

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT IN AND FOR
MONROE COUNTY FLORIDA**

LOWER KEYS CRIMINAL DIVISION

**STATE OF FLORIDA,
CRIMINAL DIVISION**

**CASE NO.: 20-CF-00094-A-P
JUDGE MARK JONES**

Plaintiff,

vs

DANIEL WEISBERGER,

Defendant.

**SENTENCING MOTION AND MEMORANDUM ON BEHALF
OF DANIEL WEISBERGER PURSUANT TO
SECTIONS 921.1401 AND 921.0026, FLORIDA STATUTES**

THE DEFENDANT, DANIEL WEISBERGER, by and through undersigned counsel hereby files this Motion and Memorandum on behalf of Daniel Weisberger pursuant to Sections 921.1401 and 921.0026, Florida Statutes, and in support of this motion would state:

CASE HISTORY

Daniel Weisberger was a 17-year old child on May 7, 2020, when he killed his younger brother, Pascal, and severely injured his father, Ariel Poholek ("Ariel") at their home in Islamorada. Later that afternoon, he threw himself in the path of a truck on the Overseas Highway and was airlifted to the Ryder Trauma Center in Miami. On June 2, 2020, he was discharged from the hospital and booked into the Key West Jail, charged with Second Degree Murder of his brother and Attempted First Degree Murder of his father.¹

¹ The State originally filed an Information on May 28, 2020, charging Second Degree Murder, Attempted First Degree Murder, Aggravated Battery, and False Imprisonment. On October 30, 2024, the State filed an amended Information charging only Second Degree Murder and Attempted First Degree Murder.

Daniel has a lengthy and documented history of mental illness from the time he was 4-years old. Records showed that he was diagnosed with ADHD when he was five, and has been taking medication since he was six. His incarceration at the Key West jail took a toll on him. The country was in lockdown due to the pandemic, he was recovering from the severe injuries and a traumatic brain injury (TBI) he received in the truck accident, and the medications he was receiving did not seem to be controlling his mental health problems. In addition, due to the strict Covid protocols at the jail, he was not able to meet with and be comforted by his family. Although his father was severely injured by his son that tragic night, Ariel Poholek has consistently been a vocal advocate for Daniel. Since the day Ariel was released from the hospital, he has been vehemently arguing that his son should not be punished or imprisoned for his actions on May 7, but instead should be treated in a mental health facility due to his life-long battle with mental illness which he strongly believes was the reason for this tragedy.

In early 2022 it was apparent that Daniel's mental health was deteriorating in the jail. Dr. Mark Mills, a defense psychiatrist, evaluated him on January 5, 2022, and opined that he was actively psychotic and incompetent to proceed. On May 2, 2022, Dr. David Ross, a neuropsychiatrist, concurred with the finding of incompetence. On May 2, 2022, Judge Luis Garcia adjudicated the Defendant incompetent and he was admitted to the South Florida Evaluation and Treatment Center (SFETC) for competency restoration. After fifteen months of treatment with antipsychotic medications and therapy, Daniel was restored to competency. On August 17, 2023, Judge Luis Garcia adjudicated Daniel competent. He remained at the SFETC as a *Rubio*² patient to receive appropriate care and treatment until his case was resolved so that his competency could be assured at the time of trial.

² *Brantley v. Rubio*, 870 So.2d 849 (Fla. 3DCA 2003).

On February 5, 2024, the defense filed their Notice of Intent to Rely on Insanity pursuant to Sec. 775.027, Florida Statutes. A bench trial before the Honorable Mark Jones began on January 13, 2025. The defense presented testimony from Dr. Mark Mills, a psychiatrist, who opined that at the time of the offense, Daniel suffered from Schizophrenia and was in a psychotic state which prevented him from knowing that what he was doing was wrong. Testimony was also presented from Dr. Pamela Scannell, a forensic psychologist, who testified that she met Daniel when he was her patient at the SFETC being treated for competency restoration. She stated that he arrived from the Key West jail in a psychotic state and after over a year of anti-psychotic medication and treatment he was restored to competency. She opined that Daniel suffered from a psychotic disorder at the time of the offense, to-wit: Schizophrenia, and as a result he did not know what he was doing was wrong.³ The defense also presented testimony from several lay witnesses regarding Daniel's bizarre behavior in the days leading up to the tragedy.⁴

On January 23, 2025, the Honorable Mark Jones found the Defendant guilty as charged of both offenses, and reset the matter for a sentencing hearing.

³ The State presented testimony from Dr. Pedro Saez, a psychologist, who disagreed that the Defendant suffered from a psychotic disorder and opined that he was suffering from a Conduct Disorder at the time of the offense and did not meet the criteria for insanity.

⁴ The defense would request that this Court consider the trial testimony of the defense experts and lay witnesses in support of this motion without the need to recall them at the sentencing hearing.

I. A Sentence of Life Imprisonment is Not Appropriate for the Juvenile Defendant in this Case based on the relevant factors in Section 921.1401, Florida Statutes

On January 23, 2025, this Court found the Daniel Weisberger guilty of (1) Second Degree Murder, in violation of Section 782.04(2), Florida Statutes, and (2) Attempted First Degree Murder, in violation of Section 782.04(1)(2), Florida Statutes. The Court found in its verdict that the Defendant personally carried, displayed, used or attempted to use a weapon, in violation of Section 775.087(1), Florida Statutes, which resulted in each offense being reclassified. Consequently, both counts were reclassified as Life felonies pursuant to Sections 782.04 (1) (a), (2); 777.04(4)(b), 775.087 (1)(a), Florida Statutes.

The possible Life sentences are not mandatory but discretionary. However, since Daniel was under 18 years of age at the time he committed the offenses, the Court is precluded from sentencing him to a term of imprisonment for life or by a term of years equal to life imprisonment without first conducting a sentencing hearing in accordance with Section 921.1401, Florida Statutes.

The U.S. Supreme Court’s Recent Juvenile Sentencing Jurisprudence

Children are constitutionally different from adults for purposes of sentencing.

Over the past several years, the United States Supreme Court has considered several cases involving juvenile sentencing schemes, ultimately concluding that, “*Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, ‘they are less deserving of the most severe punishments.’ ” *Miller*, 132 S.Ct. at 2464 (quoting *Graham*, 560 U.S. at 68, 130 S.Ct. 2011).

In *Roper v. Simmons*, 125 S.Ct. 1183 (2005), the Supreme Court held that the execution of individuals under 18 years of age at the time of their capital crimes is precluded by the Eighth and Fourteenth Amendments. In reaching their decision, the Court considered the scientific authorities cited by the amicus, noting that “as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young”, *Roper*, *supra*. at 1195, citing *Johnson v. Texas*, 113 S.Ct. 2658 (1993). Youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.” *Eddings v. Oklahoma*, 102 S.Ct. 869, 877 (1981).

A few years later, the Supreme Court held that the imposition of a life without parole sentence on a juvenile offender who did not commit a homicide violated the Eighth Amendment in *Graham v. Florida*, 560 So.2d 28 (2010). “The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential...Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope. Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation.” *Graham*, at 79.

Building on the foundation of *Graham* and *Roper*, in 2012 the Supreme Court held that the imposition of the state’s most severe penalties upon juvenile offenders cannot proceed as if they were not children, *Miller v. Alabama*, 132 S.Ct. 2455 (2012). A sentencing scheme mandating life in prison for juveniles violated the Eighth Amendment unless the sentencer took into account how children are different, and how those differences counsel against irrevocably

sentencing them to a lifetime in prison. The Court reasoned that “*Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, ‘they are less deserving of the most severe punishments.’” *Miller*, 132 S.Ct. at 2464 (quoting *Graham*, 560 U.S. at 68, 130 S.Ct. 2011). *Miller* required that the courts conduct an *individualized* sentencing hearing and consider mitigating factors in juvenile cases where the penalty was a mandatory life sentence. This sentencing requirement was codified in Section 921.1401, Florida Statutes (2018).

In *Landrum v. State*, 192 So.3d 459 (2016), the Florida Supreme Court extended the *Miller* individualized sentencing requirement to cases where a life-without parole sentence was *discretionary*. In *Landrum*, the 16-year old defendant had been sentenced to life in prison without parole for a second-degree murder. Since the life sentence was not mandatory the judge did not conduct the *Miller* analysis and “take into account how children are different and how those differences counsel against irrevocable sentencing them to a lifetime in prison”, *Landrum*, at 460, *citing Miller*, 132 S.Ct. at 2469. Without this individualized sentencing consideration, a sentencer is unable to distinguish between juvenile offenders whose crimes “reflect transient immaturity” and those whose crimes reflect “irreparable corruption.” [Miller, 132 S.Ct. at 2469](#). Failing to make this distinction, otherwise, would mean life sentences for juveniles would not be exceedingly rare, but possibly commonplace.

In Daniel Weisberger’s case currently before the Court for sentencing, the Court has the discretion to sentence him to life in prison. Like all life imprisonment sentences imposed in Florida after 1983, a life sentence is without parole. Life means life. The Court is required to

take into account the individualized sentencing considerations of the juvenile offender's youth before imposing a non-mandatory life sentence.

Mitigating Circumstances pursuant to Section 921.1401, Florida Statutes

Section 921.1401(2) states, in pertinent part, as follows:

*In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:*⁵

(b) The effect of the crime on the victim's family and on the community.

The offenses in this case had a great impact on the Upper Keys community. The Defendant's brother, Pascal, was only fourteen years old when he died. Yet in that too brief time, Pascal made a great impression on many people, overcoming his diagnosis of autism to forge strong friendships. His funeral was attended by over a hundred people in spite of Covid restrictions. He had logged almost 2400 hours volunteering at the local animal shelter and, upon his death, the lobby was named in his honor. His father, Ariel Poholek, started an organization called Pascal's Way, with the motto "Be Kind", which holds an annual well-attended beach cleanup in Pascal's honor. Pascal was a remarkable young man.

At the same time, Ariel has been the loudest voice advocating on behalf of his son, Daniel. Ariel suffered severe injuries when Daniel stabbed him in the neck, but as soon as he was released from the hospital, he began meeting with the prosecutors, law enforcement, mental health experts, and anyone who would listen to him, urging that Daniel should be treated as someone suffering from mental illness, and not as a criminal. Dozens of members of the community have written letters to the Court urging it to send Daniel to a mental hospital instead of a prison. The letters

⁵ In this motion the defense will address only those factors which apply to the Defendant based on the testimony at trial and evidence which was presented at trial and will be presented at the evidentiary hearing on this motion.

were written by friends, teachers, coaches, and other members of the community who had seen and interacted with Daniel and his family over the years and knew of his battle with mental illness. To date, Ariel has obtain thousands of signatures on a petition asking the Court to help Daniel get the mental health treatment he has so desperately needed.

(c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

Daniel was a 17-year old child at the time of the offense and had been treated for mental illness, PTSD, and Maternal Child Abuse for many years. The Defendant's age and mental health will be described further in this motion and the defense will present testimony from witnesses in support of this factor.

(d) The defendant's background, including his or her family, home, and community environment.

Daniel suffered from Maternal Child Abuse from the time he was a toddler. His parents separated when he was three due to his mother's violence toward her husband and son. When the divorce was final, Ariel was granted custody of both boys due to the mother's abuse, but she continued to see them for a few years pursuant to court-ordered visitation. This was suspended due to her violence toward Daniel and his overwhelming anxiety when he was with her.

Daniel's background and family life will be described in greater detail later in this motion, and the defense will present testimony at the hearing in support of this mitigating factor.

(e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

The Defendant was 17-years old at the time of the offenses and suffering from long-term mental illness. This will be addressed in greater detail later in this motion, and the defense will

present testimony at the hearing on the impact of Juvenile Brain Development.

(g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.

A significant factor in the Defendant's mental illness was the Trauma he suffered as a result of the abuse by his mother. He learned to recognize through therapy that his mother was a trigger to his behavior. This will be discussed in greater detail later in this motion, and the defense will present testimony about the effect of Trauma on juveniles.

(h) The nature and extent of the defendant's prior criminal history.

At the time of his arrest in this case, the Defendant was in a juvenile diversion program for arrests related to his father. The State has since nolle prossed all charges. Daniel has no prior convictions or juvenile adjudications.

(i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

The defense will rely on arguments in paragraph (e) above, as well as other arguments made later in this motion and the testimony of witnesses at the hearing.

(j) The possibility of rehabilitating the defendant.

Daniel has been continuously in custody since his arrest on May 7, 2020, in either the Monroe County Jail or the South Florida Evaluation and Treatment Center. He was transferred to the SFETC on May 15, 2022 after being adjudicated incompetent to proceed. After being stabilized with antipsychotic medication, he improved dramatically not only mentally, but with his interpersonal behavior. Both experts and family members noted the improvement in his behavior and mental state. This will be discussed further in this motion, and through testimony at the hearing.

Based on the testimony and evidence presented in support of these mitigating factors, as

well as the non-statutory mitigation discussed later in this motion, the Defendant urges this Court to find that a life sentence without the possibility of parole is not appropriate for the Defendant in this case, who was 17-years old at the time of the offenses.

II. The Defendant has valid legal grounds to support a downward departure sentence based on the facts and circumstances in this case, pursuant to Section 921.0026, Florida Statutes

**GROUND FOR DOWNWARD DEPARTURE FROM
THE SENTENCING GUIDELINES**

On January 23, 2025, this Court found the Defendant guilty of (1) Second Degree Murder, in violation of Section 782.04(2), Florida Statutes, and (2) Attempted First Degree Murder, in violation of Section 782.04(1)(2), Florida Statutes. The Court found in its verdict that the Defendant personally carried, displayed, used or attempted to use a weapon, in violation of Section 775.087(1), Florida Statutes, which resulted in each offense being reclassified. The Court further made specific Scoresheet findings as to each count (See Verdict Form, attached hereto as Exhibit A). The Defendant is facing a minimum of 319.500 months in prison (26.625 years) up to life in prison. (See Criminal Punishment Code Scoresheet, attached hereto as Exhibit B). The Defendant is seeking a sentence below the minimum guideline range for the reasons described herein.

The sentencing guidelines are designed to aid the judge in the sentencing decision but are not intended to usurp judicial discretion. Rule 3.701(b)(6), Florida Rules of Criminal Procedure. The Defendant bears the burden of presenting competent, substantial evidence supporting the reason for a downward departure sentence. To determine whether a downward departure sentence is appropriate, the trial court is required to follow a two-step process: first, the court must determine whether there is a valid legal ground for the departure sentence, set forth in statute or case law, supported by facts proven by a preponderance of the evidence. This is a mixed question of law and fact, and will be sustained if the correct rule of law was applied and it

is supported by competent, substantial evidence. *Id.* Second, the court must determine whether the departure is the best sentencing option for the defendant by weighing the totality of the circumstances, *Banks v. State*, 732 So.2d 1065 (Fla 1999); *Coto v. State*, 366 So.3rd 1 (Fla. 4DCA 2023). This is reviewed for an abuse of discretion. *Banks*, at 1069. Once a court has followed the proper process in determining that a downward departure sentence is appropriate, the extent of the departure is not subject to review. *See, State v. Chubbuck*, 141 So.3d 1163, 1165 (Fla 2014).

Statutory Grounds for Mitigation
Section 921.0026, Florida Statutes

1) Defendant's Capacity to appreciate the criminal nature of his conduct was substantially impaired

921.0026 (c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.

This mitigating circumstance has been referred to by the courts as diminished capacity.⁶ Evidence to support a court's finding that the defendant had a diminished capacity may be in the form of both expert and/or lay testimony. The amount of evidence needed to establish this factor is less than required for a defendant to prove insanity at trial.

The Defendant presented testimony of Ariel Poholek, the Defendant's father, regarding Daniel's behavior in the days leading up to the offenses. He described the Daniel's extreme paranoia, locking doors, collecting and hiding knives throughout the house, stabbing furniture and other household items, taking his brother to a wooded area to teach him to fight by punching

⁶ The courts have used the term "diminished capacity" to describe this statutory mitigator. *See, Caulkins v. State*, 390 So.3d 255 (Fla. 2DCA 2024); *Kezal v. State*, 42 So.3d 252 (Fla. 2DCA 2010).

an abandoned mattress. Ariel described this behavior to Ryan Lemay, the Juvenile Probation Officer, who was so concerned that he took steps to have the Defendant *Baker Acted*.⁷

Carole Poholek (“Carole”), the Defendant’s paternal grandmother, described returning to the home after the offenses once it had been released by law enforcement. She testified about seeing stab marks on the Defendant’s mattress and couch, burnt bird bones on foil hidden in a kitchen ceiling tile, and strange drawings on the wall in the boys’ bedroom which caused her great concern.⁸ Inside a decorative birdcage the Defendant had made for his father were dozens of tiny folded papers with the strange hieroglyphic drawings which were also on his suicide note and on the wall of his bedroom.⁹

The Court also heard testimony from Dr. Mark Mills, a psychiatrist, in support of the Defendant’s insanity defense at trial. Dr. Mills testified that based on the circumstances at or around the time of the offenses, and his review of thousands of pages of records documenting the Defendant’s mental health history, it was his expert opinion that the Defendant was suffering from Schizophrenia at the time of the offenses and in an actively psychotic state so was not sane at the time of the offenses. (see report of Dr. Mark Mills, February 4, 2024, attached hereto as Exhibit C). Although this Court, sitting as the trier of fact, rejected the insanity defense, that does not foreclose its consideration of the Defendant’s diminished mental state to support the mitigating factor in this case. In *State v. Clark*, 745 So.2d 1116, 1117 (Fla. 4DCA 1999), the defendant was convicted at trial after presenting testimony from expert witnesses in support of his insanity defense. At sentencing, the court relied on 921.0026 (c) finding that the defendant’s capacity to appreciate the criminal nature of his conduct or to conform that conduct to the

⁷ Ultimately the Mobile Crisis Unit did not respond and the Defendant was not *Baker Acted*.

⁸ The strange drawings were the same as the strange symbol at the top of the Defendant’s suicide note later discovered by police in a bloody pair of the Defendant’s pants.

⁹ None of these were preserved by Carole Poholek.

requirements of law were substantially impaired, *although the impairment did not reach the level of insanity* (emphasis added). *See also, Hiraldo v. State*, 268 So.3d 955, 956 (Fla. 2DCA 2019) (finding that defendant's theory of impaired capacity due to her bipolar disorder was a valid legal basis for downward departure).

The Defendant will present additional evidence and testimony in support of this mitigating factor at the sentencing hearing.

2) Mental Disorder Requiring Specialized Treatment

(d) The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.

A defendant who is requesting a downward departure sentence pursuant to subsection 921.0026 (2)(d) must prove by the following by a preponderance of the evidence:

- 1) The defendant has a mental disorder (unrelated to substance abuse or addiction) or a physical disability;
- 2) Which requires specialized treatment; and
- 3) The defendant is amenable to such treatment.

State v. Chubbock, 141 So.3d 1163, 1171 (Fla. 2014).

The Defendant has been diagnosed by multiple mental health experts with a serious mental illness. This Court has already heard testimony from Dr. Pamela Scannell who testified that she believed the Defendant suffered from Schizophrenia when she met him at the SFETC, that he suffered from Schizophrenia at the time of the offense, and in her most recent report on February 25, 2025, diagnosed Schizoaffective Disorder, Bipolar type.¹⁰ She testified that while at the SFETC his psychotic illness was treated with antipsychotic medications and therapy, and that the Defendant responded to this treatment. The Court also heard testimony from Dr. Mark Mills who

¹⁰ During the trial, Dr. Scannell testified that she considered this diagnosis based on new information that she learned from observing the testimony of lay witnesses, but explained that both were a major psychotic disorders.

diagnosed the Defendant with Schizophrenia. He further testified that his condition and demeanor after being treated in the hospital environment at the SFETC was dramatically different from his mental condition while in the Key West Jail, and attributed this to his ability to get proper medication and treatment for his mental condition in the hospital.

In *Hiraldo v. State*, 268 So.3d 955 (Fla. 2DCA 2019), the defendant sought a downward departure due to her need for specialized treatment for her bipolar disorder which required specialized treatment. The defendant presented evidence of a diagnosis by a licensed mental health counsellor who treated her bipolar condition with medication and providing coping skills. The counsellor testified that the defendant had made substantial improvements with her bipolar disorder and that he believed that sending the defendant to jail or prison would make it more difficult to monitor her conditions. He thought the treatment he was providing was best for her. The judge indicated he was inclined to impose a downward departure but ultimately concluded that the defendant did not meet the legal criteria under Sec. 921.0026(d) due to the substance abuse component. The Fourth District held that the trial judge misconstrued the evidence, since the medication, treatment and goals were separate, and the mere fact that there was an accompanying substance abuse component did not make the defendant ineligible for a downward departure under this section of the statute. In the instant case, the Defendant has previously been diagnosed with Cannabis Use Disorder, but there is no evidence that he has used cannabis in the last five years and his treatment is solely directed to his diagnosed mental illness.

As evidence that the Defendant is amenable to treatment, the Court should consider Dr. Scannell's trial testimony about the effect the antipsychotic medication had on stabilizing the Defendant and that he has continued to take the medication. The records from the SFETC and his incarceration at the Key West Jail since his return on January 13,

2025 both indicate that he has been compliant with his medication. Dr. Matthew Jalazo, a court appointed psychologist, evaluated the Defendant on March 18, 2025, and reported that, the Defendant's symptoms are in remission and "...continued compliance with psychotropic medications may be assisting him in this regard". He diagnosed the Defendant with Bipolar Unspecified and further reported that the Defendant is taking antipsychotic medications which he says make him "feel more calm" and "easier to deal with hallucinations" and he "absolutely" intended to continue taking them. The Defendant's compliance with his medication is evidence that he is amenable to treatment.

In addition to relying on the trial testimony of Dr. Mark Mills and Dr. Pamela Scannell, the defense will present further evidence at the hearing regarding this mitigator and the Defendant's need for specialized treatment for his psychotic disorder¹¹ and his amenability to treatment.¹²

3) Age of Defendant (17 years old)

(k) At the time of the offense the defendant was too young to appreciate the consequences of the offense.

Daniel Weisberger was seventeen years old at the time of the offenses in this case. Under Florida Law, he was considered to be a child. However, a court may not enter a downward departure sentence based on a defendant's age alone unless it is accompanied by other factors. These factors may include a defendant's emotional immaturity. *Salgado v. State*, 948 So.2d 12 (Fla. 3DCA 2006); *State v. Evans*, 630 So.2d 203 (Fla. 3DCA 1993); or that the defendant suffered from a diminished mental capacity or other mental deficit that prevented him from appreciating the consequences of his conduct. *State v. Hunt*, 302 So.3d 453 (Fla. 2DCA 2020).

¹¹ The Defendant is not required to prove that the Department of Corrections (DOC) could not provide the required specialized treatment. *State v. Chubbuck*, 141 So.3d 1163 (Fla. 2014).

¹² "Amenability" has been defined as "a reasonable possibility ...that treatment will be successful". See, *Chubbuck, supra.*, footnote 22, citing *Herrin v. State*, 568 So.2d 920, 922 (Fla. 1990).

The Defendant will be relying on testimony presented at trial from Dr. Mark Mills and Dr. Pamela Scannell to prove the defendant suffered from a diminished mental capacity that prevented him from appreciating the consequences of his conduct. In addition, the defendant will present testimony at the hearing from Dr. James Campbell, a forensic psychologist who will offer expert testimony in regarding the effects of juvenile brain development, childhood trauma, and PTSD on the Defendant's mental capacity and emotional maturity.

Non-Statutory Grounds for Mitigation

5) Defendant Acknowledged his Responsibility for his Brother's Death

Daniel Weisberger has no memory of the tragic events which took place on and around May 7, 2020 when his younger brother, Pascal was killed and his father was severely injured. Two neuropsychologists (Dr. Michele Quiroga and Dr. Pedro Saez) conducted lengthy examinations and testing of Daniel and reviewed his hospital records from Jackson Memorial Hospital. They both concluded that his claim of memory loss was reasonable based on the damage to his brain from the truck accident. Dr. Saez testified on behalf of the State at trial. He conceded that Daniel suffered a severe TBI (traumatic brain injury) which resulted in a weakness in his cognitive processing speed and that it was within reason that he would have post-traumatic amnesia. He did not find anything suspicious about the Defendant's claim that he had no memory of the event. Nonetheless, Daniel Weisberger has acknowledged that he is responsible for the death of his brother and injuries to his father. On March 21, 2025, he wrote a lengthy letter to the judge, which was incorporated in the Pre-Sentence Investigation Report. In this letter, Daniel stated, "We all know the reason we are here today is that a terrible thing that I did resulted in the tragic loss of my beloved brother, and in addition, the severe wounding mentally and physically of my beloved father. The most important thing that I want to say, is though I

don't remember the actions I'm responsible for, and am overwhelmed with the knowledge that these took place, I couldn't be sorrier and more regretful for these events having happened." (See letter of Daniel Weisberger to Judge Mark Jones, March 21, 2025, attached hereto as Exhibit D).

6) History of Child Abuse

Daniel Weisberger was born on February 25, 2003 in New Port Richey, Florida to Ariel Poholek and his wife, Jocelyn Avomo Nguema ("Jocelyn").

Daniel's parents met and were married in Gabon, Africa where Ariel had been assigned as a Peace Corps volunteer. When Ariel returned to the United States in 2002, his new wife was pregnant with Daniel. From the outset, their marriage was marked with verbal and physical violence between the parents in the presence of the children, and Jocelyn's physical and emotional abuse of their two children. Jocelyn's aggression toward Ariel became so violent he joined a local support group for battered spouses. After Daniel was born, it soon became evident that Jocelyn's ideas and attitudes toward child rearing were radically different from those of Ariel. From the time Daniel was a toddler, Jocelyn would inflict very harsh punishments for normal childhood behavior. If he was too loud, or overly energetic, or didn't comply with her rules or commands, young Daniel would be punished with severe spankings and beatings, or isolated in his room on a "time out" for hours at a time.

Food was often the subject of her anger and punishment of Daniel. As a toddler, she would frequently stand over him as he was eating a meal and scream at him for how he was eating. Carole Poholek (paternal grandmother) recalled a time she took Daniel out for lunch when he was about three years old, and he became terrified when he accidentally spilled his milk. Carole reassured him that it was not a big deal, and laughed as she spilled some of her

coffee as proof. When they returned home, Daniel ran up to his father and told him, "I spilled my milk today and nothing bad happened."

The couple separated in 2006, when Daniel was three and Pascal was nine months old, and Ariel filed for divorce. During the pendency of the divorce, Jocelyn was the primary custodian and they had shared visitation. Jocelyn would constantly cause problems with mental health providers who had been ordered to evaluate Daniel related to the court proceedings. She would cancel appointments, or refuse to comply with recommendations (See Report of Ruthie Stein, attached hereto as Exhibit E). In 2008, the Court granted Ariel's Emergency Motion to Allow Counseling for D.W. over Mother's Objections. Ultimately the Court gave Ariel sole authority over Daniel's medical decisions. However there were so many episodes of neglect and abuse by Jocelyn that when the divorce was final in 2008, Ariel was designated the custodial parent with visitation permitted by Jocelyn.

The ensuing years were marked by frequent arguments between Ariel and Jocelyn over child visitation issues, and increasingly harsh discipline inflicted upon Daniel by his mother. He began seeing a therapist for behavioral issues when he was four, and the following year he was diagnosed with ADHD. From the time he was six years old he was being treated with ADHD medication for his behavioral disorders. However, Jocelyn was adamantly opposed to any type of mental health therapy or medication, and refused to give him his medication when he was with her, and interfered with the therapeutic treatment from psychologists to the point that they would discontinue treatment.

Daniel would complain to his father and grandmother about his fear of his mother and beg them not to make him see her. Although they explained that it was the Court that had ordered the visits and they were required to comply, he remained visibly fearful and reluctant. Ariel would see the bruises on Daniel's body when he returned home after a visit, and Daniel

reported the beatings, and how she would yank him up from the floor by his ear and put him in his room for “time outs” for 8-10 hours at a time. She would often use physical exercise as a form of punishment, and force him to run endless laps in the hot sun and once had him do jumping jacks on the hot pavement while he was barefoot, leaving blisters on his feet. This incident was investigated by DCF. On another occasion when Daniel was ten years old, his mother grabbed him from the shower and made him walk naked in front of young girls in the living room to clean up some games he had left out.

Jocelyn would also try to drive a wedge in the sibling relationship between Daniel and his younger brother, Pascal. Pascal was three years younger and by the time he was five had been diagnosed with autism.¹³ Jocelyn did not believe Pascal needed medication and treatment for his autism and would withhold all medication when he was with her, as she did with Daniel. She also would not let the boys wear their prescription eyeglasses, believing that their eyes would be *strengthened* by straining to see. Nonetheless, it was clear that she preferred Pascal over Daniel, and treated him much better. When Daniel was confined to his bedroom for a lengthy “time out”, she would interrogate Pascal to see if the older boy had tried to get out of the room to play or get food. She would frequently withhold food from Daniel, and often would make Daniel’s favorite meal and serve it to Pascal to eat in front of Daniel, leaving Daniel with a piece of bread and butter for his meal.

Jocelyn’s violence culminated in an incident which occurred in October 25, 2013, which became known as the Train Incident. Since 2011 both boys were living with Ariel in the upper Keys while Jocelyn lived in Port St. Lucie. Ariel would take the boys to meet Jocelyn at the Tri-Rail Station to transfer custody for their weekend visitation. Both boys always appeared very

¹³ Ariel was able to get very good treatment for Pascal’s autism and over the years he was able to function socially at a very high level and was very intelligent.

fearful and apprehensive about the visits. On this particular day they met their mother at the station and she overheard Daniel ask his father if he could stay with him instead of going with his mother. Jocelyn became enraged and began screaming at Daniel, beat him and threw him numerous times against a chain-link fence. As Jocelyn was grabbing Daniel's shirt, he managed to wiggle out of it and escape from her. After things calmed down, Daniel left with his father and Pascal continued to Port St. Lucie with his mother. A woman who witnessed the incident was so troubled that she later appeared at a court hearing in Monroe County to offer testimony in support of Ariel's motion to terminate visitation. The motion was ultimately granted and Daniel didn't spend another night at his mother's home for the next six years.

Daniel continued to receive mental health services when they moved to the Keys in 2011. He was seen almost weekly by licensed mental health counsellors at the Guidance Care Center (GCC) in Islamorada for ADHD beginning. There were also periodic psychological or psychiatric evaluations. Over the next few years, Daniel would continually report the trauma he still suffered and flashbacks he endured as a result of the abuse by his mother. He would frequently discuss the Train Incident, and how terrified he was because he truly believed his mother was trying to kill him.

By 2015, Daniel's assigned mental health counsellor at the GCC was Amy Beeler. Ms. Beeler testified at trial about a staffing on January 11, 2016, when she reported her concerns about the trauma Daniel had suffered as a result of maternal abuse. At that time, the decision was made to make Post Traumatic Stress Disorder (PTSD) caused by Maternal Abuse the primary focus of his ongoing therapy instead of ADHD (See GCC Staffing Note, 1/11/2016, attached hereto as Exhibit F). The family court judge appointed Ms. Beeler to supervise visitation between Daniel and his mother, however after a few attempts it was decided that the visitation would be suspended until Daniel said he was ready to see her. It was clear that he

became very anxious and stressed when in contact with his mother, even if Ms. Beeler was nearby. The professionals believed that his mother was a “trigger” for his mental illness problems. Daniel did not go to his mother’s house for a visitation again until 2020, a few months before the tragic event. This ended badly after six weeks, with Daniel filing a claim with DCF for her abusive treatment of him while at her home, and Jocelyn had him arrested for a battery, which was later dismissed. When Daniel returned to his home with Ariel and Pascal, his mental state was clearly deteriorating.

In addition to the testimony elicited at trial through several witnesses regarding the Child Abuse inflicted on Daniel by his mother, the defense will be presenting testimony from Dr. James Campbell, an expert in PTSD and the effect of Trauma on children.

III. Alternative to Incarceration

Daniel Weisberger has suffered from mental illness for most of his life. It was this mental illness which caused him to commit the heart-breaking and tragic offense of killing his younger brother and severely injuring his father. He has accepted responsibility for these horrific offenses and is determined to make amends. He has gained an insight into his mental illness and recognizes the need to continually take his medications, since they are the lifeline to his stability. He has acknowledged the love and support that he has received from his family, realizing the tremendous loss they all suffered by his actions.

For their part, his family has offered him comfort and forgiveness, knowing that his actions were caused by his mental illness and desperately hoping that at after all they have been through as a family, the Court will exercise its discretion by imposing a sentence that would allow Daniel to receive the help he so desperately needed at a mental health facility rather than in a prison cell. This sentiment has been echoed by the volumes of letters sent by friends and family, who witnessed Daniel's struggles with mental illness over the years and his father's valiant attempts to find help.

In the Pre-Sentence Investigation prepared by Officer Jesika M. Rojas, Correctional Probation Senior Officer with the Department of Probation, she recognized Daniel's need for mental health treatment and recommend that he "be sent to a supervised mental health facility where they can help him transition from a hospital or penal institution environment to a more independent, less restrictive environment in an effort to help him achieve control over his mental illness and/or co-occurring disorders".

This Court has the authority to impose a sentence ordering Daniel Weisberger to a mental health facility rather than a sentence in prison. One such facility is Passageways, a *secure mental health* facility, which is described as follows:

Passageway Adult Mental Health has served Florida's mentally ill population since its founding more than 30 years ago in 1979. Our mission is to provide supervised treatment to severe and persistent, chronically mentally ill individuals who are involved in the criminal justice system. The program is designed to facilitate the persons served transition from a hospital or penal institution in to an independent, less restrictive environment and help them achieve control over their mental illness and/or any co-occurring disorders.

The staff from Passageway has investigated and interviewed Daniel Weisberger and determined that they will accept him into their program. This acceptance is rare, since they ordinarily only accept forensic commitments (incompetent or NGI); however, they determined that Daniel is suitable for their program and that they believe they could help him. The program is of indeterminate duration. All patients must participate and remain for a minimum of 12 months, although they have patients who have resided at Passageways for as long as 20 years.


They require the following conditions:

- Participate and complete at a minimum 12 months of residential treatment @ Passageway Residence of Dade County, Inc.
- Shall attend and participate in all activities as required by the treatment team/staff.
- Must consume all prescribed medications, including and not limited to injectable psychotropic medications if they are deemed appropriate, as directed by the treating psychiatrists/prescriber.
- Shall not consume any type of illicit substance or alcohol and shall submit to random drug testing (urine/blood tests) if requested by his treatment team/program staff.
- Must not leave the program unless approved by and accompanied by treatment team/staff.
- GPS Monitoring for at least one year, continued GPS monitoring shall depend on the recommendation of the Passageway treatment, and as approved by the court.

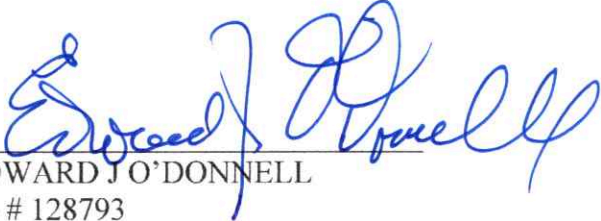
The Chief Executive Office, Adilen Cruz, will be available via Zoom during the sentencing hearing in order to describe the Passageway Program to the Court and answer any questions or concerns.

We are asking this Court, on behalf of Daniel Weisberger, to exercise its discretion and enter a sentence that is appropriate under all of the circumstances in this case. It is the best sentencing option that would assure that Daniel could continue to recover from years of mental illness in a stable environment that will provide the appropriate medication and treatment. He has shown that he is amenable to treatment and a good candidate for rehabilitation. It is an outcome recommended by those people who have known him the best over most of his life: his family and friends. It is recommended by the Senior Probation Officer, Jesika M. Rojas, based on her Pre-Sentence Investigation. The offenses committed by Daniel Weisberger were horrific and tragic; yet even the victim of Daniel's actions, Ariel Poholek, continues to cry out for a just resolution-to send his son to a mental health facility where he can receive humane treatment for his mental illness.

Respectfully submitted,



DIANE WARD
FB#349534
Attorney for Daniel Weisberger

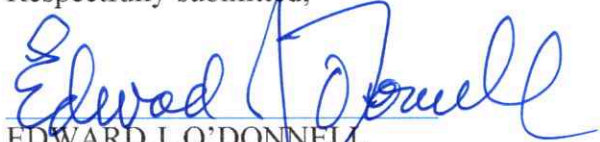


EDWARD J O'DONNELL
FB # 128793
Attorney for Daniel Weisberger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via Florida Courts E-Filing Portal to the Office of the State Attorney, Monroe County on this 10th day of April 2025.

Respectfully submitted,

A handwritten signature in blue ink that reads "Edward J. O'Donnell". The signature is written in a cursive style and is positioned above the printed name.

EDWARD J. O'DONNELL

Attorney for Defendant

Fla. Bar # 128793

4000 Ponce de Leon Blvd, #470

Coral Gables, FL 33146

(305) 757-7300

Exhibit A
Verdict Form

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT,
CRIMINAL DIVISION IN AND FOR MONROE COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO. 2020-CF-00094-A-P

DANIEL WEISBERGER,

Defendant.

VERDICT

THE HONORABLE JUDGE IN THE COURT, FIND as follows:

As to **Count I** (Pascal Weisberger), I find the Defendant:

Guilty of Second Degree Murder in violation of 782.04(2)

If you find the Defendant guilty of Second Degree Murder, you must next answer the following question:

1. Did the State prove beyond a reasonable doubt during the commission of the crime, that the Defendant personally carried, displayed, used or attempted to use a weapon?

Yes No

Guilty of Lesser Included Offense- Manslaughter in violation of 782.07

If you find the Defendant guilty of Lesser Included Offense - Manslaughter, you must next answer the following question:

1. Did the State prove beyond a reasonable doubt during the commission of the crime, that the Defendant personally carried, displayed, used or attempted to use a weapon?

Yes No

Not Guilty by reason of Insanity

Not Guilty

FILED FOR REPORT
2025 JAN 23 PM 4:03
MONROE COUNTY CLERK

As to **Count II** (Ariel Poholek) I find the Defendant:

Guilty of Attempted First Degree Premeditated Murder, in violation of 782.04(1)(a) & 777.04

If you find the Defendant guilty of Lesser Included Offense Attempted First Degree Premeditated Murder you must next answer the following question:

1. Did the State prove beyond a reasonable doubt during the commission of the crime, that the Defendant personally carried, displayed, used or attempted to use a deadly weapon?

Yes No

Guilty of Lesser Included Offense Attempted Second Degree Murder, in violation of 782.04(2) & 777.04

If you find the Defendant guilty of Lesser Included Offense Attempted Second Degree Murder, you must next answer the following question:

1. Did the State prove beyond a reasonable doubt during the commission of the crime, that the Defendant personally carried, displayed, used or attempted to use a deadly weapon?

Yes No

Guilty of Lesser Included Offense Attempted Manslaughter by Act in violation of 782.07 and 777.04

If you find the Defendant guilty of Lesser Included Offense Attempted Manslaughter, you must next answer the following question:

1. Did the State prove beyond a reasonable doubt during the commission of the crime, that the Defendant personally carried, displayed, used or attempted to use a deadly weapon?

Yes No

Guilty of Lesser Included Offense –Aggravated Battery in violation of
780.045(1)a(1)

If you find the Defendant guilty of Lesser Included Offense –Aggravated Battery, you must next
answer the following question:

1. Did the State prove beyond a reasonable doubt during the commission of the crime, that the
Defendant personally carried, displayed, used or attempted to use a deadly weapon?

Yes No

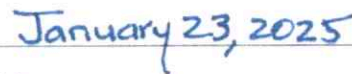
Guilty of Lesser Included Offense –Battery in violation of 784.03(1)a(2)

Not Guilty by reason of Insanity

Not Guilty



Hon. Circuit Court Judge Mark H. Jones



Date

3.14 SCORESHEET FINDINGS

3.15

Count 1 (Pascal Weisberger)

If you find Daniel Weisberger guilty of Second Degree Murder or the lessor included offense of Manslaughter, you must then answer the following question:

- 1. Did the State prove beyond a reasonable doubt that Pascal Weisberger died as a direct result of the Second Degree Murder or the lessor included offense of Manslaughter?

Yes
 No

Count 2 (Ariel Poholek)

If you find Daniel Weisberger guilty of Attempted First Degree Murder or the lessor included offense of Attempted Second Degree or Attempted Manslaughter or Aggravated Battery you must then answer one of the following questions:

- 1. Did the State prove beyond a reasonable doubt that Ariel Poholek suffered severe physical injury?

Yes
 No

Did the State prove beyond a reasonable doubt that Ariel Poholek suffered moderate physical injury?

Yes
 No

Did the State prove beyond a reasonable doubt that Ariel Poholek suffered slight physical injury?

Yes
 No

Mark H. Jones

Hon. Circuit Court Judge Mark H. Jones

January 23, 2025

Date

Exhibit B
Criminal Punishment Scoresheet

RULE 3.992(a) CRIMINAL PUNISHMENT CODE SCORESHEET

1 DATE OF SENTENCE	2 PREPARER'S NAME Dunne, Colleen M	3 COUNTY Monroe	4 SENTENCING JUDGE Garcia, Luis M.	
5 NAME (LAST, FIRST, M.I.) Weisberger, Daniel MBA	6 DOB 02/25/2003	8 RACE BLACK	10 PRIMARY OFF DATE 05/07/2020	12 PLEA <input type="checkbox"/>
	7 DC#	9 GENDER MALE	11 PRIMARY DOCKET # 2020CF00094AP	TRIAL <input type="checkbox"/>

I. PRIMARY OFFENSE: If Qualifier, please check A S C R (A=Attempt, S=Solicitation, C=Conspiracy, R=Reclassification)

FELONY F.S.# DEGREE	DESCRIPTION	OFFENSE LEVEL	POINTS
L 782.04 2	Second Degree Murder	10	116.00

(Level - Points: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=116)

Prior capital felony triples Primary Offense points **I. 116.00**

II. ADDITIONAL OFFENSE(S): Supplemental page attached

DOCKET #	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY A/S/C/R	COUNTS	POINTS	TOTAL
2020CF00094AP	1	777.04 (1), 782.04(1)(2)	10	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	1 X	58.00	58.00

DESCRIPTION: <u>Attempted First Degree Murder</u>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	X	0.00
DESCRIPTION: _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	X	0.00
DESCRIPTION: _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	X	0.00
DESCRIPTION: _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	X	0.00

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

Supplemental page points 0.00
 Prior capital felony triples Additional Offense points **II. 58.00**

III. VICTIM INJURY:

	Number	=	Total		Number	=	Total
2nd Degree murder	240 X	1	240.00	Slight	4 X	0	0.00
Death	120 X	0	0.00	Sex Penetration	80 X	0	0.00
Severe	40 X	1	40.00	Sex Contact	40 X	0	0.00
Moderate	18 X	0	0.00				

III. 280.00

IV. PRIOR RECORD: Supplemental page attached

FEL/MM DEGREE	F.S.#	OFFENSE I FVFI	QUALIFY A/S/C/R	DESCRIPTION:	COUNTS	POINTS	TOTAL
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X		0.00
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X		0.00
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X		0.00
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X		0.00
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X		0.00
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X		0.00
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X		0.00
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	X		0.00

(Level - Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)

Supplemental page points 0.00
IV. 0.00

Page 1 Subtotal: 454.00

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committed on or after October 1, 1998, and subsequent revisions.

NAME (LAST, FIRST, M.I.) Weisberger, Daniel MBA	DOCKET # 2020CF00094AP	DATE OF SENTENCE
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Page 1 Subtotal: 454.00

V. LEGAL STATUS VIOLATION = 4 Points

- Escape
 Fleeing
 Failure to Appear
 Supersedeas Bond
 Incarceration
 Pretrial Intervention or Diversion Program
 Court Imposed or Post Prison Release Community Supervision Resulting in a Conviction
- V. 0.00

VI. COMMUNITY SANCTION VIOLATION BEFORE THE COURT FOR SENTENCING

- Probation
 Community Control
 Pretrial Intervention or Diversion
 6 points for any violation other than new felony conviction x 0 each successive violation OR
 New felony conviction = 12 points x 0 each successive violation if new offense results in conviction before or at same time a sentence for violation of probation OR
 12 points x 0 each successive violation for a violent felony offender of special concern when the violation is not based solely on failure to pay costs, fines, or restitution OR
 New felony conviction = 24 points x 0 each successive violation for a violent felony offender of special concern if new offense results in a conviction before or at the same time for violation of probation
- VI. 0.00

VII. FIREARM/SEMI-AUTOMATIC OR MACHINE GUN = 18 or 25 Points VII. 0.00

VIII. PRIOR SERIOUS FELONY = 30 Points VIII. 0.00

Subtotal Sentence Points 454.00

IX. ENHANCEMENTS (only if the primary offense qualifies for enhancement)

- | | | | | | |
|--|--------------------------------|--------------------------------|--------------------------------|---|--|
| Law Enf Protect | Drug
Trafficker | Motor Vehicle
Theft | Criminal Gang
Offense | Domestic Violence in the Presence
of Related Child
(offenses committed on or after 3/12/07) | Adult-on-Minor Sex Offense
(offenses committed on or after 10/1/14) |
| <input type="checkbox"/> x 1.5 <input type="checkbox"/> x 2.0 <input type="checkbox"/> x 2.5 | <input type="checkbox"/> x 1.5 | <input type="checkbox"/> x 1.5 | <input type="checkbox"/> x 1.5 | <input type="checkbox"/> x 1.5 | <input type="checkbox"/> x 2.0 |

Enhancement Subtotal Sentence Points IX. 0.00

TOTAL SENTENCE POINTS 454.00

SENTENCE COMPUTATION

If total sentence points are less than or equal to 44, the lowest permissible sentence is any non-state prison sanction. If the total sentence points are 22 points or less, see Section 775.082(10), Florida Statutes, to determine if the court must sentence the offender to a non-state prison sanction.

If total sentence points are greater than 44:

<u>454.000</u>	minus 28 =	<u>426.000</u>	X .75 =	<u>319.500</u>
total sentence points				lowest permissible prison sentence in months

If total sentence points are 60 points or less and court makes findings pursuant to both Florida Statutes 948.20 and 397.334(3), the court may place the defendant into a treatment-based drug court program.

The maximum sentence for each individual felony offense is the statutory maximum as provided in s.775.082, F.S., unless the lowest permissible sentence listed above exceeds the statutory maximum for that offense. If the lowest permissible sentence exceeds the statutory maximum for an individual felony offense, the lowest permissible sentence replaces the statutory maximum and must be imposed for that offense. See State v. Gabriel, 314 So. 3rd 1243(Fla.2021). Sentences for multiple felony offenses may be imposed concurrently or consecutively. If total sentence points

	Description	Maximum sentence in years
Primary offense:	<u>Second Degree Murder</u>	<u>LIFE</u>
Additional offense:	<u>Attempted First Degree Murder</u>	<u>30.000</u>
Total maximum sentence in years for all counts above if consecutive sentences imposed		<u>LIFE</u>
		Maximum sentence in years

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committed on or after October 1, 1998, and subsequent revisions.

NAME (LAST, FIRST, M.I.) Weisberger, Daniel MBA	DOCKET # 2020CF00094AP	DATE OF SENTENCE
---	----------------------------------	-------------------------

TOTAL SENTENCE IMPOSED

<input type="checkbox"/> State Prison	<input type="checkbox"/> Life	<u> </u>	<u> </u>	<u> </u>
<input type="checkbox"/> County Jail	<input type="checkbox"/> Time Served	<u> </u>	<u> </u>	<u> </u>
<input type="checkbox"/> Community Control		<u> </u>	<u> </u>	<u> </u>
<input type="checkbox"/> Probation	<input type="checkbox"/> Modified	<u> </u>	<u> </u>	<u> </u>

Please check if sentenced as Habitual Offender, Habitual Violent Offender, Violent Career Criminal, Prison Release Reoffender,

or a Mandatory Minimum Applies.

Mitigated Departure Plea Bargain Prison Diversion Program

Other Reason(s) _____

JUDGE'S SIGNATURE	
--------------------------	--

NAME (LAST, FIRST, M.I.) Weisberger, Daniel MBA	DOCKET # 2020CF00094AP	DATE OF SENTENCE
--	---------------------------	------------------

Reasons for Departure - Mitigating Circumstances
(reasons may be checked here or written on the scoresheet)

- Legitimate, uncoerced plea bargain.
- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired
- The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction, or for a physical disability and the defendant is amenable to treatment
- The need for payment of restitution to the victim outweighs the need for a prison sentence.
- The victim was an initiator, willing participant, aggressor, or provoker of the incident.
- The defendant acted under extreme duress or under the domination of another person.
- Before the identity of the defendant was determined, the victim was substantially compensated.
- The defendant cooperated with the State to resolve the current offense or any other offense.
- The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.
- At the time of the offense the defendant was too young to appreciate the consequences of the OFFENSE.
- The defendant is to be sentenced as a youthful offender.
- The defendant is amenable to the services of a post adjudicatory treatment based drug court program and is otherwise qualified to participate in the program
- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug related overdose.
- Other Reason(s): _____

Exhibit C
Report of Dr. Mark Mills
February 4, 2024

Filed Under Seal

Exhibit D

**Letter from Daniel Weisberger
to the Honorable Mark Jones
March 23, 2025**

March 21, 2025

Dear Judge Jones,

We all know that the reason we are here today is that a terrible thing that I did resulted in the tragic loss of my beloved brother, and in addition, the severe wounding mentally and physically of my beloved father. The most important thing that I want to say, is though I don't remember the actions I'm responsible for, and am overwhelmed with the knowledge that these took place, I couldn't be sorrier and more regretful for these events having happened. Though I was aware to a certain extent beforehand, from the beginning of trial, the more I observed and came to know the details, the less I understood how these terrible circumstances came to happen, or how I could have hurt my family who I love so greatly. I once was a cautious young boy, who later became lost while trying to find my way to becoming a man, due to my struggles with the adversity of trauma and mental illness. With everything that has happened in the past, and which I have continued to deal with in the present, my eyes have become unveiled to a better understanding of myself over the past number of years, and I now wish to present this reality to you, as well as how I hope to continue being the best person I can be as I move forward in my life.

I always cared about my brother, and still do more than I can say, from the first time I laid eyes on him, when Pascal came home from the hospital, to when I watched him grow, as I grew, and encouraged him to step outside the small circle he was in, so that he would have more meaningful experiences in life. As Pascal grew and found the courage to spread out in his accomplishments, I always cherished him and admired his persistence and resiliency. In the times of darkness that our mother put us in precarious positions by threatening our well-being, it was an honor to step up to protect him and take the beatings for both of us. What I was strong enough to handle, he was too young to endure, and I didn't want her to inspire hate in his heart, and taint him with her violent tendencies. However, there were of course many times where I wished the abuse would end for both of us, and regretted that our experiences in life, which often were positive otherwise, didn't have to be darkened by our mother's abusive treatment of each of us. As a child, I often felt like Atlas holding the world on my shoulders, but in the end neither of Pascal or I deserved the abusive behavior that we were subjected to, nor the terrible outcome of the mental scarring that troubled both of us as a result, and so often made life emotionally challenging throughout our young lives.

This situation was the product of someone who did not know how to deal with their own emotional issues, and would subject others to her internal emotional turmoil. There is no reason as a mature adult to knowingly make someone else's life less fortunate, especially their own child, because of their own emotional shortcomings, but this is what our mother put us through on a regular basis. That aside, there are many things that can be said about this tragedy, but what is indisputable is there is no reason for Pascal to be gone, or my dad

wounded, and it is a terrible reality to have to contemplate each day. If I could go before God, I would trade my life or give up everything in the world so that Pascal could live again, and would do this without question no matter what the cost to me personally, because his life was always more precious to me, and still is despite him no longer being with us in body. With all the things the State said about me in trial, and despite what my attorneys tried to present, I have considered that you may likely have a disapproving opinion of me. The most important thing I want you to know is I spent my whole life loving my brother, and over every minute and second since he passed, have continued to. What I wish most going forward is to have a chance to live in Pascal's honor, and bring honor and respect to his memory, and to my father and other family who are still part of my life. In my future path of life, depending on my restrictions and availability to the world, I wish to keep Pascal's memory alive and let the world know who he was, and what he stood for. As I continue to take my mental health seriously, I also wish to help other people, especially young kids, better or worse off, who are in need of help and support.

The mental health circumstances I continue to face in the present are very challenging. These come in various forms, visual, auditory, olfactory, and mood instability. These conditions are hard for me to deal with, but with proper medication, which often times need adjustments, and with other intervention, like counseling, which I haven't had access to for a long time, they can be adequately managed so that I can better function in my life. For these reasons, I understand the severity of how these issues can affect how another person dealing with mental health issues, as well as those who have been the victim of abuse in their lives, who sadly often also deal with mental illness as a result, so would like to be someone who can provide care and support as a peer mentor to others in need because of suffering from these conditions. With proper guidance, there is an opportunity where I can develop a bond with others who are the victim of mental illness and abuse, and help to be part of helping those who have faced similar circumstances to me, overcome their issues. I know that, like me, many individuals experiencing these issues are ones in jails and prisons, and I know from my own experience that due to the nature of punitive environments, they can severely undermine mental health, and do not provide the correct support to improve symptoms.

For example, in my own situation when I become stressed, my symptoms become worse, such as seeing people who are not there, including friends and enemies, and it is often hard to convince myself that they aren't actually present. I hear voices and see shadow creatures, which can be very stressful and I have to choose whether to react or not, which is often difficult because of how real many of these manifestations appear to be. A person suffering these issues needs to get help quickly so as to not get further pulled into their psychosis, and jails/prisons aren't good atmospheres to be dealing with this as they exacerbate stress and don't have the right type of access to mental health treatment. In my journey to make a difference based on who I have become so far, and want to be in the future, I wish to be of help to others in whatever ways I can, and the truth is, the ability of one's ability to be a positive influence, has to do with the access that one has. I'm hoping that the support of my family and community, and my longing to make positive change in the world, prove that I am worthy of having the

opportunity to re-enter society while still in my younger years, when I can best make positive contributions to giving back to the world, instead of becoming institutionalized through years in prison, which will not be of benefit to anyone, and will be hurtful to my family as well.

Though this tragedy caused the loss of my brother, the person most important to me, I still have many family members and friends whose lives I greatly hope to continue being part of and provide support to. I have a deep love for all of these individuals, and especially feel a commitment to my close family such as my father, grandparents, and uncle, because of the great love and support they have always provided to me over my life, not least since the terrible tragedy they suffered because of me, almost 5 years ago. My understanding that the time of the world limits how much longer we may have the opportunity to be together physically, I am motivated to request your grace and mercy to be provided the chance for my family, some of whom like my grandparents are in their elder years, to be able to directly see and spend time with me while we are all still here in body, as well as spirit. Both my grandparents have played very important roles in my life, with my grandmother also having played a motherly role as well and greatly helped both my brother and I in our struggles with abuse at the hands of our mother, which she could relate to because of having sadly gone through a similarly abusive childhood. My grandfather has always been an important part of our lives as well, despite the geographic distance that separated him from us over the years, he consistently reached out to stay in contact and inspire us to follow each of our intellectual desires. He is a professor at a college, and has helped thousands of people to educate themselves, Pascal and I, being two of them, and equally important he has always shown that he has a big heart as well, having shown an amazing amount of love for both Pascal and I over the years, not least of which in support of me since the terrible tragedy of losing Pascal occurred.

After finding out my brother was gone, and being overwhelmed with grief, life was only bearable because of understanding how much care and support I still had from my family, especially my dad, grandparents, and my Uncle Zach, who was also always an important part of both Pascal and my lives growing up. I also have other family members like my Great Uncle Mike, Great Aunt Paula, cousin Julie, and so many other friends and family friends, who have continued to stay in touch and provide support to me over these past 5 years, despite everything that happened, while letting me know my life still has value. One very important group of friends who I feel a tremendous debt to, and dedication to continuing my connection with, is my brother Pascal's five best friends, Adrian Peterson, Zack Woltanski, Jordan Lubis, Aidan Austin, and Tommy Cheung. These young men were Pascal's closest friends throughout many of his years in the Keys, especially in middle school and within our scout troop, so it would have been very understandable if they had been angry with me and even against me having a future. However, instead, despite being grief stricken and very despondent over the loss of Pascal, they were willing to understand from their prior experience with me, and seeing my love for my brother, that though this was a tragic event which we all regret, it did not happen because I was against Pascal or had consciously sought to hurt him. Their continued

care and support has meant the world to me, and in addition to being appreciated in general, has also been very meaningful as a continued connection to my brother, through the friendships he shared with them, and the many wonderful experiences that they had together, and which always make me so joyful to hear about. It is for this reason I would like to be able to be a more direct part of their lives, as well as with my family members, and personal close friends, and to be able to share as much time as possible with all who I am closely connected to, while bringing honor to them and making them proud by doing better and making something positive of my life by being involved with helping to make the world a better place. These are the reasons I would like to be available to share meaningful memories and experiences with the people who care about me, and who I care about in my life, while there are still opportunities to do so, especially with my family members who may have limited time left to spend time with.

In regards to pursuing a more positive life in the future, while being realistic and managing my priorities, I would like to finish my high school education by getting my GED, and then find employment. I would also particularly like to get vocational training as a peer counselor to help other people who need guidance, which I could either do as a job, or as a form of volunteer work. Eventually I would like to go to college to get a degree in psychology, in order to better understand myself and the world around me, and hopefully use that knowledge to be of assistance to others, especially young people, who are struggling with dealing with the consequences of being abused and the resulting trauma, as I and my brother unfortunately had to during our lives. I would also like to get a degree in business management, so I can be well informed about the financial realities of managing a business, as well as my own finances. This will help me better be self-sufficient and not rely on others, as I have unfortunately had to do over the past number of years, though I am incredibly grateful for the assistance that my dad and family as a whole has provided to me in this way, as well as so many others. Equally important, I would like to further give back to the communities I live in by doing a variety of service activities to be of help to individuals in need, and organizations whose mission I believe strongly in, as well as ones which were a focus of my brother Pascal's time and dedication during his life. As a child, along with Pascal and my dad, I did a lot of community service, especially in conjunction with our involvement in Scouts, so am very familiar with being involved in these types of activities.

These experiences gave me an appreciation for the importance of dedicating time to giving back to other people, animals, and the environment, so I would greatly like to continue this tradition by doing beach-cleanups, volunteering at animal shelters, and being a mentor to at-risk youth, to name a few. These are examples that I have focused on to give you an understanding that I have a clear trajectory that I wish to pursue and have thought out on a basic level how I will best use my time, and the kind or purposeful and productive life that I will strive for, if given the opportunity. I will also work hard to keep myself emotionally stable and mentally healthy by using my coping skills such as music and exercise, in conjunction with therapy and proper medication, as well as any other recommended or necessary tools, for

instance involvement in substance recovery and trauma support groups. In addition to the abuse I went through in my life, the after affects of which I still struggle with, I have also suffered a lot of loss in my life, including that of an unfortunate number of close friends, and of course most importantly of all, my beloved brother Pascal. It may seem hard to understand for those who are on the outside looking in on my situation, but this is a loss which I have only begun to deal with emotionally because of my ongoing legal situation and not having been afforded individual therapy in the different facility settings I have been in over the past number of years, which has been a very difficult challenge. I clearly recognize that I need effective therapeutic help for me to be able to fully come to terms and process all that happened and which I have an obligation to making sure I'm mentally healthy in a way that something like that could never occur again. I would like to get the help I need to be mentally healed for myself, and also so I can better myself enough in order to be an asset to others so I can help them heal and improve themselves, as I'm seeking to do for myself.

For those of us who have come to know better through whatever means, I strongly believe based on my own challenges and adversity I have faced, it's imperative for us to guide others who are less fortunate and facing their own challenges, such as abuse, neglect, exposure to violence, PTSD, mental illness, to name a few. I have reflected on the influence these problems have had on me, and may have on the ability of others to live positive and productive lives. From the better consciousness I now have, I acknowledge the role I should play in being part of a support system for others however I can, including through being a mentor, whether formally or otherwise. I believe it's not acceptable when one can do otherwise, to withhold help and support that one may be able to provide, and I believe based on my life experiences, both good and bad, that I have the ability to be of assistance to others, so greatly would like to do so. To go forward, and be able to help people over the course of my life, I realize it's imperative for me to work on my own mental health in a very in-depth way. Based on my experience in the jail system, and the environment provided in incarcerated situations like jails and prisons, it's clear that I will not receive the level of mental health services necessary to help me get better.

Therefore, I realize I will not be able to grow in the way I need to mentally, to become and maintain being, a productive member of society, as well as to help others, as I have expressed, if I am in prison for years. The best thing I can do with my life in the future is to give back to the communities where I will live as a rehabilitated person who can also effectively provide for myself, and offer assistance to those in need who I may have the right perspective to help in ways that others may not be able to. It's clear this can only happen with me being able to have access to a variety of necessary services, in conjunction with safety restrictions like probation to account for concerns of the State, which are something I understand and am willing to live within. In order to best move forward in my life from here, I'm hoping that I can be placed at a residential treatment facility (RTF) which will provide me with the necessary mental health services I need, in addition to other programs and assistance that will help me be prepared to eventually transition to successfully and independently living back in society. A facility such as this will not only provide effective round the clock mental healthcare, but also restrictions that I

must abide by and can't violate if I want to continue bettering myself, and not end up being sent to prison. Being at this type of facility for a number of years will dually give me the opportunity to improve on my mental health, instead of continuing to struggle and likely go downhill mentally again, and also have access to being able to complete my education and eventually pursue a career once I've completed my time in the facility environment and having successfully demonstrated my ability to be mentally sound and self-sufficient enough to live independently. I know this is an unusual request, but understand that others have been given this opportunity in the past, and am hoping to have your mercy and understanding in my current time of need, and in reflection of what so many of my family, friends, and community members have so beautifully asked for me to be granted. I truly believe this path is the one which will prepare me to be the most productive member of society I can be, while honoring my family, my community, and most of all, my brother Pascal, whom I know I owe a great debt and obligation to, which I hope to fulfill by being the best human being I can be and giving back to others in every way possible as I move forward in my life. #PascalsWay

Sincerely,

Daniel Mba Weisberger

Exhibit E
Letter from Ruthie Stein, LMHC
to Judge Metzger
December 30, 2008

Filed Under Seal

Exhibit F
Guidance Care Staffing Report
January 11, 2016

GUIDANCE / CARE CENTER
CLINICAL STAFFING NOTE

Date: 1/11/14 Start Time: 9:15 End Time: 9:30 am

Location: 1

The following staff met at:

Amy R., LMHC, CAP
Small, LMHC
B. Caruso, MA, NCC
KOTTO ELFTHC

[Signature]
KOTTO ELFTHC

Regarding Client: Daniel Weisberger DOB: 2/25/03

Who is a client of: Amy Becker
At the Guidance / Care Center

The focus of discussion was: Client continues to struggle
with meeting his responsibilities at school + home
high reactivity, reports flashbacks, re-experiencing,
hyperarousance, exaggerated startle response, avoidance, anger, etc.,

Action Required Including Persons

Responsible: Trauma effect is being assessed, client
appears to meet PTSD criteria at this time.
Switch focus to treating trauma symptoms.

Signature of Staff & Credentials: [Signature] Amy R., LMHC, CAP

Printed Staff Name & Credentials: Amy L. Becker, LMHC, CAP