

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 v.) ID No. 0801010328
)
CLIFFORD W. WRIGHT)
)
 Defendant.)

SENTENCING OPINION

Decided: March 5, 2010

Steven P. Wood, Esquire, Ipek Medford, Esquire, Deputy Attorney General,
Department of Justice, Wilmington, Delaware, Attorneys for the State of
Delaware

Jerome M. Capone, Esquire, Brian J. Chapman, Esquire, Wilmington,
Delaware, Attorneys for the Defendant

JOHNSTON, J.

There is no decision more difficult, nor duty more profound, than the obligation of a judge to make the final determination of whether to sentence a human being to death. Through the General Assembly, the people of the State of Delaware have established the procedure a Superior Court judge must follow. This is the Court's decision after presiding at trial, careful review of the record, through examination of legal precedent, and soul-searching analysis.

FACTS

In June of 2006, defendant Clifford Wright resided with his girlfriend, Tamela Gardner, and her two children at Ms. Gardner's home in the Woodcreek development of Wilmington. Wright and Ms. Gardner had a contentious relationship. Her children testified that they argued regularly, and that Ms. Gardner repeatedly threw Wright out of her home.

On Saturday, July 1, 2006, Ms. Gardner and Wright again argued. Ms. Gardner took her children to a friend's pool party and told Wright to remove his belongings and move out of her house before they returned. He told a friend, Raheem Cannon, that he went by the pool party to watch Ms. Gardner. In an attempt to win back her favor, Wright repeatedly began to call Ms. Gardner. Between 7:14 p.m. and 2:31 a.m., Wright called Ms.

Gardner's cell phone 35 times. That night, Wright began sleeping at Raheem Cannon's home.

The following day, the phone calls continued. Between 7:34 a.m. and 9:28 p.m., Wright called Ms. Gardner 25 times. Frightened and upset by the repeated phone calls, Ms. Gardner put Wright's clothing in bags and left them on her porch. Ms. Gardner's daughter testified that, although her mother and Wright had argued frequently, this was the first time she saw her mother remove Wright's belongings from the house. On Monday July 3, 2006, Wright called Ms. Gardner 32 times.

On July 4, 2006, Ms. Gardner took her children to a friend's home for a barbecue. Wright, with Ms. Gardner's permission, borrowed her motorcycle from her home. At Ms. Gardner's request, Wright returned the motorcycle at 7:30 p.m. Half an hour later, Wright returned. As he and a friend drove past the house, Wright yelled "fucking crack whore," out of the window. His friend, Sheila Saxton, testified that Wright insisted that Ms. Gardner was inside with another man. On that day, Wright called Ms. Gardner 48 times.

The following day, Wright returned to Ms. Gardner's home to retrieve a bottle of cologne. Ms. Gardner attempted to leave the bottle outside for Wright, but he insisted on seeing her. As they spoke on her driveway, Ms.

Gardner informed Wright that she had decided to sever all ties with him. Later that night, angered by this decision, Wright searched for, and found, Ms. Gardner at the Good Shot Bar in Wilmington.

From the parking lot, Wright watched Ms. Gardner and a friend, Gabriel Gabrielli, in the bar for over three hours. Wright called the New Castle County Police Department and reported that drug sales were occurring at the Good Shot Bar. He called Ms. Gardner's ex-husband, Scott Gardner, and told him that Ms. Gardner was an unfit mother and that she was using drugs. To draw her out of the bar, Wright called Ms. Gardner 43 times and left a series of both threatening and pleading voicemails. On one of these voicemails, Wright told her: "You done played with the wrong person little lady. You got me mean." Alarmed by Wright's messages, Ms. Gardner called her ex-husband who advised her to call the police. Around 3:30 in the morning, New Castle County police officers arrived at the Good Shot Bar and arrested Wright for aggravated harassment.

On Thursday, July 6, 2006, the morning after his arrest, after being released from custody at around 6:00 a.m., Wright waited outside Ms. Gardner's development. As Scott Gardner left the development in the morning, after leaving his children at Ms. Gardner's, Wright stopped him.

Wright asked Scott to take custody of the children, again stating that Ms. Gardner was a bad mother and on drugs.

That same day, Ms. Gardner took her children to the Crossroads Restaurant. As they were eating, they noticed Wright's car drive by the diner. Ms. Gardner's daughter testified that her mother was scared, shaken, and felt like she was being stalked. That night, Ms. Gardner asked Scott to take the children because she was worried for their safety.

On Friday, July 7, 2006, Wright called Ms. Gardner's employer. Using his middle name, Wright told Ms. Gardner's supervisor, Kandy Hager, that Ms. Gardner was using drugs. When notified about the phone call, Ms. Gardner became hysterical and told Ms. Hager about her situation. Ms. Hager testified that when they left work that night, Ms. Gardner was still shaken and was afraid that something was going to happen to her.

On Saturday July 8, 2006, the children left their mother's home to stay with their father. Not knowing that it was the last time they would see her, they said goodbye to their mother. Ms. Gardner asked a neighbor to watch for Wright and to call the police if he came to the house.

That night, Ms. Gardner met Gabriel Gabrielli and a mutual friend, Kelly Culpepper, for drinks at the Good Shot Bar. The three eventually returned to Ms. Gardner's home. Ms. Culpepper left Ms. Gardner and Mr.

Gabrielli at 1:30 a.m. She was the last person to see Tamela Gardner and Gabriel Gabrielli alive.

Wright spent the night at Tailgates Bar delivering cocaine for Raheem Cannon. At around 1:00 a.m., Wright informed Cannon that he could not find any more customers. He asked Cannon to buy him a pack of cigarettes and bring them to Tailgates Bar. Cannon agreed to do so. But, when he arrived at Tailgates around 1:45 a.m., he could not locate Wright or his van.

The specific sequence of the following events is not entirely known. Wright stated to the New Castle County Police that after he left Tailgates Bar at 1:45 a.m., he returned to Raheem Cannon's home at 2:10 a.m. However, Wright's cell phone records and Mr. Cannon's testimony contradict Wright's account. While Wright claimed he went to Mr. Cannon's home, his cell phone records show that he was traveling away from Mr. Cannon's home and towards Ms. Gardner's house. Mr. Cannon testified that, after looking for Wright at Tailgates Bar, he tried calling to no avail. He then returned to his house and placed the un-opened pack of cigarettes on Wright's pillow. Mr. Cannon testified that Wright did not return to Cannon's home that night.

At trial, a former cellmate of Wright's testified that while imprisoned, Wright remarked that, before Ms. Gardner kicked him out, he had left a

basement window cover unlocked after he had cleaned it. Following the murder, the police found a nine-inch cut on one of the basement window screens. Wright also had entry into the house through an upstairs window which Ms. Gardner's son testified would not lock properly. Additionally, Wright, at one time, had access to a remote control garage opener which was never found.

Using one of these points of entry, Wright snuck into Ms. Gardner's home. Once inside, Wright crept up the stairs to Ms. Gardner and Mr. Gabrielli as they slept. He then began to beat the pair with either a baseball bat or a hammer. He continued to beat them until they both suffered fatal injuries.

Delaware Assistant Medical Examiner Dr. Jennie Vershovsky testified that Mr. Gabrielli suffered at least 11 injuries to the head, and Ms. Gardner suffered at least 8 injuries to the head. Neither of the victims displayed any defensive wounds. She stated that both Mr. Gabrielli and Ms. Gardner were hit with enough force to expose brain matter. She opined that, from the force required to cause such trauma and the absence of defensive wounds, it was likely that neither gained consciousness before they were killed.

Following the murders, Wright attempted to clean the room and dispose of the bodies. He used a scrub brush, a bottle of window cleaner, a

vacuum cleaner, and bleach to remove blood stains from the bed, carpet, mirror and wall. He made Ms. Gardner's bed using fresh sheets from an adjacent room. Wright then stuffed the bloody linens and blankets into garbage bags. He cut sections out of the bloody mattress and replaced them with a foam egg crate to preserve the illusion of an undamaged bed.

Wright eventually dragged the bodies downstairs and placed them, along with the bag of bloody bedding and a gasoline container, in Ms. Gardner's van. The back seat had been removed from the van. He then drove the van to Tweed's Park and tried to set it on fire. According to his former cellmate's testimony, Wright also took with him Ms. Gardner's daughter's bicycle for the ride back.

On July 13, 2006, construction workers found Ms. Gardner's partially burned van in Tweed's Park and notified the New Castle County Police Department. Inside the van, the police found the bodies of Ms. Gardner and Mr. Gabrielli as well as the bag of bedding, the gas container, and the cleaning supplies. The fire had badly burned the bodies, but it had extinguished itself due to a lack of air.

Following an investigation, Wright was arrested and charged with the murders of both Tamela Gardner and Gabriel Gabrielli.

ANALYSIS

After deliberating for three days, a Superior Court jury convicted Clifford Wright, of four counts of First Degree Murder, five counts of Possession of a Deadly Weapon During the Commission of a Felony, one count of Burglary First Degree, one count on Theft of a Motor Vehicle, one count of Arson in the Third Degree, one count of Aggravated Harassment, and one count of Non-Compliance with Bond Conditions.

Statutory Aggravating Circumstances

On December 10, 2009, following a penalty hearing and one day of deliberation, the jury unanimously found that the evidence showed, beyond a reasonable doubt, the existence of four statutory aggravating factors. The jury found that: (1) Wright committed the intentional murder and felony murder of Tamela Gardner while engaged in the commission of Burglary in the First Degree; (2) Wright's course of conduct resulted in the death of two or more persons; (3) Wright committed the intentional murder and felony murder of Gabriel Gabrielli while engaged in the commission of Burglary in the First Degree; and (4) Wright's course of conduct resulted in the death of two or more persons. By a seven-to-five vote, the jury recommended the death penalty on each of the four counts of First Degree Murder.

Penalty Hearing Procedure

The Delaware General Assembly has established the procedure for determining whether a defendant should be sentenced to death. Section 4209 of title 11 of the Delaware Code provides:

(b)(1) Upon a conviction of guilt of a defendant of first-degree murder, the Superior Court shall conduct a separate hearing to determine whether the defendant should be sentenced to death or to life imprisonment without benefit of probation or parole

(c)(1) The sole determination for the jury or judge at the hearing provided for by this section shall be the penalty to be imposed upon the defendant for the conviction of first-degree murder. At the hearing, evidence may be presented as to any matter that the Court deems relevant and admissible to the penalty to be imposed. The evidence shall include matters relating to any mitigating circumstance and to any aggravating circumstance Notice in writing of any aggravating circumstances and any mitigating circumstances shall be given to the other side by the party seeking to introduce evidence of such circumstances prior to the punishment hearing, and after the verdict on guilt

(c)(3)a. Upon the conclusion of the evidence and arguments the judge shall give the jury appropriate instructions and the jury shall retire to deliberate and report to the Court an answer to the following questions:

1. Whether the evidence shows beyond a reasonable doubt the existence of at least 1 aggravating circumstance as enumerated in subsection (e) of this section; and
2. Whether, by a preponderance of the evidence, after weighing all relevant evidence in

aggravation or mitigation which bear upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender, the aggravating circumstances found to exist out weigh the mitigating circumstances found to exist.

The State and the defense properly gave notice of the non-statutory aggravating and mitigating factors upon which they intended to rely during the penalty hearing.

State's Non-Statutory Aggravating Factors

1. The particular circumstances and details of the commission of the offenses set forth in the instant indictment;
2. The character and propensities of the defendant;
3. The impact of the indicted crimes upon the family of Tamela Gardner;
4. The impact of the indicted crimes upon the family of Gabriel Gabrielli;
5. Prior acts of domestic violence, harassment or abuse perpetrated by the defendant against Tamela Gardner;
6. Prior acts of domestic violence, harassment or abuse perpetrated by the defendant against Sheila Saxton;
7. Prior acts of domestic violence, harassment or abuse perpetrated by the defendant against Michelle Cox;
8. Prior acts of domestic violence, harassment or abuse perpetrated by the defendant against Tara Grant;
9. Prior acts of domestic violence, harassment or abuse perpetrated by the defendant against his children (Christina and Clifford Wright);

10. Prior acts of domestic violence, harassment or abuse perpetrated by the defendant against Bonnie Wright;
11. Prior acts of domestic violence, harassment or abuse perpetrated by the defendant against Jessica Woomer;
12. Prior acts of sexual abuse perpetrated by the defendant against Jessica Woomer;
13. The particular circumstances and details of the commission of the following offenses:
 - a. A 2004 arrest and conviction for Criminal Impersonation;
 - b. A 2003 arrest and conviction for Burglary Second Degree (victim Pam Panansewicz);
 - c. A 2003 arrest for harassment (victim Tara Grant);
 - d. A 2002 arrest and conviction for Criminal Trespass First Degree (victim Sheila Saxton);
 - e. 2002 arrests for harassment and a 2002 arrest for Criminal Contempt of a P.F.A. (victim Michelle Cox);
 - f. A 1989 arrest for felony theft in Northeast, Maryland;
 - g. 1988 arrests and convictions for larceny misdemeanor and Financial Card Fraud in New Bern, North Carolina; and
 - h. A 1988 arrest for felony theft in Northeast, Maryland;
14. The defendant's use of cocaine and other illegal drugs;
15. The defendant's non-compliance with the conditions of probation;
16. The defendant's potential for future dangerousness;

17. The defendant was aware of, and chose to disregard, the fact that his commission of the charged offenses would leave Ms. Gardner's children motherless.

Defendant's Non-Statutory Mitigating Factors

1. Clifford Wright's dysfunctional upbringing:
 - a. He was born to an abusive father and alcoholic mother;
 - b. His chaotic childhood which included frequent moves and attending numerous schools;
 - c. His low bonding to school, his years as a special education student, and his academic failure;
 - d. His exposure to domestic violence and verbal abuse;
 - e. His family of origin has an extensive history of substance abuse and domestic violence;
 - f. His unstable and disruptive family life throughout his childhood;
 - g. Lack of stable parenting, resulting in children having to assume the parenting roles for younger siblings.
2. The fact that a life sentence will mean that when Clifford Wright dies in jail, he will likely have spent over 30 years in jail (based on actuarial tables for life expectancy). In other words, a life sentence will be a long and severe punishment.
3. The favorable prognosis for a positive adjustment to life in prison with little likelihood that he will be a risk to commit violent criminal acts while incarcerated.
4. The effect of his execution on Clifford Wright's family members who will be devastated and stigmatized in the event the State is permitted to execute him.

5. Clifford Wright's usage of cocaine as self-medication in place of therapy and treatment for his mental health problems.
6. Clifford Wright possesses the intelligence and ability to seek redemption while serving a life sentence.
7. Mercy.

Weighing the Factors

The Court is charged with the heavy responsibility of deciding whether the defendant will spend the rest of his natural life in prison, or whether the defendant shall be executed. The Court must give the jury's recommendation appropriate consideration in light of the particular circumstances presented in this case.¹ The jury's recommendation of death, by a vote of 7 to 5, is an important factor in the Court's sentencing decision.²

The aggravating factors must be weighed against the mitigating factors. The weighing process is not the mere comparison of the number of factors. Rather, the Court first must determine whether each factor has been established by the evidence. The Court then must make an evaluation whether the aggravating factors outweigh the mitigating factors.

¹ *State v. Cohen*, 604 A.2d 846, 849 (Del. 1992).

² *Starling v. State*, 882 A.2d 747, 759 (Del. 2005).

Criminal Record

Wright's adult criminal record begins in 1988, when he was arrested for felony theft of a car. Another arrest for theft followed in 1989. In 1990, he was convicted of financial card fraud. Wright burglarized his brother's home and stole jewelry belonging to the mother of his sister-in-law. In order to evade charges of driving without a license and insurance, Wright impersonated his brother when stopped by the police. Wright's record also includes a 2003 conviction for burglary second degree, a 2004 conviction for criminal impersonation, as well as the convictions relating to his harassment and abuse of the women who were unfortunate enough to cross his path. The evidence clearly demonstrated that throughout the relevant time period, Wright abused cocaine, an illegal substance.

Particular Circumstances and Details of the Offenses

As set forth in detail in the facts section of this opinion, Wright's crimes are horrifying and gruesome. Wright had many opportunities to consider and re-consider his actions. Nevertheless, he murdered two completely innocent and defenseless people without mercy. Although Wright may have been motivated by anger and jealousy, these murders obviously were premeditated and not spontaneous acts of passion. Wright attacked his victims after entering the home by stealth, with sufficient

cunning and evil intent that he did not wake them. Tamela Gardner and Gabriel Gabrielli were brutally attacked while asleep, with no opportunity to defend themselves. Wright chose a blunt instrument to inflict at least 19 blows - far more than necessary to subdue and kill his victims.

This overkill left a gory scene. Wright spent considerable time in the house attempting to eradicate evidence of his crimes. He then treated Tamela Gardner and Gabriel Gabrielli as if they were trash by wrapping their heads in garbage bags and dumping them into the back of Ms. Gardner's van, along with the bloody evidence. Wright's attempt to completely destroy the bodies was thwarted, however, because the fire he set in the closed van extinguished itself when the oxygen ran out.

These murders are the culmination of an eerie and alarming pattern of behavior. In 1999, Wright married. Wright repeatedly beat his step-daughter. When the step-daughter was 15, Wright raped her, using a hairbrush and a screwdriver. Wright also physically abused his wife. When his wife ended the relationship, Wright harassed and threatened her.

Wright then met another woman ("Girlfriend One") at Tailgates Bar in the fall of 2001. Wright moved into the home of Girlfriend One and her two children. Girlfriend One was frightened when she heard Wright's angry telephone conversations with his wife. When Girlfriend One attempted to

terminate the relationship and asked him to leave, Wright tried to break into her home. After she called the police, Wright blocked her car in the parking lot of a bar. A no-contact order was issued against Wright. Wright ignored the order and repeatedly called and harassed Girlfriend One. In retaliation, Wright called the police, claiming that Girlfriend One was harassing him. Wright was arrested for harassment and criminal contempt of the no-contact order.

Wright also met “Girlfriend Two” at Tailgates Bar. He moved in with her and her children in March of 2002. Wright again demonstrated uncontrolled jealousy. He confronted Girlfriend Two at a banquet hall, demanding that she leave her friends and come with him. Girlfriend Two threw him out of her home and asked for her key back. Wright subsequently was confined in a work-release program. Girlfriend Two visited Wright to make sure he understood that the relationship was over. Speaking through a fence, Wright became enraged, climbed on the fence and tore at his clothing. He screamed at Girlfriend Two that he had two guns and knew how to use them. Upon his release, Wright broke into Girlfriend Two's home, using a key he had made for himself. Girlfriend Two hid in her daughter's room and called the police. A no-contact order was issued and Wright was convicted of criminal trespass first degree.

Once again, Wright met “Girlfriend Three” at Tailgates Bar. Wright moved into her home, with her children, shortly thereafter in March 2003. When Wright saw Girlfriend Three get into a truck with another man, Wright chased them down and demanded that she get into Wright's vehicle. Wright grabbed Girlfriend Three by the shirt and told her that she belonged to him. He became physically violent, slamming her against the wall when they arrived home. When Girlfriend Three ended the relationship a few months after it began, Wright did not go peacefully. He made harassing phone calls and stalked her at night outside her bedroom window. When questioned by the police, Wright stated that his car coincidentally broke down in Girlfriend Three's neighborhood. A third no-contact order was issued in three years, and Wright was arrested for harassment.

In the summer of 2003, Girlfriend Two gave Wright a second chance. However, Wright had not taken advantage of court-ordered domestic violence counseling to alter his behavior. Wright again became violent with Girlfriend Two and she ended the relationship. As with the others, Wright denigrated Girlfriend Two in public.

Wright met Tamela Gardner at Tailgates Bar in the fall of 2003. He moved into her home with her two children. After a few months, Wright began serving prison time for burglary. When he was released in May 2005,

Wright moved back in with Ms. Gardner. As discussed previously, the relationship was tempestuous. Wright abused Ms. Gardner physically and emotionally. When she kicked him out for good, he stalked, harassed, terrorized and murdered her.

During his time in the Gardner home, Wright observed the loving and close relationships among Ms. Gardner and her two children. When Wright bludgeoned her to death, he knew he was depriving those children of their mother. Ms. Gardner's children poignantly testified about the effect their mother's murder has had on their lives. Even though the children have the strong and steady support of their father and other family members, their loss is devastating and they will be forever scarred.

The Court also heard heart-wrenching testimony about the effects of Mr. Gabrielli's slaying on his children. Mr. Gabrielli's family has suffered irreparable loss of a father. Mr. Gabrielli's own father has lost a beloved son.

It is abundantly clear that had Wright not been incarcerated for these murders, he would have continued his heinous pattern. Wright identified and targeted women who would allow him to take advantage of their hospitality, and feed his illusion that he was the head of the household. He failed to exercise control of his violent impulses when he did not get his

way. He resorted to physical violence and became enraged when these women wanted their lives back. Not satisfied with moving on to his next victim, Wright created a living hell for these women and their children. Eventually, his rage, jealousy and bruised pride led him to commit premeditated murder, without regard for the enormous cascading effect of pain and irreparable injury to children and loved ones.

Non-Statutory Mitigating Factors

It is undisputed that Wright had a very difficult childhood. He was born to an abusive father. His mother was an alcoholic, and she did not parent or otherwise care for him. Wright was rejected by his mother and made to feel that he was worthless. His chaotic and unstable childhood was marked by frequent moves, all involving changes in school. There is an extensive history of substance abuse and domestic violence throughout Wright's family.

Wright was a special education student, most probably because of behavioral issues, not lack of intelligence. Wright has tested as having normal intelligence. However, he failed academically and did not finish high school. Wright was parented by older siblings and placed in the role of parenting his younger siblings. Family members testified that the family will be devastated if Wright is executed.

Expert psychologist witness Dr. Abraham Mensch, performed a neuropsychological assessment of Wright. Dr. Mensch diagnosed Wright with Fetal Alcohol Effect ("FAE"), resulting from prenatal exposure to alcohol. Behavior associated with FAE includes lack of maturity, hyperactivity, poor impulse control, limited ability for remorse, inflexibility, ritualized behaviors, regressive behaviors, increased incidence of aggressive behaviors, inability to perceive others' emotional states, inability to perceive normal social cues, lack of empathy, poor attachments, and general inability to manage appropriate behavior. Wright was neither previously diagnosed with nor treated for FAE. It is likely that Wright resorted to cocaine as a means of self-medication for his mental health problems.

Dr. Mensch also testified that Wright likely would do well in a highly-structured environment, such as prison. While incarcerated awaiting trial, Wright had very few "write-ups" for minor infractions. There is no evidence to suggest that Wright will commit violent criminal acts while incarcerated.

Wright exercised his right of allocution. The Court found his remarks to be sincere. Notably, Wright expressed remorse and appeared to admit culpability. He declined to blame his family or anyone or anything else for

his actions. Wright accepted responsibility and did not attempt to excuse his crimes. Wright stated, in pertinent part:

For the record, my name is Clifford Wright, Sr. I'm the defendant in this trial. I would like to take the time today to make statements to the Gardner and Gabrielli's families, as well as to my family. And to you, the jury, to plead for my life. Life is a terrible thing to waste and to take. I didn't think about before I did it. The doctor was right about a lot of things he said about me, those things I didn't see before. Why didn't I? Miss Medford was right. I had the opportunities, but I didn't take that road, and why? Today, I still ask my own self that same question.

* * *

I take the time today to address the families of Tamela Gardner and Gabe Gabrielli. First, I start with Tammy. She was a very loving mother. Her kids were everything to her. And I'm sorry. Look at the kids. No mom. No mother. Look at her family, the sister that's gone. I've known you. I spoke with you. God bless you all, and I have prayed for you every day.

Next to them, the Gabrielli family, five children. From what I've heard in this courtroom for the first time, was stories about Gabe. He's a man of music. He's like my father. My father is a man of music. I understand that, where it comes from. I'm sorry for your loss and your pain and suffering. His father has been here through the whole trial. God bless him. And I'm sorry for your loss, sir. You are always in my prayers.

* * *

We have all heard about the women in my life in this courtroom. I'm not here to dispute any evidence in this case. There's two sides to a coin. There's a head's side and there's a tail. And I'll leave it at that. I would like to say that I am sorry to them. I don't realize none of them that's in here in the courtroom. So, for the record, I'm sorry for messing your lives

up, for terrorizing you, whatever the case may be, each one of them holds their own.

CONCLUSION

The jury found Wright guilty beyond a reasonable doubt of four Counts of First Degree Murder, and related charges. The jury unanimously found 4 statutory aggravating factors beyond a reasonable doubt. After considering all of the evidence presented during the penalty phase, the jurors weighed the aggravating and mitigating factors, bearing upon the particular circumstances and details of the commission of the offenses, and the character and propensities of the offender. By a preponderance of the evidence, seven jurors found that the aggravating circumstances outweighed the mitigating circumstances. Five jurors found that the aggravating circumstances did not outweigh the mitigating circumstances.

The law requires that the Court give appropriate weight to the jury's recommendation. A recommendation of seven to five, in favor of death, is not overwhelming.

Having independently considered the evidence and weighed the aggravating and mitigating circumstances, the Court gives appropriate weight to the jury's recommendation, and finds by a preponderance of the

evidence that the aggravating circumstances do not outweigh the mitigating circumstances.

Accordingly, the Court imposes the following sentence:

Count I, Criminal Action Number IN 08-01-1612, Murder First Degree (Tamela Gardner): Defendant is placed in the custody of the Department of Correction for the remainder of his natural life without the benefit of probation or parole or any other reduction.

Count III, Criminal Action Number IN 08-01-1613, Murder First Degree (Gabriel Gabrielli): Defendant is placed in the custody of the Department of Correction for the remainder of his natural life without the benefit of probation or parole or any other reduction.

Count V, Criminal Action Number IN 08-01-1620, Murder First Degree (Felony/Tamela Gardner): Defendant is placed in the custody of the Department of Correction for the remainder of his natural life without the benefit of probation or parole or any other reduction.

Count VII, Criminal Action Number IN 08-01-1622, Murder First Degree (Felony/Gabriel Gabrielli): Defendant is placed in the custody of the Department of Correction for the remainder of his natural life without the benefit of probation or parole or any other reduction.

Count II, Criminal Action Number IN 08-01-1614, Possession of a Deadly Weapon During the Commission of a Felony (Intentional Murder/Tamela Gardner): Defendant is placed in the custody of the Department of Correction for 25 years at Level 5.

Count IV, Criminal Action No. IN 08-01-1619, Possession of a Deadly Weapon During the Commission of a Felony (Intentional Murder/Gabriel Gabrielli): Defendant is placed in the custody of the Department of Correction for 25 years at Level 5.

Count VI, Criminal Action No. IN 08-01-1621, Possession of a Deadly Weapon During the Commission of a Felony (Felony Murder/Tamela Gardner): Defendant is placed in the custody of the Department of Correction for 25 years at Level 5.

Count VIII, Criminal Action No. IN 08-01-1623, Possession of a Deadly Weapon During the Commission of a Felony (Felony Murder/Gabriel Gabrielli): Defendant is placed in the custody of the Department of Correction for 25 years at Level 5.

Count IX, Criminal Action No. IN 08-01-1615, Burglary First Degree: Defendant is placed in the custody of the Department of Correction for 15 years at Level 5.

Count X, Criminal Action No. IN 08-01-1624, Non Compliance With Bond Conditions: Defendant is placed in the custody of the Department of Correction for 1 year at Level 5.

Count XI, Criminal Action No. IN 08-01-1625, Possession of a Deadly Weapon During the Commission of a Felony, (Burglary First Degree): Defendant is placed in the custody of the Department of Correction for 25 years at Level 5.

Count XII, Criminal Action No. IN 08-01-1626, Theft of a Motor Vehicle: Defendant is placed in the custody of the Department of Correction for 2 years at Level 5.

Count XIII, Criminal Action No. IN 08-01-2722, Arson in the Third Degree: Defendant is placed in the custody of the Department of Correction for 2 years at Level 5.

Count XIV, Criminal Action No. IN 08-01-1627, Aggravated Harassment: Defendant is placed in the custody of the Department of Correction for 2 years at Level 5, suspended after 18 months for 6 months Level 4, DOC discretion, hold at Level 5.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston