

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2008-031021-001 DT

08/18/2009

HON. SALLY S. DUNCAN

CLERK OF THE COURT
M. Cabral
Deputy

STATE OF ARIZONA

JUAN M MARTINEZ

v.

JODI ANN ARIAS (001)

VICTORIA E WASHINGTON
KIRK NURMI
MARIA L SCHAFFER
GREGORY T PARZYCH

CAPITAL CASE MANAGER
VICTIM SERVICES DIV-CA-CCC

RULING

Following the evidentiary hearing on August 7, 2009, the Court took under advisement the defendant's Request for Determination of Probable Cause on Alleged Aggravating Factor.

In its Notice of Intent to Seek Death Penalty, Aggravating Factors, Witnesses and Evidence, filed October 31, 2008, the state alleges one aggravating circumstance, A.R.S. §13-751(F)(6) (especially heinous, cruel or depraved). At the hearing, the State asserted that in addition to the cruelty prong, it was relying on the following theories to support the heinous and depraved prong: gratuitous violence, needless mutilation, helplessness and senselessness.¹

¹ The State did not argue that the defendant relished the murder. The evidence showed that the defendant photographed the victim in the shower shortly before attacking him and several inadvertent photos were taken during the attack due to the configuration of the digital camera. The Court finds that the State has waived relishing as a factor to support a finding of heinousness or depravity.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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08/18/2009

Cruelty

A first degree murder is “especially cruel” if the victim suffers physical pain or mental anguish and the defendant knew or should have known that the victim would suffer. *State v. McCray*, 218 Ariz. 252, 259, ¶31, 183 P.3d 503, 510 (2008). To establish this aggravating factor, the State does not need to prove that the victim was conscious for “each and every wound inflicted.” *State v. Sansing*, 206 Ariz. 232, 235, ¶10, 77 P.3d 30, 34 (2003). Physical pain may be found where a conscious victim physically suffered for at least a short period of time. *State v. William Herrera, Jr.*, 176 Ariz. 21, 859 P.2d 131 (1993) (finding victim was lying on the ground with a gash in his head for at least 18 seconds and possibly as much as two to three minutes).

The State presented evidence that the victim was first shot on the right side of his head near his eye with a .25 caliber handgun and that the bullet lodged in his left cheek. This wound was not fatal and may or may not have rendered the victim unconscious. The victim did not remain unconscious based on the infliction of the other wounds and the location of blood spatter evidence in the bathroom sink and blood in the hallway. In addition, the defendant told the police that the victim was unconscious after being shot but then crawled around and was stabbed.

The victim was then stabbed 27 times in the back, shoulders, head and chest. Cuts on the hands were defensive wounds from grabbing the knife. With the exception of two wounds, these wounds were not fatal. The two fatal wounds were a deep stab wound to the chest and then a cut across the throat. While conscious, the victim would have felt pain and mental anguish associated with these multiple wounds.

The Court finds that the State has proved that there is probable cause to believe that the offense was especially cruel under the theory that it involved both physical and mental suffering of the victim.

Heinous and/or Depraved

1. Senselessness of Murder and Helplessness of Victim

Senselessness and helplessness alone do not make a first degree murder especially heinous or depraved. A separate finding of one of the other theories must coexist with either or both findings. *State v. Wallace*, 219 Ariz. 1, 6, ¶25, 191 P.3d 164, 169 (2008).

A murder is senseless when it is unnecessary for the defendant to achieve her criminal goal. *Schackart*, 190 Ariz. 238, 947 P.2d 315 (1997); *State v. Chad Lee*, 189 Ariz. 608, 944 P.2d 1222 (1997). Here, the State argues only that the murder was senseless because it involved a great deal of violence. In essence, this argument relates to gratuitous violence rather than senselessness. The

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2008-031021-001 DT

08/18/2009

defendant's goal was to kill the victim. The Court finds that the State has not established probable cause that the murder was senseless because it was unnecessary to achieve the defendant's criminal goal.

A victim is helpless when he is disabled, mentally or physically, and unable to resist the murder. *State v. Hyde*, 186 Ariz. 252, 921 P.2d 655 (1996)(victims were helpless where 72-year-old male victim and 50-year-old female victim were both physically small); *State v. Jackson*, 186 Ariz. 20, 918 P.2d 1038 (1996)(victim driven into desert with no means of escape, unarmed and outnumbered three to one); *State v. Murray*, 184 Ariz. 9, 906 P.2d 542 (1995)(victims were elderly and could not easily summon aid). An otherwise able victim may be rendered helpless by the defendant's actions. *State v. Sansing*, 206 Ariz. 232, 238, ¶19, 77 P.3d 30, 36 (2003)(victim rendered helpless by defendant binding her after throwing her on the floor); *State v. Brewer*, 170 Ariz. 486, 502, 826 P.2d 783, 799 (1992)(victim, who initially put up a fight, rendered helpless by beating from defendant). Here, the evidence does not support a finding that some of the stab wounds were inflicted after the victim's ability to resist had been overcome by the defendant's actions; the evidence suggests that the victim fought for his life and was subdued only after the defendant dealt the fatal blow. The Court finds that the State has not established probable cause that the victim was helpless.

2. Gratuitous Violence

The gratuitous violence factor focuses on the intent of the killer as evidenced by her actions. *State v. Bocharski*, 218 Ariz. 476, 189 P.3d 403 (2008). The State must make two showings. The State must first show that the defendant did, in fact, use violence beyond that necessary to kill. The State must also show that the defendant continued to inflict violence after she knew or should have known that a fatal action had occurred. *Id.* The showing of using violence beyond that necessary to kill often involves a "barrage of violence." *State v. Ceja*, 115 Ariz. 413, 417, 565 P.2d 1274, 1278 (1977). See *Bocharski*, 218 Ariz. at ¶86 (24 knife injuries to head and face, including eight stab wounds that penetrated deep into face and neck, unnecessary to cause death); *State v. Detrich*, 188 Ariz. 57, 932 P.2d 1328 (1997)(three stab wounds were fatal and 37 others were excessive, constituting gratuitous violence); *State v. Gulbrandson*, 184 Ariz. 46, 906 P.2d 579 (1995)(the victim was brutally beaten with knives and scissors, and a wooden salad fork was left protruding from the body; victim was stabbed 34 times; victim died of asphyxiation due to strangling); *State v. Salazar*, 173 Ariz. 399, 412, 844 P.2d 566, 579 (1992)(finding gratuitous violence when a fragile, partially blind 83-year-old woman was beaten and strangled so severely that she suffered a broken nose and crushed Adam's apple); *State v. LaGrand*, 153 Ariz. 21, 36-37, 734 P.2d 563, 578-79 (1987)(finding gratuitous violence when a bound and gagged man was stabbed 24 times).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2008-031021-001 DT

08/18/2009

The showing that the defendant continued to inflict violence after she knew or should have known that a fatal action had occurred provides essential evidence of the defendant's intent to inflict gratuitous violence. *Bocharski*, 218 Ariz. at ¶87 (no showing that the defendant knew or should have known victim was dead yet continued to stab her when medical examiner expressed uncertainty of timing of fatal wound in sequence of 24 knife injuries inflicted in less than one minute). *See also*, *State v. Lee*, 189 Ariz. 608, 619, 944 P.2d 1222, 1233 (1997)(finding gratuitous violence when, after inflicting a wound to the head that was "unquestionably fatal," the defendant walked around the counter and shot the victim two more times); *State v. Jones*, 185 Ariz. 471, 488-89, 917 P.2d 200, 217-18 (1996)(finding gratuitous violence when the defendant, after inflicting two fatal blows, asphyxiated the victim).

Here, as in *Bocharski*, the State has not shown that the defendant knew or should have known that the victim was dead yet continued to stab him. Although a gun was used in addition to a knife, and there were many stab wounds, this evidence supports only a conclusion that the defendant inflicted more violence than that necessary to kill. Det. Flores, the state's only witness, testified that he spoke with Dr. Horne, who conducted the autopsy, and that Dr. Horne opined that the two fatal wounds occurred last in the sequence. Based on this evidence, there is no showing that the defendant continued to injure the victim after she had fatally wounded him. *Bocharski*, 218 Ariz. at ¶89.

3. Mutilation

Needless mutilation requires an act separate and distinct from the killing itself, committed with the intent to mutilate the victim's corpse. *Bocharski*, 218 Ariz. at ¶84; *State v. Pandeli*, 215 Ariz. 514, 523-24, ¶20, 161 P.3d 557, 566-67 (2007). The evidence presented here does not support a finding that the defendant had a separate purpose to mutilate the victim's corpse.

The Court finds that the State has failed to prove that there is probable cause to believe that the offense was committed in an especially heinous or depraved manner.

FILED: Exhibit Worksheet

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