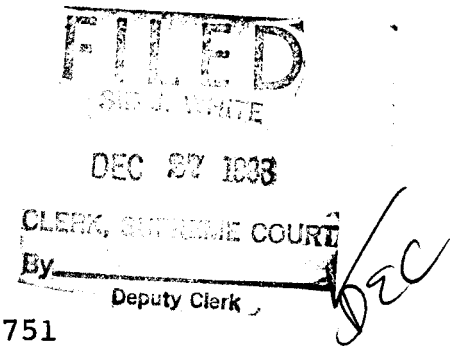
IN THE SUPREME COURT OF FLORIDA



JORGE ZERQUERA, **

Appellant, **

v. ** CASE NO 70,751

STATE OF FLORIDA, **

Appellee. **

ON APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA CRIMINAL DIVISION

REPLY BRIEF

PETER RABEN
BRESLIN & RABEN, P.A.
Counsel for Appellant
1870 South Bayshore Drive
Coconut Grove, FL. 33133
Tel: 305/285-0900

TABLE OF CONTENTS

TABLE OF CITATIONS

OTHER AUTHORITIES:

STATEMENT OF THE CASE AND FACTS

Appellant accepts the rendition offered by the State of Florida of the history of this case.

The State of Florida's version of the factual progression of the trial of this case is also acceptable. However, its recounting of the interrogation of Mr. Zerquera by the Hialeah police is inaccurate and misleading. This discrepancy will be specifically addressed in Point I of our Reply.

ARGUMENT

I.

WHEN THE POLICE ADMIT THAT THE DEFENDANT WAS INTERROGATED ABOUT A HOMICIDE AFTER HE INVOKED HIS RIGHT TO REMAIN SILENT, THE DEFENDANT'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION WERE NOT SCRUPULOUSLY HONORED.

The State of Florida's perception of the interrogation of Jorge Zerquera is inaccurate, overly simplistic, and not borne out by the record. The State claims that Mr. Zerquera was given his Miranda rights; he was interrogated by the police about auto thefts; he did not refuse to discuss auto thefts but merely refused to implicate his friends; the police then changed the subject to the homicide by reading to Mr. Zerquera a part of Scott Puttkamer's statement; when Mr. Zerquera said he did not want to discuss the homicide, the officer left the room, leaving the statement of Puttkamer behind; upon re-entering the room, the police were told by the Defendant that he now wished to make a statement. Brief of Appellee at 39. That account of the interrogation is belied by the record, and merges four hours of

questioning into minutes.

Detective Porth testified that Mr. Zerquera was taken into an interrogation room at the station, and the Defendant executed a Miranda rights waiver card at 2:04 p.m. (S.R. 22). Porth immediately told Mr. Zerquera "we were investigating a homicide of a taxi driver that occurred in our city, and we were told that he had been reportedly involved in the homicide by another man. That was explained to him." (S.R. 24). Porth claims he began asking questions about the auto thefts, (S.R. 25), and Mr. Zerquera's first statement was he "didn't want to talk about his friends." (S.R. 25). But Zerquera made it quite clear, according to Porth, that he would discuss his involvement in auto thefts. (S.R. 25).

Porth testified that he then changed the conversation to the homicide investigation:

> Q. About how long did you talk to him about the auto theft ring before you began to speak with him about the homicide which you were investigating?
>
> A. It wasn't long at all.

(S.R. 28).

Mr. Zerquera was asked to sign a consent to search form to facilitate the homicide investigation, and that form was executed at 3:25 p.m. (S.R. 30). Concerning this stage of the interrogation, Detective Porth testified:

> Q. Now, up until the time of 3:25 p.m., when Mr. Zerquera signed that consent to search form, did he ever say to you, 'Detective Porth, I don't want to talk to you.'
>
> A. Yes.

(S.R. 30).

The State of Florida deals with this clear invocation of silence by claiming it was limited to auto thefts. Brief of Appellee at 25 and 39. Yet that explanation is refuted by the record. The State argues that Mr. Zerquera agreed to discuss the auto thefts, (S.R. 25), then claims that Mr. Zerquera's "I don't want to talk to you" was regarding the auto thefts. Both cannot be true. In any event, an end-run around the invocation of silence cannot occur by changing the focus of an interrogation from auto thefts to a homicide. The United States Supreme Court held last term in Arizona v. Roberson, ___ U.S. ___, 108 S.Ct. 2093 (1988), in the context of a request for counsel, that interrogations cannot resume by merely substituting a second investigation for the first. Mr. Zerquera's "I don't want to talk to you,'' even if referring to auto thefts, did not permit further uninterrupted interrogation.

If the invocation of silence were construed as referring to auto thefts, the interrogation still did not meet the minimum standards set out in Michigan v. Moseley, 423 U.S. 96 (1975), and Miranda v. Arizona, 384 U.S. 436 (1966):

> . . . when a suspect asserts his right to cut off questioning, the police may scrupulously honor that right by immediately ceasing the interrogation, resuming questioning only after the passage of a significant period of time and the provision of a fresh set of warnings, restricting the second interrogation to a crime that had not been a subject of the earlier interrogation.

Moseley, 423 U.S. at 106.

Detective Porth's testimony required suppression of Mr.

Zerquera's statement. Following Mr. Zerquera's refusal to talk to Porth, that detective did not cease the interrogation, did not provide Mr. Zerquera with a fresh set of warnings, and did not begin an interrogation regarding a new and independant investigation.

Moreover, any questioning which followed the invocation must be limited to clarifying the Defendant's intent. See Christopher v. Florida, 824 F.2d 836, 841 (11th Cir. 1987). If the police believed Mr. Zerquera's "I don't want to talk to you" was only regarding auto thefts, they did not confirm that belief by clarifying the Defendant's intent. See Kyser v. State, ____ So.2d ____ (Fla. 1988) (Case No. 69,736, Op. filed October 27, 1988); State v. Long, 517 So.2d 664 (Fla. 1987).

Detective Venema's testimony also required suppression. First, this Court has now made it clear that Venema's absence from the room during Mr. Zerquera's earlier invocation of silence to Porth is legally irrelevant. Kyser v. State, supra.[1]/

The questioning which continued after Mr. Zerquera's "I don't want to talk to you" before 3:25 p.m. was additionally flawed. Venema testified that the subject of the homicide did not come up until after 5:30 p.m., when Detective Venema read a part of Puttkamer's statement to Mr. Zerquera, and the Defendant said, "I do not want to discuss it. I do not want to talk about

---

1/ It seems more than a coincidence that Venema was out of the room when Porth heard Mr. Zerquera say "I don't want to talk to you," and Porth was out of the room when Venema was told, concerning the homicide, "I don't wish to discuss it." (A. 16-17).

it.'' (A. 16-17). Venema claims he left the room, and when he returned, Mr. Zerquera promptly initiated a conversation and began the confession. Yet that version was contradicted by both Porth and Venema, and does not exist to justify the State of Florida's contentions.

A startling contrast exists between Detective Venema's version at the suppression hearing and his sworn statement six months earlier, when he testified:

> Q. Well, what prompted Jorge to sign the consent to search?
>
> A. I showed him the statement given by Scott. I said, 'here, read it, We didn't drag here, out of the blue. I never met you in my life. I didn't decide to pick on some unknown person and make life miserable, or whatever.'
>
> * * * *
>
> A. I showed him the statement. Jorge looked at me. He never asked for a lawyer. He said, 'I don't want to discuss it. I don't want to talk about it.' Then I told him some things that Scott said, What I said exactly I don't really recall. I said Scott is saying you were both there and you pulled the trigger. He is putting the shooting on you, and I showed him the statement, and I said, 'here is the statement, which he had signed it and corrected it and it has been notarized, and all.' He read through a few pages. I said, 'I don't know, maybe this did not occur. I am not making this up. I am not trying to make a bluff. This person we caught described it in quite a bit of detail, this murder.' He finally looked at me and said, 'Scott puked.' I said, he puked twenty-six pages. He said get yourself a tape recorder or turn on the tape recorder. I don't remember what his exact words were, but something to that effect, get yourself a tape or turn on the recorder and he proceeded -- well, you got a copy of the tape. I could hardly shut him up.

(A. 16-17).

Detective Venema specifically admits to violating Mr. Zerquera's invocation of his right to silence. [2]/ See, Rhode Island v. Innis, **446** U.S. **291 (1980);** Brewer v. Williams, **430** U.S. **387 (1977).**

Venema also refutes the State of Florida's claim that the subject of the homicide did not come up until immediately before the confession. Venema stated in his earlier sworn statement:

> ***Q.*** Was Jorge told that if he gave more details or incriminated himself it is a more believable statement?
>
> **A.** No. Once he started going -- well, you read this thing. He goes on and on for pages at a time without my saying anything.
>
> ***Q.*** What about in the three hours and forty-five minutes before the tape started?
>
> **A.** He would not discuss it.
>
> ***Q.*** He refused to disuss it?
>
> **A.** Correct.

(A. 23). Venema's testimony that Mr. Zerquera refused to discuss the homicide until shortly before the detectives convinced him to change his mind was also corroborated by Venema at the motion to suppress hearing:

> Q. Did he talk about the homicide in the three hours and forty-five minutes prior to that statement?
>
> **A. No.**
>
> Q. Did you ask him about the homicide [in] the

---

[2]/ That deposition was supplemented as a part of this record, and appears in the supplemental volume at pages 1-56.

three hours and forty-five minutes before the statement?

A. I am sure we did

(S.R. 73).

* * * *

Q. Shortly after the rights form, [at 2:04 p.m.], did you ask him about the homicide?

A. Yes.

(S.R. 75).

This record does not support the trial court's denial of Mr. Zerquera's motion to suppress. The suggestion that this error was harmless constitutes a farce. Aside from the confession, only the testimony of Puttkamer implicated the Defendant. The entire defense was dealing with the confession. In fact, the prosecutor's closing argument was a recitation of the confession.

Nor is the State of Florida accurate when it states that no promises, threats or deals were made by the police in the course of Mr. Zerquera's interrogation. Brief of Appellee at 40. Rather, Mr. Zerquera testified that he told the police that he willing to cooperate but would not answer any questions, (S.R. 104), to which the detectives replied that because Puttkamer was putting the entire crime on Mr. Zerquera, he would get the electric chair if the co-defendant's version was left unrefuted. (S.R. 87). Mr. Zerquera testified that the detectives misled him into believing that there was no such thing as accessory, and told him that they could make him a State's witness and "you probably won't get arrested." If those are not promises and

threats, then the State is correct.

II.

THE DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE PROSECUTOR ELICITED TESTIMONY HE KNEW TO BE FALSE, AND PARTICIPATED IN THE PRESENTATION OF FALSE AND MISLEADING TESTIMONY WHICH TAINTED THE FACT-FINDING FUNCTION OF THE JURY.

The State of Florida asserts that the defense "has not shown any of the testimony to be false or misleading, or to the extent that the evidence was false or misleading, that it was not attributable to the defense." Brief of Appellee at 41. Yet all the State does is discuss evidentiary issues that are wholly immaterial to the issue we raised - knowing prosecutorial acquiescence and condonation of perjury.

The State does not contend that its prosecutor was mistaken when he claimed, pre-trial, that its police discovered inside a brown suitcase a plastic pouch, belonging to Puttkamer, which contained his checkstubs, some cooking utensils, and the .22 caliber ammunition similar to the murder projectile. (T. 657-659). The State also appears to concede that all of the pre-trial activity regarding the seizure of these bullets occurred outside the presence of Mr. Zerquera's counsel.

But when Puttkamer falsely testified that, while the pouch was his, and Mr. Zerquera did not have access to the pouch, he did not put the bullets with his other belongings - the prosecutor stood idle. (T. 1121, 1122). Again, the State stood idle when Venema erroneously told the jury that the police did not find among Puttkamer's belongings the .22 magnum bullets and

casings. (T. 1174, 1175). Then the State advanced the slight-of-hand further, by attempting to prove the property belonged to the Defendant - a one hundred eighty degree shift from its pre-trial stance. (T. 1179).

The State of Florida does not explain how its prosecutor could allow Puttkamer to testify that he did not use the brown suitcase, when the plastic pouch with the witnesses paystubs, cooking utensils and the ominous bullets were found therein. (T. 1182). The condonation metamorphisized into obstruction when the prosecutor successfully prevented the witness from having to explain why the bullets were with his paystubs and cooking utensils. (T. 1183-1185). This obstruction denied the Defendant his right to cross-examine his accuser, in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

This tactic was not mere evidentiary objections, as painted by the State of Florida. Brief of Appellee at 41-43. The battle between the parties was over the identity of the triggerman, and the death penalty was at stake. The harmless error doctrine is hardly appropriate, where the jury was not permitted to hear of Mr. Puttkamer's highly incriminating possessions.

III.

A SENTENCE OF DEATH IS UNCONSTITUTIONALLY DISPROPORTIONATE WHERE THERE ARE AN EQUAL NUMBER OF STATUTORY AGGRAVATING AND MITIGATING CIRCUMSTANCES AND A CONSIDERABLE NUMBER OF NON-STATUTORY MITIGATING CIRCUMSTANCES, AND AS APPLIED TO THE FACTS OF THIS CASE.

We have argued to this Court that the death penalty in this case is disproportionate because of the character of the crime,

the equal number of statutory aggravating and mitigating factors, and the nature of this case when compared to other cases reviewed by this Court. The State of Florida has not specifically addressed these claims.

First, this Court has vacated death sentences in similar felony-murder situations where a spontaneous death occurred. Proffit v. State, 510 So.2d 896 (Fla. 1987). This Court, in State v. Dixon, 283 So.2d 1 (Fla. 1973), and the United States Supreme Court, in Furman v. Georgia, 408 U.S. 238 (1972), held that our legislature intended the death penalty to be limited to "the most aggravated, the most indefensable of crimes." Proportionality review continues to be a critical function of this Court's plenary review, and relief is dispensed where appropriate. See Banda v. State, ___ So.2d ___ (Fla. 1988) (Case No. 69,102, Op. filed Dec. 8, 1988) (death vacated despite jury recommendation of death); Fitzpatrick v. State, 527 So.2d 809 (Fla. 1988) (accord); Amaro v. State, 531 So.2d 1256 (Fla. 1988) (accord).

Here, when the two aggravating factors are placed into a crucible with the two statutory mitigating factors and the multitude of non-statutory mitigating factors, a decision against death is appropriate. See, e.g., Lloyd v. State, 524 So.2d 396 (Fla. 1988). The State's only witness testified that the impetus to the entire ordeal was the compelling hunger of each man. For the State of Florida to ignore this emotional coercion, it would have to ignore its own witness. While, the effect of drug usage was excluded by the defense in the guilt phase, the existance of

that deluding effect is not erased because the motion in limine was granted, See Brief of Appellee at 45 (reliance on hunger and drug usage unavailing).

Equity must come into the equation when inordinate disparity exists between the ten year sentence of Puttkamer and the death sentence of Mr. Zerquera. When even the lead investigator testified that no one but the two defendants knew who pulled the trigger, (T. 1376), the principle against disparate results must intervene as an equalizing force. See, Slater v. State, 316 So.2d 539 (Fla. 1975).

Affirming the death sentence in this case could easily lead to a subjective disposition of future cases, where an equal number of aggravating and statutory mitigating circumstances are proven. In such a situtation, a defendant's fate will rely on the persuasiveness of his lawyer juxtaposed against the skill of the prosecutor. As a trial court heavily relies on a jury recommendation in a situation where there are an equal number of statutory circumstances, an individual's sentence devolves to skill of his own lawyer. Yet the United States Supreme Court and this Court have acquiesced to the constitutionality of Florida's capital statute precisely to avoid this occurrance. A more objective standard must be put into effect, to avoid the knee - jerk acceptance of a jury recommendation in a situation such as this case presents. An answer to that dilemma must be the processing of the non-statutory mitigating factors into the formula with a weight equal to those of the statutory mitigating factors. That done, the scales in this case tip toward life.

IV.

THE TRIAL COURT COMMITTED FUNDAMENTAL ERROR BY WEIGHING THE IMPACT OF THE CRIME ON THE VICTIM'S FAMILY AS A NON-STATUTORY AGGRAVATING CIRCUMSTANCE IN ITS DECISION TO IMPOSE THE DEATH PENALTY.

The clear reliance by the trial court in her sentencing speech upon factors condemned by Booth v. Maryland, 482 U.S. ____ 96 L.Ed. 440, 107 S.Ct. 2529 (1987), makes this case different, and requires more than summary review. No other case before this Court reflects a sentencing speech which balances the statutory mitigating factors of youth and no significant prior criminal history against "the family of Robert Shayne can never have the love, comfort and protection of the husband, father and grandfather." (T. 1428, 1429) [3] An objection, generally required, State v. Grossman, 525 So.2d 833 (Fla. 1988), would

---

[3] The trial court imposed the death penalty by stating:

> Mr. Zerquera, perhaps you are right, perhaps that the sentence I do give you will be incorrect. If I sentence you to life imprisonment, the family of Robert Shayne [sic] will feel that justice has not been served. If I sentence you to death by electrocution, you feel that I have sentenced improperly and incorrectly because you feel that you are not the person who committed the crime.
>
> In any event, through your own statements you have admitted that you were on the scene of the crime when Mr. Shayne [sic] was murdered. This is one of the most difficult parts of being a judge. You're only twenty-four years of age and except for this case, it appears that you are not significantly involved with the law; however, balancing this, the family of Robert Shayne [sic] can never have the love, comfort, and protection of the husband, father and grandfather.

(T. 1428, 1429).

have been a useless gesture. The victims family had already been invited to address the court. Alternatively, the gravity of the court's reliance upon the victim impact testimony makes the error fundamental, as it was the earlier opinion of the trial court -- in writing -- that no reasonable juror could validly impose the death penalty under the facts of this case. (R. 102 - 105). The facts did not compel this change of heart by the trial court; her sentencing speech unequivocally reveals it was the need of the family that created the court's change of opinion.

Finally, the trial court's speech indicates, in effect, that the victim impact testimony became an impermissible non-aggravating factor considered by the court. See, Jackson v. State, 498 So.2d 906 (Fla. 1986) (victims character and standing in community impermissible aggravating factor). The trial court's omission of these express findings in her written order -- prepared one month later -- does not diminish one iota the impact of the judge's words when the sentence was imposed. C.f., Parker v. Dugger, ___ So.2d ___ (Fla. 1988) (Case No. 72,466, Op. filed December 1, 1988) (no Booth error where judge "made clear in his remarks and sentencing order that he limited his sentencing decision to the statutory aggravating factors.") Here, the record supports the position that impermissible consideration was given to non-statutory aggravating factors, and fundamental error occurred.

V.

THE TRIAL COURT'S FINDING THAT THE MURDER WAS COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING A LAWFUL ARREST WAS ERRONEOUS.

It is the State of Florida's position that the uncorroborated and impeached testimony of Scott Puttkamer established that Mr. Zerquera shot Mr. Shayne to eliminate him as a witness. Brief of Appellee at page 50. That testimony does not meet the high standard set by this Court to prove the aggravating circumstance in Section 921.141(5)(e). The prosecution did not show beyond a reasonable doubt that the dominent or sole motive for the murder was the elimination of a witness. Bates v. State, 465 So.2d 490 (Fla. 1985). The State of Florida did not even attempt to distinguish Amazon v. State, 487 So.2d 8 (1986), where a claim was made by a detective that the defendant said he had killed to avoid arrest. This Court called that evidence an "unsupported assertion," and discounted it. The finding of witness elimination is also unreliable because of the prior sworn testimony of Mr. Puttkamer; Mr. Puttkamer's penalty phase testimony was contradicted by his pre-trial sworn statement, wherein he testified that Mr. Zerquera "didn't mention anything about the cab driver [after the shooting]. Afterwards, we had talked one time afterwards, but it was brief. It kind of turned my stomach thinking about it so I didn't really want to talk about it." (A. 30). Under the unique facts of this case, the finding of the lower court that the murder was committed for the purpose of avoiding or preventing a lawful arrest was erroneous.

VI.

THE DEATH PENALTY WAS UNCONSTITUTIONALLY IMPOSED WHEN THE SENTENCING JUDGE (1) IMPROPERLY WEIGHED THE JURY'S RECOMMENDATION OF DEATH, (2) IMPOSED DEATH AFTER HAVING RULED THAT DEATH WAS AN IMPROPER PENALTY UNDER THE FACTS OF THIS CASE, AND (3) IMPOSED DEATH KNOWING THAT THE DEFENDANT WAS ONLY IN JEOPARDY OF THAT PENALTY BECAUSE HE RELIED TO HIS DETRIMENT UPON A MISLEADING STATEMENT FROM THE PROSECUTION

The death penalty was unconstitutionally imposed when the sentencing judge (1) improperly waived the jury's recommendation of death, (2) imposed death after having ruled that death was an improper penalty under the facts of this case, and (3) imposed death knowing that the defendant was only in jeopardy of that penalty because he relied to his detriment upon a misleading statement from the prosecution, Mr. Zerquera set forth here three separate reasons to justify a vacating of the death penalty. First, the doctrine of estoppel should have acted to prevent the imposition of the death penalty, when Mr. Zerquera only went to trial following a statement by the prosecutor and a finding by a judge that, even if the jury recommended death, that penalty would not be imposed. Second, Mr. Zerquera argued that undue influence was placed upon the jury's recommendation. See, Ross v. State, 386 So.2d 1191, 1197 (Fla. 1980). Third, we suggested that Mr. Zerquera only permitted himself to be tried upon the misguided belief that the death penalty would not be imposed. See Thompson v. State, 351 So.2d 701 (Fla. 1987); Surace v. State, 351 So.2d 702 (Fla. 1987).

The State of Florida did not address these issues. Rather, the State of Florida mistakenly claims that these arguments have

no merit, in light of this Court's decision in State v. Donner, 500 So.2d 532 (Fla. 1987). While this Court set aside the trial court's order determining pre-trial the death penalty inapplicable, that ruling was based upon jurisdiction. This Court held that the determination of the applicability of the death penalty was an executive function. This Court never reached the merits or facts of this specific case. The State of Florida's response, Brief of Appellee at 51, does not address the three distinct issues we have raised in this point of our Brief.

VII.

THE TRIAL COURT ERRED IN FAILING TO FIND THE EXISTENCE OF OTHER ENUMERATED AND UNENUMERATED MITIGATING CIRCUMSTANCES.

The State of Florida does not specifically respond to this point in our Brief. Therefore, we would rely upon our original claims in our Brief of Appellant at 56-59.

VIII.

THE TRIAL COURT ERRED IN IT'S COMMENTS TO THE JURY AND IN GIVING THE STANDARD PENALTY PHASE JURY INSTRUCTION WHICH DIMINISHED THE RESPONSIBILITY OF THE JURY'S ROLE IN THE SENTENCING PROCESS, AND DENIED THE DEFENDANT DUE PROCESS OF LAW.

Two comments made by the trial judge to the jury were inaccurate and misleading, and implicate the holdings of the Eleventh Circuit Court of Appeals in Mann v. Dugger, 844 F.2d 1446 (11th Cir. 1988) and Stewart v. Dugger, 842 F.2d 1486 (11th Cir. 1988). The trial court told the jury that "if you should come out with [a guilty] verdict when they go into the second part of the trial, that part of the trial you only make an

advisory opinion. You do not determine whether or not I sentence the Defendant to death in the electric chair. You merely advise me of your opinion by a not necessarily unanimous decision, and that means each and every one of you, who are jurors in the case, can either have an opinion that it should be life imprisonment or death by electrocution. You will so advise by that verdict." (T. 791, 792).

That dimunition of the jurors responsibility was exacerbated when the trial court read the standard jury instructions at the close of the guilt phase of the trial:

> I will now inform you of the maximum and minimum possible penalties in this case. The penalty is for the court to decide. You are not responsible for the penalty in any way because of your verdict. The possible results of this case are to be disregarded. The possible results of this case are to be disregarded as you discuss your verdict on the issue of guilt or innocence. (T. 1375).

This Court has repeatedly rebuffed Caldwell claims, noting that the standard instructions are generally accompanied by a statement from the trial judge advising the jury of the great weight which the court will place upon the jury's recommendation. See Garcia v. State, 492 So.2d 360, 367 (Fla. 1986); State v. Cave, 525 So.2d 853 (Fla. 1988). No similar admonishment was given to the jury in this case.

A combination of the court's ad lib statements, the prosecutors explanation of the mere advisory role of the jury, and the court's standard instruction at the close of guilt phase on the jury's duties to ignore penalty in their deliberations, all acted to violate the due process clauses of the Florida and

Federal Constitutions.

CONCLUSION

Based upon the authorities cited herein, and the Brief originally filed by Mr. Zerquera before this Court, we would respectfully request that this Honorable Court vacate the convictions and sentences in this case, and remand this matter for a new trial.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing is mailed to: Michelle Crawford, Assistant Attorney General, 401 N.W. 2nd Avenue, Room 800, Miami, Florida this 23rd day of DECEMBER, 1988.

Respectfully submitted,

BRESLIN & RABEN, P.A.
Attorney for Appellant

PETER RABEN, ESQUIRE
(Florida Bar #231045)
1870 South Bayshore Drive
Coconut Grove, FL 33133
Tel: 305/285-0900