuant to one course of conduct in violation of 13A-5-40(a)(10) *Code of Alabama* (1975). The two persons which Count 1 charged the Defendant intentionally caused the death of, in violation of 13A-5-40(a)(10) *Code of Alabama* (1975), were his wife and two-year old son.

In Count 2, the Defendant was indicted for the capital offense of intentionally causing the death of a child less than 14 years of age by shooting him with a gun, in violation of 13A-5-40(a)(15) *Alabama Code* (1975). The child less

than 14 referred to in Count 2 of the indictment was the Defendant's two-year old son.

The trial began on October 18, 2010 with voir dire and concluded on November 3, 2010 with a conviction of capital murder as to both counts.

The Court began the most extensive voir dire of its judicial career beginning on Monday, October 8, 2010. One hundred five jurors were given a questionnaire which had been drafted by counsel and the Court. Upon completion of the questionnaire, the jurors were instructed to return on Wednesday, October 20, 2010. Court staff then spent the next few hours making copies of these questionnaires for all counsel, the Court and the Defendant. All counsel had copies of all juror questionnaires before the end of the day on October 18, 2010 in order to study and review before voir dire began on October 20, 2010. Because of space considerations, general voir dire was conducted in the Ceremonial Courtroom of Mobile Government Plaza on October 20, 2010. The Court questioned the jurors as to general matters then allowed the State and the Defense to do so. This general voir dire took all of October 20. The Court then instructed some jurors to return the morning of Thursday, October 21 and some to return the afternoon of October 21, 2010 as individual voir dire would begin on October 21, 2010.

Individual voir dire of most of the jurors was conducted on October 21 and October 22.

As the individual voir dire was completed late in the day on Friday, October 22, the Court allowed counsel the weekend to consider information gleaned from the voir dire process and set the striking process for Monday, October 25, 2010.

A jury composed of 8 men and 4 women was selected to hear the case. Ten of the jurors were Caucasian and 2 were African-American.

Additionally, 4 alternate jurors were selected. After the striking process was completed but before the jury was seated and sworn, counsel for Defendant moved under the authority of *Batson v. Kentucky*, 476 U.S. 79 (1986) that the State had used its peremptory strikes in a manner that discriminated based on race and gender. The Court held that the Defendant, a Caucasian, had shown a prima facie case of gender and racial discriminatory strikes and thus required the State to produce, if possible, race and gender neutral reasons for its peremptory strikes. After hearing the reasons for the State's strikes, the Court denied the challenge to the composition of the jury pursuant to *Batson*, which held that there was no violation by the State under *Batson* and its progeny.

On August 5, 2010, the Defendant filed a Motion to Change Venue to another circuit in the state because of pre-trial publicity and also to sequester the Jury. The Court Denied that motion without prejudice and expressly stated in that order that if voir dire revealed that jurors had been exposed to pre-trial publicity and thus the Defendant's right to a fair and impartial jury was endangered, the Court would reconsider. Nothing in the voir dire process indicated any tainting of the jury pool with pre-trial publicity. As to sequestration of the jury, which is directed more to trial publicity, nothing in voir dire gave the Court the concern that sequestration was necessary. The Court entered two orders concerning juror conduct. The October 12 order required that the jurors be kept apart from the general population in Mobile Government Plaza during the trial, that they go to lunch together and accompanied by two sheriff's department employees. Thus, the danger from inadvertent "contamination" of jurors from waiting in the security line, waiting in elevators and eating lunch was avoided. The Court also entered a "Juror Conduct Agreement" which the Court required each member of the petit jury to sign to further enforce the Court's instructions upon the jurors. A copy of

this "Juror Conduct Agreement" was given to each juror after he or she signed it, acknowledging that they understood the rules of the jury and agreed to abide by them.

On November 2, 2010, the Defendant was convicted by a jury of his peers of the 2 counts of capital murder for which he was indicted: Count 1 intentionally causing the death of two or more persons by one act or pursuant to one course of conduct in violation of 13A-5-40(a)(10) *Code of Alabama* (1975); and Count 2 intentionally causing the death of a child less than 14 years of age by shooting him with a gun in violation of 13A-5-40(a)(15) *Code of Alabama* (1975).

The "guilt phase" of the trial lasted a total of 7 days. After being instructed by the Court as to the law, the jury deliberated approximately 2 hours after which the jury returned a verdict of guilty as to both counts of the indictment. After the jury returned a verdict of guilty as to both counts of capital murder, a sentencing hearing was held directly after the "guilt phase" before the jury. After hearing all matters presented during the guilt phase, all matters presented during the penalty phase and the instructions from the Court the jury returned an advisory verdict recommendation of DEATH.

The vote was ELEVEN (11) for death and ONE (1) for life imprisonment without the possibility of parole.

The Court ordered, received and reviewed a written pre-sentence report. On February 4, 2011, in open Court, the State and the Defendant were offered the right to present arguments concerning the pre-sentence report which each did as well as witnesses and other evidence concerning the Defendant's sentence. The State and the Defendant each presented argument concerning the existence of aggravating and mitigating circumstances and as to the appropriate sentence. At the sentencing

hearing on February 4, 2011 the Defendant's mother, Mrs. Lynn Tullos pleaded for her son's life. From evidence presented during the trial, it is apparent that Mrs. Tullos did everything she could for her son in order to make him a productive member of society. The Defendant's actions rest solely on him and no one else. Blame and guilt cannot and should not be heaped upon the Defendant's mother, his upbringing, or a learning disability. As human beings with free wills, we are all responsible for our own acts and we must be held accountable for them.

During the sentence hearing the Defendant, Michael Woolf spoke. While he admitted to having killed Angel and Ayden, he claimed that it was not intentional. Put another way, he has not lived up to his responsibility as a human being, as a husband, and above all as a father. He has refused to take legal and moral responsibility for his actions.

In order that the Court might fully consider the evidence presented at the sentencing hearing the Court recessed the February 4, 2011 sentencing hearing and continued it until February 17, 2011.

The Court has considered all the evidence presented at trial, in the pre-sentence report and at the sentencing hearing. The facts of the crime are as follows:

This is not a murder mystery that is worthy of an Agatha Christie novel, as there is no doubt that the Defendant, Michael Bragg Woolf, did the acts which caused the deaths of both his wife and his young son. The Defendant admitted in a statement to Mobile Police, which was admitted into evidence, that he was guilty. The question that the jury had to answer was: guilty of what crimes? The jury agreed with the State that the Defendant's actions amounted to capital murder.

The Defendant had been married to Angel Woolf for several years. Their marriage produced a son named Ayden. The Defendant, Angel and Ayden lived at 370 A Schillinger Road in Mobile County, Alabama, which is a trailer park within the police jurisdiction of the City of Mobile, Alabama.

Friends and neighbors of the Woolf's testified that the couple argued a good bit during their marriage. Ms. Krista Byrd, a friend of Michael Woolf's for over 15 years, testified that the Woolf's had a "stormy relationship."

Neighbors of the Woolf's in the trailer park in which they lived, such as Belinda Carol, testified that the Woolf's argued all the time.

It was against this "stormy relationship" that the Defendant became obsessed with the idea that he might not be the biological father of his son, Ayden. By all accounts, the Defendant was a loving father to Ayden.

However, apparently, the Defendant heard rumors and jokes that Ayden might not be his son. In the Defendant's mind, his wife Angel, the woman whom he thought had had numerous affairs since 1999, might be deceiving him about Ayden.

On February 15, 2008, the Defendant, Angel Woolf, Ayden Woolf and another woman who was probably the Defendant's mother all went to a Mobile area DNA office by the name of Resultz. The purpose of the visit was to have DNA testing done in order to prove definitively whether or not Ayden was the biological son of the Defendant. The two employees of Resultz testified at trial regarding the Woolf's visit. Both Jacqueline Dukes and Velvet DiVisconte testified that both the Defendant and Angel looked upset. As the Defendant paid for the DNA test and prepared to leave the office the Defendant said "Please pray for me."

On February 19, 2008 someone returned to Resultz and picked up the DNA test report. On March 3, 208 the Defendant and his son, Ayden, returned to the Resultz office. Both Jacqueline Dukes and Velvet DiVisconte were in the office when the Defendant entered in a highly agitated state. In spite of the fact that the DNA report confirmed that Ayden was the biological son of the Defendant, the Defendant seemed not to understand the report. The DNA clinic employees testified that the Defendant was shaking the report and seemed confused as to the results. The Defendant's actions made these two employees very nervous. The Defendant told the two employees that he had to get some understanding of the report so he would "know what to do." Once again, as the Defendant was leaving the clinic he stated, "Pray for me, pray for me."

What happened after the Defendant left the DNA clinic with his son on March 3, 2008 and the time that the crimes took place, approximately 12 midnight on March 4, 2008 was not totally clear. The Defendant did drive around and drink and smoke marijuana. At just after midnight on March 4, 2008, 12:09 a.m., Mobile, Alabama 911 dispatch received a telephone call from what was apparently the Defendant. He said "I've just killed two people, my family, and need to go to jail."

Mobile Fire-Medic Jonathan Parker testified that as per routine procedure on a 911 call such as this that they meet in a public staging area with police units in order to plan the entrance onto the property in which the crime may have occurred. Thus, Mobile Fire-Medics were located at the Circle K on Schillinger's Road when a man whom they later realized was the Defendant approached them. The Defendant approached the Mobile Fire-Medics with his arms and hands stretched in front of his body as if he were ready for them to place handcuffs on and stated that he had killed his family and needed to go to jail. Shocked, the Mobile Fire-

Medics attempted to find out who they were dealing with while notifying the Mobile Police. Mobile Police arrived at the Circle K and took the Defendant into custody. The Defendant's story changed through time and now he used the term "I poisoned my family." Then he said something about his wife poisoning him. At one point he begs Mobile Police Officer Bryan Reeher to "shoot him" as he (the Defendant is "guilty").

The evidence reflects that on the night of March 3, 2008 the Defendant had been driving around in his car, smoking pot, drinking alcohol and getting high. He was still agitated about his understanding of what the DNA results meant. At some point before the 12:09 a.m. 911 call on March 4, 2008, he returned to the trailer where he lived with Angel and Ayden. The Defendant asserted in his testimony that he and Angel were arguing when the loaded revolver which he was holding just went off, ricocheted, then hit two-year-old Ayden killing him instantly but accidently. The Defendant then testified that Angel, upon seeing her son Ayden shot and killed before her eyes physically attacked the Defendant and in a struggle over the revolver it fired, killing Angel (once again) accidentally.

The crime scene revealed the small, lifeless body of two-year old Ayden Woolf, dressed in his pajamas, his spinal cord cut by the bullet that ripped through his body killing him instantly.

Mere feet away, his mother, Angel, also lay lifeless, killed by one shot to the head.

While the Defendant told a story of a struggle and an accidental shooting, the jury, when given the opportunity to convict the Defendant of a lesser included offense consistent with that testimony chose not to. Rather, the jury chose to

convict the Defendant of both charges of capital murder, consistent with the State's theory of the case.

The crime scene was so horrible, so hideous, that Mobile Police Officer Henebry advised Mobile Fire-Medics that both Angel and Ayden were dead, not to even go into the trailer because he wanted to preserve evidence.

The Court having duly considered all evidence presented during the guilt phase of the trial, all evidence presented during the penalty phase of the trial, the recommendation of the jury regarding the sentence, all matters presented at the sentencing hearing, hereby finds as follows:

THE AGGRAVATING CIRCUMSTANCES

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

1. The Defendant was under a sentence of imprisonment when he committed the capital offenses. Therefore, 13A-5-49(1) *Code of Alabama* (1975) does not apply and is not considered.
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 13A-5-49(2) *Code of Alabama* (1975) does not apply and is not considered.
3. The Defendant did not knowingly create a great risk of death to many persons. Therefore 13A-5-49(3) *Code of Alabama* (1975) does not apply and is not considered.
4. The capital offense was not committed while the Defendant was engaged in the commission of or an attempt to commit, or flight after committing or attempting to commit, rape, robbery, burglary, or kidnapping. Therefore 13A-5-49(4) *Code of Alabama* (1975) aggravating circumstances does not exist and does not apply and is not considered.

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 13A-5-49(5) *Code of Alabama* (1975). Therefore, 13A-5-49(5) *Code of Alabama* (1975) does not apply and is not considered.
6. The capital offense was not committed for the purpose of pecuniary gain. Therefore 13A-5-49(6) *Code of Alabama* (1975) aggravating circumstances does not apply and is not considered.
7. The capital offense was not committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws. Therefore 13A-5-49(7) *Code of Alabama* (1975) does not apply and is not considered.
8. The State did not offer evidence that this capital offense was especially heinous, atrocious, or cruel. Therefore, 13A-5-49(8) *Code of Alabama* (1975) aggravating circumstance does not exist and is not considered.
9. The Defendant intentionally caused the death of two or more persons by one act or pursuant to one scheme or course of conduct. Therefore, 13A-5-49(9) *Code of Alabama* (1975) does exist and is being considered.
10. The capital offense was not one of a series of intentional killing committed by the Defendant. Therefore 13A-5-49(10) *Code of Alabama* (1975) aggravating circumstance does not apply and is not being considered.

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 has a significant history of prior criminal activity within the meaning of 13A-5-51(1) *Code of Alabama* (1975). The Defendant has previous convictions for: Burglary 3rd Degree (CC 03-626), Receiving Stolen Property 1st (CC-99-1241), Burglary 3rd Degree (CC-98-379), Burglary 3rd Degree (CC-99-1240); Possession of Marijuana 2nd Degree (DC-99-10592), Possession of Drug Paraphernalia, Theft of Property 3rd Degree, Domestic Violence 3rd Degree. The Court finds that 13A-5-51(1) *Code of Alabama* (1975) mitigating circumstance does not exist and is not 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 13A-5-51(2) *Code of Alabama* (1975) mitigating circumstance does not exist and is not considered.
3. The victims were not participants in the Defendant's conduct, and did not consent to it. Thus, the Court finds that 13A-5-51(3) *Code of Alabama* (1975) mitigating circumstances does not exist and is not considered.
4. The victims were not accomplices in the capital offense. Thus, the Court finds that 13A-5-51(4) *Code of Alabama* (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 offenses. Thus, the Court finds that 13A-5-51(5) *Code of Alabama* (1975) mitigating circumstances 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 13A-5-51(6) *Code of Alabama* (1975) mitigating circumstance does not exist and is not considered.
7. The Defendant was 29 years old at the commission of the capital offenses. Thus the Court finds that 13A-5-51(7) *Code of Alabama* (1975) mitigating circumstance does not exist and is not considered.

NON-STATUTORY MITIGATING CIRCUMSTANCES

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

The Defendant has claimed that he has abused alcohol and drugs throughout his life. The Court finds that this non-statutory mitigating circumstance **does exist.**

The Defendant's attorneys have raised and offered the testimony of Dr. Tom Bennett that the Defendant has a learning disability, probably ADD or ADHD. The Court finds that this non-statutory mitigating circumstance **does exist.**

Additionally, Dr. Bennett testified that the Defendant has a Borderline Personality disorder and is possibly bipolar. The Court finds that this non-statutory mitigating circumstance **does exist.**

Additionally, the defense offers Dr. Bennett's opinion that the Defendant has a low I.Q. of 74. However, in the end Dr. Bennett testified that he did not meet the legal standard for not guilty by reason of mental disease or defect. The Court has had the Defendant evaluated by Doug McKeown, Ph.D., a clinical psychologist, who has reported that the Defendant is functioning in the normal intelligence range and is competent to stand trial. The Court is also of that opinion. The Court has

considered this and taken that opinion and Dr. Bennett's opinion into account. Taking both expert opinions into account the Court finds that this non-statutory mitigating circumstance **does not exist.**

The Defendant's mother, Mrs. Lynn Tullos, testified at the hearing on February 4, 2011. She stood in stark contrast to her son. She was a very proper, well mannered, middle class lady, deeply affected by the events her son caused. She told of her efforts to get him proper help in school for some undiagnosed learning disability and all the obstacles she faced trying to get him help because she felt something was wrong with him. Additionally, the emotional coldness of the defendant's father, his lack of empathy, lack of emotions and, in general, partially dysfunctional family background partially contributed to the defendant's own unstable relationships. The Court finds that this non-statutory mitigating circumstance **does exist**.

THE JURY'S RECOMMENDATION

The jury's advisory verdict recommended **DEATH**. The jury's vote was 11 for death and 1 for life without the possibility of parole. The Court has given due consideration and weight to that recommendation.

WEIGHING THE MIIGATING AND NON-MITIGATING STATUTORY AND NON-STATUTORY CIRCUMSTANCES

In accordance with Alabama Law and with the Opinion and Order from the Alabama Court of Criminal Appeals dated May 2, 2014, The Court has carefully and meticulously weighed the aggravating circumstances against both the statutory

mitigating circumstances and the non-statutory mitigating circumstances enumerated above and found the aggravating circumstances outweigh the combination of the statutory mitigating circumstances and the non-statutory mitigating circumstances or any one of them individually beyond a reasonable doubt.

THE SENTENCE

The Court has weighed the aggravating circumstances and the statutory mitigating circumstances and non-statutory mitigating circumstances and weighed the recommendation of the jury. The Court sincerely appreciates the work and service of the jury who labored tirelessly during this trial. The Court **ACCEPTS** the advisory verdict of the jury and finds that the aggravating circumstances in this case outweigh the statutory mitigating circumstances and non-statutory mitigating circumstances beyond a reasonable doubt and that the punishment of the Defendant for capital murder in Counts 1 and 2 should be **DEATH.**

It is, therefore, the Order of this Court that the Defendant Michael Bragg Woolf 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 the 15th day of May, 2014.

/S/ Joseph S Johnston
JUDGE JOHNSTON
Circuit Judge