IN THE SUPREME COURT OF FLORIDA

TERENCE OLIVER,

Appellant,

vs.

CASE NO. SC12-1350

STATE OF FLORIDA,

Appellee.

_____/

ON APPEAL FROM THE CIRCUIT COURT,
EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY

APPELLANT'S **SUPPLEMENTAL** INITIAL BRIEF

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

By: O.H. EATON, JR.
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 111108
444 Seabreeze Blvd., Suite 210
Daytona Beach, Florida 32118
386/254-3758
Eaton.oscar@pd7.org

COUNSEL FOR APPELLANT

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STATEMENT OF THE CASE

This is a direct appeal from a judgment of the Circuit Court in Brevard County adjudicating Terence Oliver guilty of two counts of first degree murder, one count of burglary of a dwelling while inflicting death, and one count of possession of a firearm by a convicted felon. He was sentenced to death on each of the murder counts and life imprisonment on the other counts. Mr. Oliver's brief on the merits contains a statement of the facts of the case. This brief is filed pursuant to Order of this Court allowing additional argument in light of this Court's recent ruling in Hurst v. Florida, 2016 WL 6036978 (October 14, 2016). The issues addressed in this brief are in addition to the issues addressed in Mr. Oliver's previously filed briefs on the merits.

SUMMARY OF THE ARGUMENT

I.

The sentences imposed in this case were unconstitutional and the error is not harmless.

The procedure used to convict and sentence Mr. Oliver in this case violated his right to trial by jury as guaranteed by the United States Constitution and the Florida Constitution. The constitutional error in this case is not harmless because the jury was instructed to return an "advisory verdict," which could be by simple majority.

The verdict in this case contained a sentencing recommendation without making any unanimous findings required by this Court including: (1) the existence of aggravating factors; (2) whether the aggravating factors were sufficient to justify the death penalty; (3) whether the aggravating factors outweighed the mitigating factors; and (4)whether the death penalty was the appropriate penalty. This failure violates the rule in Perry v. State, 2016 WL 6036982 (October 14, 2016), which requires the jury to make unanimous findings.

While the recommendations by the jury were 12-0 for the death of each of the two victims in the case, the facts are significantly different from those in the recent case of Davis v. State, SC11-1122 (November 10, 2016) because this case involves two shooting incidents instead of horrendous fire deaths and the aggravating circumstances are less weighty or unproven. Under the facts of the case, the Court cannot determine which sentence the jury would have recommended if it had been instructed to return unanimous findings as well as a unanimous verdict.

II.

The maximum sentence allowed in this case is life imprisonment.

The maximum sentence allowable in this case is life imprisonment because (1) there is no viable death penalty in Florida at this time and (2) this Court erred in Perry v. State, 2016 WL 6036982 (Oct. 14, 2016), by construing Sec. 921.141, Fla. Stat.,

as amended in 2016, to require a unanimous verdict and to require other findings not required by an unambiguous statute.

ARGUMENT

I.

The sentences imposed in this case were unconstitutional and the error is not harmless.

The sentencing error in this case is not harmless because (1) Mr. Oliver was sentenced in violation of his right to trial by jury as guaranteed by the Sixth Amendment of the United States Constitution and Art. I, Sec. 22, of the Florida Constitution and (2) his case is similar, but not identical to, the case in Hurst wherein this Court determined the error was not harmless.

In this case, the jury was instructed to return an "advisory verdict," which could be by simple majority without making any findings as to (1) whether aggravating factors exist; (2) whether the aggravating factors were sufficient to justify the death penalty; (3) whether the aggravating factors outweighed the mitigating factors; and (4) whether the death penalty was the appropriate penalty. This failure violates the rule in Perry v. State, 2016 W L6036982 (October 14, 2016), which requires the jury to make unanimous findings on all of these questions. The advisory verdict returned by the jury in this case was merely a "recommendation" based upon undetermined

facts. As the United States Supreme Court recently stated, "A recommendation is not enough." Hurst v. Florida, __ U.S. __, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016).

Mr. Oliver's case is similar, but not identical to, the Hurst case wherein this Court determined the same constitutional error not to be harmless.

The penalty phase jury's "advisory" "recommendation" was 12-0 for the death of each of the two victims in this case. The jury was specifically instructed that their verdict would be "advisory" and could be returned by a simple majority of the jurors. The role of the jury in capital cases in Florida has always been confusing. The jury merely makes a recommendation, which the sentencing judge must give "great weight," whatever that means. It certainly does not mean jury sentencing. No one will ever know how the simple majority/advisory instruction affected the deliberations of the jurors. This instruction violated the rule laid down by this court in Perry v. State, 2016 WL 6036982 (Oct. 14, 2016) which requires the jury to make unanimous findings.

The rationale for unanimous jury verdicts was recognized by this Court in Hurst v. State, 2016 WL 6036978 (Oct.14, 2016),when the Court stated:

> The dynamics of the jury process are such that often only one or two members express doubt as to [the] view held by a majority at the outset of deliberations. A rule which insists on unanimity furthers the deliberative process by requiring the minority view to be examined and, if possible, accepted or rejected by the entire jury. The requirement of

jury unanimity thus has a precise effect on the fact-finding process, one which gives particular significance and conclusiveness to the jury's verdict. United States v. Lopez, 581 F.2d 1338, 1341 (9th Cir.1978). That court further noted that "[b]oth the defendant and society can place special confidence in a unanimous verdict." *Id.* Comparing the unanimous jury requirement to the requirement for proof beyond a reasonable doubt, the Fifth Circuit Court of Appeals stated, "the unanimous jury requirement 'impresses on the trier of fact the necessity of reaching a subjective state of certitude on the facts in issue.' " United States v. Gipson, 553 F.2d 453, 457 (5th Cir.1977).

Further, it has been found based on data that "behavior in juries asked to reach a unanimous verdict is more thorough and grave than in majority-rule juries, and that the former were more likely than the latter jurors to agree on the issues underlying their verdict. Majority jurors had a relatively negative view of their fellow jurors' openmindedness and persuasiveness." *See* Elizabeth F. Loftus & Edith Greene, *Twelve Angry People: The Collective Mind of the Jury,* 84 Colum. L.Rev. 1425, 1428 (1984). Another study disclosed that capital jurors work especially hard to evaluate the evidence and reach a unanimous verdict where they can find agreement. *See* Scott E. Sundby, *War & Peace in the Jury Room: How Capital Juries Reach Unanimity,* 62 Hastings L.J. 103 (2010). Unanimous-verdict juries tend to be more evidence driven, generally delaying their first vote until the evidence has been discussed. *See* Kate Riordan, *Ten Angry Men: Unanimous Jury Verdicts in Criminal Trials and Incorporation After McDonald,* 101 J.Crim. L. & Criminology 1403, 1429 (2011). Further, juries not required to reach unanimity tend to take less time deliberating and cease deliberating when the required majority vote is achieved rather than attempting to obtain full consensus; and jurors operating under majority rule express less confidence in the justness of their decisions. *See, e.g.,* Kim Taylor–Thompson, *Empty Votes in Jury Deliberations,* 113 Harv. L.Rev. 1261, 1272–73 (2000). All these principles would apply with even more gravity, and more significance, in capital sentencing proceedings. We also note that the requirement of unanimity in capital jury findings will help to ensure the heightened level of protection necessary for a defendant who stands to lose his life as a penalty.

Harmless error as applied to this case

While the recommendations for death sentences were 12-0 in this case, the facts here are significantly different from those in the recent case of Davis v. State, SC11-1122 (November 10, 2016), and harmless error analysis must be applied on a case-by-case basis. This case involves two simultaneous shooting incidents instead of horrendous fire deaths, and the number of aggravating circumstances are fewer, less weighty, or unproven. No interrogatories were included on the verdict forms, so the trial court, and this Court, cannot know, and will never know, if the jury found any of these aggravating circumstances unanimously or if any of them were found by even a majority of the jury. *See* Aguirre-Jarquin v. State, 9 So.3d 593, 611-612 (Fla. 2009) (Pariente, J., concurring). The test to be used when applying harmless error analysis is whether there is no reasonable possibility that the error contributed to the sentence. *See* Zack v. State, 753 So.2d 9, 20 (Fla. 2000). The focus is on the effect of the error on the trier-of-fact, and not the effect the evidence may have had on the appellate court. No one will know what the effect the error had on the jury in this case. It is the State's heavy burden of proof to show the error was harmless. How can a conviction based upon the jury's failure to find the necessary elements needed to justify a death sentence ever be harmless when the statute involved is subsequently declared to be unconstitutional?

Constitutional arguments aside, the facts of this case do not support the trial judge's decision to allow three of the aggravating circumstances to be considered by the jury.

Aggravating Factors - Andrea Richardson

The aggravating factors submitted to the jury involving the murder of Andrea Richardson were (1) previous convictions of violent felonies, including the two homicides in this case, (2) felony murder - (burglary), (3) avoid arrest, and (4) cold, calculated, and premeditated. Mr. Oliver's prior convictions were established by the evidence and so was the felony murder. The other two aggravating circumstances were not proven.

Avoiding arrest

The evidence does not support the finding that the shooting of Andrea Richardson was for the purpose of avoiding arrest. The evidence established that the shooting of Andrea Richardson occurred simultaneously with the discovery of his presence in the house. Under the facts of the case, but for the felony murder rule, the shooting would have only amounted to second degree murder. There is no presumption for the existence of the "avoiding arrest" aggravating circumstance. The supporting evidence must be "very strong" to permit a finding of this circumstance. Riley v. State, 366 So. 2d 19, 22 (Fla.1978); Rodriguez v. State, 753 So. 2d 29, 47-48

(Fla. 2000). In cases such as this one, where the victim is not a law enforcement officer, the State must prove beyond a reasonable doubt that "the sole or dominant motive for the murder was the elimination of the witness." Proof of the intent to avoid arrest must be "very strong." Serrano v. State, 64 So. 3d 93 (Fla. 2011); Zack v. State, 753 So. 2d 9, 20 (Fla. 2000); Urbin v. State, 714 So. 2d 411 (Fla. 1998); Consalvo v. State, 697 So. 2d 805, 819 (Fla. 1996) (speculation not enough); Preston v. State, 607 So. 2d 404, 409 (Fla. 1992) (the fact that it may have been one of the motives is not enough); Davis v. State, 604 So. 2d 794 (Fla. 1992); Connor v. State, 803 So. 2d 598 (Fla. 2001). Mere speculation by the State cannot support this aggravating circumstance. Connor v. State, 803 So. 2d 598, 610 (Fla. 2001); Consalvo v. State, 697 So. 2d 805, 819 (Fla. 1996). The evidence in this case can be interpreted in at least two different ways - the shooting of Andrea Richardson was the result of sudden awareness of his presence, and resulting panic, or it was for the purpose of avoiding arrest. There was no direct evidence of motive. Where there is some evidence that the defendant may have "panicked" during the murder, the avoid arrest aggravator is not proven. Perry v. State, 522 So. 2d 817 (Fla. 1988). It is the state's burden to prove avoiding arrest was the "sole or dominant motive" for the killing and the evidence falls short to establish this aggravating circumstance. At best, the evidence proves this circumstance to have arisen from one of two motives.

Mr. Oliver's statement that the reason he shot Richardson was because "He was there and he was running out the back door" is the only evidence in the record relating to this issue. This ambiguous statement conveys panic as much as it conveys motive. It hardly proves a "sole or dominant" motive. The evidence in the record would cause a reasonable trier of fact to "waver and vacillate" and be unable to find "avoid arrest" beyond a reasonable doubt.

Cold, calculated and premeditated

The evidence for the cold, calculated, and premeditated aggravator also falls short for the shooting of Andrea Richardson. There is no evidence in the record to show there was any "bad blood" or other reason to kill Richardson other than the fact that his presence was discovered at the time of the shooting of Krystal Pinson. As previously stated, the shooting of Richardson would be second degree murder, but for the felony murder rule.

The killing of Richardson lacks the "cold" element, showing "calm, cool reflection, and not an act prompted by emotional frenzy, panic, or a fit of rage." Jackson v. State, 648 So. 2d 85, 89 (Fla. 1994); Richardson v. State, 604 So. 2d 1107, 1109 (Fla. 1992).

It also lacks the "calculated" element of "careful plan or prearranged design to commit the *murder*." A careful plan or prearranged design to *kill* is required--not

a careful plan to commit another crime and a killing also takes place. Pomeranz v. State, 703 So. 2d 465, 471 (Fla. 1997); Jackson v. State, 648 So. 2d 85, 89-90 (Fla. 1994); Valdes v. State, 626 So. 2d 1316, 1323 (Fla. 1993); Rogers v. State, 511 So. 2d 526, 533 (Fla. 1987); Hardwick v. State, 461 So. 2d 79, 81 (Fla. 1984).

The proof also lacks the "heightened premeditation" necessary to fall under this aggravating circumstance. There is no evidence of "deliberate ruthlessness" in the record and "deliberate ruthlessness" is necessary to prove CCP. Buzia v. State, 926 So. 2d 1203 (Fla. 2006).

Aggravating Circumstances - Krystal Pinson

Heinous, atrocious, or cruel (HAC)

The aggravating circumstances submitted to the jury involving the shooting of Krystal Pinson included the heinous, atrocious, and cruel aggravator. This aggravating circumstance is sufficiently serious, standing alone, to justify a death sentence in an appropriate case. Butler v. State, 842 So. 2d 817 (Fla. 2003). This Court has held this aggravating circumstance would apply "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). For this factor to apply, the crime must be *both* conscienceless or pitiless *and* unnecessarily

torturous to the victim. Nelson v. State, 748 So. 2d 237, 245 (Fla. 1999); Knight v. State, 746 So. 2d 423, 438-39 (Fla. 1998); Zakrzewski v. State, 717 So. 2d 488, 492 (Fla. 1998); Hartley v. State, 686 So. 2d 1316, 1323 (Fla. 1996); Richardson v. State, 604 So. 2d 1107, 1109 (Fla. 1992); Baker v. State, 71 So. 3d 802 (Fla. 2011).

Shooting deaths are generally not considered to be heinous, atrocious, or cruel because they are usually instantaneous, or nearly so. There must be additional acts that amount to physical or mental torture to the victim. Lynch v. State, 841 So. 2d 362, 369 (Fla. 2003); Henyard v. State, 689 So. 2d 239, 253 (Fla. 1996); Wyatt v. State, 641 So. 2d 1336, 1340-41 (Fla. 1994); Preston v. State, 607 So. 2d 404, 409-10 (Fla. 1992). There is no evidence in this record that would establish that the shooting of Krystal Pinson was for the purpose of inflicting lingering pain or suffering. Diaz v. State, 860 So. 2d 960, 966-67 (Fla. 2003); Rimmer v. State, 825 So. 2d 304, 327-28 (Fla. 2002); Robertson v. State, 611 So. 2d 1228, 1228 (Fla. 1993). The evidence established that Krystal Pinson was taken by surprise and shot eight times while she was sleeping in bed. The trial court speculated as to the order in which the shots entered her body but he admitted the order he listed could be wrong. Any of the shots fired after she died or lost consciousness could not be considered to be heinous, atrocious, or cruel. Zakrzewski v. State, 717 So. 2d 488, 493 (Fla. 1998); Jones v. State, 569 So. 2d 1234, 1239 (Fla. 1990); Jackson v. State, 451 So. 2d 458, 463 (Fla.

1984); Herzog v. State, 439 So. 2d 1372, 1379-80 (Fla. 1983). The facts of the case show the shooting of Pinson took place in a matter of seconds and, as the medical examiner opined, "she actually died . . . seconds to minutes" but it was "impossible" to narrow the time. (V20, R2485-86, 2490). He did state unequivocally that once Pinson lost consciousness, she would have not have regained it. (V20, R2491). HAC cannot be proven beyond a reasonable doubt on such vague testimony and this Court should not allow this type of evidence to be the basis for sentencing a person to death.

Effect of Unproven Aggravating Circumstances

The jury in this case was allowed to consider three aggravating circumstances that were not supported by the evidence. All three of them were "serious" rather than merely "status" aggravators. Since the jury did not give the trial court the benefit of any findings of fact, it is not possible to know how these improper aggravators affected the jury's deliberations on the issue of penalty. For this court to assume this serious error was "harmless" amounts to speculation and would fail to recognize the difficulty the trial judges have in evaluating the aggravating and mitigating circumstances in these cases, and determining who shall live and who shall die. The errors described above are sufficiently prejudicial to justify setting aside the death sentence in this case.

II.

The Maximum Sentence Allowed in This Case is Life Imprisonment.

In Perry v. State, 2016 WL 6036982 (October 14, 2016), this Court construed Sec. 921.1414, Fla. Stat. in order to conform it to the requirements laid down by the United States Supreme Court and this Court and to breathe life into an otherwise unconstitutional statute. The Court should reconsider that ruling for two reasons: (1) the analysis in Perry is flawed because it fails to follow the rules of statutory construction; and (2) it creates statutory provisions that do not exist.

Sec. 921.141(2)(c), as amended by the legislature in 2016, provides as follows:

> If at least 10 jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If fewer than 10 jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

There is nothing ambiguous about the requirement that "at least 10 jurors" are needed to recommend a death sentence. To construe "10" to mean "12" is the same as construing "apples" to mean "oranges." This Court is required to give statutes the meaning contained in the plain language provided by the legislature unless the language is ambiguous. In Knowles v. Beverly Enterprises-Florida, Inc., 898 So.2d 1 (Fla. 2005) this Court stated the rule as follows:

> "It is well settled that legislative intent is the polestar that guides

> a court's statutory construction analysis. *See* State v. Rife, 789 So.2d 288, 292 (Fla.2001); McLaughlin v. State, 721 So.2d 1170, 1172 (Fla.1998). In determining that intent, we have explained that "we look first to the statute's plain meaning." Moonlit Waters Apartments, Inc. v. Cauley, 666 So. 2d 898, 900 (Fla.1996). Normally, "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." Holly v. Auld, 450 So. 2d 217, 219 (Fla.1984) (quoting A.R. Douglass, Inc., v. McRainey, 102 Fla. 1141, 137 So. 157, 159 (1931))."

The rule was repeated by the Fifth District Court of Appeal in Hobbs v. State, 974 So.2d 1119, 1122 (Fla. 5th DCA 2008):

> While maxims such as *ejusdem generis* are intended to aid in the construction of statutes, our first consideration is to give effect to the intent of the legislature as evidenced by the plain meaning of the text. Capers v. State, 678 So.2d 330, 332 (Fla.1996). *Ejusdem generis* should only come into play when it is necessary to construe an ambiguous statute, not to create an ambiguity in a clearly worded statute. Jacobo v. Bd. of Trs. of Miami Police, 788 So. 2d 362, 363 (Fla. 3d DCA 2001).

The Florida Legislature intended to enact a statute that provided for non-unanimous verdicts and that is exactly what it did. The enactment was in spite of the fact that this Court (and many others involved in death penalty litigation) forewarned the Legislature over 15 years ago of the need for unanimity in death cases. State v. Steele, 921 So. 2d 538 (Fla 2005).

By construing the words "at least 10" to mean "unanimous" the Court effectively struck a portion of an unambiguous statute and substituted another word

for the words of the legislature. This the court is not allowed to do. Long ago in this Court in the case of Fine v. Moran, 74 Fla. 417, 77 So. 533 (Fla. 1917), stated,

> In interpreting the words of a statute the courts perform no function of legislation, but seek only to ascertain the legislative intention and where the language is plain, definite in meaning without ambiguity, it needs no interpretation or construction and itself fixes the legislative intention.

The Court went on to state:

> It is not allowable to bend the terms of an act of the Legislature to conform to our view as to the purpose of the act where its terms are expressed in language that is clear and definite in meaning. Certainly it is not permissible to strike out words of plain, definite meaning and substitute others in order that the purpose of the act after such remodeling may more nearly conform to our notions as to its purpose and be congruent with our views as to what language should have been used to accomplish such purpose of the statute.

In Osborn v. Simpson, 94 Fla. 793, 114 So.543 (Fla. 1927) the Court observed "The court has no right or authority to strike out of the act words which have a definite and well-known meaning and substitute in lieu thereof other words which the court might assume would express the more reasonable intent of the Legislature."

In addition to the requirement that the jury make unanimous findings as to the existence of aggravating circumstances, the amended statute requires the jury to complete the following tasks:

1. The jury must unanimously find at least one aggravating factor before the defendant is eligible for the death penalty.

2. The jury must base a death recommendation upon (1) whether sufficient aggravating factors exist, (2) whether the aggravating factors outweigh the mitigating factors, and (3) whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

The legislature did not provide for the jury to make the findings of these three elements unanimously on the verdict form. However, this Court "construed" the statute to require these findings. This construction amounts to legislating and is not the province of any court. This Court recognized this basic principle of statutory construction in the Perry opinion when it observed,

> This Court is bound to "resolve all doubts as to the validity of the statute in favor of its constitutionality, provided the statute may be given a fair construction that is consistent with the federal and state constitutions as well as with legislative intent." *Heart of Adoptions, Inc. v. J.A.,* 963 So.2d 189, 207 (Fla.2007) (citation omitted). **However, this Court may only do so, if "to do so does not effectively rewrite the enactment."** *State v. Stalder,* 630 So.2d 1072, 1076 (Fla.1994) (quoting *Firestone v. News–Press Publ'g Co.,* 538 So.2d 457, 459–60 (Fla.1989)). (Emphasis supplied.)

The legislature did not provide for the jury to make findings relating to the three elements required by the statute and this Court lacks the power to construe the statute by filling in the missing elements.

Even it the provisions of Sec. 921.141, Florida Statutes, are ambiguous, which they are not, the statute is a criminal statute and criminal statutes are required to be

construed in favor of the accused.

As stated by Judge Joe A. Cowart, in his dissent in E.N v. State, 455 So. 2d 636 (Fla. 5th DCA 1984),

> As written, this statute is reasonably capable of being read and understood in two possible senses-that taken by the trial judge and that taken by the majority opinion-and it is, therefore, ambiguous. However, the legal point is not which of the two meanings was intended by the legislature. This is not one of the more common situations where a court properly construes an ambiguous statute to determine the true intent of the legislature. This is a penal statute. *The correct and applicable rule of law is that penal statutes must be strictly construed and any ambiguity resolved in favor of the accused.* When a criminal statute is ambiguous, and under one meaning it applies to the defendant or his conduct and under the other meaning it does not, the proper resolution of the legal problem is not for the appellate court to construe or interpret the statute and explain the rationale for its adoption of the second, more harsh, meaning but to declare the statute to be ambiguous and hold that, for that reason alone, the statute must be applied in accordance with the meaning most favorable to the accused. (Emphasis supplied.)

Accord Busicy v. United States, 446 U.S. 398, 100 S.Ct. 1747, 64 L.Ed.2d 381 (1980). *See also* Bell v. United States, 349 U.S. 81, 75 S.Ct. 620, 99 L.Ed.2d 905 (1955); United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 73 S.Ct. 277, 97 L.Ed.2d 260 (1952); United States v. Evans, 333 U.S. 483, 68 S.Ct. 634, 92 L.Ed.2d 823 (1948); Clements v. State, 979 So.2d 256 (Fla. 2d DCA 2007) (Statute of Limitations construed in favor of the accused); Ex Parte Amos, 93 Fla. 5, 112 So. 289 (1927); Atlantic Coast Line R. Co. v. State, 73 Fla. 609, 74 So.595 (1917).

Sec. 921.141, Fla. Stat., as amended in 2016, is not subject to being construed to change its plain meaning and the only sentence available to Mr. Oliver, assuming this Court ultimately affirms the Circuit Court's judgment and sentence, is life imprisonment without possibility of parole.

Conclusion

For the reasons stated herein, this Court is urged to consider this direct appeal on its merits and, if the Court determines it must affirm the judgment of guilt, this Court is urged to reverse the sentences of death imposed upon Terence Oliver and remand the case to the trial court for imposition of a life sentence on each of the murder counts.

Respectfully submitted,

JAMES S. PURDY,
PUBLIC DEFENDER

s/ O.H. Eaton, Jr.
By: O.H. EATON, JR.
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 111108
444 Seabreeze Blvd., Suite 210
Daytona Beach, Florida 32118
386/254-3758
Eaton.oscar@pd7.org

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Second Supplemental Initial Brief has been electronically delivered to Assistant Attorney General Stacie Kircher, at capapp@myfloridalegal.com, and mailed to the Appellant on this 17th day of November, 2016.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with Rule 9.210(2)(a), Florida Rules of Appellate Procedure, in that it is set in Times New Roman 14-point font.

s/ O.H. Eaton, Jr.
By: O.H. EATON, JR.