

IN THE SUPREME COURT OF FLORIDA

MICHAEL A. GORDON, :

Appellant, :

vs. : Case No. SC20-284

STATE OF FLORIDA, :

Appellee. :

_____ :

APPEAL FROM THE CIRCUIT COURT
IN AND FOR POLK COUNTY
STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

This reply brief is directed to Issues I, II, and V. As to the remaining issues Gordon will rely on his initial brief.

The state's answer brief will be referred to herein as "SB".

ISSUE I [THE STATE'S FIRST AND SECOND PEREMPTORY STRIKES OF JUROR KIMBERLY JAMES]

Four highly significant decisions of the United States Supreme Court - - Miller-El v. Dretke, 545 U.S. 231 (2005); Snyder v. Louisiana, 552 U.S. 472 (2008); Foster v. Chatman, 136 S.Ct 1737 (2016); and Flowers v. Mississippi, 139 S.Ct. 2228 (2019) - - none of which has ever been thoroughly addressed in an opinion of this Court¹, are

¹ Foster comes the closest. It was cited in footnote 2 of the plurality opinion in Spencer v. State, 238 So.3d 708,711 (Fla. 2018) for the proposition that appellate review of the entire record may sometimes be necessary to uncover pretext. Miller-El is cited in Justice Pariente's dissenting opinion in Jones v. State, 923 So.2d 486,493 (Fla. 2006) for the proposition that racial, ethnic, or gender bias in jury selection undermines the integrity of the justice system. Flowers is cited in footnote 5 of Justice Labarga's dissenting opinion in State v. Pacchiana, 289 So.3d 857,864(Fla. 2020)("Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process"). In Willacy v. State, __So.3d__ (Fla., April 1, 2021)[2021 WL 1217141] this Court summarily rejected the defendant's Flowers argument in an appeal from the denial of an untimely successive postconviction motion. Snyder has never been cited by this Court.

the focal point of Gordon's arguments in his initial brief and in this reply brief.

The state's arguments on this issue, as well as the intertwined next issue (comparative juror analysis), rest almost entirely on its effort to limit the scope of review in a manner inconsistent with the United States Supreme Court's views expressed and its in-depth analysis used in Miller-El, Snyder, Foster, and Flowers. The evolving case law plainly shows that the Supreme Court is seriously committed to uncovering pretext for racial discrimination in the exclusion of minority jurors. See Densey v. State, 191 S.W.3d 296,308 n.14 (Tex.Crim.App. 2006)(Gray, C.J. concurring)(some commentators have described Miller-El as the decision which put teeth in Batson).²

Batson "has expanded and evolved to better accomplish its overriding goal of ending racial discrimination in the use of peremptory challenges." Sanchez v. Roden, 753 F.3d 279,292 (1st Cir. 2014). The Supreme Court, in its 2019 opinion authored by Justice Kavanaugh in Flowers, said "In the decades since Batson, the Court's cases have vigorously enforced and reinforced the decision and guarded against any backsliding." 139 S.Ct. at 2243. The opinions referred to (at 2243)

² Batson v. Kentucky, 476 U.S. 79 (1986).

are Foster, Snyder, and Miller-El (authored by Justices Roberts, Alito, and Souter, respectively). What that case law makes clear - - both in what the Court said and what it did - - is that in evaluating a claim that a juror has been excluded due to racial bias, a reviewing court must consider all of the circumstances bearing on that question, and must look to the entire record of the voir dire proceedings. Miller-El, 545 U.S. at 241 n.2, 252,241-66; Snyder, 552 U.S. at 478,477-85; Foster, 136 S.Ct. at 1748, 1747-55; Flowers, 139 S.Ct. at 2250, 2246-51. In Flowers, in examining the state’s peremptory strike of a black prospective juror, Carolyn Wright, the Court said “we must examine the whole picture.” The outcome depended largely upon “whether we look at the Wright strike in isolation or instead look at [it] in the context of all the facts and circumstances. Our precedents require that we do the latter.” 139 S.Ct. at 2250 (emphasis supplied). In other words, in evaluating a Batson claim reviewing courts should not put on blinders. See Foster v. Chatman, 136 S.Ct. at 1748. See also State v. Kirk, 145 N.E.2d 1092,1103 (Ohio App.2019)(“Under Flowers, we must examine the whole picture and look at the exclusion of prospective juror No.4 in the context of all the facts and circumstances”).

Regarding the necessity that the reviewing court consider all of the circumstances bearing on the issue of whether a strike was motivated by racial bias, see also Sanchez v. Roden, supra, 753 F.3d at 299-300 and 304; Commonwealth v. Sanchez, 151 N.E.3d 404,412 (Mass. 2020); State v. Curry, 447 P.3d 7,11 and 15 (Or.App.2019); Haney v. United States, 206 A.2d 854,863 (D.C. App. 2019); Nieto v. State, 365 S.W.3d 673,676 (Tex.Crim.App.2012); Watkins v. State, 245 S.W.3d 444,448 (Tex. Crim. App. 2008); Moore v. State, 265 S.W.3d 73,89-90 (Tex. Ct. App. –Houston (1st Dist.)2008).

In light of the totality of the circumstances scope of review required by Miller-El, Snyder, Foster, and Flowers, the record of the voir dire proceedings in Michael Gordon's case belies any claim by the state that the prosecutor's original and substitute justifications for striking African-American juror Kimberly James were genuine and not pretextual. [Indeed, Judge Harb denied the state's original strike of Ms. James because he was not satisfied that the prosecutor's articulated reason was genuine (T1792-94)].

As for the prosecutor's afterthought rationalization regarding the juror's cousin's prison sentence - - a reason which does not square with the prosecutor's own statement to the panel that she was only

concerned if it was “somebody very close to you where it impacted your life” - - the state tries to reframe this evidence of pretext as a separate claim that the unauthorized purported “backstrike”, in and of itself, constitutes reversible error (SB 46-47). [Indeed Gordon might have raised such a separate claim if it had been preserved]. Instead, Gordon offers the prosecutor’s creative (and successful) effort to exercise a second peremptory strike against Ms. James as evidence strongly indicative of pretext and racial bias. See Miller-El, at 246, where the prosecutor “suddenly came up with [juror] Fields’ brother’s prior conviction as another reason for the strike.” The Supreme Court emphasized the suspect timing:

It would be difficult to credit the State’s new explanation, which reeks of afterthought. While the Court of Appeals tried to bolster it with the observation that no seated juror was in Fields’s position with respect to his brother, 361 F.3d at 859-60, the court’s readiness to accept the State’s substitute reason ignores not only its pretextual timing but the other reasons rendering it implausible. Fields’s testimony indicated he was not close to his brother, App. 190 (“I don’t really know too much about it”), and the prosecution asked nothing further about the influence his brother’s history might have had on Fields, as it probably would have done if the family history had actually mattered. See, e.g., *Ex. Parte Travis*, 776 So.2d 874,881 (Fla.2000) (“[T]he State’s failure to engage in any meaningful voir dire examination on a subject the State alleges it is concerned about is evidence suggesting that the explanation is a sham and a pretext for discrimination”). There is no good reason to

doubt that the State's afterthought about Fields's brother was anything but makeweight.

(emphasis supplied).

So it is in Gordon's case as well, only more so. The prosecutor prefaced her group question with the caveat that "I want to keep it to somebody very close to you where it impacted your life. You thought about it, you were involved in it. . . ." (T1399). When the prosecutor called on Ms. James in the second row, the first thing the juror said was "But it didn't affect me. It was a first cousin." The cousin went to prison for a sex sting "but it didn't affect me in no way." In response to the prosecutor's questions, Ms. James answered unequivocally that she wasn't involved in the court process, she didn't provide a statement, she felt the cousin was rightfully charged and the 25 year sentence was fair. The prosecutor asked "Is there anything about that incident that would impact your ability to be fair and impartial as it relates to this case?", and Ms. James replied, "Definitely not" (T1402-03).

If the cousin's history had actually mattered to the prosecutor, or if the prosecutor had any basis to disbelieve Ms. James, she would have brought it up when defense counsel objected to her initial per-

emptory challenge, instead of taking Ms. James' "I'm not God" remark completely out of context and offering that as her justification for the strike. Judge Harb found the original justification not to be genuine. See Snyder, 552 U.S. at 485 (recognizing the pretextual significance of a stated reason that does not hold up; and that a prosecutor's proffer of a pretextual explanation "naturally gives rise to an inference of discriminatory intent"). In cases in which the trial judge does not believe the proffered reason to be genuine the correct ruling is to sustain the opponent's objection and disallow the strike. State v. Johnson, 295 So.3d 710,714-15 n.1 (Fla. 2020); Craven v. State, __So.3d__ (Fla. 2020) [2020 WL 6166366, p.6]. That is exactly what happened here. At that point, the prosecutor was either holding her substitute rationale in reserve, or - - more likely - - she came up with it as an afterthought when her peremptory strike of Ms. James was denied. Either way, it is indicative of pretext and racial bias.

Gordon's objection to the prosecutor's peremptory strike of Ms. James, and to her proffered justification, is preserved. State v. Johnson, 295 So.3d 710,714-16 (Fla. 2020), Joiner v. State, 618 So.2d 174,176 (Fla. 1993).

It is the state's obligation [as the proponent of the strike] to advance a facially race-neutral reason that is supported in

the record. If the explanation is challenged by opposing counsel, the trial court must review the record to establish record support for the reason advanced. However, when the state asserts a fact as existing in the record, the trial court cannot be faulted for assuming it is so when defense counsel is silent and the assertion remains unchallenged. Once the state has proffered a facially race-neutral reason, a defendant must place the court on notice that he or she contests the factual existence of the reason.

Johnson, at 174; quoting Floyd v. State, 569 So.2d 1225,1229 (Fla. 1990) (emphasis in Johnson opinion).

In the instant case, when the prosecutor initially struck Ms. James the defense asked for a race-neutral reason, whereupon the prosecutor - - twisting and taking completely out of context the juror's statements on the subject - - offered the "I'm not God" comment [See Gordon's initial brief, p. 37-38, 45-51]. Defense counsel disagreed that that was a sufficient race-neutral reason, and Judge Harb expressed that he was not persuaded in light of "all of the answers and responses given by Ms. James to the questions by both the State and the defense" that the prosecutor's asserted reason was genuine (T1792-94). So he correctly denied the peremptory strike.

Next came the purported "backstrike" based on the juror's cousin's conviction and sentence for traveling to meet a minor. The prosecutor had told the jurors she "want[ed] to keep it to somebody

very close to you where it impacted your life”; “[a] son, daughter, mother, things of that nature” (T1399). When Ms. James, likely in an excess of caution, raised her hand, the first thing she said was “But it didn’t affect me. It was a first cousin” (T1402). All of her ensuing responses dispelled any legitimate worry that the cousin’s conviction or sentence would affect her jury service in any way, which may explain why the prosecutor never thought to mention it when she initially moved to strike Ms. James. Only on her second try did she express her unfounded concern about the juror’s “ability to give the state a fair shot” because of the cousin, and even then the prosecutor evidently thought so little of the substitute rationale that she saw fit to rehash her original justification which Judge Harb had already rejected as not being genuine (T1796).

Defense counsel, as required by Johnson, objected and contested the prosecutor’s substitute reason. “In fact, she [juror James] indicated I think that this person who she was referencing got 25 years and didn’t think it was a problem. Fair sentence I think is what she said. It was a fair sentence” (T1796-97).

Defense counsel, by challenging the prosecutor’s new explanation, triggered Judge Harb’s obligation to review the record to estab-

lish whether or not the record supported the reason advanced. Johnson, 295 So.3d at 714; Floyd, 569 So.2d at 1229. Accordingly, Judge Harb did not immediately rule on the prosecutor's second peremptory strike of Ms. James; saying "I'm just going through my notes to see what notes I have in addition to what's been presented by the State and the defense in support or opposition of the peremptory challenge" (T1797). Ultimately, after "[h]aving considered the totality of the circumstances", the judge "grant[ed] the state's request over the defense's objection to strike Ms. James" (T1800).

As even the state concedes, "when a court is determining whether a party's race-neutral explanation is genuine, it may consider all relevant circumstances surrounding the strike" (SB 51) (citing Murray v. State, 3 So.3d 1108,1120 (Fla. 2009)). This mandate applies to trial courts and reviewing courts alike. See Miller-El; Snyder; Foster; Flowers. See also Watkins v. State, 245 S.W. 3d 444,448 and n.13 (Tex. Crim. App. 2008) ("[T]he reviewing court should consider the entire record of voir dire; it need not limit itself to arguments or considerations that the parties specifically called to the trial court's attention so long as those arguments or considerations are manifestly grounded in the appellate record"). "[T]he prosecutor's questions and statements

during voir dire examination and in exercising his challenges may support or refute an inference of discriminatory purpose.” Flowers, 139 S.Ct at 2246, quoting Batson, 476 U.S. at 97.

Here, (1) the prosecutor’s statement to the jurors that she was only concerned about close relatives or friends whose criminal cases impacted the juror’s life; (2) the voir dire examination of Ms. James which unequivocally showed that her cousin’s case had no impact on her life and would “[d]efinitely not” affect her ability to be fair and impartial; and especially (3) the prosecutor’s failure to even mention her supposed concern about the cousin until after Judge Harb found that the first rationale she advanced was not genuine, all strongly support the inference of discriminatory purpose. Judge Harb’s decision to grant the state’s peremptory challenge against Ms. James on the second try - - where both reasons advanced by the state had all the earmarks of pretext - - was clearly erroneous. As recognized in Miller-El v. Cockrell, 537 U.S. 322, 340 (2003); Dorsey v. State, 868 So.2d 1192,1200 (Fla. 2003); and Nowell v. State, 998 So.2d 597,602 (Fla. 2008), deference neither implies abdication of judicial review nor precludes relief. Since “[i]n the eyes of the Constitution, one racially discriminatory peremptory strike is one too many” [Flowers, 139 S.Ct. at

2241, see also 2244,2248], and since the wrongful exclusion of Ms. James from Gordon's jury is per se reversible error³, Gordon's convictions and death sentence must be reversed for a new trial.

ISSUE II [COMPARATIVE JUROR ANALYSIS]

As anticipated, the state - - in contending that reviewing courts may dispense with comparative juror analysis if not specifically raised below - - relies on case law⁴ which (1) derives from a pre-Miller-El noncapital Third DCA decision⁵; (2) fails to acknowledge or discuss Miller-El or Snyder; and (3) precedes (and therefore does not consider the impact of) Foster or Flowers (SB 55-56; see Gordon's initial brief, p.63-64). Therefore, but for the constitutional analysis of those four U.S. Supreme Court decisions, the state's waiver argument would likely prevail. However, the Supreme Court case law does exist, and

³ In addition to the cases cited in Gordon's initial brief at p.51-52, see also People v. Gutierrez, 395 P.3d 186,201 (Cal. 2017) and State v. Curry, 447 P.3d 7,16-17 (Or. App. 2019).

⁴ Hoskins v. State, 965 So.2d 1, 10-11 (Fla. 2007); Poole v. State, 151 So.3d 402, 413-14 (Fla. 2014); King v. State, 89 So.3d 209,230-31 (Fla. 2012).

⁵ Davis v. State, 691 So.2d 1180 (Fla.3d DCA 1997).

compels the opposite conclusion.

The takeaway from Miller-El, Snyder, Foster, and Flowers - - and from federal decisions and decisions of other state courts construing them⁶ - - is that all evidence in the record bearing on the question of racial discrimination in the exercise of a peremptory strike must be taken into consideration by a reviewing court, and that includes comparison of the voir dire examination of the stricken minority juror or jurors with the examination of non-minority jurors who the prosecutor allowed to serve.

In State v. Curry, 447 P.3d 7,9 (Or. App. 2019), the Oregon Court of Appeals said, “The question before [us] is whether, under the ‘comparative juror’ analysis adopted by the Supreme Court in [Miller-El, Snyder, and Flowers], the [trial] court erred in overruling defendant’s Batson objection. Although Snyder and Miller-El have both been on the books for more than a decade, this case appears to present the first opportunity for our court to consider a trial court’s ruling on a

⁶ See United States v. Atkins, 843 F.3d 625,634-37 (6th Cir. 2016); Sanchez v. Roden, 753 F.3d 279,299,302,304 (1st Cir. 2014); United States v. Barnette, 644 F.3d 192,205 (4th Cir. 2011); People v. Lenix, 187 P.3d 946,960-61 (Cal. 2008); People v. Gutierrez, 395 P.3d 186, 202 (Cal. 2017); Watkins v. State, 245 S.W. 3d 444,448 and n.13 (Tex. Crim. App. 2008); State v. Curry, 447 P.3d 7, 10-12 (Or. App. 2019); State v. Kirk, 145 N.E. 3d 1092,1097-99 (Ohio App. 2019).

Batson challenge under the comparative juror analysis.” The appellate court in Curry then did so [447 P.3d at 389-92], and concluded that “[w]hen the trial court’s ruling is considered through the lens of the comparative juror analysis employed in Snyder and Miller-El, it is clearly erroneous.” Id., at 389. “On consideration of ‘all relevant circumstances’ as Miller-El requires”, and in view of the prosecutor’s disparate treatment of similarly situated white jurors, the appellate court found that “the only reasonable conclusion is that the prosecutor’s stated reasons were pretextual.” Id., at 390.

[For its contention that the waiver theory of Hoskins, Poole, and King (all derived, as previously noted, from the Third DCA’s pre-Miller-El decision in Davis) somehow survives Miller-El and Snyder and Foster and Flowers, the state relies heavily on Justice Thomas’ dissenting opinion in Miller-El (SB 56-58). Suffice it to say (1) that it is the majority opinion (6-3 in Miller-El), not the dissent, which sets forth the applicable constitutional principles. As Justice Harding correctly observed “dissenting opinions are just that – dissenting opinions; the positions expressed in these opinions did not carry the

day”.⁷ See also Salerno v. State, 347 So.2d 659,662 (Fla. 4th DCA 1977)(“The State, of course, quotes from Judge Mager’s dissent in the Mitchell case, but the dissent is not the opinion of the court”). And (2) Justice Thomas’ viewpoint has never “carried the day” - - he was in the minority in each decision - - as the Supreme Court has continued over the next decade-and-a-half to employ the Miller-El approach in Snyder (7-2), Foster (6-1, with Alito, J., concurring in judgment), and Flowers (7-2)].

To the extent the state complains that “the race of the seated [comparison] jurors remains unknown” (SB 64), the state and this Court certainly could have known the race of jurors Kelly, Stanley and Mamula if the state had not opposed Gordon’s motion to reconstruct the record, or if the Court had not denied it. It is not too late to reconsider and to allow Gordon to establish for the record that these jurors are white. See, e.g., Stifel, Nicolaus & Co., Inc. v. Woolsey & Co., Inc, 81 F.3d 1540,1544 (10th Cir. 1996), recognizing that an appellate court retains inherent authority to revisit its prior ruling on a motion, uninhibited by the law of the case doctrine:

⁷ Mills v. Moore, 786 So.2d 532,540 (Fla. 2001)(Harding, J., concurring).

[A] motions panel's decision is often tentative because it is based on an abbreviated record and made without the benefit of full briefing and oral argument. "Decisions by motions panels are summary in character, made often on a scanty record, and not entitled to the weight of a decision made after plenary submission." Johnson[v. Burken, 930 F.2d 1202,1205 (7th Cir. 1991)]. "With the benefit of full briefing and . . . oral argument, the panel to which the case falls for disposition on the merits may conclude that the motions decision was improvident and should be reconsidered." [E.E.O.C. v.]Neches Butane, 704 F.2d [144,147 (5th Cir. 1983)].

This Court should not put on blinders, and should not handicap itself in its ability to review the entire voir dire proceeding, including comparative analysis, in order to uncover pretext for racial discrimination. As recognized in Jamerson v. Runnels, 713 F.3d 1218,1226 (9th Cir. 2013), "[w]ithout knowing the race of each venire member - - a fact visible to the state trial court but obscured by the cold record on review - - it would be impossible to discharge this duty." See Gordon's initial brief, p. 60-62.

With [Issue II] or even without [Issue I] comparative juror analysis - - whether on review of the record as presently constituted or of a supplemented record establishing the race of the three comparison jurors - - the prosecutor's original and substitute rationalizations for striking African-American juror Kimberly James were pretextual. The original reason took her "I'm not God" comment completely out of

context, and the trial judge properly rejected it. The “reeks of after-thought” reason was wholly at odds with the prosecutor’s stated purpose in asking the question in the first place. Ms. James could not have made it any clearer that her cousin’s conviction and sentence had no impact on her life and would in no way affect her ability to be a fair and impartial juror. If the prosecutor had been genuinely concerned about Ms. James’ “ability to give the State a fair shot” because of the cousin she would have brought it up when she was first asked for a reason. [The fact that the prosecutor had no similar concern about juror Kelly’s nephew (to whom he was close) or juror Stanley’s brother provides further evidence to show what is already evident - - the prosecutor’s proffered reasons for striking Ms. James were at best makeweight; they were pretextual and not genuine]. For the reasons shown in Issue I, and for the additional reasons which will be shown if this Court conducts the comparative analysis prescribed by Miller-El, Snyder, Foster, and Flowers (and/or allows Gordon to reconstruct the record to show the race of the comparison jurors), Gordon’s convictions and death sentences must be reversed for a new trial.

ISSUE V [SUPERFICIAL AND DISMISSIVE TREATMENT OF MITIGATING EVIDENCE IN TRIAL COURT'S SENTENCING ORDER]

The state asserts that this Court “has never required that the sentencing order be a dissertation” (SB 83). True enough. However, what this Court does require - - indeed what it has described as a “bedrock requirement” - - is “a thoughtful and comprehensive analysis” of any evidence which mitigates against imposition of the death penalty. Walker v. State, 707 So.2d 300,319 (Fla. 1997).

[Walker, which further emphasizes that this requirement “cannot be met by treating mitigating evidence as an academic exercise which may be summarily addressed and disposed of” [Id., at 319], is cited in the state’s answer brief (p. 83-84) as setting forth the “proper evaluation”, although the state omits the part about a thoughtful and comprehensive analysis].

Walker, along with Jackson v. State, 704 So.2d 500,507 (Fla. 1997); Woodel v. State, 804 So.2d 316,326-27 (Fla. 2001); and Griffin v. State, 820 So.2d 906, 914 n.10 (Fla. 2002) (each of which reflects the same standards for evaluating mitigating circumstances as

Walker)⁸, demonstrates that Judge Harb's superficial and dismissive treatment of Gordon's mitigating evidence is woefully inadequate. Gordon presented voluminous and unrebutted testimony of five mental health experts - - none of whom the trial court found not to be credible - - establishing that Gordon has long suffered from mental illnesses including schizophrenia (with auditory hallucinations), bipolar disorder, and PTSD; that he has organic brain damage which severely impairs his ability to regulate impulses; that he had very low intelligence and learning disabilities even in childhood (and the brain damage and drug and alcohol abuse has caused his intelligence to deteriorate to the extent that he now has an IQ of 70; a single point above the threshold of mental retardation); and he was not malingering either his brain damage (which would have been impossible) or his IQ. Dovetailing with the mental health mitigation was evidence of his longstanding and recently escalating drug use (both illegal and prescribed drugs), and his abused and neglected childhood. Yet each proffered mitigating circumstance was summarily disposed of by the trial court, mostly on the basis that the drug use was voluntary (a somewhat questionable proposition under the totality of the facts),

⁸ See Gordon's initial brief p. 91.

and he was able to commit the charged crimes and try to avoid apprehension. [The evidence, in fact, shows an extremely disorganized criminal episode, at least in the aftermath of the pawnshop robbery].

A state's capital sentencing scheme which (1) has abandoned proportionality review; (2) features aggravating circumstances so numerous and so broad that nearly everyone convicted of first-degree murder is death-eligible; and (3) does not even require the sentencer to thoroughly address the mitigating evidence, would provide no meaningful assurance of reliability and no meaningful safeguard against arbitrariness. For that reason - - and because this Court has often stated that it "does not intentionally overrule itself sub silentio"⁹ - - it must be assumed that the requirement of a thoughtful and comprehensive analysis of the mitigating evidence recognized in Walker, Jackson, Woodel, and Griffin remains good law. If - - to the contrary - - Rogers v. State, 285 So.3d 872,889-90 (Fla. 2019), which receded from Oyola v. State, 89 So.3d 431,437 (Fla. 2012), is now interpreted to mean that a thoughtful and comprehensive evaluation of the mi-

⁹ See, e.g. Stevens v. State, 226 So.3d 787,792 (Fla. 2017); Arsali v. Chase Home Finance, L.L.C, 121 So.3d 511, 516 (Fla. 2013); Puryear v. State, 810 So.2d 901,905 (Fla. 2002).

mitigating evidence by the trial court is no longer required, then the can of constitutional worms opened by the Lawrence¹⁰ decision [see Issue III in Gordon's initial brief] becomes even more problematic.

This Court should remand for sentences of life imprisonment or (in the event the trial court decides to reimpose death sentences) for preparation of an order which properly addresses the mitigating evidence.

CONCLUSION

Based on the foregoing argument, reasoning, and citation of authority, and that contained in his initial brief, appellant GORDON respectfully requests that this Court reverse his convictions (Issues I, II, and VII) and death sentences (Issues III, IV, V, and VI).

¹⁰ Lawrence v. State, 308 So.3d 544 (Fla. 2020).

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to Assistant Attorney General Rick Buchwalter at CrimappTPA@myfloridalegal.com, on this 29th day of April, 2021.

Respectfully submitted,

/s/ Steven L. Bolotin

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CERTIFICATION OF COMPLIANCE

I certify that this document contains 4503 words (excluding the portions exempted by Fla.R.App.P. 9.045(e)), and that it complies with the applicable font and word-count limit requirements.

/s/ Steven L. Bolotin

STEVEN L. BOLOTIN
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