

Supreme Court of Florida

No. SC01-185

JEREMIAH MARTEL RODGERS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[November 24, 2004]

PER CURIAM.

We have on appeal a judgment of conviction of first-degree murder and a sentence of death. We have jurisdiction. See Art. V, § 3(b)(1), Fla. Const. For the reasons set forth below, we affirm the conviction and sentence of death.

FACTS

Jeremiah Martel Rodgers was the coperpetrator of the May 7, 1998, murder of Jennifer Robinson. The other coperpetrator and the codefendant in Rodgers' trial for the Robinson murder was Jonathan Huey Lawrence. We affirmed Lawrence's sentence of death in Lawrence v. State, 846 So. 2d 440 (Fla. 2003).

On May 7, 1998, eighteen-year-old Jennifer Robinson went on a date with Rodgers after he had picked her up at her home and met her mother. Robinson never returned home that night. The following day, Rodgers showed Polaroid pictures of Robinson's desecrated body to his girlfriend, Patty Perritt, and his brother, Elijah Waldrop. Shortly thereafter, Rodgers left Santa Rosa County and drove to Lake County to see his father and sister. On May 9, Lake County law enforcement officers located Rodgers as he was driving his car, and Rodgers attempted to flee from them. When Rodgers was finally stopped, he exited his car with a handgun pointed to his head, leading to a hours-long standoff. A subsequent ballistics examination of the handgun revealed that it was the same weapon that was used to kill Robinson.

On May 10, 1998, Rodgers told Lake County law enforcement officers that he took Robinson on a date, accompanied by Lawrence. Rodgers stated that they took her to a wooded area, where he watched as Lawrence shot Robinson, had intercourse with and mutilated her body, and took Polaroid pictures of what he had done. Rodgers claimed that he did not participate in the murder or mutilation and stated that he had considered shooting Lawrence.

After being returned to Santa Rosa County, Rodgers gave a second statement to officers. In his May 13, 1998, statement, Rodgers acknowledged taking Robinson on a date as part of a plan. Rodgers met Robinson's mother and

then drove to Lawrence's house to pick him up and use Lawrence's truck. Lawrence had already purchased Everclear grain alcohol, and they stopped at a gas station to pick up Mountain Dew and Dr. Pepper soft drinks to mix with the alcohol. They drove as far as they could into the woods and pretended to wait for Lawrence's girlfriend to arrive, although Lawrence and Rodgers knew that she was not coming. While pretending to wait, they mixed large portions of the alcohol with the soft drinks for Robinson, while drinking very little alcohol themselves. Rodgers and Robinson then engaged in consensual sex, talked for a while, and then had sex twice more. While this occurred, Lawrence walked into the woods to fix his handgun, which had jammed. When Lawrence returned, he handed the weapon to Rodgers. Rodgers convinced Robinson to go with him to look at a marijuana field, which did not exist, and as they were walking to Lawrence's truck, Rodgers shot her in the back of the head. The two men then placed Robinson's body in the back of the truck and drove to a place where they unsuccessfully attempted to burn the body and then covered the body with debris.

On July 24, 2000, Rodgers entered a plea of guilty as a principal to the first-degree murder of Jennifer Robinson, conspiracy to commit murder, giving alcohol to a minor, and to the abuse of a human corpse. In exchange for Rodgers' plea and acknowledgment that he was responsible for the murder as a principal, the State agreed that it would not argue in the penalty phase that Rodgers was responsible

for shooting Robinson and would not object to hearsay evidence entered by the defense that specifically supported the theory that Rodgers was not the shooter. The trial court found that a factual basis existed that was sufficient to support the plea and, following an extended colloquy with Rodgers, found that the plea was freely, voluntarily, and intelligently entered into, and that Rodgers fully understood the consequences of his plea.

PENALTY PHASE TESTIMONY AND EVIDENCE

Aggravation

Extensive testimony and evidence were presented during the penalty phase. The State's first witness in aggravation was Joe McCurdy, a detective with the Santa Rosa County Sheriff's Office. In addition to investigating the Robinson murder, he was involved in the investigations of the attempted murder of Leighton Smitherman and the murder of Justin Livingston. He testified regarding the location of the murder victims' bodies in Santa Rosa County.

The next witness was Leighton Smitherman, who testified about being shot in his living room while watching television on March 29, 1998. Smitherman never met either Rodgers or Lawrence. The State then entered into evidence a certified copy of the conviction against Rodgers for the attempted murder of Smitherman. The State re-called Detective McCurdy and played Rodgers' May 13, 1998, tape-recorded confession to the Smitherman attempted murder.

Todd Hand, a detective with the Santa Rosa County Sheriff's Office, testified about his investigation of Justin Livingston's murder. The State played Rodgers' May 13, 1998, tape-recorded confession to the Livingston murder and then entered into evidence Rodgers' guilty plea and a certified copy of the conviction in the federal case of United States v. Rodgers, No. 3:98CR00073-002 (N.D. Fla. order filed June 29, 1999). He stated that Lawrence and Rodgers had decided to kill Livingston, so they gave him drugs until he became intoxicated and then stabbed him multiple times. Rodgers received a life sentence for the murder of Livingston. Because the murder occurred at Spencer Field, which was on United States property, the case was tried in federal court.

The next witness to testify was Elizabeth Robinson, Jennifer Robinson's mother. She stated that she met Rodgers prior to his date with Jennifer on the night of the murder, and she read a statement about her daughter's life.

Deputy Leonard Thomas with the Santa Rosa County Sheriff's Office next testified. He was the officer who went to Elizabeth Robinson's house to fill out a missing person report when Jennifer failed to return home from her date with Rodgers. Elizabeth Robinson told Thomas that Jennifer was last seen by her with Rodgers, so Deputy Thomas attempted to locate Rodgers. Upon locating him, Deputy Thomas questioned Rodgers about the whereabouts of Robinson, but Rodgers denied knowing where she was and stated that she was drunk when he left

her in Pensacola. Deputy Thomas testified that he was later given information about the murder by Elijah Waldrop, Rodgers' brother.

Detective Hand was re-called to testify about Rodgers' arrest, and then Deputy John Tomlinson of the Santa Rosa County Sheriff's Office testified as to the search of Lawrence's residence, truck, and property. The State entered into evidence two lists that were handwritten by Lawrence and found in his residence.

Next, Todd Luce, a detective with the Lake County Sheriff's Office, testified about locating Rodgers as he was driving on County Road 42 in Lake County. His pursuit and eventual apprehension of Rodgers ended after a five to six-hour standoff, during which Rodgers was holding a handgun to his head, threatening suicide. Detective Luce testified that Rodgers asked for his sister, and she was brought to the scene. Rodgers was not allowed to talk with her until after the standoff was over, which occurred when Rodgers agreed to end the standoff in exchange for a cigarette. He also testified regarding Rodgers' May 10, 1998, statement to Lake County officers about the Robinson murder.

Farley Caudill, a Deputy Sheriff for the Lake County Sheriff's Office, was the next witness called and testified regarding evidence found in Rodgers' car, including the murder weapon and Polaroid photographs of Robinson's body. These photographs were introduced to support the cold, calculated, and premeditated aggravator, and the court allowed two of the photographs into

evidence. None of the other photographs of Robinson's mutilated body were admitted as exhibits because of their overly prejudicial nature.

Next, forensic pathologist Gary Cumberl testified regarding his examination of Robinson's body for a cause of death, which he determined to be a gunshot wound to the back left side of her head. Cumberland also testified regarding postmortem wounds inflicted upon Robinson's body and stated that the frozen human remains found in Lawrence's residence fit exactly into Robinson's missing calf muscle.

Detective McCurdy was then re-called to testify about Rodgers' May 13, 1998, statement to Santa Rosa County officers about the Robinson murder. The State played the tape-recorded statement containing Rodgers' confession to the Robinson murder. McCurdy also testified about finding the Everclear alcohol and Mountain Dew bottles in the wooded area described by Rodgers.

Donald Pribbenow, a Florida Department of Law Enforcement crime lab analyst, testified as a handwriting expert regarding the two lists recovered from Lawrence's residence. He verified that the lists were in Lawrence's handwriting.

The State then called Laura Rousseau with the Pensacola office of the Florida Department of Law Enforcement (FDLE) to testify regarding the crime scenes related to the Robinson murder. The first crime scene was where the murder took place, and the second was where the body was found. Rousseau

further testified about the location, collection, and testing of the crime scene evidence. Pictures taken by Rouseau of the crime scenes were entered into evidence.

Magda Clanton, a crime lab analyst in the Serology DNA Section of the Pensacola FDLE office, testified that the blood found at the crime scenes was identical to Robinson's at six genetic markers.

The next witness, Joseph Hall, who was an FDLE firearm analyst, testified about the firearm, bullets, and casings that were collected. He testified that the Lorcin semi-automatic .380 caliber weapon found in Rodgers' possession was the type of weapon that fired the bullet that killed Robinson.

For the State's final aggravation witness, Detective Hand was re-called to testify about the Polaroid camera that he stated was found at Lawrence's residence. This camera, he testified, was consistent with the type of camera and film used in the pictures of Robinson's corpse. The State then rested.

Mitigation

The defense began its mitigation testimony by re-calling Detective Hand to testify about the search warrant executed to search Lawrence's residence. The court only allowed into evidence items seized from the residence that related to the murder weapon. Hand also testified about Rodgers' providing authorities with information they used to locate the bodies of Robinson and Livingston.

Next, the defense called David Waldrup, the adoptive father of Rodgers' brother, Elijah Waldrup. Waldrup testified that he knew Rodgers' parents, Janelle and Steven Rodgers, and that they used drugs and alcohol. Waldrup further testified that he had witnessed the physical abuse of Janelle by Steven. Waldrup initially took custody of Elijah when Janelle left him on the steps of the welfare office. He stated that a few months after she abandoned him, she tried to take Elijah back. Later, when the Waldrups formally adopted Elijah, neither biological parent contested the adoption. Elijah had never expressed a desire to see his biological parents until his mother killed herself. When Rodgers was released from prison, Elijah picked Rodgers up, and Rodgers stayed with the Waldrups for a few months. Waldrup testified that Rodgers worked as a mechanic with Waldrup's nephew and was a good worker. Lawrence's home was a block from the Waldrup home, and although Rodgers visited Lawrence at the Lawrence home, Lawrence was not allowed to visit the Waldrup home. Following a fight with Elijah, Rodgers left the Waldrup's and moved in with Patty Perritt, Rodgers' girlfriend.

Elijah Waldrup was the next mitigation witness. He testified regarding his biological family and his relationship with Rodgers. Elijah spent a week with his brother and biological father after Rodgers was released from prison. He testified that he partied and drank with Rodgers but that he was not friends with Lawrence.

Elijah testified about the day that Rodgers came to him after the Robinson murder and told Elijah that Lawrence had shot Robinson.

Next, Patty Perritt, who was Rodgers' girlfriend at the time of the murder, testified about her relationship with Rodgers. Perritt testified about a Christmas she spent with Rodgers and her two children, and pictures from that occasion were admitted as evidence. She stated that Rodgers was good to her children. Perritt also testified about Rodgers spending time with Lawrence and how she was uncomfortable with their spending time together. Perritt infrequently spent time with Rodgers and Lawrence together, but testified that the three of them were together on her twenty-first birthday. On that occasion she observed Lawrence throwing rocks at squirrels in an attempt to kill them. Perritt also testified about the day that Rodgers told her that he was unfaithful to her with Robinson and that Lawrence had killed Robinson. Rodgers told her that he wanted to commit suicide and asked Perritt to take the Polaroid pictures and turn them over to law enforcement authorities.

Todd Hand was again re-called to testify about additional items seized from Lawrence's residence. He testified that a black hood and handcuffs were found, as well as a daily work log of Lawrence's, which was read into the record. Hand testified about other items found at Lawrence's residence, which included: a variety of ammunition; a pipe bomb; an owner's manual for a rifle; an automatic

bb gun; a blackjack; two wooden stakes; two curved martial arts sickle knives; a screwdriver with a pointed end; two corkscrew devices; a temper sickle; a throwing star; another throwing star with four blades; handcuffs; nunchaks; a leather device with sixteen metallic studs; a pistol; gun cleaning kits; and a variety of receipts for guns and gun supplies. The majority of these items were not admitted into evidence.

The next mitigation witness was Diane Waldrup, who was Elijah Waldrup's adoptive mother. Mrs. Waldrup testified to the physical and verbal abuse in the Rodgers' household and the circumstances surrounding her adoption of Elijah.

Mary Pruitt testified that she was Rodgers' paternal grandmother. She stated that her son, Steven Rodgers, was fifteen or sixteen years old when he married Janelle, who was then fourteen or fifteen years of age. They immediately began having children; and Pruitt took two of them, Tamica and Jeremiah, from Janelle when she threatened to give them away. She testified that the children had no food, clothing, or toys when they came to live with her because they did not have anything. Later, she took the children permanently and sought custody after Rodgers' parents were spotted on the highway hitchhiking to Orlando, where they intended to take the children for adoption. Pruitt also testified that Steven was an alcoholic. The defense then admitted into evidence family pictures of Rodgers' relatives and Rodgers as a child.

Rodgers' aunt, Renee Endress, was the older sister of Janelle Rodgers. She testified that Janelle and Renee's father, Rodgers' grandfather, drowned in a boating accident when she was fourteen. Her family was then forced to live on government subsidies. She testified to the verbal and physical abuse in her household and how her father drank alcohol excessively. She told of physical beatings that Janelle had sustained from Rodgers' father, Steven, Janelle's problems with alcohol abuse, and Janelle's sexual promiscuity with men. Renee testified that Janelle died by a self-inflicted gunshot wound to the head. Their brother was diagnosed as a paranoid-schizophrenic and abuses alcohol. Renee further testified that she has been diagnosed with depression and has a problem with alcohol abuse. She had twice attempted to kill herself by overdosing on pills.

Zachariah Walker, Rodgers' half-brother, was another son of Janelle Rodgers. Zachariah testified that his mother left him on his father's doorstep when he was five years old and never took custody of him again. One of his early memories of his mother was her smoking marijuana out of a water pipe with other people, and she gave him marijuana when he was seven. His older sister had helped with his meals and dressed him. He told of punishments and beatings by his mother, and said that the last time he saw her, she had bruises and was high on crack cocaine.

Rodgers' full sister, Tamica Williams, testified about her various responsibilities as a child, including cooking, cleaning, and dressing her brothers. She was punished with a belt and punished for bedwetting or wetting her underwear by having to wear the soiled underwear on her head. She said that Rodgers was similarly punished. Tamica slept in the same bed as her mother and from an early age witnessed her mother having sex with men. When Rodgers fled to Lake County after Robinson's murder, he called Tamica in an attempt to see her before he was arrested and told her that he did not shoot Robinson. She testified about Rodgers' desire to commit suicide and told of a letter he wrote to her about his plans to kill himself. She also testified to Rodgers' self-mutilation in prison and how he would make cuts on his arms.

Next, Angela Mason, a social worker, testified in mitigation about the psycho-social history she prepared of the Rodgers' family. In compiling the family history, she reviewed a variety of records from schools, institutions, hospitals, and law enforcement agencies. Mason testified about and the defense introduced into evidence a variety of documents that she used in compiling the family history. At school, Rodgers was placed in a class for severely emotionally disturbed children. The records contained reports that Rodgers was given his first beer at two years of age and was sexually abused by his mother starting at age three. Mason testified that Rodgers reported the sexual abuse began by his mother before he was the age

of nine and that when he was age fourteen, his mother had full intercourse with him multiple times. Rodgers' mother was herself reported to have been sexually abused by her uncle. Another report stated that Rodgers' father threatened to shoot him and put an unloaded gun to Rodgers' head. The records indicated that Rodgers was a good artist. Rodgers attempted suicide at thirteen by slitting his wrists in a bathtub. At age seventeen, he was arrested for theft of an automobile, which he had stolen when he was fifteen. The defense admitted into evidence a chart of Rodgers' family tree, which showed deaths, marital relationships, alcohol abuse, and other mental health problems.

The following witness, David Foy, a professor of psychology at Pepperdine University, testified as an expert on post-traumatic stress disorder. Professor Foy reviewed Rodgers' medical records and testified that six out of the six classic risk factors for mental illness existed in Rodgers' childhood home life. Rodgers was diagnosed with post-traumatic stress disorder, and Foy testified as to the factors leading to this diagnosis.

Dr. Sarah Deland, a psychiatrist, testified as an expert regarding Rodgers' mental health. Dr. Deland stated that Rodgers' diagnoses were post-traumatic stress disorder, disassociative disorder, substance abuse in remission, and borderline personality disorder. She testified in depth about these particular

diagnoses and how Rodgers' life events shaped his development. The defense then rested.

State's Rebuttal

In rebuttal, the State first called Dr. Richard Greer, who was the Chief of Forensic Psychiatry at the University of Florida. Dr. Greer stated that Rodgers' primary diagnosis was a personality disorder, and his secondary diagnosis was depression.

The State's final rebuttal witness, Vickie Truel, was a coworker with Robinson at the Corner Quick Stop, where Robinson first met Rodgers. Truel testified that Rodgers told her that the reason for the scars and cuts on his arms was that "if you can make people think you're crazy, you can get by with anything."

Sentence

At the conclusion of the penalty phase, the jury recommended death by a nine-to-three vote. In a detailed sentencing order, the court found two aggravators, to which he gave great weight: prior violent felony and cold calculated and premeditated. The court rejected Rodgers' proffered statutory mental health mitigators¹ but found three nonspecified statutory mitigators² and three

1. The court rejected the following statutory mitigators argued by Rodgers: (1) the capital felony was committed while Rodgers was extremely mentally or emotionally disturbed; (2) he lacked the capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of the law; (3) Rodgers

nonstatutory mitigators.³ The court sentenced Rodgers to death, finding “the two serious aggravating circumstances which have been proven beyond and to the exclusion of all reasonable doubt, greatly outweigh the mitigating circumstances.” State v. Rodgers, No. 98-274-CFA, order at 20 (Fla. 1st Cir. Ct. order filed Nov. 21, 2000).

MERITS

In his direct appeal, Rodgers raises two guilt phase claims and six penalty phase claims. We will address these issues in the order raised in Rodgers’ brief to this Court.

Rodgers’ first claim is that the trial court erred in its decision to exclude certain items of evidence retrieved from codefendant Lawrence’s residence.

was an accomplice in the capital felony, which was committed by another person and Rodgers’ participation was minor; (4) he acted under extreme duress or substantial domination of another person; and (5) Rodgers’ young age at the time of the crime.

2. The court found the following nonspecified statutory mitigators: (1) Rodgers was sexually abused by his mother; he was physically abused by his father; Rodgers’ parents abandoned him; his parents abused drugs and alcohol; his family had a legacy of domestic violence; and there was a history of suicide among Rodgers’ relatives (considerable weight); (2) at the age of sixteen, Rodgers was incarcerated as an adult and was sexually abused in prison (some weight); and Rodgers suffered from mental illness (considerable and substantial weight).

3. The nonstatutory mitigators found by the court were: (1) Rodgers had a positive impact on the inmate population (little weight); (2) Rodgers expressed remorse for the murder (some weight); and (3) he provided assistance to officers in solving prior crimes (some weight).

Rodgers offered into evidence all of the items seized from Lawrence's residence, which included:

Small red notebook in Lawrence's handwriting, a throwing knife in a sheath, a knife with a black taped handle, a black hood, a pair of handcuffs, .410 Winchester shotgun shell, red plastic container with suspect gun powder, suspected pipe bomb, firearm cleaning record, folding buck knife, two throwing stars, two wooden stakes, one pair of S&W handcuffs, one pair of nunchaks, one Sears screwdriver with a sharp point, one black leather blackjack, one knife with a black handle, one sickle, one T-handle corkscrew, two unknown type weapons with blades, one wood-handled chisel, one fingerless black glove, two black knives with sheaths, one velcro wrist strap, one chrome spike wristband, one silver-sharpened piece of metal, one Assault Weapons book, one Silencer Sniper's and Assassin's book, one Ultimate Sniper book, one Trapper and Mountainmen book, one Dear Mom: A Sniper's Vietnam book, one Wild Food Field Guide Cookbook, one Sniper World of Combat Sniping book, one U.S.M.C. Close Quarters Combat Manual, one U.S. Special Forces Conditioning Program book, one Marine Sniper book, one Undercover Official cookbook, one marksman BB pistol, one Walmart receipt for a .270 caliber Remington Rifle, one Remington gun literature, 20 rounds of .270 caliber Hornaday live ammunition box, 19 rounds of .12 gauge live ammunition in a box with four live rounds, one gun cleaning kit, one receipt for the Lorcin .380 serial number 480849, one box Derringer percussion serial number 176962 JUKAR, one nipple-cap, one ramrod with powder measurer, daily work log of Lawrence for May 7, 8, 9, 1998.

Initial Brief of Appellant at 71-72. Out of these retrieved items, the court only allowed the admission of evidence related to the murder weapon: two pistol cleaning kits; sales receipts for the murder weapon and ammunition; and .380 caliber ammunition, which was the same type of ammunition used in the murder weapon. Even though the court would not admit any of the other items, the

defense was able to inquire into each item retrieved through the testimony of Detective Todd Hand. The State did not object to this questioning, and all of the items found at Lawrence's residence were discussed in the testimony of Detective Hand, even though they were not admitted into evidence.

In the case against codefendant Lawrence, the State introduced some of the excluded evidence in the Spencer⁴ hearing to rebut Lawrence's mitigation theory of domination by Rodgers. Lawrence v. State, 846 So. 2d 440, 449 (Fla. 2003), cert. denied, 124 S. Ct. 394 (2003).⁵ However, these items belonged to Lawrence. The items admitted in Lawrence and the remainder of the items recovered from his residence were proffered by Rodgers in the present case on the theory that the items showed that Rodgers had been dominated by Lawrence and that the items

4. Spencer v. State, 615 So. 2d 688 (Fla. 1993).

5. At Lawrence's Spencer hearing, the items that were admitted into evidence were:

[T]he scrapbook and books found in Lawrence's trailer and truck. The scrapbook included Lawrence's karate certificate, his high school diploma, references to serial killers, and a certificate of "Citizenship" in the Ku Klux Klan. The books included The Human Machine; The Anarchist Cookbook; Serial Killers; The Ultimate Sniper: An Advanced Training Manual For Military & Police Snipers; and Silencers, Snipers & Assassins: An Overview of Whispering Death."

Lawrence, 846 So. 2d at 444 n.5.

indicated Lawrence's fascination with weaponry and survivalism. The State objected to their admission.

The trial court admitted the receipt for the purchase of the Lorcin handgun, stating:

I'm going to allow that in. I'm going to allow the evidence regarding the boxes [of] .380 ammunition, since that's the same caliber of this Lorcin semi-automatic; but all the other items that were seized at Mr. Lawrence's home, the Court is not going to allow those. But I will allow the Defense to introduce the sales receipt of the Lorcin semi-automatic and also the box of the .380 ammunition.

The court subsequently allowed into evidence the two pistol cleaning kits because they were related to the murder weapon.

The trial court only allowed into evidence those items which it concluded were relevant to the issues involved in the Robinson murder. The excluded evidence, regarding serial killers, survival guides, and weapons, was deemed by the trial court to be unrelated to the Robinson murder or to any of the penalty phase issues of mitigation as to Rodgers. The items not admitted were only about Lawrence, with no connection to Rodgers or the Robinson murder. We do not find that the trial court erred in determining that the items that were sought to be admitted that were located in Lawrence's home were not admissible in Rodgers' case. The trial judge was within his discretion in keeping the focus of this penalty phase trial upon Rodgers and not allowing the focus to become Lawrence. We do not find that the trial court abused its discretion in excluding this evidence. We

have held that the “trial court has wide discretion in areas concerning the admission of evidence, and, unless an abuse of discretion can be shown, its rulings will not be disturbed.” Welty v. State, 402 So. 2d 1159, 1162-63 (Fla. 1981). Moreover, even if the trial court erred in respect to the admissibility of this evidence, any error would be harmless beyond a reasonable doubt. DiGuilio v. State, 491 So. 2d 1129 (Fla. 1986).

The next issue raised by Rodgers in his direct appeal is proportionality. To determine whether a sentence of death is a proportionate penalty, this Court must consider the totality of the circumstances of the case and compare this case with other capital cases. Urbin v. State, 714 So. 2d 411, 416-17 (Fla. 1998). This Court reviews and considers all circumstances of a case relative to other capital cases in which death sentences have been affirmed. Johnson v. State, 720 So. 2d 232, 238 (Fla. 1998).

When more than one defendant was involved in the commission of a crime, this Court performs an analysis of the relative culpability of the coperpetrators of the crime to ensure that the equally culpable individuals are treated alike in their capital sentencings and that they received equal punishment. See Shere v. Moore, 830 So. 2d 56, 60 (Fla. 2002). Here, both Lawrence and Rodgers were culpable for Robinson’s death and both received a death sentence. While the mitigation contained in the record concerning the life history of Rodgers is substantial,

substantial mitigation was also found to exist regarding Lawrence in the penalty phase of his trial for the Robinson murder. We find that the death sentences of Rodgers and Lawrence are proportionate to each other.

As to proportionality with other sentences of death, Rodgers argues that the mitigation in his situation is extreme based upon: (1) the record evidence of his dysfunctional family, especially his mother; (2) the physical and sexual abuse he suffered throughout his childhood; and (3) his mental health history, which included the self-infliction of wounds and suicide attempts. We recognize that the trial court determined that these mitigators existed and were to be given considerable weight. We agree.

However, the trial court also gave great weight to the aggravators in this case. We also agree that this finding is supported by competent, substantial evidence. Rodgers has been convicted of the senseless and pitiless stabbing murder of Justin Livingston, to which Rodgers confessed. Livingston was a young man who was Rodgers' and Lawrence's age whom Rodgers and Lawrence simply decided to kill for the sake of killing him. Rodgers pled guilty to the attempted murder of Leighton Smitherman.⁶ In respect to Smitherman, Rodgers admitted

6. One of the two convictions used in aggravation for the prior violent felony aggravator was the attempted murder of Leighton Smitherman. This conviction was subsequently overturned by the decision in Rodgers v. State, 869 So. 2d 604 (Fla. 1st DCA 2004), based on an issue unrelated to the merits.

that he and Lawrence were driving around looking for someone to shoot. When Rodgers and Lawrence came to the Smitherman house and while Smitherman was sitting in his living room with his family, Rodgers shot him in the back through his living room window.

In addition to these prior violent felonies, the murder of Robinson was cold, calculated, and premeditated. Rodgers does not contest the finding of this aggravator, and clearly the facts of the murder support this aggravator.

Viewing the entire record in this case, we find that even with the considerable weight appropriately given to the mitigators in this case, Rodgers' death penalty is proportionate to other cases of this Court in which we have affirmed the death penalty. As we did in Lawrence, 846 So. 2d at 453, we find that Rodgers' death sentence is proportionate to the death sentences in Robinson v. State, 761 So. 2d 269, 272-73 (Fla. 1999) (two statutory mental mitigators and considerable nonstatutory family history and mental health mitigation); Zakrzewski v. State, 717 So. 2d 488, 494 (Fla. 1998); Henry v. State, 689 So. 2d 239 (Fla. 1996); Rolling v. State, 695 So. 2d 278, 297 (Fla. 1997); and Branch v. State, 685 So. 2d 1250 (Fla. 1996).

However, since this reversal, Rodgers again pled guilty to the attempted murder of Smitherman. The other conviction upon which this aggravator was based is the final judgment in United States v. Rodgers, No. 3:98CR00073-002 (N.D. Fla. order filed June 29, 1999).

Rodgers next claims that the trial court ignored certain mitigating evidence in the sentencing order. He argues that his May 13, 1998, confession statement was falsified because he was suicidal, and the court did not examine or comment upon that hypothesis in the sentencing order. We do not agree. This contention relates to the weight that the trial court should have given the May 13 statement and not to what was required to be in the sentencing order. We find that the trial court entered a detailed sentencing order, which considered the substantial mitigation presented. In the sentencing order the trial court recognized expressly that Rodgers “has made serious suicide attempts on his own life on several occasions.” Whenever a reasonable quantum of competent, uncontroverted evidence of mitigation has been presented, a trial court must find that the mitigating factor has been proved. Nibert v. State, 574 So. 2d 1059, 1062 (Fla. 1990). We find that the trial court’s sentencing order complied with this rule.

Rodgers made two statements to officers, the first in Lake County, where he was initially arrested, and the second in Santa Rosa County, where the murder occurred. Rodgers argued that the second statement, which was made to the Santa Rosa County officers, was intentionally false because he was suicidal. However, the State argued and the trial court found that the second statement was a detailed and reliable portrayal of the events. It is a trial court’s duty to resolve conflicts in the evidence, Sireci v. State, 587 So. 2d 450, 453 (Fla. 1991), and to weigh the

evidence which was admitted. The trial court resolved the conflicting statements in the sentencing order. For example, in Rodgers' first statement to officers, his explanation for having possession of the murder weapon was that he was going to shoot Lawrence. In his second statement to officers, he stated that he had the murder weapon because he shot Robinson. The two statements were both addressed by the trial court in the sentencing order:

In a statement given on May 8, 1998 in Lake County, Florida, Defendant Rodgers alleged that Co-Defendant Lawrence actually shot and killed the victim, but it is significant to note that Defendant Rodgers was in possession of the murder weapon when apprehended by law enforcement officials in Lake County. Defendant Rodgers explained that he came into possession of the firearm by retrieving same from Co-Defendant Lawrence after Lawrence allegedly shot the victim. He stated he was so angry with Lawrence for doing so that he considered shooting Lawrence. That explanation is inconsistent with the subsequent acts of the Defendant where he worked in concert with Lawrence to desecrate, mutilate, and dispose of the victim's body. Defendant's subsequent statement of May 13, 1998 where he admitted to shooting the victim in the back of the head is supported by subsequent actions of the defendants and is more credible.

Resolving the conflict was within the discretion of the trial court, and the conflict was properly set out in the trial court's sentencing order. We find no error.

The next issue raised by Rodgers is whether handwritten notes by codefendant Lawrence were inadmissible hearsay. Rodgers objected at trial to these notes on hearsay and relevancy bases. The trial court admitted these notes "with the understanding that its in the hand[writing] of Lawrence." We find these

lists were properly admitted under the coconspirator exception to the hearsay rule.

Brooks v. State, 787 So. 2d 765, 778-79 (Fla. 2001).

There was record evidence suggesting that at the time that Lawrence constructed these notes, there existed a conspiracy to murder and desecrate Robinson's body. In his statements to law enforcement officers, Rodgers admitted multiple times that the murder was premeditated and that there was a plan. In his May 13 statement, he responded to a question about the list:

John made a list of things he would bring, you know. He kinda planned by hisself when I was at home or wherever I was at, and he showed me the list before we even met up with Jenifer [sic] and took her out. And on the list as far as I know was the scalpel . . ., you know the ice the I there was a rope, I don't remember everything that was on the list. The knife I think.

(Emphasis added.) Although Lawrence prepared the list and planned the murder, Rodgers saw the list and was involved in the conspiracy prior to the time Rodgers went to pick up Robinson for their date. Lawrence and Rodgers had already murdered Livingston and shot Smitherman before murdering Robinson. The list reflects Rodgers' involvement in the planning of the crime: "get Jeremaih [sic] to make phone calls." Phone calls to Robinson were supported by the testimony of Robinson's mother that Rodgers and Robinson talked on the phone a couple of times prior to their date. Thus, the list was relevant to the conspiracy.

Rodgers also claims error by the trial court in its denial of his motion to withdraw his plea based upon his attorneys' conflict and unpreparedness. Further,

he claims that he was involuntarily absent from a hearing in the judge's chambers while his attorneys' conflict was being discussed.

The disagreement between Rodgers' attorneys began before the trial when they discussed the guilty plea. Defense counsel disagreed as to whether Rodgers should enter the plea, and a recess was taken. During the recess, the attorneys met together with Rodgers and explained the plea to him. After the recess, although his attorneys still disagreed on the plea decision, Rodgers decided to enter the guilty plea, and a lengthy colloquy occurred. During the plea colloquy, the court advised Rodgers that the decision to plead guilty was his.

THE COURT: All right. And you understand, sir, that that's a right personal to you. Your attorneys may advise you as to what they believe is in your best interest, but your right to testify in your own behalf is a personal right, and it's your decision and no one else's decision. Did you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you also understand, sir, that the right to a jury trial similarly is a right personal to you. In other words, only you can waive that right. And certainly your attorneys are educated in the law and experienced in these areas and you ought to give weight to their recommendations, but the bottom line is that this is your trial; and it has to be your decision. So is it your decision to plead guilty, sir?

THE DEFENDANT: Yes, sir.

THE COURT: And in reaching that decision have you considered the advice of your Counsel?

THE DEFENDANT: From both sides, yes, sir.

Rodgers acknowledged the existence of a disagreement between his defense attorneys in his statement that he considered the advice of counsel “from both sides.”

After the guilty plea, the trial continued through jury selection, opening statements, and the testimony of three State witnesses. Defense counsel LeBoeuf then told the court that she wanted to have a hearing in chambers. A conference occurred in chambers, where LeBoeuf stated that she had a conflict with co-counsel White that “affected preparation” of the case. The basis for this conflict was that the two attorneys, who were independent defense counsel, disagreed over the handling of the case. The two had planned for White to handle the guilt phase and for LeBoeuf to handle the penalty phase.

LeBoeuf said that she wanted to waive Rodgers’ presence at the hearing because he was “very unstable at the moment. He’s very attached to Mr. White as his lawyer, very attached to me as his lawyer, and not capable of understanding that reasonable disagreement occurs between reasonable people.” White and the State objected to Rodgers’ absence. The hearing reconvened in chambers after lunch, at which time Rodgers was present. The judge told Rodgers that there was a conflict between White and Leboeuf, and that LeBoeuf had requested a hearing in Rodgers’ absence but White objected. The court asked Rodgers if he minded being absent from the hearing, and Rodgers stated, “I’m okay with that. I’ll just

wait in the back.” Then the court asked one more time if he minded “absenting [him]self,” to which he replied, “Yeah, I’ll just take the time out and, you know, just sit by myself.” Rodgers waited outside of chambers in the judge’s waiting room while his attorneys discussed their conflict.

The next day, White stated that the conflict was resolved, but LeBoeuf moved for a mistrial, which was denied. The penalty phase continued without conflict for the remainder of the trial. However, at the Spencer hearing, attorney Tim Schardl appeared on Rodgers’ behalf to challenge the manner in which Rodgers had been advised of his plea and filed a motion to stay so that he could more fully explore the issues. The court recited some of what occurred earlier and denied the motion to stay the proceedings. The motion contained no specific information as to why Rodgers wanted to withdraw his plea except for the stated conflict between his attorneys. Nevertheless, after the Spencer hearing, the court sua sponte entered an order scheduling for a hearing the issues raised by Schardl.

At the hearing, Rodgers was asked several questions by the court and stated that he learned “that the problem between these two [attorneys] was a little more than I knew—a lot more than I knew.” Rodgers stated that his attorneys did not tell him of their problems before the date of the Spencer hearing, and he learned that they were “at odds all the way through” his representation. Rodgers explained that he did not know “[a]nything about the plea. I didn’t know the good to taking

it, the bad to taking the plea. I didn't know anything about it." However Rodgers was "happy with both" attorneys and would not waive the attorney-client privilege to allow for evidentiary development.

After hearing argument by Schardl and testimony from defense attorneys LeBoeuf and White, the court denied the motion to withdraw the plea. In the order denying Schardl's motion to allow Rodgers to withdraw his plea, the court stated:

After full reflection, consideration and review of the transcript of the prior proceedings in this matter, there is no evidence before this court which leads it to believe that the Defendant's plea of guilty was not freely, voluntarily and intelligently entered after the Defendant had the benefit and advice of counsel. The Defendant was present when counsel made known their difference of opinion as to whether or not he should enter a plea to the charges. The degree to which counsel disagreed is not material. The fact that Defendant was aware of the disagreement between counsel as to whether or not he should enter his plea is significant. It is clear from the record that the disagreement between counsel was made known to the Defendant, that the Defendant weighed and considered the advice of both counsel and that the plea which he entered was his plea after he had an opportunity to weigh and consider both lawyers' advice to him.

The withdrawal of a guilty plea is a question for the sound discretion of the trial court. Hunt v. State, 613 So. 2d 893, 896 (Fla. 1992). The trial court's decision regarding withdrawal of a plea will generally not be disturbed on appeal, absent a showing of an abuse of discretion. See Id. Rodgers understood at the time of his plea that his attorneys disagreed on whether he should accept the plea. On the basis of the record here, we find no error in the trial court's denial of the withdrawal of Rodgers' plea.

We also find that Rodgers waived the right to be present at the hearing in the judge's chambers. Although criminal defendants have a due process right to be physically present at all critical stages of a trial, Muhammad v. State, 782 So.2d 343, 351 (Fla. 2001), this right may be waived by the defendant. Rodgers was advised that what was to be discussed with the court was his counsel's internal disagreement and that his counsel believed it was in Rodgers' interest for him not to be at the hearing. Rodgers then agreed to wait in the waiting room of the judge's chambers so that he would not hear the discussion. We find no error in Rodgers' absence from the hearing in chambers. Moreover, we have reviewed the record to determine whether there are indications that the internal disagreement between Rodgers' attorneys adversely affected their representation of him during the trial. We find no prejudice to Rodgers that resulted in Rodgers not attending this hearing or the disagreement between his counsel.

Rodgers' next claim was that the attempted murder conviction for shooting Smitherman was reversed on appeal. This was one of the two convictions used in aggravation for the prior violent felony aggravator. It is correct that this conviction was subsequently overturned by Rodgers v. State, 869 So. 2d 604 (Fla. 1st DCA 2004). However, shortly after this reversal, Rodgers again pled guilty to the

attempted murder of Smitherman.⁷ We find that the reversal of the attempted murder conviction was harmless beyond a reasonable doubt based upon Rodgers' subsequent guilty plea and conviction.

Rodgers next argues that reversal is required by Ring v. Arizona, 536 U.S. 584 (2002). This Court has declined to hold that Florida's death penalty scheme is unconstitutional on the basis of Ring. See Bottoson v. Moore, 833 So. 2d 693 (Fla. 2002); King v. Moore, 831 So. 2d 143 (Fla. 2002). This case does not raise any new issues; therefore, Rodgers' claim is without merit. Furthermore, one of the aggravating factors found by the trial court was a prior violent felony conviction. See Kormondy v. State, 845 So. 2d 41 (Fla. 2003), cert. denied, 124 S. Ct. 392 (2003).

Rodgers' final claim is that, in violation of his rights, prison guards forced him to take medication during the trial. The issue of forced medication was not raised in the court below and thus not preserved for appeal. There was no objection in the record about the defendant being forced by prison guards to take medication. See State v. Delva, 575 So. 2d 643 (Fla. 1991) (error must be preserved for appeal by proper objection). Even if this issue were properly preserved, there is no basis in the record to conclude that Rodgers was prejudiced in any way during the trial by the taking of medication.

7. State v. Rodgers, No. 98000322CFMA (Fla. 1st Cir. Ct. order filed June 7, 2004).

For the foregoing reasons, we affirm Rodgers' conviction and sentence of death.

It is so ordered.

WELLS, QUINCE, and CANTERO, JJ., concur.

LEWIS, J., concurs in result only.

ANSTEAD, J., concurs in part and dissents in part with an opinion, in which

PARIENTE, C.J., concurs.

BELL, J., recused.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

ANSTEAD, J., concurring in part and dissenting in part.

I fully concur in the majority's affirmance of appellant's convictions. I dissent only to that part of the opinion that approves the trial court's exclusion of substantial evidence of the role played by appellant's codefendant in the horrendous murder for which we have previously affirmed a death sentence imposed on that codefendant.

As the majority notes, a crucial issue in this case was and remains upon our review: the relative culpability of Rodgers and his codefendant Jonathan Lawrence. Not surprisingly, both the defendants claimed the other was more culpable. In our review of the death sentence imposed upon Lawrence we noted that the trial court

relied upon substantial evidence of Lawrence's long time fascination with violence and serial killings in assessing his culpability and rejecting his claim that he was "substantially dominated" by Rodgers in carrying out this crime. Lawrence v. State, 846 So. 2d 440 (Fla. 2003).⁸ However, in Rodgers' case the trial court

8. In our Lawrence opinion we quoted from the trial court's sentencing order:

Although the experts suggest Lawrence is easily led, Lawrence failed to establish that Rodgers substantially dominated him or that he acted under extreme duress. Other than Lawrence's self-serving confession, the record does not contain any direct evidence that Rodgers dominated Lawrence or that Lawrence's participation in the crime was minor. As discussed in the cold, calculated, and premeditated section, the evidence demonstrates that Lawrence's involvement was anything but minor. His involvement was significant. Lawrence participated in all phases of the murder: the planning, the preparation, the implementation of the plan, and the concealment of the crime.

The following details particularly demonstrate Lawrence's involvement in Jennifer Robinson's murder: Lawrence wrote the notes after he had been involved in two other violent crimes with Rodgers; Lawrence furnished the murder weapon as well as the majority of the items used in the murder; Lawrence was more familiar with the remote areas of Santa Rosa County; and Lawrence never withdrew his assistance even after the murder had been committed.

Although Lawrence indicates in his taped confession that he wrote the note at Rodgers' direction, he continually contradicts this implication with his extensive use of the term "we." In fact, Rodgers' and Lawrence's collaboration is best illustrated with the following statement: "[y]eah, he'd just tell me just bad things to write down. I'd think of a few and write stuff down." In addition, one of the instructions on the notes is "get Jereimaih [Jeremiah] to make phone calls." This statement does not appear to be written at Rodgers' instruction nor is it characteristic of a dominant/submissive relationship.

At the Spencer hearing, the State presented additional evidence

that supports Lawrence's active involvement. A footlocker at Lawrence's residence contained numerous books as well as a scrapbook. These items are very telling. Among the books found were: (1) William Powell, *The Anarchist Cookbook*, Barricade Books, Inc. (1971); (2) The Editors of Time-Life Books, *Serial Killers*, Time-Life Books (1992) which contains pictorial essays on Ted Bundy, John Wayne Gacy, David Berkowitz and Dennis Nilsen; and (3) Five books about snipers including Maj. John L. Plaster, *The Ultimate Sniper: An Advanced Training Manual For Military & Police Snipers*, Paladin Press (1993) and J. David Truby, *Silencers, Snipers & Assassins: An Overview of Whispering Death*, Paladin Press (1972).

The scrapbook contained various items that included: his GED certificate, karate certificate, numerous articles on the Ku Klux Klan and serial killers. Many of the items date back several years prior to Lawrence's involvement with Rodgers. The certification of Lawrence's "Citizenship" in the American Knights of the Ku Klux Klan is dated February 23, 1998, a month before the attempted murder of Layton Smitherman. Rodgers did not arrive in Pace until March 1998.

The books and the scrapbook reveal Lawrence's interests and support the State's contention that he would have actively participated in the murder. The State also introduced into evidence the human body book, *The Incredible Machine*, which was recovered from the toolbox on [Lawrence's] truck. Several sections in this book were marked with a pen including a picture of the muscle structure of a female body with the calf section marked. The possession of this book, along with the other evidence (e.g., admission that he cut the leg and the calf muscle was found in his freezer), indicate that Lawrence initiated and carried out this aspect of the plan.

Regardless of who was the leader, the evidence demonstrates that Lawrence's involvement was active, significant and voluntary. He was a major participant, not a minor accomplice. There is insufficient evidence to establish [that] Mr. Rodgers substantially dominated Lawrence or that he was under extreme duress. Therefore, Lawrence has failed to establish by the greater weight of the evidence the presence of these two mitigators.

Sentencing order at 14-16 (citations and footnotes omitted.)

withheld from the jury's consideration the very evidence relied upon to justify a death sentence for Lawrence and to reject his claim of lesser culpability. I believe this evidence was wrongfully withheld and prevented Rodgers' jury from fairly assessing his claim of the greater culpability of his codefendant Lawrence. In my view we cannot approve the death penalty for one defendant based upon evidence of his culpability and then turn around and approve the withholding of that same obviously relevant evidence from a jury that is trying to sort out the relative culpability of the two defendants in the case.

For that reason I would remand for a new penalty phase proceeding in which this evidence would not be withheld from the jury.

PARIENTE, C.J., concurs.

An Appeal from the Circuit Court in and for Santa Rosa County,
Paul Rasmussen, Judge - Case No. 98-274-CFA

Mark E. Olive, Tallahassee, Florida,

for Appellant

Charles J. Crist, Jr., Attorney General, and Curtis M. French, Assistant Attorney
General, Tallahassee, Florida,

for Appellee

846 So. 2d at 449.