

STATE OF MAINE

WASHINGTON, ss.

SUPERIOR COURT
Dkt. No. CR-22-201214

20121

STATE OF MAINE)
)
vs.)
)
KAILIE BRACKETT)

DEFENDANT'S SENTENCING MEMO

To: Allison Wood, Clerk
Machias Superior Court
85 Court Street
P.O. Box 526
Machias, Maine 04654-0526

NOW COMES Kailie Brackett, by and through her attorneys Jeffrey C. Toothaker, Esq. And David Bate, Esq., and submits this Sentencing Memo.

Facts

1. The Indictment charged Intentional or Knowing or Depraved Indifference Murder. This is allowed by statute and caselaw.
2. The Jury returned a verdict of guilty, but to which element were they supporting? Intentional murder? Knowing Murder? Or Depraved Indifference murder?
3. We will never know, but the State quite arrogantly assumes it was Depraved Indifference. This reliance is misplaced.
4. The decedent's body had 484 individual knife wounds. The ME testified the killing mechanism was a stab wound to the throat that cut her artery and she bleed profusely and surely passed out within 2 minutes of receiving said wound. The victim also received a knife wound to the chest that expedited matters. The remaining 482 knife wounds were delivered when the victim was passed out or dead. The ME supported this notion. Thus, can the State claim cruelty if the knife wounds the State relies upon to claim such did not impact the victim when alive and conscience.
5. Further, the 482 additional knife wounds were not accompanied with telltale signs of resistance such as tearing, or other indications that when punctured, the victim fought back or attempted to stop same. In fact, most of same were clean entry and exit wounds strongly suggesting, as the ME concluded, that same were delivered when the victim was unconscious or

FEB 21 12 24 PM '25
WASHINGTON CITY CT

dead.

6. There is no other evidence this murder was any more horrific than the typical murders we deal with on a regular basis. What separates this case for the State is the number of post death stab wounds that did not contribute to or cause death.

7. There is no evidence of sexual misconduct or rape or torture. The evidence suggests she was stabbed in the neck and bled profusely because her artery was severed.

8. The State seeks life based upon their suggestion of cruelty. If she was alive and felt the 482 wounds they would have a good case for same, but the evidence from the ME does not support that assertion.

Sentence Analysis

9. Selecting an appropriate sentence for Murder is a 2 step process. First, the Court picks the "basis" period of incarceration by comparing how this murder was committed with all others on a spectrum. Second, the Court looks at aggravating and mitigating factors to arrive at a final sentence.

10. Here, the State seeks a life sentence claiming they proved cruelty. Their analysis is misguided. From the Defense perspective, and notwithstanding our client's position at Trial, viewing the facts "we," the defense heard, would show that a conflict between the accused and victim evolved in the victim's home and the victim was stabbed twice in a lethal fashion. The ME's testimony supported the assertion that the two wounds delivered to the victim's neck and chest caused her death. That fact pattern is consistent with cases where people are getting between 35 and 40 years as a basic sentence. The Court will never know what caused the fight and the State's suggestions (fight over money or something else) are just that, suggestions. They have no proof to back up any such claims.

11. Next, the Court considers the aggravating and mitigating factors. Ever present is victim impact. This exists in all cases and how any one case is somehow worse than any other involving death is troubling. It's the standard State go to factor, but in reality, this factor is built into the basis period of incarceration.

12. Brackett's criminal history is clearly relevant. Brackett's DOB is March 3, 1984. Brackett's criminal record consists of the following:

1.	2004	Burglary	2 years all but 30 days	Felony
2.	2004	Bail Viol	30 days	Misdemeanor
		Forgery	30 days	Misdemeanor
		Forgery	30 days	Misdemeanor
3.	2004	Poss Drugs	6 days	Misdemeanor

		Poss Drugs	6 days	Misdemeanor
4.	2007	Forgery	1 day	Misdemeanor
		Theft	1 day	Misdemeanor
5.	2008	Agg. Forg	1 year	Felony
		Theft	1 year	Felony
6.	2008	Theft	1 year	Felony
7.	2010	Theft	90 days	Felony
8.	2011	Traf, Prison	9 months 1 day	Felony
9.	2012	Theft	6 months	Felony
10.	2016	Robbery	7 years, all but 2	Felony
		Eluding		Felony
		Traf. Prison		Felony
		Endanger		Misdemeanor
		Poss Drugs		Misdemeanor

13. Brackett has no crimes where no actual violence was used (brackett displayed a firearm to the store clerk and left without incident).

14. The State claims Brackett's testimony at trial is an aggravating factor and amounts to perjury. What if she didn't kill the victim? The State's case was built on unsupported science and nothing more. Thus, Brackett's testimony should not be considering as an aggravating or mitigating factor.

15. Brackett's personal life is relevant. According to Kailee's younger sister Leela (dob. 03/23/1986), Kailee's upbringing was normal and their family did lots of activities. Their mother raised them primarily, but they saw their father on regular occasions. Family trips included Disney in Florida, camping trips on weekends, other trips all over the East Coast, and lots of trips to Massachusetts to see mom's side of the family. Kailee's mom was an RN and worked full time at the local hospital on the Reservation. Kailee has Leela (full sister), and Patrick Bassett, 05/07/93 (half brother) on mom's side. On dad's side, Kailee has Andrea Stevens (5 years older than Kailee-half sister). Kailee had/has ongoing relationships with all siblings. Kailee was very close to her mother prior to the allegations. When Kailee went to Prison for the Robbery, Kailee's mom raised her son.

16. According to Leela, Kailee was always employed. She worked for the Tribe and also had jobs in Bangor, Maine. Leela described her as a hard working, self sufficient person. Leela indicated that Kailee was a well liked person in the community up until this event. Kailee had lots of friends and acquaintances. Kailee also helped her dad drive to and from Bangor when he had cancer. She always took care of her parents according to Leela.

Life Sentence

17. The State seeks Life. To get a life sentence this Court must consider the factors announced in *State v. Shortsleeves*, 580 A.2d 145 (ME 1990). In that case, Shortsleeves and his friend Tracy Meggison participated in a most brutal murder involving a vicious beating of the victim with bats, fry pans, and knives over a period of time. In arriving at a Life Sentence, the Court listed several factors Courts should consider, including:

1. Premeditation-in-fact;
2. Multiple deaths;
3. Prior conviction for Murder;
4. Murder accompanied by torture, sexual abuse or other extreme cruelty inflicted on the victim (presumably while victim is alive);
5. Murder by a Prison Inmate;
6. Murder of a cop;
7. Murder of a hostage.

18. The only factor the State cites is 4, murder accompanied by other extreme cruelty.

19. The State cites the Court to:

1. *State v. Derek Poulin*, 2016 ME 110 (70 stab wounds);
2. *State v. Michael Hutchinson*, 2009 ME 44 (over 50 stab wounds); and
3. *State v. Roland Cummings*, 2017 ME 143 (15 stab wounds).

20. In *Poulin*, the elderly victim (defendant's grandmother) was stabbed many times, but the opinion does not really shed light on if those wounds were done when the victim was alive. Poulin also set the house on fire. This opinion is not very helpful.

21. *Hutchinson*, involved a brutal rape and torture of a woman, whose young child was in the home. The victim had attempted to ward off repeated stabbing attempts by the defendant and ended up with approximately 50 stab wounds to her head, face arms and wrist. The victim was also anally raped. The victim's injuries suggested the incident may have lasted a considerable time. This crime went unsolved for over 9 years (1994 to 2003), when Hutchinson gave DNA to the State on another case. His DNA was found on, around, and in the victim. Hutchinson clearly raped, tortured and was cruel to this victim. But the stab wounds the State seeks to highlight were clearly inflicted on this victim **while alive and fighting back**.

22. In *Cummings*, the defendant burglarized an older friend's home and stabbed him 16 times causing his death. The opinion suggests the victim was alive for most or all of the times he was stabbed. That is not the case in Brackett.

23. Here, there are two (2) death causing stab wounds. The first to the throat that severed her artery. The second to her chest that punctured her lungs. The remaining 482 were delivered once the victim was unconscious or dead. That's not torture or cruelty to an alive human being. That's abuse of a corpse.

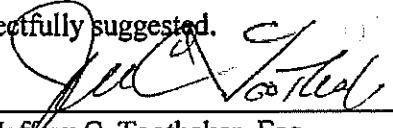
Conclusion

From the Defense perspective, this is a 35 to 40 basis period of incarceration. The aggravating factors include her criminal history, which includes many thefts and drug charges. She has done prison time, which cannot be ignored. Her upbringing is a positive factor to be considered. She claims she didn't do this, as is her right and because the evidence to convict was slight, this should not be considered aggravating or mitigating.

The real issue for sentencing is the Court's view of the ME's testimony. It's the Defense position that the victim died fairly quickly from a stab wound to her neck that punctured a major artery to her brain. She was also stabbed in the chest that punctured her lung. The remaining 482 stab wounds were inflicted after the victim was unconscious or dead. The ME testified as such or would not say the victim was alive or conscience when same were inflicted. Obviously, the act of inflicting 482 separate and individual stab wounds can and should be considered, but not used to justify the State's unsupported notion this is a Shortsleeves factor of cruelty. To find cruelty, the Court would need evidence of suffering from these additional wound, which was not supported by the ME's testimony.

WHEREFORE, a Sentence of 45 year is respectfully suggested.

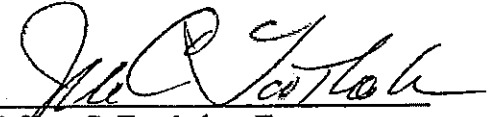
Dated: February 21, 2024


Jeffrey C. Toothaker, Esq.
14 High Street
Ellsworth, Maine 04605
207-667-6755

CERTIFICATION OF SERVICE

I, Jeffrey C. Toothaker, Esq., hereby certify that on the 21st day of February, 2024, a true copy of this pleading was sent, via first class U.S. Mail, postage prepaid, to: Donald Macumber, AAG, and Leane Zainea, Asst. AAG, Office of the Attorney General, 6 State House Station, Augusta, Maine 04333-0006.

Dated: February 21, 2024


Jeffrey C. Toothaker, Esq.
14 High Street
Ellsworth, Maine 04605
207-667-6755