SUPREME COURT OF FLORIDA
CASE NO.: 94,421

JULIO MORA,

Appellant/Defendant,

vs.

STATE OF FLORIDA,

Appellee/ Plaintiff.
_____/

INITIAL BRIEF OF APPELLANT

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CERTIFICATE OF TYPE SIZE AND STYLE

I certify that this brief is prepared in 12 point courier new, a font that is not proportionately spaced.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes and Rules of Court

FACTS

A. Introduction.

This is a double murder case for which appellant, Dr. Julio Mora, received two sentences of death. He was charged with the May 27, 1994 first degree murders of Dr. Clarence Rudolph and Karen Starr Marx, Esquire, and the attempted first degree murder of Maurice Hall, Esquire. Dr. Mora defended on the grounds of insanity at the time of the offense by reason of a long-standing paranoid delusional disorder, and intoxication and self-defense. Dr. Mora was quite vocal at the trial and there is in the record visible tension in some of the exchanges between Judge Backman and Dr. Mora.

There was testimony in the record that Dr. Mora acted out his delusions through litigation as individuals with paranoid delusional disorders may do. The shootings in the case occurred at a deposition in one such piece of litigation in which Dr. Mora had sued Dr. Rudolph and his employer AARP for sexual harassment and other wrongs. Mrs. Marx and Mr. Hall were the defense lawyers. The court reporter captured the killings on an audio tape recording of the deposition. Dr. Mora filed motion after motion with the trial court alleging in its various permutations the existence of a vast conspiracy against him involving all or some of the victims, Judge Backman, Judge Eade who had the case earlier, and this court and its former Chief Justice. At some point, each of Dr. Mora's lawyers in turn became conspirators as well.

Dr. Mora testified in his own defense. His recounting of

events was bizarre and disturbing. He described a nightmarish world punctuated at every turn with relentless brutalizing attacks on him by Dr. Rudolph and his black-Chinese henchman, Wong Chung. In addition to the psychological and psychiatric testimony describing Dr. Mora's insanity and incompetency, the defense also presented substantial historical evidence recounting Dr. Mora's strange and paranoid behavior over virtually the whole of his life.

Dr. Mora believed that Dr. Rudolph was at the core of the conspiracy to kill him by shooting at him and by pumping poison gas into his apartment at night. Dr. Mora had reported many of these incidents to the police and some of those officers testified at trial about Dr. Mora's allegations. Dr. Mora's apartment at Hurley Hall, an adult independent living facility, was rigged with devices to both prevent the gas from entering and to vent it out if the devices were unsuccessful. A clear plastic wrapping hung from the ceiling surrounding Dr. Mora's bed. Electric outlets were stuffed with foam. Numerous table fans with their grates removed were positioned throughout the apartment. Filters were installed, windows were sealed and Dr. Mora had rigged his door to stay open 5" to vent the gas.

The jury found Dr. Mora guilty on all counts and it recommended the death sentence by an eight to four vote and Judge Backman sentenced Dr. Mora to death by electrocution for both

killings. (R. 3184-3185).[1]

In several written motions defense counsel sought a declaration that Dr. Mora was incompetent. (R. 828-829, 1295-1298, 1304-1308, and 3715-3183). *Ore tenus* motions were periodically heard as well. Judge Backman found Dr. Mora competent each time. Dr. Mora and penalty phase counsel, Mr. Malnik, clashed on what sentencing evidence should be presented with Mr. Malnik holding to the view that Dr. Mora's approach guaranteed a death sentence. In one heated exchange, Dr. Mora objected to Mr. Malnik's attempt to obtain mitigation evidence from his family, and he tried to force the issue by asking the court to permit him to waive known and unknown mitigators and he asked the court to impose the death penalty on him then and there. After much back and forth, Dr. Mora went forward with the penalty phase on his own with Mr. Malnik as his stand-by counsel. No mitigating evidence or argument was presented to the penalty phase jury except Dr. Mora addressed the jury as follows:

> Good afternoon, ladies and gentlemen. I know you face a very difficult task now. I am going to try to make it easy for you. About 1,500 years ago in the year 540 after Jesus Christ died, the Pope called and granted to my family several powers. Two of them according to the law was the power to bless and the power to forgive, since it's based upon the law.
>
> (Thereupon, a statement was made by the defendant in Latin, after which the following proceedings were had:) (Tr. 3074).

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[1] The pleadings are referenced by the signal "R." The trial transcripts are referenced by the signal "Tr." The supplemental record consisting of the **Spencer** hearing proceedings are referenced by the signal "SR."

B. The Sentencing Order.

1. The Aggravating Circumstances.

For the Rudolph killing Judge Backman found an aggravating circumstance under §921.141(5)(b) Fla. Stat. because of the contemporaneous felony convictions of the first degree murder of Mrs. Marx and the attempted first degree murder of Hall. The Rudolph and Hall convictions established the same aggravating factor for the Marx killing. (R. 3187-3188).

Judge Backman found the killing of Mrs. Marx to be especially heinous, atrocious or cruel because Dr. Mora, after shooting Mrs. Marx several times and while she lay on the floor crying for help, "lingered with apparent composure and deliberation listening to Mrs. Marx's cries, utterly impervious to the fact that she was still alive, conscious and in obvious agony and terror." (R. 3190-3192, quote at 3192).

2. The Mitigating Circumstances.

Judge Backman court rejected the §921.141(6)(b) Fla. Stat. extreme mental or emotional disturbance mitigator even though all four experts, Doctors Stock [delusional disorder of a prosecutory type], Macaluso [paranoid delusional disorder], and Ceros-Livingston [paranoid schizophrenia] for the defense, and Dr. Spencer for the State, [some paranoid personality disorder], agreed that Dr. Mora suffered from a paranoid delusional disorder, a condition Judge Backman later found to be a non-statutory mitigator. The court found that Dr. Mora was not at the time of the shootings under an extreme mental or emotional disturbance,

but was rather "an individual enacting a deliberate plan of action absent any trace of extreme mental or emotional disturbance." (R. 3193-3197, quote at R. 3197). Judge Backman also found that Dr. Mora had the capacity to appreciate the criminality of his conduct and to conform his conduct to requirements of law.

Judge Backman drew most heavily on Dr. Spencer's testimony that Dr. Mora's paranoid personality disorder did not impair his ability to know right from wrong or to appreciate the consequences of his actions, and that the Dr. Mora's conduct at the deposition, as depicted on the court reporter's audio tape, was not congruent with the behavior of an individual who was acting under the influence of an extreme mental or emotional disturbance. Judge Backman also drew on the testimony of Dr. Stock to the effect that Dr. Mora was "embellishing or lying" about the gun play being instigated by Wong Chung, who fired at Dr. Mora from the doorway of the deposition room, the testimony of Dr. Macaluso that Dr. Mora knew what he was doing and believed it to be legally justified but morally wrong and, Dr. Ceros-Livingston's conclusion that Dr. Mora was manipulative. (R. 3194-3196).

Judge Backman rejected the §921.141(6)(f) Fla. Stat. mitigator finding that Dr. Mora's paranoid personality disorder did not impair Dr. Mora's ability to know right from wrong or interfere with his capacity to appreciate the consequences of his conduct. (R. 3197-3198).

Judge Backman rejected Dr. Stock's opinion that Dr. Mora was insane at the time of the shootings because Dr. Stock's opinion

was "diminished by the doctor's finding that the defendant fabricated information to make his claim of self-defense more credible" and he rejected as well the opinions of Dr. Macaluso and Dr. Ceros-Livingston that Dr. Mora was insane. (R. 3198). Judge Backman also found that Dr. Mora's capacities were not diminished from the large amount of drugs that he claimed to have ingested prior to the shootings because there was testimony describing how Dr. Mora should have appeared if he had taken that amount and combination of drugs that was inconsistent with the way the court found Dr. Mora to have acted on the tape. (R. 3199-3200).

The court found Dr. Mora's age, 68 years old at the time of the shootings and 71 years old at the time of conviction, did not exist as a mitigating factor. (R. 3200-3201).

Judge Backman rejected as not established by a greater weight of the evidence Dr. Mora's argument pursuant to §921.141(6)(c) Fla. Stat. that the victims were participants in his conduct, or consented to it, because he was defending himself from conspirators who had made multiple attempts on his life and because the shootout was started by Wong Chung who had shot into the room hitting Dr. Rudolph and Mr. Hall with the first wave of bullets. (R. 3201).

Judge Backman found that Dr. Mora's acquittal of the crimes of attempted murder and use of a firearm in the commission of a felony negated the §921.141(6)(a) Fla. Stat. no significant history of criminal activity mitigator (R. 3201-3202).

Judge Backman found no evidence that Dr. Mora acted under

extreme duress or under the substantial domination of another person pursuant to §921.141(6)(e) Fla. Stat.(R. 3202).

For non-statutory mitigators, the court found that Dr. Mora was under a delusional impression that people were trying to kill him and accorded that some weight; that Dr. Mora had a history of gainful employment and accorded that some weight; that Dr. Mora had a difficult unstable childhood and accorded that little weight; that Dr. Mora had long-standing emotional problems and accorded little weight; that Dr. Mora had a history of mental illness in his family and accorded that little weight; that Dr. Mora had specific good characteristics [intelligence, charm and grace] and accorded that little weight; that Dr. Mora's actions were not morally justified; and, that Dr. Mora made some contributions to society and accorded that little weight. (R. 3202-3207).

C. The Guilt Phase Testimony.

1. Dr. Mora's Testimony.

In the deposition room, Dr. Mora saw Dr. Rudolph pat his jacket pocket about forty times. Dr. Mora knew that this gesture was a death threat by Dr. Rudolph because just prior to the start of the deposition Dr. Rudolph had attacked Dr. Mora in the men's room, patting his pocket, flashing a gun from in there, and then kneeing Dr. Mora in the groin and throwing Dr. Mora against a wall while telling Dr. Mora that he would blow Dr. Mora's brains out before he left the building. Dr. Mora was armed at this time and he could have shot Dr. Rudolph then and there and ended his

persecution, but his resolve failed him. (Tr. 2130-2135).

Dr. Mora had thought about abandoning the deposition after the attack but he felt that his only hope was to catch Dr. Rudolph lying under oath, so Dr. Mora entered the room. Everyone was inside. As he had hired the court reporter, Dr. Mora thought that he should be the one to decide where everyone sat, plus he felt that he needed to be close to the door to escape in case something happened. When the others rejected Dr. Mora's attempt to rearrange the seating, Dr. Mora felt that he had no choice but to sit at the place they had for him which was away from the door. When Dr. Rudolph's deposition began, everyone's eyes were on Dr. Mora so Dr. Rudolph could do whatever he wanted without anyone seeing him. Dr. Rudolph put his finger on his lips, a gesture meant to silence Dr. Mora. Dr. Rudolph's face mutated to that of a gargoyle and he touched his pocket many times. Dr. Mora felt for his gun in his pocket and he waited for Dr. Rudolph to draw. Mrs. Marx started perspiring, and her eyes opened up like round saucers. Only Mrs. Marx and Dr. Mora had a sight line to the deposition room door. (Tr. 2142-2144). Wong Chung was at the door with a gun with a silencer. Wong Chung pointed his weapon at Dr. Mora. Dr. Mora shot and the bullet went into the door. Mr. Hall threw Dr. Mora's briefcase at Dr. Mora's head knocking off Dr. Mora's glasses, blinding him. Dr. Rudolph dived under the table and grabbed Dr. Mora's ankles and wrapped his thighs around him and he may have tried to grab at the gun. Dr. Mora thinks he shot Dr. Rudolph in the hand. (Tr. 2136-2147). Mrs. Marx turned to her purse to get a

gun so Dr. Mora shot her. Dr. Mora had no clear memory after that. Dr. Mora believed that he fought with Dr. Rudolph for the gun but he did not know that for sure. The image going through Dr. Mora's head at the time was his recollection of being a ten-year-old boy in Germany in 1936 watching two Brown Shirts beat up two Jews and smashing them against a wall so you could hear the crack of their bones, their brains, their skulls and their spines. Dr. Mora could not explain how or why he had those thoughts after 50 years. Dr. Mora believed that when Mr. Hall threw the briefcase, he put his body into the line of fire and he was shot in the shoulder by Wong Chung who also shot Dr. Rudolph in the thigh. (Tr. 2136-2150).

When Dr. Mora left the room, he found himself floating on the ceiling. He saw rocks and had to vomit. He tried to get to the bathroom. He saw several doors and opened one and a man with a black mask jumped on him. Dr. Mora thought it was the assailant. He believed that was when he shot Mr. Hall in the stomach. Mr. Hall and Dr. Mora fought. Mr. Hall took the gun away, Dr. Mora lifted his cane to hit the assailant in the head but then he recognized him as Mr. Hall and Dr. Mora left.

Dr. Mora left the room where he fought with Mr. Hall and Mr. Tannenbaum, the owner of the court reporting service, held him for the police. The police arrived and Dr. Mora blacked out. (Tr. 2150-2154).

Dr. Mora traveled by taxi to the Cumberland building. The previous night he was gassed with Freon 12 gas that gave him hypothermia. He had gotten home late on night of May 26th because

Dr. Rudolph had shot his tire out on I-95. Now his car had the donut spare on it and it could not be driven to the deposition. Earlier that day Dr. Rudolph had threatened Dr. Mora, telling him that he had a gun and that he would blow Dr. Mora's brains out. When he finally arrived home at 12:00 or 12:30 a.m. on the morning of the depositions, after having his tire shot out, Dr. Mora prepared his door, which took an hour to an hour and a half, and he put on his fans and set his filters to half power. When the gas did come, he fell asleep and he was cold. Dr. Mora got up and found his gas mask, but the gas penetrated it, and although Dr. Mora passed out, he still managed to turn his filters up to high to get relief. At 3:30 a.m. Dr. Mora showered and took some Percondan, Darvocet, Tylenol Three, Flexeril and Xanex to remove his "pain and dysfunction" and "vomiting." The pain was from an accident, a long ago air crash from which Dr. Mora suffered through nineteen operations in the United States and Europe, and which put him in a coma with resultant memory loss. He was living in terror and he was depressed. (Tr.2101-2110).

Dressed by 4:30 a.m., Dr. Mora's plan was to stay in his car. For safety, he had been sleeping in his car since March of 1994. But, before Dr. Mora could get to the car, Dr. Rudolph called. Although Dr. Mora's telephone number had been changed to prevent calls from Dr. Rudolph, he was on the line nonetheless. Dr. Rudolph told Dr. Mora that he was going "to convert my body in a vessel of agony" and that he would "cut[] my eyes and swallow them." Dr. Rudolph threatened Dr. Mora with a "Columbian necktie"

where one's tongue is cut out and one drowns in his own blood. (Tr. 2110-2116).

Dr. Mora went to his car and he sat in it. The vehicle moved even though its battery was disconnected and Dr. Mora had not engaged the ignition. Dr. Mora had been for some time routinely disconnecting the car battery to combat tampering with it by the Rudolph forces- they were discharging it- and he had installed a special lock on the trunk so when the battery was in there no one could get at it. Dr. Mora went back and forth between his car and his apartment, but neither provided respite because the car kept on moving and Dr. Rudolph and Wong Chung kept on calling, telling Dr. Mora that they were waiting for him outside to kill him and that they would kill him if he went to the deposition or if he went to the Palm Beach hotel. (Tr. 2116-2122). Rudolph and Wong Chong learned about the Palm Beach hotel in March of 1994. Dr. Mora had been driving to court in West Palm Beach when he was stopped by the police. He decided to stay in a hotel. The next day at the hotel Dr. Mora was entering his car when he was kidnaped at gunpoint by Dr. Rudolph and Wong Chung and he told that he would be killed if he didn't drop the lawsuit. (Tr. 2058-2060).

In the taxi going to the deposition, Dr. Mora saw a van with black windows following. Dr. Mora tried to explain his concern that Dr. Rudolph and Wong Chung would try to ram them. The taxi driver became alarmed. In the taxi, Dr. Mora opened his briefcase and moved his gun to his pocket so he would have rapid access to it if something happened. Later, after Dr. Mora arrived at the

Cumberland building, he felt safe and he was going to put the gun back in his briefcase while he was in the men's room, but Dr. Rudolph attacked him. Before arriving at the Cumberland Building, Dr. Mora had the taxi driver stop at BSO headquarters to pick up documents that Dr. Mora wanted to use to impeach Dr. Rudolph. (Tr. 2122-2131). A few days before the shootings, on May 23rd, Dr. Mora was at the Palm Beach County Courthouse. A man who appeared as if he didn't belong there was following him. Earlier, the man was at Florida Atlantic University and he was at Publix as well. When Dr. Mora went home, the man was there. Dr. Mora went to the University of Miami Law School and the man was there. When he came back to his car after two or three hours, the man was there. Dr. Mora went to Home Depot to pick up a filter for the gas. The man was there as well. This time Dr. Mora confronted him and asked him why he was following him, but the man said he wasn't doing that. The Home Depot manager called BSO and the deputy determined that Dr. Mora had a suspended license and could no longer drive. (Tr. 2076-2081). Dr. Mora got a substitute licence and now he wanted a report of the incident to confront Dr. Rudolph with, but he could not get it. (Tr. 2080-2081, 2122-2125). On May 24th they had tried to poison him with a deadly poison, clostridium perfrigent. Dr. Mora knew that they were using this poison because he smelled it on his food and a cat ate the food and died on the spot. The next day, the 25th, Dr. Mora attended a scheduled deposition but no one else came. He took a gun with him to that deposition to protect himself. (Tr. 2083-2086).

Garbled printouts from Dr. Mora's computer, introduced into evidence, proved that Dr. Rudolph had gotten into Dr. Mora's computer and sabotaged it. (Tr. 2100-2101).

Dr. Mora met Dr. Rudolph in 1987. Through Dr. Rudolph and AARP, Dr. Mora obtained employment that lasted several years. Dr. Mora also helped Dr. Rudolph in his office until the "pain and dysfunction" came on and Dr. Mora had to go to the hospital. (Tr. 1806-1815). Dr. Rudolph caused Dr. Mora to lose a job with the USDA. This pained Dr. Mora greatly. Dr. Mora also did work for Dr. Rudolph's consulting firm, P.I.E., as a scientific consultant but the State Attorney stole the documentation of this from his home. (Tr. 1810-1820).

Dr. Rudolph had tried to get Dr. Mora to engage in improper conduct when Dr. Mora worked for the United States District Court. Then, in June of 1993, Dr. Rudolph, who was not a psychologist or psychiatrist, psychoanalyzed Dr. Mora and brainwashed him to get him to obey. (Tr. 2009). Because P.I.E. had the word psychological in it, Dr. Mora believed that meant that Dr. Rudolph was practicing psychology without a license. Also of significance to Dr. Mora was that there was no physical address on the P.I.E. letterhead, only a post office box that Dr. Rudolph used for everything and a telephone number that was the same telephone number as a subsidiary of AARP. (Tr. 2015-2018).

In September, Dr. Rudolph sexually attacked Dr. Mora. Another physical attack occurred in October, when Dr. Mora refused to notarize documents for Dr. Rudolph. (Tr. 2019). It seems that

there was a contract between P.I.E. and the City of Tamarac but Dr. Rudolph did not have the authority to sign it. When Dr. Mora refused to notarize Dr. Rudolph's unauthorized signature, Dr. Rudolph tried to bribe Dr. Mora and intimidate him and finally Dr. Rudolph beat him up. (Tr. 2020-2024). The bribe was a move to a different position. Dr. Mora had been acting as Dr. Rudolph's second-in-command, but he did not hold the office, and now Dr. Rudolph offered to make Dr. Mora officially his second-in-command if Dr. Mora would notarize the fraudulent document. (Tr. 2024-2025).

In September of 1993, someone broke into Dr. Mora's apartment and Dr. Mora filed a police report. On October 20, 1993, Dr. Rudolph assaulted and battered him. Dr. Mora had refused to notarize other documents which would permit Dr. Rudolph to obtain money from the accounts of deceased people. (Tr. 2025-2026).

On November 29, 1993, Dr. Mora was fired and he filed an unemployment claim which Dr. Rudolph disputed. (Tr. 2026).

Dr. Mora created a curriculum for teaching computers at AARP. (Tr. 2034-2036). Dr. Mora's students were elderly people who required special attention. Dr. Rudolph came behind Dr. Mora while he was on the computer and tried to kiss him. Dr. Rudolph created a schedule that had no lunch break and Dr. Mora had no time to correct the work of the students. (Tr. 2037-2040). In December of 1993, Dr. Mora checked on P.I.E. with the Florida Secretary of State. During this period of time Dr. Mora had problems at home after his pet died and he was gassed. He also got a picture of a

terrorized painting from Indegas. (Tr. 2040). Dr. Mora hired an investigator in September of 1993, a Mr. Rodriguez, who found out that Dr. Rudolph used the post office box exclusively for all aspects of his life and he had no physical address. (Tr. 2041).

Dr. Mora was hospitalized in California because Dr. Rudolph beat him up. He was driving there and almost got killed. He lost consciousness, but the noise of his tires hitting the lane divider markers woke him up and he went to the hospital and received medication and he was able to continue on his trip. (Tr. 2042).

Dr. Mora returned to Florida in January of 1994. The gases started coming at night after midnight, generally from 1:00 o'clock until 3:00 o'clock in the morning. In the beginning, the gas only made him cough and dizzy and he was sick in the morning. Later, Dr. Mora analyzed the gas and found it was phenol, a very dangerous substance. Dr. Mora bought a gas mask and had to jury-rig his door so that it would stay open at night to release the gas. (Tr. 2042-2044).

In January of 1994, Dr. Mora reported Dr. Rudolph's and AARP's fraudulent activities to the Secretary of Interior; the President of the United States; Utah's Senator Simpson; Janet Reno; the Governor of Florida and the Florida House of Representatives. In addition to reporting Dr. Rudolph to these authorities, Dr. Mora met with Dr. Rudolph and told him that his corporation was a phantom and criminally illegal. Dr. Rudolph laughed at him and he told Dr. Mora that he would file his papers with the Secretary of State and that if Dr. Mora went to court he

would be a laughingstock. Undaunted, Dr. Mora incorporated P.I.E. in his name. He filed a lawsuit on January 28, 1994. Dr. Rudolph was notified about the lawsuit on February 4th and immediately thereafter Dr. Mora was subject to a massive amount of toxic gas in his home, the pressure in his tires was altered and they started shooting at his tires on the highway. (Tr. 2050-2053).

Dr. Mora identified as a forgery a document filed with unemployment showing that he earned $32,000. (Tr. 2046). This document also indicated that Dr. Mora was a computer analyst when he was not, so someone must have falsified it. (Tr. 2047). A client separation document was filled in after Dr. Mora signed it. (Tr. 2049). Another document issued by Insight for the Blind showed falsely that Dr. Mora was an audio engineer when he was an electrical engineer. (Tr. 2049). On February 16, 1994, Dr. Mora tried to file a complaint for an injunction against Dr. Rudolph at the Palm Beach County courthouse. Dr. Mora was told to go to the court's Delray Beach branch. While driving on I-95, Dr. Mora was forced off the highway by a truck occupied by Dr. Rudolph and Wong Chung and a third man who was from Trinidad. (Tr. 2053-2055). Dr. Rudolph put a gun in Dr. Mora's mouth and slapped him and took away his watch and insulted him and tried to intimidate him into dropping the lawsuit. (Tr. 2056). Dr. Rudolph told Wong Chung to go to Dr. Mora's left window and count from five to zero and blow out Dr. Mora's brains, but Wong Chung hit Dr. Mora in the eye instead and they took away all Dr. Mora's papers so he could not file them with the court. (Tr. 2056-2057). After that, they

continued to pump gas into Dr. Mora's home and shoot out his tires. (Tr. 2057). Dr. Mora reported Dr. Rudolph's actions to the State Attorney's office in Palm Beach but they did nothing. The police told Dr. Mora that AARP said that Dr. Mora was coercing them with the lawsuit. (Tr. 2057-2058).

Once Dr. Mora filed his lawsuit, his encounters with the police multiplied. Ordinarily, the police stopped him at 6:00 o'clock in the morning but now they stopped him at 5:00 o'clock so Dr. Mora had to get onto the highway before 5:00 o'clock if he wanted to go anywhere or they would stop him before he could get to his court hearings. (Tr. 2062-2063). One time the officers even told Dr. Mora that he was being stopped because of the lawsuit. (Tr. 2063).

Dr. Mora made many reports to the police and to the Sheriff but they didn't believe him or they didn't want to believe him. From the witness stand Dr. Mora compared himself to Nicole Simpson: the police laughed at her and she was killed. (Tr. 2063). In April of 1994, Dr. Mora had to buy plastic and put it around his bed. He didn't have the money to do this as he lived on social security so sometimes he didn't eat, but he had to protect himself. (Tr. 2064). One day Dr. Mora encountered Wong Chung and a man with a badge. He doesn't remember what happened, except that the man with Wong Chung was trying to steal a certificate of appearance. (Tr. 2064-2068).

On May 3rd, Dr. Mora was parking near the highway and his tires were cut and shot out. Somebody stopped and towed Dr. Mora's

car to Tire Kingdom. (Tr. 2065). Dr. Mora purchased new tires. (Tr. 2065-2066).

On May 9th, Dr. Mora bought a Medico lock for $132.50 because Dr. Rudolph and his associates were entering his apartment by picking his lock. (Tr. 2066).

On May 20, 1994, Dr. Mora's car was broken into at a Publix and documents and a checkbook and a gold watch were stolen. As a result, Dr. Mora had to open up a new bank account, which he did on May 26, 1994. (Tr. 2068-2070).

Dr. Mora was told by his bank that he had insufficient funds and he went to the bank to repay it because he had received funds and jewelry from his sister. At that time he was told that he needed a new account because his checkbook was stolen. (Tr. 2071).

On cross examination, Dr. Mora maintained that the shootings were in self-defense. He repeated that Dr. Rudolph attacked him in the bathroom of the Cumberland Building and that Dr. Rudolph had told Dr. Mora that he was armed. Although Dr. Mora was afraid, he felt compelled to go through with the deposition, but he did not go there with the intent to kill Dr. Rudolph and he never told anyone on that day that Dr. Rudolph was trying to kill him because he thought everyone "was in cahoots." (Tr. 2206-2221). In the room, Dr. Mora wanted to rearrange the seating so that he could have a ready escape route. (Tr. 2242- 2243). Dr. Mora did not see Dr. Rudolph following him in the taxi earlier that day. When Dr. Mora transferred the gun from his briefcase to his pocket during the taxi ride, a round was chambered and the safety was off. (Tr.

2203-2205). He had gone armed to the other depositions on May 25th and May 26th. (Tr. 2198- 2200).

After Wong Chung opened the door and started shooting, Dr. Mora's survival instinct took over: "It's possible that the action was from my gun, it's possible I press the trigger.... when you having this, you don't make a distinction between man or woman, child or anything.... it's a difference between the action you can control, and action you cannot control. " (Tr. 2272). Dr. Mora knew that Dr. Rudolph tried to grab his gun and his ankles, but he did not know whether he shot him in the head or the heart, but he stated: "It's possible that the bullet from my gun went to his head." (Tr. 2273- 2275). Later, Dr. Mora stated that he believed that he shot Dr. Rudolph while he [Dr. Mora] was on the floor, but he was unaware of the number of shots that were fired. (Tr. 2283). Dr. Mora also denied shooting Mrs. Marx while at the same time conceding the possibility that the bullets from his gun could hurt her: "But I didn't shot [sic] her on purpose. I didn't shot [sic] her. I didn't have the minimal recognition that I did it." (Tr. 2277- 2278, 2284). Dr. Mora did not see or hear Mrs. Marx crying for help. (Tr. 2288). Dr. Mora stated:

> I didn't realize I was shooting Karen Marx or Rudolph or anyone else. I'm sorry. The only thing I know is that they are dead, and I am sorry, I apologize. And I, I, how you say, the sorrow and the pain have been going with me and will go with me for life for this. (Tr. 2283- 2284).

When shown a picture of the bullet hole in the door of the deposition room, Dr. Mora stated that he believed that the picture was faked. (Tr. 2259- 2263). Dr. Mora could not identify the sound

of the door of the deposition room opening after the sixth shot from the audio tape and he refused to identify a seventh shot as such when the tape was played for him again. (Tr. 2265- 2271).

Dr. Mora believed that he shot Wong Chung although he couldn't say for certain that the person he shot was in fact Wong Chung. (Tr. 2279- 2280).

Dr. Mora admitted that he understood the consequences of shooting a gun but he maintained that he shot only in self-defense in order to get out of the room alive. (Tr. 2276). Dr. Mora recognized that it was morally wrong to kill someone and he stated that the killing of another cannot be justified. (Tr. 2353)

2. The Sanity Testimony.

A. For the defense.

Dr. Ceros-Livingston, a clinical and forensic psychologist, interviewed Dr. Mora on four occasions over a collective five hour and forty minute period and she reviewed other reports and approximately 158 documents, some going back to 1974, and a video tape. In Dr. Ceros-Livingston's opinion, Dr. Mora suffered from paranoid schizophrenia, a major thought disorder that has "bizarre behaviors" including delusions, which are false beliefs that one does not know are false and visual and olfactory hallucinations. Dr. Mora suffered from both persecution and grandeur delusions: he believed that others were planning to harm him and he believed that he was better than others. A person with a persecution delusion can look at virtually anything as evidence of a conspiracy. The delusion can become fixed around events or people

and others can be brought into an expanding delusional system. A paranoid schizophrenic might believe that only certain people are after him and he might appear normal until something occurs that impinges on the delusional system. What Dr. Mora described to Dr. Ceros-Livingston was not a delusion from his point of view. It was what happened. (Tr. 1570-1581, 1585-1586, 1602, 1612).

Dr. Ceros-Livingston found that Dr. Mora did not know the difference between right and wrong and did not understand the consequences of his actions. (Tr. 1597, 1610).

> I think he has a fixed delusional system. The whole thing was acted out within that system. Yes, within the concrete motion [sic] of yes, he did know he had a gun in his hand; yes, I think he did. But for his point of view, I am sure he thought he might have been shot.
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> But I think the rest of that consequence, he would be, I don't think he knew the consequences before the shot left the barrel. That's the best way I can get to it, Mr. Donnelly. I don't think he thought about the consequences. I don't think it even crossed his framework. (Tr. 1623).

Dr. Mora had a long history of evaluations by courts, of writing letters, of suing people, including judges, and of claiming conspiracies, including a conspiracy between Dade County judges and drug dealers. Dr. Mora, as is typical with the disease, had a history of difficulties in interpersonal relationships. While polite at first, Dr. Mora can become agitated and upset if one gets close to one of his systems Dr. Mora's persecution and grandiosity delusions could together lead to dangerous acting-out behaviors. Dr. Mora's mental illness can ebb and flow and, because it is not consistent, he might appear fine for a period of time and then act out for a period of time but the illness never goes

away. (Tr. 1596-1597, 1606, 1609-1610).

Dr. Mora thought that Dr. Rudolph was gassing his apartment and that he had tried to kill him many times before and that Dr. Rudolph would kill him at the deposition. As his delusions about Dr. Rudolph became worse, Dr. Mora protected himself by putting up the apparatus over his bed, plugging up the holes in the electrical outlets, etc. (Tr. 1581-1582, 1611).

The threatening telephone calls, the gas in the room and the belief that someone was following the taxi were delusions as was his belief that he was attacked in the Cumberland Building bathroom when he went to return his gun to the briefcase. After the attack, Dr. Mora believed that he was not going to leave the building alive. (Tr. 1590-1591, 1614-1619).

In the deposition room, Dr. Mora, highly suspicious, hyper vigilant and delusional, believed that everyone was waiting there to harm him. (Tr. 1592-1593). Dr. Mora's perception of Mrs. Marx as nervous and sweating was a visual hallucination. Dr. Mora believed that every time he asked a question of Dr. Rudolph, Dr. Rudolph touched his pocket to signal to Dr. Mora that he [Rudolph] had a gun. (Tr. 1593). A man in a ski mask with a gun appeared and Dr. Mora fired at him in self-defense. Dr. Mora believed that Mr. Hall and Dr. Rudolph fought with him and he told Dr. Ceros-Livingston that he shot Dr. Rudolph. He remembered Mrs. Marx trying to grab her purse and thinking that she had a gun and he thought that he may have shot her. Dr. Mora believed that all of his actions were in self-defense. (Tr. 1594, 1619-1621).

Dr. Ceros-Livingston gave Mr. Mora a Minnesota Multiphasic Personality Inventory-II which showed that Dr. Mora was very manipulative. (Tr. 1604).

Dr. Macaluso testified that Dr. Mora was insane at the time of the shootings. (Tr. 1667).

Dr. Macaluso, a psychiatrist, interviewed Dr. Mora on two occasions for a total of 4-1/2 hours and he reviewed six volumes of background information. Dr. Macaluso found that Dr. Mora suffered from a nonschizophrenic psychotic delusional disorder involving a fixed false belief. Dr. Mora was actively delusional at the shootings - he was suffering from a symptom of a major mental illness. He believed that the people in the room and the people outside of the room were trying to kill him and that Dr. Rudolph had threatened him before the deposition. In his delusional belief system, Dr. Mora saw the actions of the others in the deposition room as threats against him, and he believed that he was acting in self-defense. Dr. Mora's delusion affected his ability to understand that his actions were wrong. (Tr. 1644-1667).

Dr. Mora was relatively intact away from his delusional belief system but his disease was progressive and could intensify with each flare up. Dr. Mora was a paranoid delusional before meeting Dr. Rudolph as evidenced by his history, but he reconstituted himself and became stabilized, only to later progressively break down again. (Tr. 1657-1664).

Dr. Macaluso did not believe that Dr. Mora's conduct in the

deposition room was a "preemptive strike," meaning that Dr. Mora did not go there with the intent to kill Dr. Rudolph because he believed Dr. Rudolph was trying to kill him. Dr. Mora was in the room for a length of time before anything happened, so it did not seem to Dr. Macaluso that Dr. Mora was acting preemptively. Dr. Macaluso did not know whether or not Dr. Mora had actually encountered Dr. Rudolph in the restroom before the deposition, but Dr. Macaluso believed that Dr. Mora perceived that event, which could be a hallucination, through the veil of his delusion. Hallucinations can become incorporated in delusions to give the delusion an aspect of reality. (Tr. 1670-1680).

Dr. Mora admitted to Dr. Macaluso that he shot all the victims, but he also repeated to Dr. Macaluso his belief that some were also shot by the masked assailant, who Dr. Macaluso thought was a hallucination. (Tr. 1680-1684). Dr. Macaluso reported that Dr. Mora understood the mechanics of what he did-- that if he shot a weapon at someone, that person would be injured or killed. Dr. Mora appeared to also understand in a generic sort of way that it is morally wrong to shoot someone, but, in this instance Dr. Mora believed on account of his delusion that he was justified because others were trying to kill him. (Tr. 1684-1688).

> He fired to protect himself, self defense. When I say self defense, I am not necessarily meaning the legal definition of self defense. He was doing this because he felt his life was in jeopardy and he had to act. (Tr. 1688-1689).

Because Dr. Macaluso interviewed Dr. Mora over a great time period and Dr. Mora's recounting of events was consistent over

time, Dr. Macaluso could rule out malingering. Dr. Macaluso felt that his diagnosis was supported by the video tape of Dr. Mora's apartment which depicted the lengths Dr. Mora went to protect himself from the poison gases and by a letter about Dr. Mora written by Dr. Rudolph to Dr. Rudolph's superior that described Dr. Mora in July of 1992 as destitute and "in bad shape" and sleeping in his automobile. Dr. Rudolph related in that letter that Dr. Mora had told him about people who were trying to harm him by projecting an ultraviolet light through his door and about people were damaging his automobile and his computers. Dr. Rudolph also related that in November of 1993, Dr. Mora again began behaving strangely, accusing Dr. Rudolph of trying to get rid of him and he described Dr. Mora as "delusional." Dr. Macaluso also reviewed police and Catholic Housing Management reports in which Dr. Mora claimed that others were entering his apartment, taking his food, putting on his clothing, moving objects around and taking money. (Tr. 1644-1656). Dr. Macaluso noted that between November of 1993 and April of 1994, Dr. Mora's complaints escalated from complaints that people had come into his apartment, to complaints about a pesticide-like odor in his apartment, to accusations that people were trying to poison him. Later, Dr. Mora identified Dr. Rudolph and other people associated with Dr. Rudolph as those who were trying to poison him. Then, Dr. Mora sought an injunction for protection against Dr. Rudolph and in April he accused Dr. Rudolph of pumping a gas into his apartment and of threatening his life. (Tr. 1655-1656).

Dr. Mora, in Dr. Stock's opinion, suffered from a paranoid delusional disorder that made him unable to appreciate the wrongfulness of his conduct. (Tr. 1762-1765).

> His delusional system was such that it made it correct for him to engage in this behavior because he was being threatened, because somebody was going to kill him, it was, therefore, appropriate for him to become violent back.
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> He believed that he was justified that it wasn't wrong to do this because so many horrible things have been going on against him for years, they were trying to kill him by gassing him, shooting at him, running him off the road and all these other alleged events that he was justified in his behavior.
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> ... I think this was a reaction to the circumstances around him that the events, these cascading events happened so quickly, and his perception of reality was so distorted, that once it started, it was just going to evolve terribly the way that it did. (Tr. 1763-1764).

Violence is a trait of Dr. Mora's mental illness. The DSM-IV describes the disorder as follows:

> This subtype applies when the central theme of the delusion involves the person's belief that he or she is being conspired against, cheated, spied on, followed, poisoned or drugged, maliciously maligned, harassed, obstructed in a pursuit of long - term goals.
>
> Small slights may be exaggerated and become the focus of the delusional system. The focus of the delusional system is often on some injustice that must be remedied by legal action where there is paranoia. And the affected person may engage in repeated attempts to obtain satisfaction by appeal to the courts and other government agencies.
>
> Individuals with persecutory delusions are often resentful and angry and may resort to violence against those that they believed are hurting them. (Tr. 1744 - 1745).

Dr. Stock called Dr. Mora's delusions about Dr. Rudolph "complicated." (Tr. 1746-1748). Dr. Stock spent twelve to fourteen

hours with Dr. Mora between 1994 and 1997 and he read the background material going back to the early 1980's which revealed among other things that Dr. Mora was diagnosed as a paranoid schizophrenic in 1982, and Dr. Stock noted that throughout the years Dr. Mora had filed police reports and lawsuits, which Dr. Stock thought were a product of Dr. Mora's disease, claiming that others, including the FBI, were breaking into his apartment, gassing him, sending laser beams at him, disrupting his life, and stealing from him. Dr. Stock believed that the video tape of Dr. Mora's apartment was consistent with a long-standing paranoid delusional disorder as were Dr. Mora's canceled checks for items that he purchased to help him combat the gas. Dr. Stock also noted Dr. Rudolph's description of Dr. Mora in his letter as delusional. (Tr. 1737-1747).

Persons with delusional disorders may look normal and rational and even have good interpersonal relations and they may communicate well about matters outside of their delusion, but their mental illness will emerge when their false fixed beliefs are discussed. A delusional person perceiving an event connected to the delusion will treat the event as true. (Tr. 1749-1754).

When Dr. Mora entered the deposition room, he tried to arrange the seating to prevent his enemies from signaling to each other from outside of his line of sight. Dr. Mora thought that Dr. Rudolph taunted him by touching his pockets, meaning to Dr. Mora that Dr. Rudolph was going to kill him at some point during the deposition. All of these actions were manifestations of Dr. Mora's

delusions. Dr. Mora saw Wong Chung shoot and hit Mr. Hall. When Dr. Rudolph dived under the table, Dr. Mora fired at him. Mrs. Marx reached for her purse. That meant to Dr. Mora that she was going for her gun so he shot her. (Tr. 1754-1755).

Dr. Stock did not think Wong Chung was part of Dr. Mora's delusion. He was a hallucination, a device to allow his mind to accept his acts rather than acknowledging his underlying mental illness. (Tr. 1758-1759).

> Dr. Mora does not think that there is anything wrong with him. He thinks that all of these things that he's put about the FBI being after him, the gas and the laser beams over the last eight years, it's all true. And he won't be dissuaded. He won't change his mind that it's not true.
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> So, in order for his own mind to accept these things, these horrible things that he did, he has to a fashion a self - defense. But when people have the kind of delusional disorder that Dr. Mora has, in my opinion, they don't hallucinate black Chinese men with guns. It doesn't happen.
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> I don't think he's fabricating - - yeah, he's fabricating the belief. I think what he's doing at this point, because he's unwilling to acknowledge his underlying mental illness, he's trying in his mind to justify his behavior in his mind. (Tr. 1758 - 1759).

Dr. Stock explained that a hallucination is a perceptual distortion of a physical reality that doesn't exist. (Tr. 1760-1767). The people in the room would not be a hallucination because they existed. (Tr. 1769-1770). A hallucination for someone with Dr. Mora's disorder would be rare, but when Dr. Mora embellished about the black man shooting a weapon, it did not mean that Dr. Mora did not feel threatened for his life. He perceived a threat by any action by anyone in the room. So, moving a briefcase would

be positioning a briefcase to be able to go for a gun and changing seats would be some sort of signaling process. Dr. Mora's mind was contorting whatever was occurring into his very narrow belief system. (Tr. 1754-1760).

> ... the best way to understand this kind of delusional disorder is to think about a filter. And this filter, if you wearing it internally in your mind, but only allow certain things in.
>
> And it wouldn't matter what reality was out there. These things would come through this filter and they would all come down to the same kind of determination that something is going on, or somebody is going to kill me. (Tr. 1761).

Dr. Mora's violence was not a preemptive strike but was a reaction to the circumstances that he perceived. Dr. Mora's delusions waxed and waned but always had an "underlying paranoid flavor to it." (Tr. 1769-1770). Dr. Mora's perception of everyday events would be very skewed. "His view of the world would be idiosyncratic, that a small event would take on major meanings to him." (Tr. 1777-1780). Dr. Mora's perceptions of what occurred within the deposition room were true in terms of his delusional disorder even though there was no Wong Chung there. (Tr. 1777-1778).

B. For the State

Dr. Spencer was the State's sole sanity witness. He met with Dr. Mora for an hour and later for six hours and he reviewed reports and statements, the videotape of Dr. Mora's apartment and the audio tape of the shootings that Grant had made. (Tr. 2430 - 2435).

Dr. Spencer testified on direct examination that Dr. Mora did not suffer from a mental disease and that he understood the difference between right and wrong. (Tr. 2436, 2454). Dr. Spencer believed that Dr. Mora's conduct was inconsistent with how an individual with a paranoid personality disorder would act. Later, on cross-examination, Dr. Spencer conceded that Dr. Mora had a "personality disorder" that was not a mental illness. (Tr. 2466 - 2487). Dr. Mora's expression of remorse after the incident reflected an appreciation of what happened and of the possible consequences. Dr. Spencer thought that Dr. Mora reacted to the loss of control at the deposition because he wasn't being treated with deference and he became more strident as the deposition progressed. (Tr. 2454 - 2458).

Dr. Mora, according to Dr. Spencer, spoke to him freely, something a paranoid would not do. Also, Dr. Mora was charming and courtly which to Dr. Spencer was inconsistent with paranoid behavior. Dr. Spencer felt that Dr. Mora's assertion that others were trying to kill him was merely a "verbal prop" - part of a story to make himself feel important, that he was somebody worth trying to kill. Dr. Spencer also thought that the anti-gassing devices in Dr. Mora's apartment were "prop[s]." Dr. Mora's demeanor, to Dr. Spencer, was inconsistent with that of an individual who believed that he was being gassed. (Tr. 2436 - 2440).

To Dr. Spencer, the audio tape of the deposition was the best evidence of what occurred. (Tr. 2444). Dr. Spencer believed that

Dr. Mora "knew absolutely" what he was doing. Nothing on the tape led Dr. Spencer to believe that Dr. Mora was frightened or intimidated. Dr. Mora acted at the deposition as if he were the one in charge. He was goal oriented and he did not appear confused. Although Dr. Mora claimed to have hallucinations and amnesia about the events, hallucinations are not hallmarks of a paranoid personality and amnesia is inconsistent with paranoia as paranoids have meticulous memories. (T. R.2435 - 2449).

On cross-examination, Dr. Spencer conceded that person with a paranoid illusional disorder might not appreciate the difference between right and wrong and might believe his actions to be justified. (Tr. 2461 - 2462). The videotape of Dr. Mora's apartment, the police reports made by Dr. Mora, his complaints about break-ins and being gassed could all indicate paranoia, but to Dr. Spencer these were things that Dr. Mora arranged. (Tr. 2464 - 2465). Even by Dr. Spencer's definition though, Dr. Mora had a personality disorder, and he was not well adjusted, but to Dr. Spencer, it was not likely that Dr. Mora was truly suffering from a paranoid personality disorder. Someone with a paranoid personality disorder could not walk out of the shooting, switch gears and put on another persona. (Tr. 2467 - 2471).

Dr. Mora presented in Dr. Spencer's words "a most complex, interesting and difficult case." (Tr. 2476). He was an individual with many resources so the paranoid personality categorization did not explain him. He exhibited behaviors that paranoids do not, although other elements of Dr. Mora's personality seemed to Dr.

Spencer to fit the paranoid mold such as his claim to being poisoned or drugged; his feelings of being maligned; his feelings of being harassed; his attempt to obtain legal redress; and, his anger and his resentfulness. (Tr. 2486).

3. The Pre-trial and Penalty Phase Competency Hearings.

1. The Pretrial Hearing.

Dr. Ceros-Livingston found Dr. Mora was incompetent to be tried because of his fixed delusional system and paranoid schizophrenia. According to Dr. Ceros-Livingston, Dr. Mora saw his situation irrationally so his interactions with counsel were colored by his delusional system. Dr. Ceros-Livingston believed that Dr. Mora made and would make decisions based upon his delusions and that he would communicate with his attorneys "only based on his belief system which is delusional." (Tr. 34-43, 45). "He cannot accept a reality other than how own, and his reality is very different from the norm." (Tr. 48).

Dr. Macaluso thought that Dr. Mora understood the charges against him, how those charges came about, the role of the people in the courtroom, his plea alternatives and the possible outcomes of the case, including the death penalty, but he believed that Dr. Mora was unable because of his paranoid delusional disorder to cooperate rationally with his counsel and to testify in a relevant manner. (Tr. 105-113, 123). Also, Dr. Mora's refusal to go along with an insanity defense was irrational to Dr. Macaluso. (Tr. 112). Dr. Macaluso believed that Dr. Mora interpreted facts in the service of his delusion and that Dr. Mora would use the courtroom

as a forum to discuss his delusions rather than to seek acquittal. (Tr. 116-121, 123, 127). Dr. Macaluso stated: "Dr. Mora can disclose facts. It's his interpretation of the facts that gets in the way of cooperating with counsel." (Tr. 123). Dr. Macaluso did not believe that Dr. Mora was malingering because he did not call attention to his mental illness but was, instead, underplaying it and was denying he had it. (Tr. 133-134).

Dr. Block-Garfield spent "roughly an hour" evaluating Dr. Mora. (Tr. 59). Dr. Block-Garfield believed that Dr. Mora was competent to stand trial because he understood the adversary nature of the proceeding, appreciated the penalty, and could conduct himself appropriately in a courtroom setting. Dr. Block-Garfield did not discuss the facts of the case with Dr. Mora except that Dr. Mora indicated that he acted in self defense and Dr. Block-Garfield inferred that Dr. Mora could communicate with his attorneys from his ability to communicate with her. (Tr. 57-59).

Dr. Block-Garfield did not review Dr. Mora's history, which she felt was not important, (Tr. 60), although she later conceded that a history would be helpful. (Tr. 63). Dr. Mora, according to Dr. Block-Garfield "may very well have a paranoid personality" but he was not a paranoid schizophrenic. (Tr. 62-63, quote at 63). Dr. Block-Block-Garfield conceded that a person with a delusional belief system would tend to rely on that belief system rather than reality and that communication with counsel would be impaired in matters "that involve the theme of the delusion." (Tr. 63-66,

quote at 66). Dr. Block-Garfield relied on Dr. Mora's statement to her that he had filed several motions with the court and had done extensive work representing himself, but Dr. Block-Garfield did not review the content of those motions. (Tr. 64).

Dr. Spencer evaluated Dr. Mora on December 31, 1995, some 14 2/3 months prior to his testimony on competency. (Tr. 73, 88). Dr. Spencer believed that Dr. Mora was competent. (Tr. 80). Dr. Mora, according to Dr. Spencer, understood the charges and the nature of the criminal justice system and he felt that he knew the issues of the case better than anyone. (Tr. 74). Dr. Spencer observed Dr. Mora in court three or four weeks prior to his testimony and noted that Dr. Mora had made a joke. Disorganized schizophrenics, according to Dr. Spencer, cannot appreciate humor and paranoid schizophrenics don't think much is funny and when they do make a joke it has a bitter, sharp edge to it. Dr. Mora's joke, according to Dr. Spencer, was a response to a question from the court, "is there anything else that you would like?" to which Dr. Mora said "Yes, I would like to go home." (Tr. 75, 76). That remark, according to Dr. Spencer, was consistent with a mind that is functioning well. Dr. Spencer thought that Dr. Mora appreciated the charges against him because he said that they were false charges and it was a self-defense situation. (Tr. 77). Dr. Spencer felt that Dr. Mora appreciated the penalties because he knew he could go to prison for a long time but the death penalty was not discussed. (Tr. 77). While Dr. Mora did not want to talk about his case with Dr. Spencer, except to tell him that the case against

him was a "false case" and it was a "self-defense situation'" Dr. Spencer believed that Dr. Mora could disclose facts pertinent to the proceedings to his attorney because Dr. Mora spoke with him about Spanish political history and he was "able to relate to [these] other things in a chronological, meaningful logical ordered manner that made sense." (Tr. 77-78, emphasis added). Moreover, according to Dr. Spencer, Dr. Mora was exhibiting appropriate courtroom behavior during his [Spencer's] testimony because he was taking notes and listening. (Tr. 79). Dr. Spencer found Dr. Mora to be a charming gentleman. (Tr. 79). When Dr. Spencer made a comment about his previous attempt at meeting Dr. Mora, Dr. Mora interjected that Dr. Spencer was lying which Dr. Spencer thought was an appropriate response, (Tr. 81-83), although it was not appropriate courtroom behavior. (Tr. 84). Also, Dr. Spencer thought Dr. Mora displayed appropriate courtroom behavior during the competency hearing because he attentively listened to the testimony and wrote his attorney a note. Dr. Spencer did not know the content of the note but assumed it was appropriate because the attorney did not react to it. (Tr. 79, 85). Dr. Spencer thought that Dr. Mora's insistence on rejecting the insanity defense in favor of a self-defense approach was an educated attempt by him to roll the dice because if he were found insane he would be hospitalized but if the self-defense argument prevailed, he would be acquitted. (Tr. 100-101).

The court found Dr. Mora to be competent to proceed (R. 881-886). A renewed motion to declare Dr. Mora incompetent was denied.

(Tr. 158-Tr. 167).

2. The Penalty Phase Competency Hearings.

Prior to the convening of the penalty phase trial with Dr. Mora acting as his own attorney, stand-by counsel Malnik moved to declare Dr. Mora incompetent. Dr. Mora resisted the motion. (Tr. 3037-3039). Dr. Stock testified that he had recently spent 12 to 14 hours with Dr. Mora and then saw him on the previous day for about four hours. (Tr. 3038-3041). Dr. Mora appeared now to be more forgetful and unable to make reasonable decisions because of his underlying mental illness. (Tr. 3042). Dr. Stock believed that while Dr. Mora knew that he was the defendant in the case and that he understood the charges and the possible outcomes and he was able to delineate the function of the attorneys and the judge and the jury, he could not act reasonably and rationally because his mental illness would not allow him to logically and coherently sort the choices he had to make in asserting his defense. (Tr. 3043). Dr. Stock stated that Dr. Mora didn't understand what mitigators were and how they might be of benefit to him and he was unable or unwilling to offer testimony on his own about his mental illness. Dr. Stock stated that individuals with persecutory delusions cannot believe that there is anything wrong with them, they believe there is something wrong with everyone else. They see a conspiracy every place they look and would rather be considered a criminal than someone who is mentally ill. Dr. Stock stated that Dr. Mora's decision not to present mental mitigation evidence was not rational: "I don't think he understands the idea of what

mitigators are, and how mitigators act, and they might benefit him." (Tr. 3044). Mr. Malnik advised that Dr. Mora couldn't focus on his advice and he has made him a part of the conspiracy. (Tr. 3057). The court found Dr. Mora competent. (Tr. 3058).

On Tuesday, October 20, 1998, the day before the sentencing, the court heard an emergency motion by Mr. Malnik to declare Dr. Mora incompetent. Mr. Malnik had before the weekend called the court and advised of his intent to file the motion and court had entered an immediate order appointing Dr. Spencer and Dr. Block-Garfield to evaluate Dr. Mora. Both doctors visited with Dr. Mora that weekend and their reports were provided at this court session. Dr. Mora asserted that he was competent. Dr. Mora objected to the appointment of the competency experts in his absence. Without conducting an evidentiary hearing, and based on its observations, the court made findings that Dr. Mora was competent to proceed. (Tr. 3149-3183).

4. The Guilt Phase Testimony for the State.

Patricia Grant was the court reporter. Depositions had also been set for May 25th and 26th but no one but Dr. Mora appeared. Both times Dr. Mora said he didn't expect anyone to attend and he waited 15 minutes. This time Dr. Mora told Grant that the witnesses were ordered to be present. (Tr. 1395-1401, 1404). Nothing in Grant's conversation with Dr. Mora on May 26th indicated to her that Dr. Mora was afraid. (Tr. 1428). On the 26th, Dr. Mora told Grant that Dr. Rudolph had fired him; that he believed that the people he was suing were pumping chemicals into his house and

were gassing him because he had notarized some documents that weren't signed and he had threatened to expose them; that his tires had been shot out; and, that he was followed at Home Depot. (Tr. 1429-1430, 1433).

On May 27th Karen Marx arrived first followed by Hall and Rudolph. (Tr. 1404). Grant recorded the deposition on audio tape. (Tr. 1408, 1409). Dr. Mora said he had one last question of Dr. Rudolph, asked it, waited while the witness answered, stood up and shot Rudolph then Hall and then Marx. (Tr. 1411). Grant thinks that Dr. Mora shot Dr. Rudolph again.

Grant got on the floor and saw Dr. Mora squatting underneath the table. When Dr. Mora looked at her, she realized that he wasn't going to shoot her so she got up and ran. (Tr. 1412). Everyone was on the floor at this time. As Grant ran out, she saw Dr. Mora leaning over the table shooting Karen Marx and she could still hear shooting after she ran out. (Tr. 1413). Later, she heard voices, came out of hiding and saw Dr. Mora with another employee and Hall lying on the floor. (Tr. 1413, 1414). Later, Grant saw Dr. Mora calmly sitting by the elevator. (Tr. 1427).

Grant did not know where the gun came from. Dr. Mora never said anything while he was shooting. (Tr. 1414).

The audio tape of the deposition was played for the jury. (Tr. 1421).

Either Hall or Rudolph went to the bathroom prior to the deposition. (Tr. 1425-1426).

Maurice Hall, Dr. Rudolph's attorney, testified that Dr. Mora

had sued Dr. Rudolph for employment discrimination, sexual harassment and sexual battery. Dr. Mora entered the deposition room last and had at first sat near Dr. Rudolph, but he moved away at Hall's request. Hall heard the court reporter state: "Dr. Mora what are you doing" and was shot in the abdomen as he turned toward the noise. Hall thought the gun came from the tabletop. Hall left the room, went down a hallway and crouched behind a door. Dr. Mora pushed through the door and he and Hall wrestled for the gun. Hall won. Dr. Mora left the room. Hall locked the door and called the police. (Tr. 1466-1479).

In the litigation, Dr. Mora had expressed on many occasions his feelings that there were conspiracies against him. Hall recalled Dr. Rudolph telling him that he saw Dr. Mora in the bathroom prior to the deposition. (Tr. 1484-1486).

Jason Pincus was at the reporting service reception desk when he heard five shots and saw some wood chips fly off the deposition room door frame. Pincus ducked and when he looked up later he saw Mr. Hall, bleeding, staggering and holding a gun, Mrs. Marx lying on the floor on her side moaning "help me" and Dr. Rudolph, who was dead.

Pincus recalled that Mr. Hall asked to use the bathroom before the deposition but he could not recall if Dr. Rudolph did. (R. 1158-1172).

Dr. Nelson performed the autopsies on both Mrs. Marx and Dr. Rudolph. Dr. Nelson also examined Dr. Rudolph where he lay face down. When Nelson rolled him over he saw a facial exit wound. (Tr.

1214-1216, 1227-1228).

Dr. Rudolph had four gunshot wounds. The sequence could not be determined. One entered the back of Dr. Rudolph's head and exited along the left side of his nose. Another entered at the back of Dr. Rudolph's left hand, exiting at the front of his wrist. A third passed through both of Dr. Rudolph's thighs traveling left to right, slightly from the front to back and slightly upward. A fourth entered on the left side of Dr. Rudolph's abdomen and was recovered in Dr. Rudolph's body. (Tr. 1227-1234).

The second projectile could have caused the third wound. The fourth passed through Dr. Rudolph's heart. The shot to the head would have rendered Dr. Rudolph unconscious. There was bleeding in Dr. Rudolph's brain which would not occur if he were shot in the heart first as the heart would have stopped pumping. (Tr. 1230-1236).

The cause of Dr. Rudolph's death was multiple gunshot wounds and the manner of his death was homicide. (Tr. 1236).

Dr. Nelson found a non-life threatening wound to Mrs. Marx's left hand. Another shot entered her left front chest, passed through her lung and exited at the back of her shoulder. A third entered her right abdomen, passed through her pregnant uterus and exited her right posterior abdomen. A fourth shot entered at the back of her right abdomen and passed through her liver and spleen. Dr. Nelson could not determine the order of the wounds. Mrs. Marx could have been lying on her back at the time she was struck with

the second projectile and one of Mrs. Marx exit wounds suggested that she was shot while her body was in contact with a hard surface. (Tr. 1216- 1223, 1237). The cause of Mrs. Marx's death was multiple gunshot wounds and the manner of her death was homicide. (Tr. 1224).

Dr. Constantini treated Mrs. Marx in the emergency room. (Tr. 1200-1201). She had multiple gunshot wounds to the abdomen and was bleeding profusely. There was a through-and-through injury to the iliac vein. One of the globes of Mrs. Marx's liver was totally destroyed, while the other had a through-and-through injury. (Tr. 1202-1203). Mrs. Marx also had a wound in her lung which could create an involuntary sound similar to moaning. (Tr. 1205). Mrs. Marx died on the operating table. (Tr. 1203-1204).

Carl Haemmerle, the firearms examiner, examined the recovered .9mm weapon and found it to be operable and the gun from which all of the recovered bullets were fired. Haemmerle testified that the weapon had jammed after being fired. Haemmerle could not determine by the location of the ejected cartridges where in the room the weapon was fired from. (Tr. 1364-1390).

Fort Lauderdale Officer Michael Hoelbrandt was the first officer to arrive at the scene. He described Dr. Mora as calm. Dr. Mora stated to Hoelbrandt: "Look I am sitting here. I am not trying to go anywhere. I am okay. I am not trying to run. Just be fair." (Tr. 1061-1066). Fort Lauderdale Officer Hancock heard Dr. Mora state: "I know what I have done, just treat me with respect" and "Treat me like a human being." (Tr. 1151-1153). Fort

Lauderdale Homicide Detective Palazzo took Dr. Mora to an interview room in the Cumberland Building and stayed with him for two to three hours. Dr. Mora told Palazzo that Dr. Rudolph had told him in the restroom before the deposition "by tomorrow you will be dead" but Dr. Mora never mentioned the physical attack. Dr. Mora's mood that day fluctuated from calm to angry to remorseful to angry. (Tr. 2414-2422).

Crime Scene Technician Robert Knutten identified a videotape of the crime scene that depicted blood spots on the floor and a .9mm Smith & Wesson pistol. A not-to-scale diagram and other pictures of the scene were introduced through Knutten. Knutten obtained the projectiles taken from Dr. Rudolph's and Mrs. Marx's bodies by the medical examiner. (Tr. 1077-1094). Fort Lauderdale Officer Medley guarded the weapon until it was given to a homicide detective. It had "stovepiped," a malfunction caused by a round not ejecting. (Tr. 1117-1123). Ft Lauderdale Officer Dodder saw Rudolph dead and Marx unresponsive and breathing shallowly. Rudolph and some furniture were moved to make way for EMS. (Tr. 1125-1134). Fort Lauderdale Officer Derio saw Rudolph's and Marx's bodies intertwined and found Hall in another room attempting to call 911. Hall pointed to a weapon on the desk. Dr. Mora was calm. (Tr. 1098-1112). Fort Lauderdale Officer Moody saw EMS assisting Marx on the floor. Rudolph did not have a pulse. A chair and stenographer's stand had been moved and EMS had kicked a shell casing. (Tr. 1136-1150).

Crime scene investigator White recovered a projectile from

the doorjamb of the deposition room and he identified a drawing and photographs of the scene and items recovered from the scene, including spent shell casings and projectiles and a maroon briefcase containing Dr. Mora's passport, $690.00, two rings and a holster. White listened to the audio tape and heard nine to ten shots fired with forty-eight seconds elapsing between the first and last shots and with thirty-one seconds elapsing between the next to the last and last shot. The first few rounds were fired in the first seven seconds, then there was a pause and then a few more rounds were fired in the next eleven seconds, when all but the last two shots were fired. (Tr. 1285-1312).

Kevin Jones, a nurse, recovered a bullet from the gurney transporting Marx to the operating room. (Tr. 1347-1349).

Joyce Marks, a court reporter, retrieved the stenographic and audio recordings of the deposition and transcribed the audio cassette. (Tr. 1179-1183).

Ellen Malasky of Mrs. Marx's law firm described the litigation between Dr. Mora and her clients, which included conspiracy claims. Ms. Malasky believed that there was a possibility that the evidence would show that Dr. Rudolph was sexually harassing Dr. Mora. Dr. Mora sued Ms. Malasky for her participation in the Rudolph litigation. (Tr. 1314-1330).

Ann Buckley worked at Dr. Mora's bank on May 26, 1994, and had serviced him on that day. Dr. Mora came in to close out one account and to open a new one. Because Dr. Mora had a direct deposit account, the old account could not be completely closed

and funds were left in there. $1,407.00 was transferred from the old account to the new account. (Tr. 2374-2390).

Detective Thomas Mangifesta searched Dr. Mora's apartment and his automobile. In the apartment Mangifesta saw several fans without blade covers; a bed with a plastic curtain shaped like a makeshift oxygen tent around it held together with paperclips and secured by pulleys on the ceiling; taped-over electrical recepticals; several locks on the doors, including a top-of-the-line Medico lock; and, a computer and approximately 50 discs. A shredded tire was in the trunk of the car. (Tr. 1436-1446).

David Potts, an accident reconstruction and mechanical analyst, inspected Dr. Mora's vehicle and found wear on the tires; nothing wrong with the brakes; nothing abnormal about the steering; an operable fuel system and parking brake; and, engine and accessories with the proper fluid levels. Potts did not have a key and could not turn the vehicle on to make sure it ran. The tire in the trunk was ruptured, but Potts did not see evidence that a bullet had penetrated it and he thought that it was probable that the shredding resulted from a high speed blow out. (Tr. 1446-1460).

Dorothy McCreary worked with Dr. Mora and Dr. Rudolph at the Senior Community Service Employment Program in Fort Lauderdale where Dr. Rudolph was the project director. Dr. Rudolph gave Dr. Mora a raise in 1993 by terminating him from the program and hiring him back so he could start at a higher wage. Before Thanksgiving, 1993, Ms. McCreary heard an argument between Dr.

Rudolph and Dr. Mora in Dr. Rudolph's office. She did not exactly hear what was said but they were at the time having a dispute over the time allotted for Dr. Mora to teach his computer course. (Tr. 1250-1259).

Ms. McCreary spent Thanksgiving with Dr. Mora at Dr. Mora's apartment. (Tr. 1259-1260). Dr. Mora indicated to Ms. McCreary that he thought someone was manufacturing drugs in his apartment. (Tr. 1268). Dr. Mora lived at Hurley Hall which is religious housing for indigent people. (Tr. 1268, 1269). Dr. Mora kept his telephone unplugged and he would not answer it because he said that someone was going to kill him. (Tr. 1270). Ms. McCreary broke off her relationship with Dr. Mora because she couldn't work for Dr. Rudolph during the day and talk to Dr. Mora at night. (Tr. 1262). When Dr. Mora received a letter that Dr. Rudolph wrote after their argument, Dr. Mora became angry and stated that he was going to get even with Dr. Rudolph. (Tr. 1263). Ms. McCreary never heard Dr. Mora make any physical threats and she didn't understand Dr. Mora to mean that he was going to shoot Dr. Rudolph but that he was going to get even with Dr. Rudolph by filing a lawsuit against him. (Tr. 1267). After Ms. McCreary read some of Dr. Mora's court papers she had doubts about his mental capabilities because there were a lot of bizarre allegations in those court papers. (Tr. 1280-1283).

5. The Guilt Phase Testimony for the Defense.

BSO Community Service Aide Anna Benitez spoke with Dr. Mora in the lobby of the Sheriff's department early in the morning of

May 27th. Dr. Mora asked for the civil department. Benitez remembered that Dr. Mora had an attache case and that he was standing on line saying "damn these people." (Tr. 1523-1524).

Michael Viscount was the taxi driver who drove Dr. Mora to the deposition. Dr. Mora told Viscount to drive him first to the Broward Sheriff's Office and then to the Cumberland Building. While they were driving on I-595, Dr. Mora asked Viscount if anyone was following them and related to Viscount that someone shot out his tires out and tried to kill him on the previous day. Viscount looked in his rear mirror and told Dr. Mora that no one was following. Dr. Mora went into the Sheriff's office and when he emerged he commented to Viscount that they would not help him there and he would take care of it himself. Dr. Mora told Viscount that he was going to the Cumberland Building to take the depositions of the people who were following him. (Tr. 1721-1727, 1729-1730). On cross-examination, Viscount did not remember an earlier statement he gave in June of 1994 in which he stated that Dr. Mora told him several times that someone was trying to kill him by shooting at his car tires and Viscount asked Dr. Mora if they were being followed now and Dr. Mora said "no, not to worry about it." (Tr. 1728). Viscount's memory of the incident was clearer at trial than at the time of his statement. (Tr. 1729).

Detective Mike Szish responded to a May 23, 1994 verbal altercation involving Dr. Mora at a Home Depot. Dr. Mora told Szish that he believed that an individual with whom he had bumped shopping carts in the aisle was following him. (Tr. 1715-1718).

Loretta Palis was the manager of the Hurley Hall Elderly Housing Facility where Dr. Mora lived in May of 1994. Dr. Mora had complained to Palis that people were going into his unit. Dr. Mora kept his apartment door open to vent the chemicals that were inside his apartment. Also, Dr. Mora would disconnect his car battery daily because he believed that someone was taking the power from his vehicle. (Tr. 1545-1549).

After Dr. Mora was arrested, Palis took a video of Dr. Mora's apartment that was shown to the jury. The video depicted tinfoil covering up sprinkler heads that were packed with foam sealant; light socket openings that were sealed with foam; a fan that replaced a window; six to eight fans without guards; ropes and bungee cords hung from the walls and ceiling; and, a plastic apparatus hanging from the ceiling that cocooned around Dr. Mora's bed. Dr. Mora's air-conditioner was unplugged and the socket was taken out of the wall and filled with foam sealant. Dr. Mora's smoke alarm was disconnected and filled with sealant, an emergency cord was taped up and a big lock was on the bedroom door. Papers were everywhere. Photographs of the apartment depicted fans; sealed electrical receptacles with foam and tape; a 2 x 4 attached to the couch. (Tr. 1549-1558).

Palis stated that at one point Dr. Mora wanted to put a wanted poster in the Hurley Hall lobby offering an award for anyone who tried to harm him. Dr. Mora continually complained to Palis that people were trying to gas him. After Dr. Mora was arrested, he called Palis on the phone and told her "a man has to

do, what a man has to do." (Tr. 1549-1569).

On April 13, 1994, Dr. Mora told Manuel Alonso, a security guard at Hurley Hall that he had called the police because he smelled chemicals in his apartment and he thought that people were trying to break in. Dr. Mora said that he was going to purchase cameras to record the break-ins. On April 20, 1994, and daily thereafter, Dr. Mora complained about people gassing him. (Tr. 1529-1532).

On April 18, 1994, Dr. Mora reported to Hallendale Police Officer Villanueva that Dr. Rudolph had entered his apartment and sprayed a bug killing chemical. Dr. Mora showed Villanueva a court order that he had obtained against Dr. Rudolph. (Tr. 1709-1711).

In April or May of 1994, Hallendale Police Department Detective Davis went to Dr. Mora's apartment with Community Service Officer Kyle. Dr. Mora had requested police assistance because someone was shooting gases into his apartment at night. Davis observed a drop cloth hanging from the ceiling over Dr. Mora's bed and fans all over the apartment. (Tr. 1539-1540). Kyle testified that she saw numerous fans without blade guards; foil papers over the fire sprinklers; and, a plastic covering hanging in a circle from the ceiling surrounding Dr. Mora's bed. Dr. Mora thought he was being poisoned by Dr. Rudolph. (Tr. 1509-1514).

Palm Beach County Sheriff's Deputy Ellis was contacted by Dr. Mora on May 12, 1994 when Dr. Mora reported a burglary of his vehicle. Dr. Mora believed that someone had a set of keys and had entered his car. (Tr. 1706-1708).

On November 11, 1993, Dr. Mora reported a burglary to Officer Jimmy Llinas. Dr. Mora had put up reward posters around Hurley Hall for information about people breaking into his apartment. Officer Llinas did not find any evidence of forced entry and, as Officer Llinas was pressing for information about the burglary, Dr. Mora yelled at Officer Llinas, stated that the police were incompetent and asked him to leave. (Tr. 1711-1715).

On June 22, 1990, Dr. Mora called the Fort Lauderdale Police because he believed that his apartment [not at Hurley Hall] had been burglarized. When Officer Judith Waldman came to the apartment, she saw cables, pulleys and chains inside the door to keep intruders from entering the apartment while Dr. Mora kept the door open six inches for ventilation. Dr. Mora reported that he had been gassed and drugged. (Tr. 1640-1643).

On June 22, 1990, Detective Todd Mills took a report from Dr. Mora in which Dr. Mora claimed that his that house was broken into and that items were missing. Later, Dr. Mora gave the police a list of some documents that were also taken from his apartment. The apartment was dusted for fingerprints but none were found. (Tr. 1629-1633).

Officer John Walters of the Coral Springs Police Department testified that in 1988 Dr. Mora reported that someone had tampered with the locks on his door. Dr. Mora felt that the reason people had broken in was to scramble the letters on his computer discs to prevent him from writing a book. (Tr. 1634-1636).

Todd Schwartz, the Health Service Administrator of the

Broward County Jail, stated that Dr. Mora currently took Cardizem, Tagamet and Naprosyn and he had a nitro patch. Dr. Mora was on psycho tropic medication at one time while he was in custody but he hadn't taken it for at least one year. (Tr. 1636-1638).

John Highton, an AARP employment counselor vaguely remembers a meeting with Dr. Mora about four or five years ago when Dr. Mora may have mentioned that someone was trying to get him. (Tr. 1782-1786).

Rev. Edward Raitt counseled Dr. Mora approximately six ½ to seven years prior to the trial. Dr. Mora complained at that time that he was "living in fear" because he thought his ex-wife had hired someone to kill him. He also felt that people at his workplace were out to get him. Later, on two occasions, Dr. Mora lived at Rev. Raitt's house, but he did not complain that people were after him on those two occasions. (Tr. 1787-1793).

D. Dr. Mora Becomes Cocounsel and Addresses the Jury.

Prior to the start of competency hearing Dr. Mora was instructed not to file any more *pro se* motions as he was represented by counsel, but the court stated: "if you want to become your own lawyer feel free to do so." Dr. Mora replied: "No, sir, I can't do it." (Tr. 22-23). Then, prior to the start of the defense case, Dr. Mora spoke to the court about his dissatisfaction with counsel's insanity defense strategy because his defense was self-defense, not insanity. (Tr. 1056-1057). Later, during Dr. Mora's direct examination, Dr. Mora announced that he wanted to fire Mr. Colleran. Dr. Mora told the court that

Mr. Colleran had reneged on his promise that the defense would be self-defense, not insanity, and that Mr. Colleran did not interview witnesses and that he was disorganized and unprepared. (Tr. 1931-1935). Dr. Mora asserted that he was not delusional and that he had evidence that Mr. Colleran was not going to present which would establish that. (Tr. 1935 - 1939). The court reminded Dr. Mora that he had been found competent to represent himself when he had earlier fired Mr. Llorente and if he fired Mr. Colleran, he would not get new appointed counsel and that it was unlikely that he would obtain a mistrial. (Tr. 1904-1905, 1909-1910). Mr. Malnik was not prepared to take over the guilt phase case. Dr. Mora stated that he had no funds to hire new counsel. (Tr. 1915).

Mr., Colleran related his experience and his efforts to defend Dr. Mora and he advised the court that he believed that Dr. Mora was unhappy because he was not able to develop the defenses that Dr. Mora wanted to present and that some of the positions Dr. Mora wanted him to take were, to his mind, legally and ethically improper. (Tr. 1951-1967).

The court found that Mr. Colleran was not deficient and that he had adequately prepared the case and that he had advised Dr. Mora of the strengths and weaknesses of possible defenses, and that while Dr. Mora was persistent in his determination to control the case, he did not object, despite being quite vocal throughout the proceedings, to the direction that counsel took when the defense was laid out in opening statements and when it was

presented through the witnesses that had already testified. The court concluded that there was no reasonable cause to believe that Mr. Colleran was providing ineffective representation and the court found that Dr. Mora was trying to provoke a mistrial by firing Mr. Colleran. (Tr. 1969-1976). After questioning Dr. Mora, the court found that Dr. Mora was capable of making an informed waiver of his right to be represented. (Tr. 1981-1989). The court offered Dr. Mora the opportunity to represent himself with Mr. Malnik as his stand-by counsel, but Dr. Mora equivocated and declined that invitation. The court refused to allow Dr. Mora to terminate Mr. Colleran. (Tr. 1976 - 1981, 1995-1996).

The guilt phase case continued in the same vein, with Mr. Colleran as counsel and Dr. Mora interrupting as he deemed appropriate, when, during a discussion between counsel and the court about a prosecution rebuttal witness who ultimately was not called to testify, Dr. Mora interjected himself into the discussion and then, apparently on the court's invitation, demanded and was granted the right to act as cocounsel without additional inquiry by the court.

THE DEFENDANT:	Your Honor, I know - - If I may say something about Clark.
	****.
THE COURT:	Dr. Mora, just sit there and please just behave. You're not going to start talking about witnesses. That's why you have a lawyer. I've asked you numerous times whether you want to act as co-counsel. You've rejected every one of my opportunities to either be your own lawyer - -.
THE DEFENDANT:	I want to be co-counsel.

THE COURT: Now you want to be your own co-counsel?

THE DEFENDANT: Yes, sir, because the State are tricking.

THE COURT: Then I'm going to hold to the same rules of evidence and procedure that would hold the lawyers to.

****

THE DEFENDANT: Sir, I may act as co-counsel now?

THE COURT: If you want to be co-counsel now, you may be co-counsel. (Tr. 2414 -2415).

After Mr. Colleran concluded his summation, Dr. Mora announced that he, as cocounsel, wanted to make a closing statement. (Tr. 2555, 2755-2757, 2689 - 2694). The court advised Dr. Mora against doing that and Dr. Mora acknowledged that he was going against his attorneys' advice. (Tr. 2695 - 2705). Dr. Mora addressed the jury in a rambling and incoherent statement. He told the jury that he was gassed; that there was another gun in the room; that he shot a man wearing ski mask who was standing at the door; that during the deposition Dr. Rudolph was playing with a gun he had in his pocket; that he shot Dr. Rudolph when Dr. Rudolph grabbed for his gun; that Dr. Rudolph was shot in the leg by the masked gunman; that the angles of the bullets in Dr. Rudolph were such that he couldn't have shot him; that Dr. Rudolph's and Mr. Hall's injuries confirm the presence of another gunman in the room; that the prosecutor had maligned him unjustly; that the bank witness lied; and, that he was afraid. (Tr. 2705-2735).

E. The Penalty Phase Trial and the Discharge of Penalty Phase Counsel.

Dr. Mora discharged Mr. Malnik before the commencement of the penalty phase proceeding because Dr. Mora did not want Mr. Malnik to present testimony of certain witnesses. Mr. Malnik felt that it would be suicidal to present the witnesses that Dr. Mora wanted the jury to hear. (Tr. 2891-2940). Mr. Malnik summed up his view of things at various times when he told the court: "... it's my belief that some of his beliefs are frankly just off the wall" and ...my overriding belief is that his perceptions and his theories reflect somebody that's delusional...."and, "what he has shown is he is not all there... I spent the whole weekend chasing ghosts." (Tr. 2905, 2942-2943 and 3098).

The court disagreed with Mr. Malnik's assessment:

> I've had an opportunity to observe defendant during the entirety of these proceedings including a closing that he gave on his own behalf after his trial counsel gave a closing. It was succinct. It was relevant to his theory and his issues. It was germane to the issues presented. It was thoughtful. It was from start to finish very consistent. And every conversation I've ever had with Dr. Mora including his pleadings have shown a great understanding of this system. (Tr. 2902, see also Tr. 2941-2942).

Mr. Malnik had a dozen or so witnesses under subpoena to testify at the penalty phase. (Tr. 2894). Dr. Mora contended for a different approach which Mr. Malnik characterized as "a trial strategy totally at variance with the ability to effectively assist his counsel...." (Tr. 2900). Dr. Mora stated that the witnesses he wanted would establish, among other things, that trial witnesses lied; that the autopsy results were not the real autopsy results; that the state suppressed evidence; and, that he was morally justified in his actions. The record is clear that

despite the trial judge's laudatory view of Dr. Mora quoted above, he greeted Dr. Mora's synopsis with a degree of incredulity, but, in the end, the court ruled that all that existed was a mere conflict about strategy between counsel and his client. (Tr. 2905-2920, 2942).

Mr. Malnik had apparently early on wanted to contact Dr. Mora's family in Spain to try to develop mitigation evidence but Dr. Mora had forbidden it under threat of discharge and Mr. Malnik had reluctantly yielded to Dr. Mora about this. Dr. Mora had not cooperated with any effort to locate his family, but Mr. Malnik indicated that he had quietly pursed that avenue anyway and he had late in the game located some family members and now needed funds for an investigator to conduct interviews of them in Spain. Dr. Mora vehemently objected to that and told the court that he would waive a jury trail and the presentation of mitigation and would ask for the death penalty if Mr. Malnik persisted. Following **Blanco v. Singletary**, 943 F.2d 1477 (11th Cir. 1991) and **Koon v. Duggar**, 619 So.2d 246 (Fla. 1993), the court directed Mr. Malnik to contact the witnesses and to report his findings to Dr. Mora with the understanding that the family would not testify if Dr. Mora, after hearing what the family had to say, did not want them. Dr. Mora now expressed a desire to waive the jury and the presentation of all mitigation. When the court told him that he might not be able to do that, Dr. Mora fired Mr. Malnik and told the court that he would argue to the jury that Mr. Malnik was a "trader [sic]." (Tr. 2943-2969). Dr. Mora explained that Mr.

Malnik was incompetent for not visiting with him, not answering his letters and not investigating or subpoenaing his witnesses. Mr. Malnik explained his efforts to defend Dr. Mora and he observed that if the witnesses Dr. Mora wanted to testify did testify "they'll put him in the electric chair." (Tr. 2970-2977, quote at 2977). After the court found that Mr. Malnik had provided competent representation and that Dr. Mora was competent to fire him, Dr. Mora equivocated, and in a somewhat confusing turn, the court refused to allow the discharge, then reversed itself and appeared to allow the discharge but kept Mr. Malnik on as stand-by counsel. Mr. Malnik was directed to subpoena the witnesses he thought should be presented to the sentencing jury. (Tr. 2978-3008).

Prior to the jury session, the court permitted Dr. Mora to waive the presentation of any testimony by his brother and sister. Dr. Mora again asked to fire Mr. Malnik and requested a continuance to obtain the testimony of the Kings of Spain and Morocco and the State Department. Dr. Stock's testimony summarized above was then presented. (Tr.3012-3055). Opening statements were given, Mr. Malnik did not speak and Dr. Mora addressed the jury in Latin as stated in the opening of this brief. (Tr. 3074). Dr. Mora refused to call witnesses and refused to allow Mr. Malnik to call witnesses for him. In an about face, the court then declared Dr. Mora incapable of providing penalty phase representation to

himself and Mr. Malnik was reappointed.[2] Dr. Mora again refused to allow the presentation of evidence and argument to the jury. (Tr. 3060-3107). At this point tempers flared and it appears that the court reappointed Dr. Mora without further inquiry. (Tr. 3107).

THE COURT: You are not, and you will not argue that. If you sit there and decide not to make a closing to this jury, that too is a choice and decision that you get to make. It think its -

THE DEFENDANT: You have remove me already, I understand, you say you are the counsel?

THE COURT: You're going to represent yourself. Just do it.

THE DEFENDANT: What the hell is going on here?

THE COURT: Just do it yourself. We'll bring the jury back in just a moment. (Tr. 3107).

Dr. Mora again refused to allow Mr. Malnik to present mitigation. (Tr. 3108). The State closed and the court offered Dr. Mora an opportunity to present his closing argument but he refused. (Tr. 3112-3125). Needless to say, Mr. Malnik renewed the motion to have Dr. Mora found incompetent at every turn. The State argued, the jury voted for death and Mr. Malnik was appointed to represent Dr. Mora at the **Spencer** hearing. Dr. Mora objected to

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[2] The court stated:

> Tell you what I am going to do, I am withdrawing your right to represent yourself. You have demonstrated to this court that you do not have the ability to do so.
>
> Mr. Malnik, we're going to present testimony right now. (Tr. 3097-3098).

Mr. Malnik's appointment and it appears that the court allowed him to continue pro se. (Tr. 3112-3148).

F. The Spencer Hearing.

At the **Spencer** hearing, the State presented no evidence and Mr. Malnik presented the following mitigation evidence over Dr. Mora's objection.

Carol Raitt testified that when Dr. Mora stayed at her house in 1993 Dr. Mora believed that he was being gassed in his apartment. (SR. 18- 22). Rev. Raitt testified that Dr. Mora stayed at his home in 1991 and 1993. In 1993, Dr. Mora believed that people were out to kill him by gassing his apartment. Dr. Mora told Rev. Raitt that people were trying to kill him on many occasions. (SR. 22- 29). Thadius Hamilton testified that he worked with Dr. Mora in 1987 and 1988. Dr. Mora told Mr. Hamilton on several occasions that people were out to kill him but Hamilton did not take that seriously. Mr. Hamilton visited Dr. Mora at his home and saw the barrier Dr. Mora had constructed to protect himself from being gassed and he noticed that Dr. Mora had several locks on his doors. Mr. Hamilton perceived Dr. Mora as very paranoid. (SR. 36-51). Judge Andrews of the Seventeenth Judicial Circuit testified that he presided over a lawsuit brought by Dr. Mora. Dr. Mora's pleadings were rambling and incoherent and his oral arguments made little sense. Judge Andrews characterized Dr. Mora as a "time bomb looking for a place to go up." Judge Andrews observed that Dr. Mora spent more energy controlling himself than he did on his case. Dr. Mora later sued Judge Andrews alleging

that he and the two defense attorneys stole items from him. (SR. 52-62). Mary Miller was property manager for the Fort Lauderdale Housing Authority. Miller stated that when Dr. Mora had resided at Pembroke Towers he had attached some electrical equipment to his apartment door and he had built a structure within the unit. Dr. Mora told Miller that he believed that she was analyzing his car, going into his apartment and stealing his computer equipment and that he was in fear for his life. At another location, Dr. Mora built a free standing structure in his apartment covering his bed and living area. (R. 68-79). Kathy Jackson worked with Dr. Mora at Insight for the Blind. Dr. Mora believed that his automobile was being sabotaged and that people were out to get him. Jackson visited Dr. Mora's apartment and noticed that there were more locks than necessary on the door and that Dr. Mora had a canary in a cage so when the apartment would fill up with poisonous fumes, the bird would die and warn him. On occasion Dr. Mora would stay at Insight for the Blind because he was afraid to stay at his apartment. (SR. 80-89). Zeniva Villegas knew Dr. Mora at Pembroke Towers Housing approximately five or six years earlier. Dr. Mora told her that someone was trying to kill him with a laser. (SR. 106-110). Rinaldo Villegas testified that when he went into Dr. Mora's apartment in Pembroke Towers, Dr. Mora was building a structure and a machine to close the door. (SR. 110-113). Ann Ellison testified that she worked for the City of Hallandale in 1992 when Dr. Mora worked for the City through AARP. Ellison received complaints from seniors that Dr. Rudolph would harangue

them at group meetings and upset them. Ellison did not speak to Dr. Rudolph about any of these complaints. (R. 114-134).

Dennis Colleran was called by Dr. Mora. Mr. Colleran testified that he received copies of the court reporter's cassette tape from the court reporter's office and that an expert concluded that the original was not tampered with and that he had files delivered to Dr. Mora. (SR. 93-106).

Dr. Howard Ollick, an expert in forensic toxicology, met with Dr. Mora at the North Broward Detention Facilities and reviewed the medication that Dr. Mora took between seven hours before to approximately forty-five minutes before the shootings. Assuming that the medications were taken, the two that concerned Dr. Ollick were Prozac and Elavil, which when mixed can cause a psychotic reaction. Also, Dr. Mora took Benzodiazepine, a barbiturate, Codeine, an opiate and Cyclobenzaprine, a muscle relaxant. Those drugs would make Dr. Mora tired and the Prozac would start the pumping of adrenaline which would make Dr. Mora very aggressive. If the Prozac were taken in a larger dose than required, it would accumulate and go directly into the brain. When Prozac and Elavil are mixed, there can be a psychotic reaction followed by memory loss. When all of these drugs are taken together, they can build up in the central nervous system and cause toxicity which could create a psychotic frenzy. If Dr. Mora also took Tigan, Flexaril, Xanax, Inderol, Percodan, Cardizam, Darvoset, Valium and Phenobarbital, Dr. Mora would start hallucinating between six and eight in the morning. Dr. Ollick did not listen to the tape of the

shootings and he could not tell, because he did not know Dr. Mora's baseline, whether or not the effect of the drugs would be reflected in Dr. Mora's behavior that was captured on the audio tape. When Dr. Ollick interviewed Dr. Mora in jail, he was told that the police took two blood samples from him. Dr. Ollick did not know if an analysis was performed. (R. 152-182).

The court received the videotape of the Spanish witnesses and Dr. Stock's deposition testimony. The witnesses on the videotape were either Dr. Mora's relatives or people who knew him as a young man. Mental illness and paranoid behavior was common in Dr. Mora's family. One witness speaking for the videotape, a Spanish physician, Dr. Jaime Ramos Ramos, knew Dr. Mora in the 1940's and believed that he exhibited a paranoid personality then.

Much of what Dr. Stock had to say in the deposition introduced at the **Spencer** hearing follows his sanity and competency testimony. However, some of what he reported at the deposition needs to be highlighted. Dr. Stock did not find Dr. Mora to be a typical case. (SR 232). Dr. Stock reviewed some Dr. Mora's documents and found them to be neither reasonable nor rational. (SR 239). Dr. Mora had a verified schizophrenic history going back to 1982. (SR 240). Dr. Stock observed that if Dr. Mora were not mentally ill he would have to be the wiliest criminal that Dr. Stock had ever encountered because Dr. Mora would had then lived for years under extreme conditions to be prepared to mount a defense to some future murder. (SR 242-243). Dr. Mora did not know that his conduct was wrong. In terms of Dr. Mora's

delusion "there was no wrong to for him, because he was being attacked." (SR 247). There was a lot of historical documentation supporting the existence of Dr. Mora's delusion. (SR 254). Dr. Mora did not think there is anything wrong with him so he resisted the insanity defense. (SR 259). Dr. Mora was adamant that he was sane and he was trying to present himself as competent. (SR 264, 268). Dr. Mora understood right and wrong in absolute terms but, because of Dr. Mora's delusional state, he thought he was acting in self-defense and he did not know what he did was wrong. (SR 266, 274).

SUMMARY OF ARGUMENT

Mrs. Marx's killing was not especially heinous, atrocious or cruel. The actual commission of the capital felony was not accompanied by such additional unnecessarily torturous acts as to set the crime apart from the norm of capital felonies.

Dr. Mora presented a sufficient quantum of evidence to establish the mitigating circumstance that the offense was committed while he was under the influence of extreme emotional or mental distress pursuant to §921.141(6)(b) Fla. Stat. Once he did that, the court was required to find that the mitigator existed and to weigh it. The reliance by the court on Dr. Spencer's guilt phase testimony on the issue of insanity to reject the §921.141(6)(b) mental mitigator deprived Dr. Mora of his rights to confrontation and to due process of law. The contradictions in the sentencing order render it deficient.

Dr. Mora presented a sufficient quantum of evidence to

establish the mitigating circumstance that Dr. Mora's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired pursuant to §921.141(6)(f) Fla. Stat. Once he did that, the court was required to find that the mitigator existed and weigh it. The reliance by the court on Dr. Spencer's guilt phase testimony on the issue of insanity to reject the §921.141(6)(f) mental mitigator deprived Dr. Mora of his rights to confrontation and to due process of law. The contradictions in the sentencing order render it deficient.

The rejection of the §921.141(6)(a) no significant history of prior criminal activity mitigator was error. An acquittal of criminal charges is not a "significant history of prior criminal activity." The use of the PSI to establish prior criminal activity deprived Dr. Mora of due process of law and did not constitute direct evidence that Dr. Mora had engaged in prior criminal activity.

There was enough evidence in this record to put the age mitigator into play and the court erroneously failed to find Dr. Mora's age as a mitigator and accord it weight. Dr. Mora's age coupled with his substantially impaired ability to appreciate criminality of his conduct and his chronic mental and emotional instability made Dr. Mora's age a mitigator.

The numerous sentencing errors require reversal of the death sentence. Death in this case is disproportionate. This case is comparable to cases where the defendant's mental or emotional

disturbance controlled the outcome.

The trial court abused its discretion by not finding Dr. Mora to be incompetent before the trial and on the several motions later made by trial counsel. There was a bona fide doubt about Dr. Mora's competency that appears on the face of this record and the court was obligated to appoint experts and to hold a competency hearing on each application. The failure of the court to do that requires reversal. Dr. Mora proved his incapacity in each instance by a preponderance of the evidence. He was not required to do more and the trial court was required to find that Dr. Mora was incompetent based on the overwhelming evidence presented. Dr. Stock's pre-penalty phase testimony about Dr. Mora's incompetency was unrebutted. The failure of the court to hold a competency hearing prior to sentencing and after it had appointed experts and had received their reports was error. That competency hearing could not be waived on Dr. Mora's assertion that he was competent. Dr. Mora had a substantive right not to be subjected to trial while he was incompetent. That substantive right is undermined by this court's use of an abuse of discretion review standard to review the lower court's competency rulings.

It was error to permit Dr. Mora to be his own guilt phase cocounsel and it was error to allow him to address the jury in that capacity at the conclusion of Mr. Colleran's closing argument. There is no constitutional right to hybrid representation. No compelling reason for permitting the hybrid representation is presented in this record.

The court abused its discretion when it permitted Dr. Mora to address the jury. Dr. Mora was represented by counsel. There was ample evidence that Dr. Mora would, if given the opportunity, deny his illness and he would use the courtroom as a forum to present his delusional view of things, which is what he did.

It was error for the court to remove Mr. Malnik as Dr. Mora's penalty phase attorney. Dr. Mora had not requested this relief and the court took this action without holding a **Faretta** hearing.

ARGUMENT

POINT I

MRS. MARX'S KILLING WAS NOT ESPECIALLY HEINOUS, ATROCIOUS OR CRUEL. THE ACTUAL COMMISSION OF THE CAPITAL FELONY WAS NOT ACCOMPANIED BY SUCH ADDITIONAL UNNECESSARILY TORTUROUS ACTS AS TO SET THE CRIME APART FROM THE NORM OF CAPITAL FELONIES.

The HAC aggravating factor was not proven beyond a reasonable doubt.

In finding the killing of Marx to be especially heinous, atrocious or cruel, the court focused on the 31 second lapse between the Mrs. Marx being shot four times and the firing of the last shot. The sentencing order states at R. 3191-3192:

> The evidence is clear that Mrs. Marx did not receive the four (4) gunshot wounds in rapid succession, a factor characteristic of traditional "execution style" shootings. Rather, the Defendant systematically shot Mrs. Marx and each other victim once in turn, then again aimed at each victim for a second shot, then turned yet again to fire two (2) more shot at Mrs. Marx. The physical agony and mental anguish that Mrs. Marx endured during this time can be heard on the audiotape and she moaned and cried "help me, help me," while the Defendant stood by in silence for thirty-one (31) agonizing seconds before firing the final shot. The testimony of

> Dr. John Constantini established that these moaning sounds and the cries for help emitted by Mrs. Marx would reflect that she was conscious during the course of the shooting. (R. 3191-3192).

The court's language suggests that Dr. Mora put to the "final shot" into Mrs. Marx thirty one seconds after she cried for help. That is not the evidence and that is not what the State argued to the jury (T. R. 2567) [final shot to Dr. Rudolph],or in its Sentencing Recommendation (R. 1820-1821) [Dr. Mora waited 31 seconds and shot Dr. Rudolph]. Dr. Constantini agreed that Mrs. Marx's moans could be an involuntary sound similar to moaning. (Tr. 1205). If Dr. Mora stood by, he did not stand by as the court implies, impervious to Mrs. Marx's pleas and he did not administer the *coup de grâce* while she was on the ground pleading for help.

The evidence necessary to sustain a finding of HAC must show that "the crime [was] both conscienceless or pitiless and unnecessarily tortuous to the victim." **Richardson v. State**, 604 So.2d 1107, (Fla. 1992); **Sochor v. Florida**, 504 U.S. 527, 112 S.Ct 2114, 2121, 119 L. Ed. 2d 326, 339 (1992). As distressing as that tape of the occurrences in the deposition room is, Dr. Mora submits that there is nothing in this case that takes it out of "the norm of capital felonies--the conscienceless or pitiless crime which is unnecessarily torturous to the victim." **State v. Dixon**, 283 So. 2d 1, 9 (Fla. 1973); **Donaldson v. State**, 722 So. 2d 177 (Fla. 1998). The HAC aggravator "is proper only in torturous murders--those that evince extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain

or utter indifference to or enjoyment of the suffering of another." **Cheshire v. State**, 568 So. 2d 908, 912 (Fla. 1990). "[A]n instantaneous or near-instantaneous death by gunfire" is not HAC. **Robinson v. State**, 574 So. 2d 108, 112 (Fla. 1991).

> What is intended to be included are those capital crimes where the actual commission of the capital felony was *accompanied by such additional acts as to set the crime apart from the norm of capital felonies*--the conscienceless or pitiless crime which is unnecessarily torturous to the victim. **Donaldson v. State**, **supra**., 722 So. 2d at 186 quoting **State v. Dixon**, **supra.**, 283 So. 2d at 9. (Emphasis added).

See also, **Hartley v. State**, 686 So. 2d 1316, 1323 (Fla. 1996): [murder carried out quickly without torture not HAC.]; **Ferrell v. State**, 686 So.2d 1324 (Fla. 1996) cert. denied 520 U.S. 1173, 117 S.Ct. 1443, 137 L. Ed. 2d 549 (1997): [no HAC where victim shot five times and there was no evidence shooting of victim deliberately done to cause unnecessary suffering].

There is no in this case no evidence of additional tortuous acts setting this case apart from the norm of capital felonies. There is no evidence of that Dr. Mora deliberately shot Mrs. Marx in a manner causing her unnecessary suffering apart from the shooting itself and the shooting was carried out relatively quickly. The court's focus on Dr. Mora's standing idly by for 31 seconds while Mrs. Marx cried for help is misplaced. The events start-to-finish occurred within 48 seconds, Mrs. Marx was shot four times within 17 seconds and the act [or inaction] of standing by idly for 31 seconds doing nothing is not an additional tortuous

act that is pitiless or cruel, particularly when the evidence of Dr. Mora's muddled mental state is replete in this record. Neither the lack of remorse about the killing nor the failure to assist a dying victim, **Cochran v. State**, 547 So.2d 928 (Fla. 1989), nor the fact that the victim may have lingered wounded and in pain for hours will make a killing heinous, atrocious or cruel. **Teffeteller v. State**, 439 So.2d 840 (Fla. 1983) cert. denied 465 U.S.1074, 104 S.Ct. 1430, 79 L. Ed. 2d 754 (1984).

In comparison, nothing in this record is in any degree comparable to the frightful way the victims died in some of the cases cited by the court to justify its finding. For example, in **Preston v. State**, 607 So.2d 404 (Fla. 1992), the defendant kidnaped in a convenience store clerk, marched her to a field at knife point, forced her to disrobe and stabbed her to death. Her body was found nude, with multiple stab wounds and almost decapitated. In **Wyatt v. State**, 641 So.2d 1336 (Fla. 1994), Wyatt, an escapee from a prison work crew, pistol-whipped one victim and raped his wife, and killed his victims in front of each other while they begged for mercy and he told the last victim, while he was praying, to listen for the bullet. In **Roulty v. State**, 440 So.2d 1257 (Fla. 1983), the victim, after being assaulted with a firearm in his home, was bound hand-and-foot and gagged, and was physically carried out of his own house, driven away in the trunk of his own car, removed from the trunk in isolated area and shot three times.

In summary, this is not a crime where accompanied by such additional acts as to set the crime apart from the norm of capital felonies. It was rather the irrational act of a seriously disturbed individual and was not heinous, atrocious or cruel.

POINT II

DR. MORA PRESENTED A SUFFICIENT QUANTUM OF EVIDENCE TO ESTABLISH THE MITIGATING CIRCUMSTANCE THAT THE OFFENSE WAS COMMITTED WHILE HE WAS UNDER THE INFLUENCE OF EXTREME EMOTIONAL OR MENTAL DISTRESS PURSUANT TO §921.141(6)(b) FLA. STAT. ONCE HE DID THAT, THE COURT WAS REQUIRED TO FIND THAT THE MITIGATOR EXISTED AND TO WEIGH IT. THE RELIANCE BY THE COURT ON DR. SPENCER'S GUILT PHASE TESTIMONY ON THE ISSUE OF INSANITY TO REJECT THE §921.141(6)(b) MENTAL MITIGATOR DEPRIVED DR. MORA OF HIS RIGHTS TO CONFRONTATION AND TO DUE PROCESS OF LAW. THE CONTRADICTIONS IN THE SENTENCING ORDER RENDER IT DEFICIENT.

The standard of review is set forth in **Blanco vs. State**, 706 So. 2d 7, 10 (Fla. 1997) cert. denied 525 U.S. 837, 119 S. Ct. 96, 142 L. Ed. 2d 76 (1998):

> The Court in *Campbell v. State*, 571 So. 2d 415 (Fla. 1990), established relevant standards of review for mitigating circumstances: 1) whether a particular circumstance is truly mitigating in nature is a question of law and subject to de novo review by this Court; 2) whether a mitigating circumstance has been established by the evidence in a given case is a question of fact and subject to the competent substantial evidence standard; and finally, 3) the weight assigned to a mitigating circumstance is within the trial court's discretion and subject to the abuse of discretion standard.

"When a reasonable quantum of competent, uncontroverted evidence of a mitigating circumstance is presented, the trial court *must* find that the mitigating circumstance has been proved." **Knowles v.**

State, 632 So. 2d 62, 67 (Fla. 1993), quoting **Nibert v. State**, 574 So. 2d 1059, 1062 (Fla. 1990); **Campbell v. State**, 571 So. 2d 415, 418 (Fla. 1990): ["The court *must* find as a mitigating circumstance each proposed factor that is mitigating in nature and has been reasonably established by the greater weight of the evidence."] (All emphasis added).

Mitigating evidence is evidence which, in fairness, or in consideration of the "totality of the defendant's life or character," may be considered as extenuating or which goes to reduce his moral responsibility. **Wickham v. State**, 593 So. 2d 191, 194 (Fla. 1991).

> A mitigating circumstance can be defined broadly as `any aspect of a defendant's character or record and any of the circumstances of the offense" that reasonably may serve as a basis for imposing a sentence less than death.' **Campbell v. State**, **supra.** n. 4, 571 So. 2d at 418, citing **Lockett v. Ohio**, 438 U.S. 586, 604, 98 S. Ct. 2954, 57 L. Ed. 2d 973 (1978).

In **Rhodes v. State**, 547 So. 2d 1201 (Fla. 1989), this court held that evidence that the defendant had led a very disturbed life and had been previously diagnosed as psychotic was sufficient to establish the mitigator. As Dr. Mora will demonstrate, his extreme mental and emotional disturbance was well established on this record, he had been previously diagnosed with a mental disorder that permeated every aspect of his life. It was error for the court to reject the extreme mental disturbance mitigator. **Morgan v. State**, 639 So. 2d 6 (Fla. 1994); **Knowles v. State**, **supra.**

While the trial court found this mitigator not to be established by the evidence, that conclusion is difficult to understand because the court later in its order recognized that Dr. Mora "did in fact have a history of paranoid delusional disorder" when it discussed the §921.141(6)(f) mitigator, (R. 3199-3200), and it later found that this mitigator existed as a nonstatutory mitigator. (R. 3203). In fact, the court later stated that the evidence was "clear that Defendant has a history of paranoid behavior and that in the weeks prior to the crime, Defendant was under the delusional impression that people were trying to harm or kill him." (R. 3203).[3] This and the other contradictions discussed in the following points make the sentencing order deficient. **Morgan v. State**, **supra.** 639 So. 2d at 13.

If the disorder is there, and it surely is on this record, the trial court was obligated to find it existed and give it weight. "Although the relative weight given each mitigating factor is within the province of the sentencing court, a mitigating factor once found cannot be dismissed as having no weight." **Campbell v. State**, **supra.** 571 So. 2d at 420.

The §921.141(6)(b) Fla. Stat. mitigator is established by evidence of something less than insanity at the time of the crime. "[T]he classic insanity test is not the appropriate standard for

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[3] The court found as some of the nonstatutory mitigators that Dr. Mora had a difficult and unstable childhood and long standing emotional problems. (R. 3204).

judging the applicability of mitigating circumstances under section 921.141 (6) Fla. Stat." **Ferguson vs. State**, 417 So.2d 631, 638 (Fla. 1982). See also, **State v. Dixon**, **supra.**, 283 So. 2d at 10: [extreme mental or emotional disturbance as used in section 921.141(6)(b), is "less than insanity but more than the emotions of an average man, however inflamed.... this circumstance is provided to protect that person who, while legally answerable for his actions, may be deserving of some mitigation of sentence because of his mental state."]; **Campbell v. State**, **supra.**, 571 So. 2d at 418-419: [" The finding of sanity, however, does not eliminate consideration of the statutory mitigating factors concerning mental condition."] Here, the trial judge applied the insanity standard to this mitigator. The sentencing order states at R. 3194: "The court is not reasonably convinced that these facts establish that the Defendant was operating under an extreme mental or emotional disturbance which *obviated the Defendant's knowledge of right and wrong.*" (Emphasis added).

But even assuming that the trial court applied the right standard, there is no substantial evidence to support the court's conclusion that the mitigator did not exist. First, harkening back to **State v. Dixon**, **supra.**, we are not here talking about the "emotions of an average man." Dr. Spencer found Dr. Mora to be complex and Dr. Stock related how hard he had to labor to come to his diagnosis. Second, Judge Backman relied on how Dr. Mora appeared - he was calm in the taxi and he did not appear on the

audio tape to Dr. Spencer to have the "comportment ...of someone who had just been beaten up by his deponent." (R. 3196). But, how should Dr. Mora appear? Would anyone reading this record, other than perhaps Dr. Mora, believe that Dr. Rudolph beat up Dr. Mora in the men's room? None of the mental health experts believed it and neither apparently did the jury and certainly Judge Backman didn't. Dr. Mora's lawyers didn't. They fought tooth and nail against the self-defense defense. So, how should Dr. Mora look after a wholly internalized confrontation? Dr. Spencer doesn't tell us. The best he can do is tell us that Dr. Mora didn't act as Dr. Spencer expected he should, but a review of Dr. Spencer's testimony summarized in the fact portion of this brief reflects quite a bit of hedging and the concession, recognized in Judge Backman's finding that "Dr. Spencer ...conceded that the Defendant did appear to suffer from a paranoid personality disorder."' (R. 3195) (Emphasis added).

In coming to his conclusions, Dr. Spencer had to reject a virtual mountain of unchallenged historical evidence. While in the eyes of the jury Dr. Mora's illness may not have amounted to insanity, and in the eyes of the court it may not have arisen to incompetence to stand trial, the historical evidence of the existence of Dr. Mora's paranoid personality disorder was overwhelming and unrebutted. The devices in his apartment, the complaints about gassing and stalking, the reports to the police, the wanted posters, the diagnosis of and hospitalization for paranoid schizophrenia in the 1980's, the evidence from the family

and the boyhood associates, the lawsuits, his behavior in court, his difficulties with his counsel, the incoherent pleadings that he filed in droves, Judge Andrews's observation of him, all point overwhelmingly to something being very amiss at Dr. Mora's core. To be sure, Dr. Spencer did dismiss this mountain of history as a "prop" and an "arrange[ment]" but the only historical evidence for that conclusion was Dr. Spencer's *ipse dixit*. And as Dr. Stock pointedly suggested, and as no one on the State's side satisfactorily answered, why would Dr. Mora live like that for years in advance of these terrible events if he were not seriously ill?

Dr. Stock, on the other hand, had in the deposition submitted at the **Spencer** hearing, spoke expressly about Dr. Mora's diminished capacity:

> ... his concept of wrong, in my opinion was so impacted by his mental illness, that he could not logically, could honestly [sic] sort out right from wrong. Because he so believed what he believed in, that whatever he did in that regard was right. So there was no wrong for him, because he was being attacked. And therefore, there could be no wrong for him. (SR. 247).

The trial judge also, it appears, failed to recognize that Dr. Spencer did not provide mitigation testimony. His testimony appears only in the record of the pre-trial competency hearing and the sanity portion of the guilt phase trial. As Dr. Spencer never rendered an opinion on the mitigation standard, it was wholly speculative for the court to assume how Dr. Spencer would address this issue. An opinion on mental mitigation is not subsumed within

an opinion on sanity. **Knowles v. State**, **supra.** 632 So. 2d at 67. And, the Sixth Amendment right of confrontation applies to the final sentencing process. The State surely had the opportunity to call Dr. Spencer at the penalty phase trial but it chose to forego that opportunity. Considerations of due process would require Dr. Spencer to expressly address the lesser mitigation standard in testimony that is subject to cross-examination before any finding based on his views could be made. **Rodriguez v. State**, 25 Fla. Law W. S 89 (Fla. 2000); **Donaldson v. State**, **supra.**, 722 So. 2d at 186; **Engle v. State**, 438 So. 2d 803, 813-814 (Fla. 1983); §921.141(1) Fla. Stat.

Next, the court found, and Dr. Spencer and Dr. Ceros-Livingston both believed, that Dr. Mora was manipulative. The record seems fairly clear that he was, but the relevant issue is whether Dr. Mora was manipulative in service of his disorder or whether he had another more evil agenda. Dr. Mora submits that the overwhelming evidence is that his conduct was in the service of his disorder.

In rejecting the §921.141(6)(b) mitigator, the court misconstrued critical portions of the defense expert testimony. That testimony was clear that Dr. Mora knew that if he shot a gun at someone it would kill them and that killing was morally wrong. Dr. Mora said this himself on cross-examination. But what does that tell us other than he understands cause and effect and he, or some part of him, shares a universal truth? Dr. Stock, Dr.

Macaluso and Dr. Ceros-Livingston were all very clear that Dr. Mora's delusional tail wagged his personality dog: that he warped his perceptions of events to fit his delusion. So, looking at Dr. Macaluso's and Dr. Ceros-Livingston's testimony as a whole, rather than parsing it as the trial court did, it is clear that what they said was that even if Dr. Mora understood that you can kill a person by shooing at her and that even if Dr. Mora accepted the abstract notion that killing was and is wrong, he was still on that day in the throes of his delusion and he was acting on it. In Dr. Stock's words "there was no wrong for him...."(SR. 247).

Last, we have the invention of Wong Chung. Wong Chung, and the invention of him, was both central to Dr. Mora's claim of self-defense and Judge Backman's rejection of the §921.141(6)(b) mitigator. Once again we have to begin with the question: would anyone reading this record believe that Wong Chung was real? So, it is entirely unremarkable that Dr. Stock stated, and that Judge Backman found, that Dr. Mora invented Wong Chung. But to Dr. Stock, Wong Chung was a mental device to allow Dr. Mora to digest, for want of a better word, his illness. Wong Chung was a coping mechanism. While Dr. Mora might have invented Wong Chung, that invention did not alter Dr. Stock's diagnosis of insanity because Wong Chung was a part of that insanity. In his **Spencer** hearing deposition testimony Dr. Stock addressed Wong Chung:

> The idea about this guy in the ski mask I don't find particularly credible. A Chinese black guy that shows up with a silencer to kill him. It's possibly not credible. But what I think is going on here, he doesn't think there's anything wrong with him. He doesn't want to

> pursue an insanity defense. I mean he's resisting this horribly. (SR. 259).
>
> ****
>
> He really tries to present himself as competent. You know, he's not able. He's not trying to say Oh, [sic] boy, this is happening to me, and I really want to go. I got a trial coming up. I - - I was going - - I really should go to the hospital. I'm pretty sick, and I'm getting sicker. Not him. (SR. 267).

In sum, Dr. Mora presented enough evidence to establish the mitigator and the court's findings to the contrary were not supported by substantial evidence. The trial judge applied the wrong standard in evaluating the applicability of the §921.141(6)(b) mitigator to Dr. Mora. The court evaluated the mitigating evidence under an insanity standard when an impairment standard should have been used. Once Dr. Mora had presented a reasonable quantum of evidence of the existence of the mitigating factor, and he did because, if for nothing else, the court found that Dr. Mora had the delusional disease and the history of it and that Dr. Mora believed that others were trying to kill or harm him, the court was required to find that the mitigator was established and then weigh it. The court could not rely on Dr. Spencer's penalty phase testimony to reject the mitigator because he did not testify about the impairment standard and Dr. Mora had no opportunity to cross-examine him on that issue.

POINT III

DR. MORA PRESENTED A SUFFICIENT QUANTUM OF EVIDENCE TO ESTABLISH THE MITIGATING CIRCUMSTANCE THAT DR. MORA'S CAPACITY TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED PURSUANT TO §921.141(6)(f) FLA. STAT. ONCE HE DID THAT, THE COURT WAS REQUIRED TO FIND

THAT THE MITIGATOR EXISTED AND WEIGH IT. THE RELIANCE BY THE COURT ON DR. SPENCER'S GUILT PHASE TESTIMONY ON THE ISSUE OF INSANITY TO REJECT THE §921.141(6)(f) MENTAL MITIGATOR DEPRIVED DR. MORA OF HIS RIGHTS TO CONFRONTATION AND TO DUE PROCESS OF LAW. THE CONTRADICTIONS IN THE SENTENCING ORDER RENDER IT DEFICIENT.

The court found that Dr. Mora's ability to conform to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was not established.

Substantially all that the court said in rejecting the extreme mental or emotional distress mitigator was cited as by the court as its basis for also rejecting the §921.141(6)(f) Fla. Stat. mental mitigator. The court primarily relied on Dr. Spencer's testimony and it rejected the opinions of Dr. Stock, Dr. Macaluso and Dr. Ceros-Livingston for the reasons already stated. Again, the court applied the wrong standard. The court stated:

> State witness Dr. John Spencer, stated that Defendant did not suffer from a mental illness and was sane at the time of the crime. He testified that although Defendant does have paranoid personality "characteristics" this did not obviate Defendant's ability to know right from wrong, nor did it interfere with his ability to appreciate the consequences of his actions. (R. 3198).

§921.141(6)(f) Fla. Stat. creates an impairment standard, not an insanity standard. A "substantial impairment of the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, as used in §921.141(6)(f), refers to mental disturbance that `interferes with but does not obviate the defendant's knowledge of right and wrong."' **Duncan v. State,** 619 So. 2d 279 (Fla. 1993) quoting **State**

v Dixon, **supra.**, 283 So. 2d at 10. The errors the court committed with regard to this mitigator are, except as set forth below, the same as those that are described in the previous discussion of the §921.141(6)(b) mental mitigator and those arguments are adopted here. To summarize them, they are that the trial judge applied the wrong standard in evaluating the applicability of the §921.141(6)(f) mitigator to Dr. Mora; that Dr. Mora presented enough evidence to establish the mitigator; that once the mitigator was established by the greater weight of the evidence, the trial court was obligated to find that it existed; that the court's findings to the contrary were not supported by substantial evidence; that the court could not rely on Dr. Spencer's guilt phase testimony on the issue of insanity to reject the mental mitigator; and, that the factual contradictions in the sentencing order render it deficient.

As additional support for its findings, the court noted that Dr. Mora "for quite some time prior to the commission of this crime ... was able to exist with this disorder and conform his conduct to the requirements of the law." That appears to be true in fact, but Dr. Mora was in his mind having running gun battles on the roads of South Florida with Dr. Rudolph and Wong Chung and the court itself later found to the contrary at R. 3201-3202: "...the court finds the defendant does have a significant history of prior criminal activity...." so this finding, as with the court's other mental mitigator finding is hopelessly contradictory and deficient under **Morgan v. State**, **supra.**, 639 So. 2d at 13.

Judge Backman also did not believe that Dr. Mora ingested all the medications that he testified that he took before the shootings and he rejected Dr. Ollick's testimony on that basis. But, there is nothing in the record that indicates that Dr. Mora did not ingest the drugs other than the court's own observation that there was no corroboration of it.

POINT IV

THE REJECTION OF THE §921.141(6)(a) NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL ACTIVITY MITIGATOR WAS ERROR. AN ACQUITTAL OF CRIMINAL CHARGES IS NOT A "SIGNIFICANT HISTORY OF PRIOR CRIMINAL ACTIVITY." THE USE OF THE PSI TO ESTABLISH PRIOR CRIMINAL ACTIVITY DEPRIVED DR. MORA OF DUE PROCESS OF LAW AND DID NOT CONSTITUTE DIRECT EVIDENCE THAT DR. MORA HAD ENGAGED IN PRIOR CRIMINAL ACTIVITY.

The court found that Dr. Mora had a significant history of prior criminal activity and found the §921.141(6)(a) Fla. Stat. mitigator to be absent. The court relied on a PSI which described a 1983 trial for the crimes of attempted murder and use of a firearm in the commission of a felony in which Dr. Mora was acquitted. This was error. "In considering a defendant's prior criminal record, the trial judge is limited to only those offenses for which `the defendant was previously convicted.'" **Spaziano v State**, 393 So.2d 1119, 1122-1123 (Fla. 1981). As far as counsel can ascertain on this record, the PSI was not provided to Mr. Malnik nor to Dr. Mora, and there was no opportunity given to Dr. Mora to refute it. This issue was not discussed by the State in its sentencing memorandum so little advance notice can be

the defendant had no opportunity to deny

presumed. (R. 1813-1833).

In **Gardner v. Florida**, 430 U.S. 349, 97 S.Ct. 1197, 51 L. Ed. 2d 393 (1977), the court held that due process prohibits the imposition of a death sentence based in part on information that the defendant had no opportunity to deny or explain. See also, **Long v. State**, 610 So.2d 1268 (Fla. 1992): [§921.141(1) Fla. Stat. requires that defendant must be given a fair opportunity to rebut hearsay evidence of prior crime]; **Rodriguez v. State**, **supra.**; **Donaldson v. State**, **supra.**; **Engle v. State**, **supra.** It was "clear error" for the court to use the PSI in the manner it did. **Spaziano v State**, **supra**. Moreover, none of the cases cited by the court stand for the proposition the court advances, that an acquittal of criminal charges can trump the "no significant history" mitigator. In **Washington v. State**, 362 So.2d 658, 663 (Fla. 1978), cited by the court, the defendant "readily admitted that he had carried on a course of burglaries and had stolen property for a significant period of time, thus eliminating Section 921.141(6)(a), Florida Statutes, as a mitigating circumstance." In **Simmons v. State**, 419 So. 2d 316, 319 (Fla. 1982), a prior robbery conviction was proved by the introduction of a certified copy of the judgment and Simmons had "numerous misdemeanor convictions, several arrests and accusations, and two charges of violation of parole." In **Funchess v. Wainwright**, 772 F.2d 683 (11th Cir 1985) the defendant was either found guilty of a variety of crimes or he admitted to them.

Assuming that the acquittal can be trumped by evidence that Dr. Mora did something criminally wrong in 1984, the mitigator must be rebutted with "*direct* evidence of criminal activity," **Walton v. State**, 547 So.2d 622, 625 (Fla. 1989), (emphasis in original), which a PSI is not. Moreover, in **Slawson v. State**, 619 So. 2d 255 (Fla. 1993) where the criminal activity was the subject of both an admission by the defendant and testimony, the evidence of criminal activity only went to the weight, not the existence, of the mitigator.

POINT V

THE TRIAL COURT FAILED TO RECOGNIZE A DR. MORA'S AGE AS A MITIGATOR AND ACCORD IT WEIGHT.

The court rejected Dr. Mora's age of 68 years at the time of the crime as a mitigating circumstance because he was "far from senile and quite active" living independently and caring for himself without difficulty, had recently held a job and was representing himself in the lawsuit against Dr. Rudolph and AARP. The uncontradicted anecdotal and demonstrative evidence belies this assertion. Dr. Mora was not caring for himself very well- the video tape of his apartment definitively establishes that; he lost his job evidently because of behavior compelled by his paranoid delusional disorder; his litigiousness was apparently a recognized symptom of the disorder; and, Judge Andrews derided Dr. Mora's ability to represent himself in a civil lawsuit. His behavior at this trial confirmed everything his professional witnesses said

about how he would act: he was irrational and confrontative, he was distrustful, he refused to accept his illness, the web of conspirators was ever widening to include counsel and the court, and he used the courtroom as forum to express his paranoid beliefs rather than to defend himself.

Old age is a mitigating circumstance.

> This mitigating circumstance usually applies to those youthful in age because of society's responsibility for overseeing the welfare of the young. Since society also has the responsibility of protecting those suffering from the infirmities of age and, this mitigating circumstance may also be applied to older persons. **Agan vs. State**, 445 So.2d 326, 328 (Fla. 1983).

> The term ` infirmities of aging' is defined to mean ` organic brain damage, advanced age, or other physical, mental, or emotional disfunctioning in connection therewith, to the extent that the person is substantially impaired in his ability adequately to provide for his own care and protection.' **In re Byrne**, 402 So.2d 383, 384-385 (Fla. 1981).

Dr. Macaluso testified that Dr. Mora broke down over time. Dr. Stock and Dr. Ceros-Livingston described the evolution of Dr. Mora's illness. Dr. Rudolph's letter described Dr. Mora's state when Dr. Rudolph met him. There was enough evidence in this record to put the age mitigator into play and the court erroneously failed to find Dr. Mora's age as a mitigator and accord it weight. **Urbin v. State**, 714 So.2d 411, 417 (Fla. 1998): [age coupled with substantially impaired ability to appreciate criminality of conduct a mitigator]; **Mahn v. State**, 714 So.2d 391, 400- 401 (Fla. 1988): [age coupled with "chronic mental and emotional instability" and other personality deficiencies a mitigator];

Echols v State, 484 So.2d 568, 575 (Fla. 1985) cert. denied 479 U.S. 568, 107 S.Ct 241, 93 L. Ed. 2d 166 (1986): ["[I]f [age] is to be accorded any significant weight, it must be linked some other characteristic of the defendant or the crime such as immaturity or senility."]

POINT VI

THE NUMEROUS SENTENCING ERRORS REQUIRE REVERSAL OF THE DEATH SENTENCE. DEATH IN THIS CASE IS DISPROPORTIONATE.

As noted at the outset of this brief, the court found one aggravating factor in the Rudolph killing and two in the Marx killings. All statutory mitigators were rejected, but seven non-statutory mitigators were found to exist, including: Dr. Mora was under the influence of extreme mental or emotional disturbance [some weight]; that Dr. Mora had long standing emotional problems [little weight]; and, that he had a history of emotional illness in his family [little weight]. Given the large number of sentencing errors, this court should vacate the death sentence. **Santos v. State**, 591 So. 2d 160, 162 (Fla. 1991): [remand for resentencing when "aggravating factors were improperly found and... valid mitigating factors were erroneously ignored."]

Death is a disproportionate sentence in this case. There was a serious mental disease at work here that the court should have recognized in its consideration of the various aggravating and mitigating circumstances at issue and which, because the court allowed this seriously ill defendant to proceed on his own at

sentencing, precluded the rational and orderly presentation of mitigating evidence and rendered the sentencing proceeding fundamentally unfair.

The significant mental and other mitigation presented in this case removes it from those cases that may be considered the most aggravated and least mitigated of capital murders. **State v. Dixon**, supra. 283 So.2d at 7.

For the killing of Dr. Rudolph the court found one aggravating factor, the contemporaneous killing of Mrs. Marx and the wounding of Mr. Hall. Against that, there was in the record substantial mitigation which the trial court either ignored or under weighted. For the killing of Mrs. Marx, the court found two aggravating factors, the killing of Dr. Rudolph and the wounding of Mr. Hall and, HAC, a finding which Dr. Mora has demonstrated is erroneous as a matter of law. Against that, the court either ignored or under weighted the substantial mitigation in this record.

On the issue of under weighting the mitigating evidence, Dr. Mora would point to the statement of this court in **Santos v. State**, 629 So. 2d 838, 840 (Fla. 1994) that mitigators "establishing substantial mental imbalance and loss of psychological control" are two of the "weightiest mitigating factors." If these mental mitigators are indeed two of the weightiest mitigating factors, it would appear in this case to be an abuse of discretion to first find them non-existent as

statutory mitigators, then find them existing as nonstatutory mitigators and then, as the trial court did, assign them "light" or "some" weight making them effectively nonexistent again. In this case, these mental mitigators, at least to the extent that something was wrong with Dr. Mora, were established by medical testimony from all sides and these same mental mitigators, to the extent that something was very wrong with Dr. Mora, was overwhelmingly established by the unrebutted historical evidence of a lifetime of mental illness that Dr. Spencer rejected without explanation.

On the issue of proportionality, this case is comparable to cases where the defendant's mental or emotional disturbance controlled the outcome. **Larkins vs. State**, 739 So.2d 90 (Fla. 1999): [extensive history of mental and emotional problems]; .**Hawk vs. State**, 718 So.2d 159 (Fla. 1998): [brain damage and mental illness]; **Robertson v. State**, 699 So.2d 1343 (Fla. 1997): [long history of mental illness and alcohol abuse]; **DeAngelo vs. State**, 616 So.2d 440 (Fla. 1993): [bilateral brain damage, hallucinations, delusional paranoid beliefs and mood disturbance]; **Fitzpatrick v. State**, 527 So.2d 809 (Fla. 1998): [emotional disturbance, impaired ability to conform conduct to the requirements of law, low mental age].

POINT VII

THE TRIAL COURT ABUSED ITS DISCRETION BY NOT FINDING DR.

MORA TO BE INCOMPETENT BEFORE THE TRIAL AND ON THE SEVERAL MOTIONS LATER MADE BY TRIAL COUNSEL. THERE WAS A BONA FIDE DOUBT ABOUT DR. MORA'S COMPETENCY THAT APPEARS ON THE FACE OF THIS RECORD AND THE COURT WAS OBLIGATED TO APPOINT EXPERTS AND TO HOLD A COMPETENCY HEARING ON EACH APPLICATION. THE FAILURE OF THE COURT TO DO THAT REQUIRES REVERSAL. DR. MORA ESTABLISHED HIS INCAPACITY BY A PREPONDERANCE OF THE EVIDENCE. HE WAS NOT REQUIRED TO DO MORE AND THE TRIAL COURT WAS REQUIRED TO FIND THAT HE WAS INCOMPETENT BASED ON THE OVERWHELMING EVIDENCE PRESENTED. DR. STOCK'S PRE-PENALTY PHASE TESTIMONY ABOUT DR. MORA'S INCOMPETENCY WAS UNREBUTTED. THE FAILURE OF THE COURT TO HOLD A COMPETENCY HEARING PRIOR TO SENTENCING AND AFTER IT HAD APPOINTED EXPERTS AND HAD RECEIVED THEIR REPORTS WAS ERROR. THAT COMPETENCY HEARING COULD NOT BE WAIVED ON DR. MORA'S ASSERTION THAT HE WAS COMPETENT. DR. MORA HAD A SUBSTANTIVE RIGHT NOT TO BE SUBJECTED TO TRIAL WHILE HE WAS INCOMPETENT. THAT SUBSTANTIVE RIGHT IS UNDERMINED BY THIS COURT'S USE OF AN ABUSE OF DISCRETION REVIEW STANDARD TO REVIEW THE LOWER COURT'S COMPETENCY RULINGS.

In the competency order, the court found that Dr. Mora understood the charges because he discussed his "preferred defense" with Dr. Block-Garfield and he could expound to Dr. Macaluso "on the nature of the charges and the events that gave rise to them." (R. 882). As Dr. Macaluso believed that Dr. Mora was incompetent based in part on that rendition of events, the court's reliance on Dr. Macaluso's testimony to find Dr. Mora competent is difficult to understand. The court found that Dr. Mora could understand the penalties at issue based on Dr. Ceros-Livingston's testimony that while Dr. Mora might not fully understand the "real consequences" in the case, he knew his liberty was at stake, and his statement to Dr. Block-Garfield that he "was fighting for his life." To the court, Dr. Mora understood

the adversarial nature of the proceedings because he knew the roles of the players and because Dr. Block-Garfield stated that Dr. Mora had filed various motions, *which she had not read*, that showed Dr. Mora's recognition of the adversarial nature of the proceedings. The court also found that Dr. Mora was able to exhibit appropriate courtroom behavior if he chose. (R. 882-883). As to Dr. Mora's ability to confer with counsel and to testify relevantly, the court found that Dr. Mora had rational discussions with Dr. Block-Garfield and Dr. Spencer. "Defendant's discussion in chronologically correct detail showed that Defendant ...had the capability to relate the details and pertinent facts of his own case in a similarly organized fashion." (R. 884). While both Dr. Ceros-Livingston and Dr. Macaluso testified that Dr. Mora's ability to consult rationally with his counsel was quite impaired by his delusion, the court dismissed this as a mere dispute with counsel over strategy. Last, the court's own observations led it to believe that Dr. Mora had a "shrewd understand of the charges and possible penalties he faces, and a vigilant desire to participate in the adversarial system and to communicate his arguments and opinions"; that "he as displayed the ability to closely follow courtroom proceedings, takes lengthy notes, and often confers with his attorney during the proceedings"; and, while Dr. Mora "occasionally interjects his arguments or opinions vocally during proceedings... his outbursts though impudent are not disruptive or overwhelmingly contrary to proper courtroom

behavior." (R. 885). Those "shrewd" pleadings[4] included allegations that former Justice Kogan was involved in conspiracy against Dr. Mora; that the court was ignorant about the effects of toxic gas on Dr. Mora; that the court was involved in a conspiracy with former attorney Llorente; that Judge Backman wrongly prevented the exposure of that conspiracy; that Judge Backman was attempting to get Dr. Mora to commit a felony; that the State Attorney, the Fort Lauderdale Police Department and "John Doe" conspired to hide exculpatory evidence; that Judge Backman wanted Dr. Mora to be tried by fire; and, that favorable evidence was stolen from Dr. Mora's apartment. (R. 776-778, 780-803, 821-826, 831-838, 847-860). Dr. Mora also sought "computerized evidence showing [Dr. Rudolph] planned to kill and destroy his enemies" and that Dr. Rudolph owned "several handguns and silencers." (R. 806-807).

We know from the record that the "preferred defense" the State's witnesses spoke of was that Dr. Mora was acting in self-defense in an incident started by the invisible but armed and masked Wong Chung. We know from the record that the "mere" dispute over strategy was the inability of Dr. Mora's counsel, all of them

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[4] Dr. Mora's incoherent ramblings appear throughout this record. Counsel doesn't have the time or space to summarize them all, but appellant is relying on all of them. The items above appear in Volume V of the record which contains the competency order, and were in the record before the competency order was rendered. Apparently, Dr. Mora persuaded Mr. Colleran to sign the pleading containing the allegations about former Justice Kogan. Mr. Colleran also signed a motion alleging that toxic gasses were being released into Dr. Mora's cell as part of a conspiracy between the State and federal governments to convict Dr. Mora. (R. 812-813).

it appears, to accept his delusional version of events. We know from the record that Dr. Mora's "appropriate courtroom behavior" was the disruption of the proceedings at every turn. We know from the record that Dr. Mora behaved throughout his trial in the manner that Dr. Stock, Dr. Macaluso and Dr. Ceros-Livingston, who all thought Dr. Mora was incompetent, predicted that someone with his disease would act. We know from the record that Dr. Mora warped everything that occurred in this case to fit his delusion. We know from the record that Dr. Mora couldn't work with his counsel. We know from the record that Dr. Mora couldn't convey any rational appreciation of the defenses his lawyers thought were available to him. We know from the record that Dr. Mora vehemently protested each suggestion that he was ill. We know from the record that Dr. Mora couldn't respect the court. We know from the record that Dr. Mora believed that he was in the right. We know from the record that Dr. Mora had no appreciation that he faced the death penalty and, like the martyr that he believed he was, Dr. Mora literally dared Judge Backman to impose it. In the end, Dr. Mora's mental disease became an accepted fact of this case when Judge Backman recognized it in the sentencing order.

Dr. Mora's attorneys were quite blunt with the court about Dr. Mora's inability to rationally work with them. It is remarkable that the observations of these front line people went unheeded, losing out to the testimony of a Dr. Spencer, who for example, among other things based his opinion that Dr. Mora was competent on Dr. Mora's ability to speak cogently with him about

Spanish political history, when this record contains not a clue about whether either of them had any inkling about Spanish political history or that Dr. Spencer knew what a cogent rendition of it was.

It is a violation of due process of law to subject an incompetent to a criminal trial. **Pate v. Robinson**, 383 U.S. 375, 86 S.Ct. 836, 15 L. Ed. 2d 815 (1966). The test of incompetency is whether the defendant has a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceedings against him." **Dusky v. United States**, 362 U.S. 402, 402, 80 S.Ct. 788, 789 4 L. Ed. 2d 824, 825 (1960); **Hunter v. State**, 660 So.2d 244 (Fla. 1995). The defendant may not be required to establish his incompetency by more than a preponderance of the evidence. **Cooper v. Oklahoma**, 517 U.S. 348, 116 S.Ct. 1373, 134 L. Ed. 2d 498 (1966); **Medina v. California**, 505 U.S. 437, 112 S.Ct. 2572, 120 L. Ed. 2d 353 (1992). The interest of the defendant in an accurate determination of his competency far outweighs any interest the State can assert in ferreting out malingerers. **Cooper v. Oklahoma**, **supra.**, 517 U.S. at 365, 116 S.Ct. 1382. "[A]n erroneous determination of competence threatens a fundamental component of our criminal justice system' - the basic fairness of the trial itself." **Id.**, at 364, 116 S.Ct. at 1382. Evidence of a defendant's "irrational behavior, his demeanor at trial, and any prior medical opinion are all

relevant," **Drope v. Missouri**, 420 U.S. 162, 180, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975), but any one factor standing alone may be sufficient. **Id**. The views of defense counsel are highly significant.

> Although an impaired defendant might be limited in his ability to assist counsel in demonstrating incompetence, the defense counsel will often have the best-informed view of the defendant's ability to participate in his defense. **Medina v. California**, **supra.**, 505 U.S. at 450, 112 S.Ct. at 2580.

and,

> Although we do not, of course, suggest that courts must accept without question a lawyer's representations concerning the competence of his client, an expressed doubt in that regard by one with `the closest contact with the defendant,' is unquestionably a factor which should be considered. **Drope v. Missouri**, **supra.**, n. 13, 420 U.S. at 179, 95 S. Ct. at 906. (Citations omitted).

See also, **Hunter v. State**, **supra.**, 660 So.2d at 247: ["trial court must consider all evidence relative to competency ...."]

If in the course of the trial a "bona fide doubt" arises about the defendant's competence, the court must conduct another competency proceeding. **Hunter v. State**, **supra.**, 660 So.2d at 248; **Drope v. Missouri**, **supra**. In determining whether such a "bona fide" doubt exists, the court cannot, as it did throughout this case, rely on its colloquies with Dr. Mora to reject "the uncontradicted testimony of [Dr. Mora's] history of pronounced irrational behavior." **Pate v. Robinson**, **supra.**, 383 U.S. at 386,

86 S.Ct. at 842.[5]

This court has stated that it reviews the trial court's competency determination under an abuse of discretion standard. **Hunter v. State**, **supra.** In **Drope**, the United States Supreme Court suggested that the standard of review is more exacting than that:

> In the present case there is no dispute as to the evidence possibly relevant to petitioner's mental condition that was before the trial court prior to trial and thereafter. Rather, the dispute concerns the inferences that were to be drawn from the undisputed evidence and whether, in light of what was then known, the failure to make further inquiry into petitioner's competence to stand trial, denied him a fair trial. *In such circumstances we believe it is 'incumbent upon us to analyze the facts in order that the appropriate enforcement of the federal right may be assured.'* **Drope v. Missouri**, **supra.**, 420 U.S. at 174-175, 95 S. Ct. at 905. (Citations omitted, emphasis added).

and,

> But 'issue of fact' is a coat of many colors. It does not cover a conclusion drawn from uncontroverted happenings, when that conclusion incorporates standards of conduct or criteria for judgment which in themselves are decisive of constitutional rights. Such standards and criteria, measured against the requirements drawn from constitutional provisions, and their proper applications, are issues for this Court's adjudication. . . . Especially in cases arising under the Due Process Clause is it important to distinguish between issues of fact that are here foreclosed and issues which, though cast in the form of determinations of fact, are the very issues to review which this Court sits.' **Drope v. Missouri**, **supra.**, n. 10, 420 U.S. at 174-175, 95 S. Ct. at 905. (Citations omitted).

But, even if the trial court's ruling is reviewed under the

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[5] For authority to the contrary see, **Hunter v. State**, **supra.**, and **Hardy v. State**, 716 So.2d 761 (Fla. 1998) where part of the record this court relied on in affirming the lower court was the lower court's observations of the defendant.

lesser standard, discretion was clearly abused. Clearly, at some point in this trial, the weight of the evidence of Dr. Mora's incompetency had to become irresistible. The medical evidence was there, the history was there, the irrational acts in the courtroom were there, the statements of counsel were there, Dr. Mora's incomprehensible court filings were there. No one testified that Dr. Mora was faking his disease - even Dr. Spencer finally said Dr. Mora was ill - and the disease is one that warps reality. And, counsels' views surely should have been considered. The court held numerous hearings on Dr. Mora's complaints about his counsel, many of which were engendered by counsels' insistence that Dr. Mora was mentally ill, and the court found those lawyers, in summary, to be diligent, competent and looking after Dr. Mora's best interests.

For the reasons set forth above, Dr. Mora asks the court to hold that the trial court committed errors of law when it did not convene subsequent evidentiary hearings on Dr. Mora's competency when the issue was raised by Dr. Mora's lawyers. Those written and oral motions raised bona fide doubts about Dr. Mora's competence. The motions arose out of Dr. Mora's bizarre and self-destructive courtroom behavior. Dr. Mora asks this court to hold that this error especially occurred before sentencing when the trial judge appointed experts to evaluate Dr. Mora, received their reports, and then did nothing but ask Dr. Mora if he was competent. Dr. Mora could not waive the hearing. **Pate v. Robinson**, **supra**. Once the experts were appointed, Dr. Mora was entitled to a hearing to challenge their conclusions and a written order with findings

under Fla. R. Crim. P. Rule 3.210(b), 3.211 and 3.212. If the motion was taken seriously enough to require the appointment of experts, it was bona fide enough to require a hearing. Dr. Mora also asks this court to hold that the error occurred at the conclusion of Dr. Stock's testimony given prior to the penalty phase trial. There was no evidence presented to rebut Dr. Stock's testimony that Dr. Mora had deteriorated and the court rejected Dr. Stock's evidence out of hand. Last, Dr. Mora asks the court to reverse this conviction on the basis of the court's initial competency ruling. Reasonable men could not differ on basis of the evidence presented there that Dr. Mora was incompetent.

POINT VIII

IT WAS ERROR TO PERMIT DR. MORA TO BE GUILT PHASE COCOUNSEL AND IT WAS ERROR TO ALLOW HIM TO ADDRESS THE JURY.

There is no constitutional right to hybrid representation. **State v. Tait**, 387 So. 2d 338, 340 (Fla. 1980). As was explained in the fact section of this brief, Dr. Mora while frustrated and vocal about the failure of his attorneys to buy into his paranoid world view, had equivocated in his desire to represent himself, the last time being in the middle of his direct examination when Dr. Mora backed down from a desire to fire Mr. Colleran. Now, in the middle of a conversation about a witness- a matter that had nothing to do with the adequacy of counsel- the court inexplicably offered Dr. Mora the right to be cocounsel. Dr. Mora had not made an unequivocal request to proceed without counsel before this and

there was no unequivocal request for that relief on the table then. Because there was no unequivocal request to remove counsel on the table, it was error to allow Dr. Mora to serve as cocounsel in this very complicated murder trial. **Bell v. State**, 699 So.2d 674, 677 (Fla. 1997): [*Faretta* requires that a defendant be allowed self-representation when the *defendant* clearly and unequivocally declares... a desire for self-representation...."]. (Emphasis added). Because no request for self-representation was on the table, the court should not have offered that option. Moreover, no "compelling reason" for the hybrid representation is presented in this record. **Burke v. State**, 732 So. 2d 1194 (Fla. 4th DCA 1999).

Next, the right of a represented defendant to address the jury is subject to the sound discretion of the court. **State v. Tait**, **supra**. In this case, the court abused its discretion. At this juncture in the case there was ample evidence in the record of Dr. Mora's disorder from both psychological professionals and from the anecdotal evidence provided by his witnesses. Significantly, the psychological evidence was that Dr. Mora would deny his illness and he would use the courtroom as a forum to present his delusional view of things, which is what he did. Knowing all this, the court virtually invited Dr. Mora to be cocounsel, it was steal a phrase "an invitation that would not be refused" given the soapbox mentality Dr. Mora exhibited throughout this trial, and the closing argument fiasco flowed naturally from

the earlier error.

POINT IX

IT WAS ERROR FOR THE COURT TO REMOVE MR. MALNIK AS DR. MORA'S PENALTY PHASE ATTORNEY.

Things were completely out of control at this point. The court had in short order permitted and withdrawn permission for Mr. Malnik's termination several times and had one point had even made a determination that Dr. Mora was incapable of defending himself. (Tr. 3060-3107). Once Mr. Malnik was back on board, the court could not remove him from the case without at least an unequivocal request from Dr. Mora that it do so. **Bell v. State**, **supra.**, 699 So.2d 674, 677 (Fla. 1997). The record, while confusing enough to require several readings, reflects only a dispute between Dr. Mora and Mr. Malnik about interviewing and calling family members. (Tr. 3100-3108). There was no attempt to fire Mr. Malnik on the table at the time the court directed Dr. Mora to represent himself. Because the dispute was over whether certain mitigation would be presented, it was an issue where Dr. Mora's judgment controlled and the court should not have intruded. **Farr v. State**, 656 So.2d 448 (Fla. 1995); **Lockhart v. State**, 655 So.2d 69 (Fla. 1995). But apparently the court did not trust Dr. Mora's judgment. That seemed to be the reason that Mr. Malnik, once out of the case, was put back in it. And, if the court could not abide by Dr. Mora's judgment in this area, it may have been the appropriate moment to revisit the issue of Dr. Mora's competency in depth. Before the court removed Mr. Malnik, a new

Faretta hearing was required to determine whether there was a knowing and voluntary waiver of counsel. "In addition to determining that a defendant who seeks to ... waive counsel is competent, the trial court must satisfy itself that the waiver of his constitutional rights is knowing and voluntary." **Godinez v. Moran**, 509 U.S. 389, 400, 113 S.Ct. 2680, 2687 , 125 L. Ed. 2d 321 (1993); **Amos v. State**, 618 So.2d 157 (Fla. 1993); Fla. R. Crim.P. 3.111. Here, the trial court made neither inquiry.

CONCLUSION

The finding that the killing of Mrs. Marx was HAC was erroneous. The actual commission of the capital felony was not accompanied by such additional unnecessarily torturous acts as to set the crime apart from the norm of capital felonies.

Dr. Mora presented a sufficient quantum of evidence to establish the mitigating circumstance that the offense was committed while he was under the influence of extreme emotional or mental distress pursuant to §921.141(6)(b) Fla. Stat. Once he did that, the court was required to find that the mitigator existed and to weigh it.

Dr. Mora presented a sufficient quantum of evidence to establish the mitigating circumstance pursuant to §921.141(6)(f) Fla. Stat. that his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. Once he did that, the court was required to find that the mitigator existed and weigh it.

The rejection of the §921.141(6)(a) no significant history of prior criminal activity mitigator was error. An acquittal of criminal charges is not a "significant history of prior criminal activity." The use of the PSI to establish prior criminal activity deprived Dr. Mora of due process of law and did not constitute direct evidence that Dr. Mora had engaged in prior criminal activity.

There was enough evidence in this record to put the age mitigator into play and the court erroneously failed to find Dr. Mora's age as a mitigator and accord it weight.

The numerous sentencing errors require reversal of the death sentence. Death in this case is disproportionate. This case is comparable to cases where the defendant's mental or emotional disturbance controlled the outcome.

The trial court abused its discretion by not finding Dr. Mora to be incompetent before the trial and on the several motions later made during trial. There was a bona fide doubt about Dr. Mora's competency that appears on the face of this record. Dr. Mora's incapacity was established in each instance by a preponderance of the evidence. Dr. Stock's pre-penalty phase testimony about Dr. Mora's incompetency was unrebutted. The failure of the court to hold a competency hearing prior to sentencing and after it had appointed experts and had received their reports was error. That competency hearing could not be waived on Dr. Mora's assertion that he was competent.

It was error to permit Dr. Mora to be his own guilt phase

cocounsel and it was error to allow him to address the jury in that capacity at the conclusion of Mr. Colleran's closing argument.

The court abused its discretion when it permitted Dr. Mora to address the penalty phase jury.

It was error for the court to remove Mr. Malnik as Dr. Mora's penalty phase attorney. Dr. Mora had not requested this relief and the court took this action without holding a **Faretta** hearing.

For the above reasons appellant, Dr. Julio Mora, respectfully requests that the court reverse both the convictions and sentences rendered in the court below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to Office of the Attorney General, 1655 Palm Beach Lakes Boulevard, 3rd Floor, West Palm Beach, Florida 33401, and by U.S. Mail to Dr. Julio Mora, C.D. #O-L11003, M.D.#A-1, Union Correctional Institution, Post Office Box 221, Raiford, Florida 32083-0221 this 22nd day of May, 2000.

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