

RECEIVED, 3/4/2014 13:08:37, John A. Tomasino, Clerk, Supreme Court  
IN THE SUPREME COURT OF FLORIDA

MIGUEL OYOLA,

Appellant,

v.

CASE NO. SC13-2048

STATE OF FLORIDA,

Appellee.

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ON APPEAL FROM THE CIRCUIT COURT  
OF THE THIRD JUDICIAL CIRCUIT,  
IN AND FOR JEFFERSON COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

W. C. McLAIN  
ASSISTANT PUBLIC DEFENDER  
LEON COUNTY COURTHOUSE  
SUITE 401  
301 SOUTH MONROE STREET  
TALLAHASSEE, FLORIDA 32301  
(850) 606-1000

ATTORNEY FOR APPELLANT  
FLA. BAR NO. 201170

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STATE OF FLORIDA,

Appellee.

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INITIAL BRIEF OF APPELLANT

PRELIMINARY STATEMENT

This is an appeal of a death sentence after this Court remanded the case for resentencing for a violation of Campbell v. State, 571 So. 2d 415 (Fla. 1990). Oyola v. State, 99 So. 3d 431, 446-447 (Fla. 2012). The resentencing record consists of three volumes, and a supplemental record of three volumes. The originally prepared record omitted items, and the supplemental record was prepared to correct the omissions. However, the supplemental record also includes all of the information from the original three record volumes. References in this brief will be to the more complete supplemental record. The prefix "SSR" will be used to designate this supplemental sentencing record.

Since this resentencing did not include another trial or penalty phase, the record of the prior appeal is relevant and

necessary for a review of this current sentence. This Court granted a request to use the record of the prior appeal in case no. SC10-2285 in the current appeal. The prior record contains ten volumes, and references will use the prefix "R" for the lower court record and "T" for the trial transcripts. The current sentencing order, that is the subject of this appeal, is entitled "Second Revised Sentencing Order", and a copy is attached as an appendix referenced by "App".

## STATEMENT OF THE CASE AND FACTS

### Procedural Progress Of The Case

On October 2, 2008, a Jefferson County grand jury indicted Miguel Oyola for first degree murder for the death of Michael Gerrard, kidnaping to facilitate a felony, armed robbery, and theft of a motor vehicle. (R1:6-8) Oyola pleaded not guilty. (R1:13) The case proceeded to a jury trial, and on August 30, 2010, the jury returned guilty verdicts for first degree murder as charged (Count I), for false imprisonment as a lesser included offense (Count II), for robbery with a deadly weapon as charged (Count III), and for grand theft of a motor vehicle as charged (Count IV). (R1:49-54; T7:434-436) The trial court orally adjudged Oyola guilty immediately after receipt of the verdicts. (T7:436) After the penalty phase of the trial held on September 3, 2010, the jury recommended a death sentence with a vote of 9 to 3. (R1:62; T8:555) The Defense and the State filed sentencing memoranda on September 27, 2010. (R1:63-83) The court received and considered a report of Oyola's psychological evaluation and transcripts of interviews of Oyola and his mother. (R1:87-142, 146)

On October 25, 2010, Circuit Judge L. Ralph Smith, Jr. sentenced Oyola to death for the murder (Count I); five years imprisonment for false imprisonment (Count II); life imprisonment for armed robbery (Count III); and five years imprisonment for grand theft of a vehicle (Count IV). (T9:1-14; R1:149-163) In the

court's order supporting the death sentence (R1:143-147) The court found three aggravating circumstances: (1) the homicide was committed while Oyola was on felony probation for 2006 judgment for grand theft (great weight); (2) the homicide was committed during a robbery and for pecuniary gain (great weight); (3) the homicide was especially heinous, atrocious or cruel (great weight). (R1:144-145) In mitigation, the court initially rejected the statutory mitigating circumstance that Oyola had an impaired capacity to conform his conduct to the requirement of the law. The court considered and gave slight weight to the mental health expert's opinion that Oyola suffered Schizoaffective Disorder, Bipolar Type, to Oyola's abusive childhood home and his family history of mental illness. The court noted that transcripts of interviews of Oyola's father and mother were presented and considered. As non-statutory mitigation, the court found and gave slight weight to Oyola's serious drug abuse history, his abusive home life as a child that created a cycle of violence, and Oyola's mental illness. (R1:145-146)

On November 17, 2010, Oyola filed a notice of appeal to this Court. (R1:181-182) This Court affirmed the judgements of guilt, but reversed the death sentence because the sentencing order failed to provide an evaluation of the mitigation and an analysis of the aggravation and mitigation that complied with the mandate of Campbell v. State, 571 So. 2d 415 (Fla. 1990). Oyola v. State, 99



So. 3d 431 (Fla. 2012).

The Resentencing

On November 6, 2012, the trial court filed a "Revised Sentencing Order." (SSR1:44-58) Defense counsel filed a motion to reconsider the order because the court entered the order without a hearing, without counsel and without Oyola present. (SSR1:58-60) The defense motion further argued that Oyola was entitled to a Spencer hearing prior to being resentenced, where Oyola was personally present, where counsel could present further argument relevant to sentencing, and where further mitigating evidence could be presented. (SSR1:58-60) The State filed a response agreeing that Oyola was entitled to a Spencer hearing before being resentenced, but contending that Oyola did not have the right to present additional evidence. (SSR1:61-68) On February 15, 2013, the trial court entered an order granting Oyola a Spencer hearing, but denying the request to present additional evidence. (SSR1:70-71) The order further stated that a new resentencing order would be prepared after the Spencer hearing. (SSR1:70-71) A Spencer hearing was set and held on April 15, 2013. (SSR1:72; SSR2:1-26) After the hearing, Oyola and the State presented sentencing memoranda. (SSR1:76-114) The court reconvened on April 29, 2013, resentenced Oyola to death, and filed a "Second Revised Sentencing Order." (SSR1:115-131; SSR3:1-11) (App) Again, the court found and gave great weight to three aggravating circumstances and found and gave

slight weight to non-statutory mental mitigating factors. This resentencing is now the subject of the current appeal.

The Evidence Presented At The Guilt Phase Trial And Contained In Prior Record On Appeal

On December 4, 2007, Christopher Miller drove his 18-wheel truck down a logging road in Jefferson County. (T4:103) He worked for Murray Logging, and he was hauling equipment in the woods off Tram Road. (T4:103) As he came around a curve on the logging road, there was a white truck and trailer parked in the road. (T4:104-105) He did not see anyone around the truck, although when he first arrived, he thought he saw someone standing by the trailer who went inside the trailer. (T4:105) After a minute, he blew his horn because the truck and trailer blocked the road. (T4:105) About that time, he noticed that the trailer was rocking, and two men fell out of the trailer. (T4:105) They were fist-fighting. (T4:105, 111) Miller saw no weapon in anyone's hand. (T4:106) One or both of them were bleeding because they wore white T-shirts with red stains. (T4:106, 112) The two men tussled on the ground, with the medium built man on top of the heavier man punching with his fists. (T4:107-108, 111-112) The heavier man seemed tired. (T4:108) Miller backed his truck back around the curve and called the wood crew for assistance. (T4:108) A man from the wood crew, Raymond Padgett, came to assist. (T4:108-109, 113) The two went back around the curve, but the truck and trailer were gone. (T4:108-109, 115) One of the men who had been fighting was on the

side of the road, on his knees, trying to get up. (T4:108-109, 114-115) He seemed to have difficulty breathing, and he fell down. (T4:108-109) A Jefferson County deputy and emergency medical service arrived at the scene. (T4:91-101) Paramedic Kim Rothrock determined that the man found was dead. (T4:98-101) Sergeant John Haire, with the Florida Highway Patrol was on Tram Road on December 4, 2007, when he noticed a sheriff's car passing and heard a dispatch that there had been an incident off Tram Road. (T4:134-136) About ten minutes before other emergency vehicles passed his position, Haire saw a white truck and trailer traveling west toward Tallahassee. (T4:136) Later, he learned the description of the victim's vehicle and recalled that the truck and trailer he saw matched. (T4:136)

Dr. Lisa Flannagan, a medical examiner, performed an autopsy on the man identified as Michael Lee Gerrard on December 7, 2007. (T4:49) Gerrard had various injuries including abrasions, blows to the head and stab wounds. (T4:51-83) Flannagan found multiple abrasions and lacerations to the head. (T4:54-57) Some of these appeared to be caused by a sharp edge consistent with the edge of a shovel. (T4:54-56) The blows to the right side of the head produced bleeding into the subdural space over the brain. (T4:75-77) There were seven stab wounds to various areas including the arm, wrist, abdomen, and shoulder. (T4:57-70, 73-74, 81-83) The stab wounds were one inch to seven inches in depth. (T4:67-69, 73-

74, 81-83) The single wound of seven inches penetrated the right side of the abdomen and incised the kidney. (T4:67-69, 73-74, 81-83) Based on several abrasions and incised wounds to the arms and hands, along with the location of other wounds, Flannagan testified these were consistent with defensive wounds during a struggle. (T4:79-81) However, Flannagan could not determine if Gerrard was conscious at the time of the stab wounds. (T4:81) The cause of death was head trauma and stab wounds. (T4:81)

Gwendolyn Rhodes lived with Miguel Oyola in a house off WW Kelly and FA Ash roads. (T4:156) They shared the residence for five years. (T4:156) Oyola worked for Lee Gerrard in December 2007. (T4:156) Gerrard owned a white, extended cab truck and sometimes pulled an enclosed trailer. (T4:156-157) Oyola occasionally drove the truck. (T4:157) On December 4, 2007, Rhodes was leaving for work around 6:00 a.m., and she asked Oyola if he was working that day because he was still in bed. (T4:157) He said he did not feel well and did not plan to go to work. (T4:157-158) When Rhodes left for work, the white truck was not at the residence, since Oyola was not driving it at that time. (T4:158) During the morning, Rhodes called both the house telephone and Oyola's cell phone to check on him, but no one answered. (T4:158-159) Oyola answered his cell phone around noon, he said that he had been sleeping and that he felt better. (T4:159-160) Rhodes thought Oyola was still at the house, but she did not know where he

was at that time. (T4:160)

Rhodes returned home about 4:45 p.m., and she saw Gerrard's white truck parked across the street from her driveway. (T4:160-161) No one was around the truck. (T4:162) At home, Rhodes found Oyola in the bathtub. (T4:162) He was bathing in a bleach and water solution, a jug of bleach was beside the tub. (T4:162-163) This was unusual since Oyola hated the smell of bleach. (T4:163) Rhodes also saw a black trash bag with something beige that appeared to be Oyola's new Dickie brand pants. (T4:164) She joked with Oyola and said he was throwing away his pants because he must have been with another woman. (T4:164) Oyola told her that she did not want to know what was inside the bag because it would make her sick. (T4:164)

Oyola left in Rhodes' car. (T4:165) Later, he called her and said she could pick up her car at the end of the road. (T4:165) She found the car on the side of the road where the white truck had been parked earlier. (T4:165-166) Oyola said he was with friends, but he wanted her to pick him up later. (T4:166) He called her, and she picked him up in the K-Mart parking area off Blairstone Road across from the Embarq office. (T4:167-168) When Rhodes found him, Oyola was wearing a Dickie brand jacket with a design on it that he did not have when he left the house. (T4:168-169) After returning home, Oyola received a telephone call prompting him to leave for a second time. (T4:169-170) He said Gerrard did not pick

up the work crew, and he took Rhodes' car to get them. (T4:170) When he returned, he no longer wore the jacket. (T4:171) At some point, Oyola told Rhodes that there was \$700 in the glove compartment of her car. (T4:171-172) He said that it was money owed to him, but he did not say where he got it. (T4:172) Law enforcement later retrieved the money. (T4:171)

Gonzalo Hernandez worked for Michael Gerrard cutting grass in December 2007. (T5:226) Jesus de Leon and Flaco Cerro also worked with Hernandez. (T5:226) On December 4, 2007, Gerrard took the three men to one job site around 2:00 p.m., and Gerrard left with the truck and trailer. (T5:227-228) Gerrard never returned to pick up the three men. (T5:228) Finally, they called Oyola, who had not worked that day, and he agreed to pick up the men. (T5:228-229) Oyola arrived in a car, not the white work truck. (T5:229-230) Flaco Cerro noticed that his jacket that he had left in the truck earlier was in the car. (T5:229-230) He took the jacket, insisting to Oyola that the jacket belonged to him. (T5:231) At a later time, Cerro gave the jacket to Hernandez who wore it when he spoke to law enforcement. (T5:231) Oyola gave the three men \$100 to buy food and beer since they were out so late. (T5:234)

Neighbors of Oyola's observed Gerrard's white truck around the area on December 4, 2007. (T4:138-154) Travis Reddick was Miguel Oyola's neighbor. (T4:138-139) He was also familiar with Oyola's boss and knew him by "Lee." (T:139-140) Reddick knew Lee's white

truck and trailer, and he also knew that Oyola sometimes drove the truck. (T4:140) Between 11:00 a.m. and noon on December 4, 2007, Reddick saw Miguel and Lee in Miguel's yard. (T4:140-141) After about 20 to 25 minutes, the two of them left together in the white truck. (T4:140-141) Reddick said there was no trailer with the truck that morning. (T4:140-141) When Reddick left for work around 3:00 p.m., he saw the truck and trailer together parked on the road across from the neighborhood. (T4:141) The driver's door was open, but Reddick did not see anyone with the truck. (T4:141-142) At this time, Reddick's mother and aunt were with him. (T4:142) Paula Moore was taking her son, Travis, to work that afternoon. (T4:145, 149) She saw the white truck only, without the trailer, but there was a car parked behind the truck. (T4:146) A man or a woman was kneeling beside the car. (T4:146) Both of the truck doors were open, but Moore did not see anyone by the truck. (T4:146-147) Luella Copeland was in the car with Travis Reddick and Paula Moore. (T4:148-149, 151) She saw the white truck, without a trailer, parked on the side of road. (T4:151-152) One truck door was open, but she did not see anyone by the truck. (T4:151)

Deputy Robert Wright located the white truck about 3:00 a.m. on December 5, 2007, parked on Blair Stone Road in front of the Embarq Telephone office across the street from K-Mart. (T4:180-182) Amy George, an FDLE crime scene investigator, examined and photographed the truck. (T4::121-128) In the bed of the truck,

she found landscaping materials, fertilizer, a shovel, a gas can, a jacket and drink containers. (T4:124-125) Some reddish-brown stains in the back of the truck tested positive for suspected blood. (T4:127) Another reddish-brown stain on the shovel also tested positive for possible blood. (T4:127) The area of the shovel where one would step on the blade appeared to be bent inward. (T4:128) Inside the truck, the driver's side floor mat was missing; the other passenger area had mats. (T4:125-126) The driver's area appeared to be cleaner. (T4:126) There were marks on the seat that appeared to be consistent with having been vacuumed. (T4:126)

Dustin Brown and his cousin, Tyler Williams were driving down Buck Lake Road on December 4, 2007, when they saw a white trailer with something on fire on the ground. (T4:174) They stopped, walked to the trailer and attempted to put out the fire. (T4:174-175) However, the fire got bigger, and they smelled gas. (T4:174-175) The trailer door was open, and they could see blood smeared on the door and inside the trailer. (T4:175) Tyler called his mother to get someone to call for help. (T4:175)

Deputy Ed Cook responded to the call, noted that the trailer was consistent with the homicide investigation, and he called for the fire marshal and FDLE. (T4:176-179) Chris Scovotto, a detective with the fire marshal's office, examined the trailer and scene. (T5:219-223) He noted there was blood on the exterior of



the trailer, and he found some burnt clothing and grass outside the trailer. (T5:221) These items and soil samples from underneath the trailer tested positive for gasoline. (T5:222-223) There was also a pour pattern on the exterior and interior of the trailer. (T5:223) No mechanical or electrical malfunction was found with the trailer. (T5:222-223) Scovotto concluded the fire was intentionally set using an ignitable liquid. (T5:223)

Robert Yao, a laboratory analyst with FDLE, examined and photographed the trailer. (T5:186- 216) He examined the trailer where it was found. (T5:189) At that time, he noted the passenger side entry door appeared to have been forced open, signs of a fire including some soot in the interior, and suspected blood stains on the exterior and interior. (T5:189) The side door damage was consistent with someone forcing the door open from the inside. (T5:191-192) Various blood stains throughout the inside of the trailer included drips, splatters and smears. (T5:192-198) There was one concentration of staining that appeared to saturate the wood of the trailer wall and likely caused by something soaked in blood in contact with the wood. (T5:196) Another series of mist-like stains seemed consistent with blood being exhaled. (T5:198) Yao testified about a number of photographs of the trailer. (R5:190-214)

Michael Lee Gerrard maintained his business checking account at Wakulla Bank for C & G Outdoor Services. (T6:298-299) Tammy

Moore, a fraud investigator with the bank, testified about the account records. (T6:298) The account had one debit card issued. (T6:299) There were three debit card transactions on December 3, 2007, at Wal-Mart. (T6:300-301) One was for \$173.21 at Wal-Mart; a second one for \$209.54 at Wal-Mart Super Center Tallahassee; and a third one for \$419.20 at Wal-Mart. (T6:300-301) On December 4, 2007, there was a cash withdrawal by Gerrard for \$900 at 2:03 p.m. (T6:301-302) Another bank employee, Chastity Risoldi, knew Michael Gerrard and assisted him with his business account. (T6:303-304) She dealt with him on almost a daily basis giving him account information in balances, transactions and cashing payroll checks. (T6:304) Risoldi also met Miguel Oyola who sometimes accompanied Gerrard to cash checks. (T6:306) On December 4, 2007, shortly after lunch time, Gerrard spoke to Risoldi by telephone to inquire about his account. (T6:304-305) In particular, he inquired about the debit card transactions. (T6:305) After hearing the information, Gerrard seemed surprised and angry, and he wanted more information about the transactions. (T6:305) Risoldi expected Gerrard to come to the bank to see the records. (T6:305-306)

Thomas Roddenberry testified about records and security video at Wal-Mart. (T6:308-325) Roddenberry was able to retrieve electronic transaction records made with the debit card from Gerrard's business bank account. (T6:311-313) Cameras over the registers produce a video of each transaction. (T6:313-314, 319-

323) There were transactions involving the debit card on December 3, 2007, at the Appalachee Parkway Wal-Mart. (T6:315-322) At 9:06 a.m., at register #7, three \$50 gift cards were purchased. (T6:315) At the same store at 3:35 p.m., at register #9, four \$100 gift cards were purchased. (T6:315) A third transaction occurred at 7:47 p.m. at register #13 where there was an attempt to purchase a total of \$3054.13 worth of items, including six \$500 gift cards. (T6:316-317) The transaction was declined. (T6:315-316) Nine minutes later at the same register, an attempt to purchase three \$500 gift cards was declined. (T6:318) A purchase of merchandise for \$84.09 was then made using the card. (T6:318) Another transaction using the card occurred at the Tennessee Street Wal-Mart at 10:09 p.m. (T6:323) Three \$50 gift cards were purchased. (T6:323)

After Gerrard's death, some friends and family members met to determine if there was a way to keep the lawn maintenance business operating. (T6:246-247) They met with Miguel Oyola because he was a key part of the business in that he knew the day-to-day operations and customers. (T6:247) A family friend, Kevin Dunn, said he was uncomfortable speaking to Oyola because there had been some speculation that he may have been involved in the homicide. (T6:247-248) After the business discussion, Oyola spoke with Dunn and proclaimed his innocence. (T6:249-250) Oylola said that he had not seen Gerrard the day of the homicide, but Gerrard did drop

money for Oyola, leaving it in Oyola's mailbox. (T6:250-251) He said it was \$700 to \$800 in cash. (T6:251)

Investigator Sally Cole went to Oyola's house on December 4, 2007, at 11:05 p.m. to inform him that his boss had died. (T6:254-255) She told him that Gerrard had passed away without specifically stating how he had died. (T6:255) Cole asked Oyola to come to the sheriff's office to talk, and she gave him the option of riding with her or driving his own vehicle. (T6:256) He rode with Cole. (T6:256) As they entered the office, Oyola said, "I can't believe someone killed him." (T6:257) While in the interview room, Cole noted that Oyola did not have any abrasions, scratches or visible injuries to his hands, face or neck. (T6:258-259) Oyola agreed to be interviewed and signed a waiver of his rights. (T6:260-263) He said he had been sick that day and did not go to work. (T6:264) Because he did not have a car, he stayed home all day until his girlfriend returned. (T6:264) Later, Gonzales, from the work crew, called and informed Oyola that Gerrard had not picked them up from a job site. (T6:264-265) Oyola picked the men up using his girlfriend's car and he gave the men \$50 to buy some beer. (T6:265-266) Oyola said that Gerrard called him during the day, and he talked about taking Oyola and his girlfriend out for Christmas dinner. (T6:266) Oyola never mentioned getting several hundred dollars in his mailbox from Gerrard. (T6:267) Oyola gave some names of people who had a conflict with Gerrard. (T6:267)

During the course of the investigation, the lower half of Gerrard's cell phone was found in the woods off WW Kelly Road about one-tenth of a mile from Oyola's house. (T6:269-273, 288-289) A floor mat was also found in the woods off of WW Kelly Road. (T6:273-274) Cole acquired Oyola's wallet, and no debit card related to Gerrard's account was found inside. (T6:273)

James Hendrith, in prison at the time of his testimony, testified that he was incarcerated with Oyola in November 2008. (T6: 276, 280) According to Hendrith, Oyola told him he had robbed and killed someone. (T6:278) He said he hit the man with a shovel and stabbed him. (T6:278-279) Oyola said he took \$375 and the man's truck. (T6:279) Additionally, Oyola allegedly told Hendrith that he took the knife home and put it on the counter before later disposing of it. (T6:280, 282-283) He took his bloody clothes home before burning them. (T6:280) Oyola was talking about the offense because he had just received an indictment in the case. (T6:279) Hendrith acknowledged he wrote the State Attorney about the information. (T6:278, 286)

Valecia Hickman, an FDLE laboratory analyst, testified about the DNA testing performed on items of evidence. (T6:337-339) On the shovel, Hickman found a mixture of DNA for both Gerrard and Oyola. (T6:341) A number of places on the shovel, including blood stains, showed Gerrard's DNA alone. (T6:342-344) Testing of Gerrard's wallet revealed Gerrard's DNA, including suspected blood

stains in the wallet and the edge of the debit card found inside the wallet. (T6:294-297, 345) An unknown person's DNA was a minor contributor to the DNA mixture found on the debit card, but Oyola was excluded as a contributor. (T6:345-346) Regarding the victim's truck, several tested areas and items revealed a DNA mixture including both Gerrard and Oyola. (T6:346-350) A total of nineteen samples of blood stains found in various places on the utility trailer were tested and all matched Gerrard's DNA profile. (T6:350-351)

The Evidence Presented At The Penalty Phase Trial And Original Sentencing Contained In The Prior Record On Appeal

At the penalty phase of the trial, the State presented a 2006 judgment from Leon County where Oyola was placed on probation for grand theft. (T8:459) Prepared victim impact statements from Michael Gerrard's wife, parents and sister were introduced and read to the jury. (T8: 460-465) Each statement described the loss the family endured because of Gerrard's death. (T8: 460-465) Additionally, each one asked that Oyola be sentenced to life in prison. (T8:461, 462, 465) Gerrard's wife explained her reason for asking for Oyola's life:

... My whole adult life I never believed in the death penalty. I'm telling you this because you're going to make your decision one way or another, but I want to make it clear that if you give him the death penalty, you're making that decision on your own and I have nothing to do with that. I've never believed in it, it doesn't make sense, and it's not going to bring Lee back. And I don't want to be responsible for somebody dying. I've already had to deal with this enough.

(T8:465)

The defense first presented Miguel Oyola's brother, Manuel Oyola, to testify. (T8:465) Manuel is nine years older than Miguel, and he remembered Miguel as a young child. (T8:467) At that time, the family lived in Connecticut. (T8:467) Miguel was the youngest of several children and a good child. (T8:468-469) All of the children suffered abuse at the hands of their mother, and all left the home as young teenagers. (T8:469) Their mother beat them with belts, broomsticks, and pointed shoes. (T8:469) The boys left around age 15, and the girls left earlier at 13 and 14. (T8:469-471) Manuel left the home at 15, leaving Miguel alone at the home at age six or seven. (T8:469-470) At age 12 or 13, Miguel started using drugs. (T8:470) The physical abuse impacted Miguel's ability to handle stress and emotional situations. (T8:471) He had a temper and acted impulsively. (T8:471) Manuel testified that over time, he had forgiven his parents, and he still visited them. (T8:478) They were unable to travel to the trial due to health problems. (T:472-474)

Dr. Michael Thomas D'Errico, a forensic psychologist, examined Miguel Oyola and testified for the defense. (T8:479) D'Errico initially evaluated Oyola on March 4, 2008, regarding an earlier case, to determine Oyola's competency to stand trial. (T8:485) Although no tests were administered in this evaluation, D'Errico did review various medical records and performed a structured

interview. (T8:486) These showed that Oyola had several symptoms of a psychotic mental illness and a history of cocaine abuse. (T8:486) Oyola reported hallucinations with voices telling him negative things about himself and urging him to hurt himself. (T8:486) He reported olfactory hallucinations of smelling wet dogs. (T8:486) Oyola had a family history of mental illness, reporting that his mother had schizophrenia and bipolar disorder. (T8:489) A brother also had schizophrenia and some cousins had mental health issues. (T8:490) Oyola's school records revealed that he was in special education classes and tested in the seventh percentile in both reading and math. (T8:490) Records from a correctional center in Philadelphia showed various psychiatric treatments for schizo-affective disorder including psychotropic medications. (T8:491) Oyola was diagnosed with substance abuse for cocaine, heroin and PCP. (T8:491) Psychiatrists at the jail had a working diagnosis of schizophrenia/paranoid type that involves hallucinations and delusions. (T8:487) D'Errico testified that individuals with these disorders who stop taking medications for the symptoms have the symptoms return. (T8:491) D'Errico found Oyola incompetent and recommended inpatient treatment to aid in restoring him to competency. (T8:487-488)

On June 10, 2010, D'Errico evaluated Oyola in reference to this case. (T8:491-492) At that time, Oyola was being treated with antipsychotic medication and antidepressants. (T8:493) As a



result, his mental condition was much improved compared to the 2008 evaluation. (T8:493) D'Errico determined that at the time of the homicide in 2007, Oyola was not receiving treatment for his mental illness, because he was unable to afford the medications. (T8:494)

The evaluation in 2010 included several tests and clinical interviews. (T8:495-503) D'Errico tested and controlled for possible malingering, and he found no indication that Oyola was malingering during the evaluation. (T8:495-496) Oyola's intellectual functioning on the Wechsler Intelligence scale was borderline with a full-scale score of 74, 26 points below average. (T8:496) Testing used for possible brain damage did not reveal a finding of damage, even though Oyola had a history of some head injury. (T8:496-497) Personality testing revealed conclusions consistent with Oyola's psychiatric history, anxiety and drug abuse problems. (T8:497)

Dr. D'Errico addressed how Oyola's untreated schizo-affective disorder impacted Oyola's behavior at the time of the offense. (T8:499-505) Oyola described a confrontation with his boss. (T8:499-500) His boss punched him in the face, stopped the truck and got a knife from the back of the truck. (T8:500) A fight continued, Oyola punched his boss, threw him to the ground and managed to get the knife. (T8:500) Oyola stabbed the victim more than once, got into the truck and drove away. (T8:500) As Oyola left, he saw the victim getting up with the knife. (T8:500)

D'Errico stated that Oyola was likely experiencing psychotic symptoms - being paranoid, hearing voices. (T8:501) He would have had poor impulse control and an inability to control his behavior. (T8:500) D'Errico testified that Oyola's paranoia lead him to overreact and see a severe, life-threatening situation where one did not really exist. (T8:501-502) He could have misinterpreted mere verbal anger as a physical threat. (T8:502, 504) Once he perceived a physical threat, Oyola's lack of impulse control would have prevented him from stopping his impulse to attack. (T8:504) D'Errico stated that Oyola had the ability to appreciate the criminality of his conduct, but he lacked the capacity to conform his conduct to the requirements of the law due to his untreated schizo-affective disorder. (T8:503-505)

Prior to the court's sentencing, the defense submitted a sentencing memorandum with a copy of Dr. D'Errico's written evaluation and transcripts of investigative interviews of Oyola's father and mother. (R1:63-79,87-142) Manuel Oyola and Leonarda Oyola married in 1956, and raised six children, Miguel was the youngest. (R1:89) Manuel confirmed that his wife had mental health problems. (R1:90-91) The problems became apparent after the birth of their first child. (R1:91) There were times that Manuel was concerned for the safety of the child. (R1:91) Leonarda was hospitalized for her "nerves", and she received electroshock therapy. (R1:91-92) Manuel was away from the family for long

periods of time for work, and he and his wife had some informal separations. (R1:95, 101) Manuel knew his wife had angry outbursts, but because he was away so much, he did not know how she was acting with the children. (R1:96) There were times when his wife would not take her medications. (R1:102) There were times when she hit the children. (R1:96) During this time, Manuel also drank alcohol, and he sometimes came home drunk. (R1:96-97) Manuel thinks the children suffered as the result of his wife's illness. (R1:102)

The family moved a number of times. (R1:93-94) Miguel attended several different schools. (R1:94) He was not a good student, and he did not like school. (R1:102) When Miguel was in the second or third grade, Manuel noticed that he would talk and argue with himself. (R1:102) Miguel did not have many friends growing up, but he was close to his brother, Tony. (R1:94,99) When Tony left home to join the Marines, Miguel was greatly affected. (R1:99) He was unhappy and misbehaved. (R1:99) One boy who had actually been Tony's friend and was older, continued a friendship with Miguel. (R1:99) Unfortunately, that boy was killed. (R1:99-100) Miguel lacked direction, and at 14 years old, he began to get into trouble. (R1:100)

Leonarda Oyola, Miguel's mother, acknowledged that she was sick, and she also stated that Miguel was sick "with nerves." (R1:105-108) Miguel started talking to himself when he was six or

seven years-old. (R1:108) They did not take him to the hospital because they did not have the means to take him. (R1:109) Miguel did poorly in school, and he suffered "greatly from nerves." (R1:140) He was very agitated, "hopelessly frustrated", and made constant movements with his hands. (R1:109) No psychiatric treatment was sought for Miguel. (R1:140) Leonarda stated that her mental condition is much improved because of the medication she has now taken for several years. (R1:113-114) She knew the medicine was for her "nerves", and she thought it might be for schizophrenia. (R1:114) Additionally, Leonarda confirmed she was treated with electroshock therapy after her first child was born. (R1:115-116) Over the years, she noted that she had anger episodes and she is bothered when things are not perfectly clean. (R1:123) She would hit the children. (R1:124) Sometimes she used things to hit them, threw items at them, but she denied ever hitting them with the broom. (R1:124-125) She remembered throwing a glass container at one of the children, and he had to go to the hospital for stitches. (R1:1260) One of the girls came home late and her clothes were dirty -- prompting Leonarda to hit her with an electrical cord, leaving marks on her stomach. (R1:126) The children were hit in the face in public sometimes. (R1:128) All of the children left home between the ages of 14 and 16 years-old. (R1:131)

## SUMMARY OF ARGUMENT

1. The trial court relied on improper and invalid decision-making factors that are outside the sentencing procedures and in violation of Oyola's constitutional rights. First, the trial court concluded death was necessary because imposing a life sentence for the murder would reward Oyola for an "elaborate scheme to use a mental health expert to thwart justice." Second, the trial court concluded a death sentence was the only way to punish Oyola for the murder, because the court had already imposed life for the robbery. A life sentence for the murder would result in no consequences for the murder. Oyola's death sentence now violates his constitutional rights to due process and to be free from cruel and unusual punishment. Amends. V, VI, VIII, XIV, U.S. Const.; Art. I, Sec. 9, 16, 17, Fla. Const. Oyola asks this Court to reverse his sentence.

2. This Court reversed the death sentence in this case and remanded for the trial court to resentence Oyola and that any reimposed death sentence be supported with an order that complies with Campbell v. State, 571 So. 2d 415 (Fla. 1990). Oyola v. State, 99 So. 3d 431 (Fla. 2012). The trial court's current resentencing order also fails to comply with Campbell. Just as the first sentencing order did not provide this Court with a basis to conduct proportionality review, this new revised order is also inadequate. Oyola asks this Court to reverse his death sentence for resentencing.

3. The trial court erroneously imposed a sentence of death in violation of the Sixth Amendment principles announced in Ring v. Arizona, 536 U.S. 584 (2002). Ring extended the requirements of Apprendi v. New Jersey, 530 U.S. 446 (2000), for a jury determination of the facts relied upon to increase maximum sentences to the capital sentencing context. Florida's death penalty statute violates Ring in a number of areas including the following: the judge and the jury are co-decision-makers on the question of penalty and the jury's advisory recommendation is not a jury verdict on penalty; the jury's advisory sentencing decision does not have to be unanimous; the jury is not required to make specific findings of fact on aggravating circumstances; the jury's decision on aggravating circumstances are not required to be unanimous; and the State is not required to plead the aggravating circumstances in the indictment.

## ARGUMENT

### ISSUE I

THE TRIAL COURT ERRED IN RELYING ON IMPROPER AND INVALID DECISION-MAKING FACTORS THEREBY FUNDAMENTALLY TAINING THE DEATH SENTENCE IMPOSED IN THIS CASE.

*A. The Trial Court Improperly Denigrated The Mental Mitigation As Nothing More Than An "elaborate scheme to use a mental health expert to thwart justice", And Sentenced Oyola To Death In Order Not To Reward Him For Employing The "scheme."*

In the sentencing analysis portion of his order, the trial judge stated:

The imposition of only a life sentence for the first degree murder committed by Oyola would be a reward to him for his elaborate scheme to use a mental health expert to thwart justice.

(SSR1:128-129) (App) First, using life or death as rewards and punishments for something occurring during the course of a trial is totally outside the death sentencing procedures in this State. See, e.g., Sec. 921.141, Fla. Stat.; State v. Dixon, 283 So. 2d 1 (Fla. 1973); see, also, Proffitt v. Florida, 428 U.S. 242 (1976). Employing such a reward or punishment decision-making factor to impose a death sentence does not merely taint the process, it strikes at the foundation of the fairness of the entire sentencing procedure. The opinions of the trial judge about improper conduct during the prosecution is injected into the heart of the sentencing decision. Imposing death so the defendant would not receive the "reward" of a life sentence for conduct during the prosecution is far more egregious than merely using an improper

aggravating factor. Unlike the taint of using a improper or invalid aggravating circumstance, the use of a reward and punishment for conduct at trial is an overarching factor placing arbitrariness at the core of the sentencing. Consequently, this is not merely a sentencing taint that can be excised and rendered harmless, leaving a trial court sentencing decision for death otherwise sound. See, e.g., Rogers v. State, 511 So. 2d 526, 535 (Fla. 1987). This reward or punishment decision-making factor permeates the entire sentencing, and the trial court expressly used it during the analysis of the aggravating and mitigating circumstance. (SSR1:128-129) (APP A) Since it is impossible to sever out the impact of this improper decision-making factor, a reversal of the sentence is required. See, Burns v. State, 609 So. 2d 600, 606-607 (Fla. 1992).

Second, assuming for argument such a reward or punishment decision-making factor was proper, there was no evidence Oyola's use of a mental health expert was a scheme to avoid justice. Oyola's defense counsel prepared and presented the defense including the proper use of a mental health expert. Moreover, the trial judge did not mention one fact in the order in support of his opinion that Oyola used a mental health expert as a scheme to avoid justice. (SSR1:128-129) (App) Interestingly, the trial judge complimented defense counsel for a thorough, ethical and professional performance in the case. (SSR1:128) (App) Oyola has a



documented history of mental illness, including psychotic disorders. This was properly presented as mental mitigation in this case. Although Oyola's statement to Dr. D'Errico about the offense was incomplete and, in part, inconsistent with evidence, D'Errico noted that such incomplete statements during psychiatric interviews are common given the mental conditions of those being examined. (T8:507-510) This Court acknowledged this fact in the prior appeal. See, Oyola v. State, 99 So. 3d. 431, 441 (Fla. 2012). In any event, the fact that an accused gave an exculpatory account of the offense in a psychiatric interview hardly justifies a death sentence.

Third, the trial judge's assessment that the use of a mental health expert in this case was a "scheme to thwart justice" denigrates mental mitigation. This Court has reversed cases and held improper instances where a prosecutor even argues such a position to a jury. See, e.g., Delhall v. State, 95 So. 3d 134, 167-168 (Fla. 2012) (condemning a prosecutor's argument that mental mitigation was excuses); Brooks v. State, 762 So. 2d 879, 904 (Fla. 2000) (prosecutor improperly argued mitigation as "flimsy", "phantom" and "excuses") In this case, the sentencing judge has used this view of the mitigation as the deciding factor in sentencing. Additionally, trial court's position impugns the integrity of defense counsel and the mental health expert. Ibid. Given the trial judge's expressed view, without factual support,

that the use of the mental health expert was a scheme, the reliability of any evaluation the trial court made regarding mental mitigation is now questionable. As a consequence, any analysis of mental mitigation in the trial court's order must be discounted as invalid. (See, also, ISSUE II, *supra*.)

***B. The Trial Court Improperly Imposed A Death Sentence Reasoning That A Life Sentence Would Give Oyola No Punishment For The Murder Since The Court Already Imposed A Life Sentence For The Robbery Of The Victim.***

The trial court gave great weight to the aggravating circumstance that the murder occurred during a robbery. (SSR1:120-121) (App) As a basis for assigning this weight to the aggravating circumstance, the court wrote:

Great weight was given to the statutory aggravating circumstance which recognizes the significance of the fact that the murder occurred while Oyola was engaged in the commission of or an attempt to commit a robbery, or flight after committing or attempting to commit a robbery, or was done for pecuniary gain. The fact that the person murdered was also the victim of the robbery is yet another reason why the legislature specified this circumstance as a justification for a death sentence in a murder case. Life imprisonment is a lawful sentence for an armed robbery. It is not a necessary element of the crime of armed robbery that the victim be killed. It is only required that the victim be put in fear at the time of the robbery. It is not a necessary element of first degree murder that the victim be robbed. A life sentence is a possible sentence for either an armed robbery or first degree murder. If there is to be any additional consequence for actually murdering the person who is the victim of an armed robbery, the death penalty should be imposed. The per curiam opinion of the Florida Supreme Court affirmed this court's life sentence against Oyola for the armed robbery of Michael Lee Gerrard. The Supreme Court also affirmed the conviction of Oyola for Gerrard's murder. If there is to be any consequence for taking Gerrard's life, after Oyola robbed him, or during

the robbery, while armed, the death penalty should be imposed. Great weight should be given this statutory aggravating circumstance in the consideration of a proper sentence in this case. The defendant has not asserted otherwise and the Supreme Court has found no error in this court's giving great weight to the statutory aggravating circumstance.

(SSR1:120-121) (App)

In the sentencing order section dealing with the analysis of aggravating and mitigating circumstances and the imposition of a death sentence, the court reiterates the above reasoning as a decision-making factor in the analysis:

The jury found the defendant guilty of armed robbery with a deadly weapon and it also found the defendant guilty of first degree murder of the same person who was robbed. This court does sentence the defendant to life imprisonment for the armed robbery. The premeditated murder of the victim of the robbery should result in some additional consequence. The imposition of a life sentence for the murder, overriding the jury's recommendation for the death penalty, would result in no additional consequence for the murder.

(SSR1:128) (App)

This reasoning as a decision-making factor in the court's imposition of a death sentence is contrary to the sentencing procedures set out in Florida's death penalty sentencing law. See, Sec. 921.141 Fla. Stat.; see, e.g., State v. Dixon, 283 So. 2d 1 (Fla. 1973); Proffitt v. Florida, 428 U.S. 242 (1976). Moreover, using the above reasoning of the trial court to impose a death sentence is tantamount to an automatic death sentence for anyone sentenced to life for robbery in a felony murder context. This Court has consistently held that a robbery-murder, alone, does not

support a death sentence. See, e.g., Scott v. State, 66 So. 3d 923 (Fla. 2011); Rembert v. State, 445 So. 2d 337 (Fla. 1984). Although other aggravating factors are present in this case, the court's decision-making reasoning did not depend on the analysis of those other factors. The trial court's reasoning was that anytime a life sentence has already been imposed for the underlying robbery a death sentence for the murder is the only right punishment. (SSR1:128) (App)

Improper Decision-Making Factor Taints The Weighing Of Robbery Aggravator

Oyola notes that the sentencing order in the first appeal of this case did not assert the same basis for giving great weight to the robbery aggravating circumstance. (R1:144) In fact, the trial court did not state any specific reason for assigning great weight to the aggravator in the prior order. The order did state the robbery was merged with financial gain to become one aggravator, but this is not a basis for assigning great weight. See, Provence v. State, 337 So. 2d 783, 786 (Fla. 1976), see, also, Brooks v. State, 762 So. 2d 879, 903 (Fla. 2000). (R1:144) In that original order, the trial court wrote:

The capital felony was committed while the defendant was engaged in the commission of or an attempt to commit a robbery, and the capital felony was committed for financial gain.

The State has proved these aggravating circumstances beyond a reasonable doubt, but because both of these aggravating circumstances relate to a single aspect of the case, they are considered to merge, and treated as one aggravator. This merged aggravator is given great

weight.

(R1:144) The current sentencing order under review after the resentencing is the one imposing the death, not the previous one. See, Jackson v. State, 767 So. 2d 1156 (Fla. 2000); Reese v. State, 728 So. 2d 727 (Fla. 1999). As this Court stated in another resentencing case, “[I]t is this sentence and not any prior one which may be carried out.” Lucas v. State, 471 So. 2d 250, 251 (Fla. 1982). Consequently, the approval of the weight given the aggravator in the prior appeal is not binding in this case. Ibid. Because the reasoning the trial court has provided in the current sentencing is improper, the trial court’s assignment of great weight to the aggravator is an abuse of discretion and is also improper.

Improper Decision-Making Factor Taints The Weighing Of The Aggravator Concerning Oyola’s Probation Status And The HAC Aggravator

Oyola acknowledges that the current sentencing order does not expressly mention this improper decision-making factor in the portions of the order weighing the probation status and HAC aggravating circumstances, as the trial court did concerning the weighing of the robbery-financial gain circumstance. (SSR1:119-122) (App) Additionally, Oyola acknowledges that this Court approved the assignment of great weight to the probation status and HAC circumstances in the first appeal of this case. Oyola v. State, 99 So. 3d 431, 442-444 (Fla. 2012). However, because the trial court

used the improper decision-making factor in the analysis of the aggravating and mitigating circumstances in this current order (SSR1:128) (App), the factor also taints the weight of the probation status and HAC aggravators. As a result, Oyola asks this Court to again review the trial court's assignment of great weight to the probation status and HAC aggravators.

The trial court has relied on improper and invalid decision-making factors that are outside the sentencing procedures and in violation of Oyola's constitutional rights. Oyola's death sentence violates his constitutional rights to due process and to be free from cruel and unusual punishment. Amends. V, VI, VIII, XIV, U.S. Const.; Art. I, Sec. 9, 16, 17, Fla. Const. Oyola now asks this Court to reverse his sentence.

ISSUE II

THE TRIAL COURT'S REVISED SENTENCING ORDER DOES NOT PROVIDE A BASIS FOR THIS COURT'S PROPORTIONALITY REVIEW, BECAUSE THE ORDER DOES NOT COMPLY WITH CAMPBELL REQUIREMENTS AND DOES NOT CONTAIN FINDINGS SUPPORTING CONCLUSIONS REGARDING MITIGATION.

This Court reversed the death sentence in this case and remanded for the trial court to resentence Oyola and any reimposed death sentence be supported with an order that complies with Campbell v. State, 571 So. 2d 415 (Fla. 1990). Oyola v. State, 99 So. 3d 431 (Fla. 2012). The trial court's resentencing order also fails to comply with Campbell. Just as the first sentencing order did not provide this Court with a basis to conduct proportionality review, see, Oyola, at 449., this new revised order is also inadequate. Oyola asks this Court to reverse his death sentence for resentencing.

In the first appeal, this Court reversed the death sentence because the trial court's order violated Campbell, and summarized the order's problems as follows:

... the sentencing order violated the requirements articulated in Campbell because the trial court did not expressly evaluate, in a well reasoned fashion, how the evidence presented failed to support the mitigating evidence presented by Oyola. Rather, it merely gave a brief summary of its findings with regard to the mitigators, and did not expressly and specifically articulate why the evidence presented failed to support the proposed statutory mitigators, and why that same evidence warranted the allocation of slight weight to the nonstatutory mitigation presented. In fact, the trial court's evaluation of the established nonstatutory mitigation evidence grouped three separate nonstatutory mitigators into a single sentence, and in a single subsequent sentence, summarily gave them slight weight.

In accordance with *Campbell*, the trial court should have separated and evaluated each nonstatutory mitigator, providing an evaluation and analysis as to why it gave each of them slight weight. In addition, the trial court's misplaced and confusing reference to what appears to be a finding with regard to what appears to be a finding with regard to nonstatutory mitigation inside the statutory mitigation section of the sentencing order further compounds its failure to render a sentencing order that reflects a well-reasoned evaluation and determination.

Oyola, 99 So. 3d at 447.

The trial court's current resentencing order, has no more substance than the first order. (SSR1:123-127) (App) While devoting more than a sentence to nonstatutory mitigation, the current order still does not give an analysis of why each of the nonstatutory mitigators were given slight weight. (SSR1:123-127) (App) After acknowledging the court had to consider nonstatutory mitigation, the sentencing order acknowledges the evidence presented for consideration from Oyola's brother, his mother, his father, and Dr. Michael D'Errico. The sentencing order, in part, reads:

Prior to the imposition of sentence against Oyola, a sentencing memorandum was prepared by him, suggesting all nonstatutory mitigation he believed had been presented to the jury or the court at a separate sentencing hearing. The defendant submitted a transcript of an interview of Manuel Oyola and Leonardo Oyola, for this court's consideration. Such transcripts were received and considered. The testimony of Dr. Michael D'Errico, Ph.D., a forensic psychologist, was presented by Oyola to this court. D'Errico performed two court-ordered psychological evaluations of Oyola and incident thereto he examined Oyola's prison and mental health records, Philadelphia Correctional Center records, Hartford, Connecticut public school records, and other records relating to defendant's background, education and health, including his mental health. All of the evidence



produced by the defendant to the trial court showed that Oyola had a history of mental illness, drug abuse and an abusive home life as a child, each of which might mitigate against the imposition of the death penalty. As to nonstatutory mitigation, the defendant only alleges error by the trial court for its giving of only slight weight to Oyola's mental condition. A separate evaluation and analysis, assigning weight to nonstatutory mitigators was ordered by the Supreme Court and is set forth hereafter.

(SSR1:125) (App)

In a separate section of the order, the court presents its analysis and assignment of weight to nonstatutory mitigators.

(SSR1:125-127) (App) The trial court again grouped the nonstatutory mitigators, rather than evaluating each one separately. Additionally, the order also merged the weight analysis of nonstatutory mitigation with the rejection of the statutory mitigator of substantially impaired capacity. In essence, the order gives slight weight to Oyola's mental health as a nonstatutory mitigator simply because the evidence did not raise to the level of the statutory mitigator of substantially impaired capacity. This section reads as follows:

**D. EVALUTION AND ANALYSIS, ASSIGNING WEIGHT GIVEN TO NONSTATUTORY MITIGATORS**

Oyola's mental condition is the only mitigating circumstance which he contends to be deserving of greater weight than the slight weight given to it by this court at sentencing. Oyola asserted to this court, and to the Supreme Court, that his mental condition satisfied the requirements of law to be considered a statutory mitigating circumstance specified in Sec. 921.141(6)(f) Fla. Stat.(2007). That assertion was rejected by this court and such rejection was affirmed on appeal. Oyola also asserted at trial that his mental condition should

be considered as a nonstatutory mitigating circumstance and be given great weight because his mental condition impaired his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. Substantial impairment need not be established to qualify for consideration as a nonstatutory mitigator, but the lack of proof of substantial impairment is a significant factor considered by this court in assigning only slight weight to such mental condition.

Oyola did suffer from schizoaffective disorder, bipolar type, at the time of the murder. Medications had been prescribed for Oyola's mental condition as well as his diabetic condition. Some testimony was presented to show that Oyola was non-compliant with such prescribed medications at the time of the murder. Oyola had an extensive history of drug abuse which may have been affected by his abusive home life as a child, his low intelligence, as well as other factors. Although the evidence obtained by D'Errico from his review of numerous records, and his testing and evaluation of Oyola, did not establish that Oyola's capacity to conform his conduct to the requirements of law was substantially impaired, D'Errico presented testimony in which he stated that it was likely Oyola was untreated at the time of the murder and that Oyola's untreated mental condition at the time of the murder caused impairments to his capacity to conform. D'Errico opined that, based upon statements made to him by Oyola, in preparation for sentencing, and not trial, subject to cross-examination, and his other testing and review, due to Oyola's paranoia he may have overreacted to a perceived dangerous situation caused by Gerrard and his poor impulse and behavioral control might have caused him to stab Gerrard to death. D'Errico stated that Oyola's mental condition impaired his ability to conform his conduct to the requirements of law.

Slight weight is given to Oyola's mental condition, as a nonstatutory mitigator. Such condition did not substantially impair Oyola's capacity to conform his conduct to the requirements of law. It is reasonable to conclude, therefore, that less than substantial weight should be given to Oyola's mental condition as a nonstatutory mitigator. D'Errico's opinion of impairment is based upon the truth of the statements made to him by Oyola regarding the circumstances of the murder, in particular his claim of self-defense, which has no support whatsoever from all of the other evidence in the case. Because there is only slight evidence to support D'Errico's opinion of impairment, and all of the other

evidence presented supports, at most, only slight impairment, this court finds that defendant's mental health is only deserving of slight weight as a nonstatutory mitigator.

(SSR1:125-127) (App)

The trial court's order is also inadequate due to improper factual findings contradicted by the evidence. Regarding Dr. D'Errico's testimony, the trial court's order incorrectly discount's D'Errico's opinion as based on Oyola's self-defense account of the crime. In fact, D'Errico acknowledged Oyola's account of the crime was less than accurate, but that it did not affect D'Errico's assessment of Oyola's mental state at the time of the crime. (T8:507-510) This Court noted this same testimony in the opinion in the previous appeal. Oyola v. State, 99 So. 3d at 441. See, also, ISSUE I A , infra.

Again, the trial court sentencing order is inadequate, and Oyola's death sentence has been imposed in violation of his rights to due process and to be free from cruel or unusual punishment. Amends. V, VI, VIII, XIV, U.S. Const.; Art. I Sec. 9, 16, 17, Fla. Const. Oyola asks this Court to reverse his sentence.

ISSUE III  
THE DEATH PENALTY IS UNCONSTITUTIONALLY IMPOSED BECAUSE  
FLORIDA'S SENTENCING PROCEDURES ARE UNCONSTITUTIONAL  
UNDER THE SIXTH AMENDMENT PURSUANT TO RING V. ARIZONA.

The trial court erroneously imposed a sentence of death in violation of the Sixth Amendment principles announced in Ring v. Arizona, 536 U.S. 584 (2002). Oyola's arguments to dismiss the death penalty as an option in his case should have been granted. (SSR1:84-92; SSR2:6-7;) Ring extended the requirements of Apprendi v. New Jersey, 530 U.S. 446 (2000), for a jury determination of the facts relied upon to increase maximum sentences to the capital sentencing context. Florida's death penalty statute violates Ring in a number of areas including the following: the judge and the jury are co-decision-makers on the question of penalty and the jury's advisory recommendation is not a jury verdict on penalty; the jury's advisory sentencing decision does not have to be unanimous; the jury is not required to make specific findings of fact on aggravating circumstances; the jury's decision on aggravating circumstances are not required to be unanimous; and the State is not required to plead the aggravating circumstances in the indictment.

Oyola acknowledges that this Court has adhered to the position that it is without authority to declare Section 921.141, Florida Statutes unconstitutional under the Sixth Amendment, even though Ring presents some constitutional questions about the statute's continued validity, because the United States Supreme Court previously upheld Florida's statute on a Sixth Amendment challenge.

See, e.g., Bottoson v. Moore, 833 So. 2d 693 (Fla. 2002), cert. denied, 123 S.Ct. 662 (2002), and King v. Moore, 831 So. 2d 143 (Fla. 2002), cert. denied, 123 S.Ct. 657 (2002). Oyola also acknowledges the decision from the United States Court of Appeals For The Eleventh Circuit holding it was without authority to overturn prior United States Supreme Court authority upholding Florida's statute on Sixth Amendment grounds, even though seemingly in conflict with Ring. Evans v. Department of Corrections, 699 F.3d 1249 (11th Cir. 2012). Additionally, Oyola is aware that this Court has held that it is without authority to correct constitutional flaws in the statute via judicial interpretation and that legislative action is required. See, e.g., State v. Steele, 921 So. 2d 538 (Fla. 2005). However, this Court continues to grapple with the problems of attempting to reconcile Florida's death penalty statutes with the constitutional requirements of Ring. See, e.g., Miller v. State, 42 So. 3d 204 (Fla. 2010); Marshall v. Crosby, 911 So. 2d 1129, 1133-1135 (Fla. 2005) (including footnotes 4 & 5, and cases cited therein); State v. Steele, 921 So. 2d 538. At this time, Oyola asks this Court to reconsider its position in Bottoson and King because Ring represents a major change in the constitutional jurisprudence which would allow this Court to rule on the constitutionality of Florida's statute.

This Court should re-examine its holding in Bottoson and King, consider the impact Ring has on Florida's death penalty scheme, and

declare Section 921.141, Florida Statutes unconstitutional. Oyola's death sentence would then fail to be constitutionally imposed. Amends. V, VI, VIII, XIV, U.S. Const.; Art. I, Secs. 9, 16, 17, Fla. Const. Oyola's death sentence must be reversed for imposition of a life sentence.

### CONCLUSION

For the reasons presented in this initial brief, Miguel Oyola asks this Court to reverse his sentence of death.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail to Charmaine Millsaps, Assistant Attorney General, Appeals Division, The Capitol, PL-01, Tallahassee, FL, 32399-1050, at [Capapp@myfloridalegal.com](mailto:Capapp@myfloridalegal.com) as agreed by the parties, and to appellant, Miguel Oyola, #N15968, UCI, 7819 N.W. 228<sup>th</sup> St., Raiford, FL 32026, on this 4<sup>th</sup> day of March, 2014.

### CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief has been prepared using 12 point Courier New, a font that is not proportionately spaced.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

/s/ W. C. McLain

W. C. McLAIN  
Assistant Public Defender  
Florida Bar No. 201170  
Leon Co. Courthouse, #401  
301 South Monroe Street  
Tallahassee, Florida 32301  
Bill.McLain@flpd2.com  
(850) 606-1000

ATTORNEY FOR APPELLANT

IN THE SUPREME COURT OF FLORIDA

MIGUEL OYOLA,

Appellant,

v.

CASE NO. SC13-2048

STATE OF FLORIDA,

Appellee.

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APPENDIX TO

INITIAL BRIEF OF APPELLANT

Second Revised Sentencing Order



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR JEFFERSON COUNTY, FLORIDA

STATE OF FLORIDA,

Vs.

MIGUEL OYOLA,

Defendant.

CASE NO. 08-128-CFMA

CLERK OF COURT  
JEFFERSON COUNTY

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**SECOND REVISED SENTENCING ORDER**

On August 30, 2010, the defendant, Miguel Oyola, was convicted by a jury of the crimes of first degree murder, false imprisonment, armed robbery with a deadly weapon and grand theft of a motor vehicle. On September 3, 2010, the same jury recommended by a vote of 9-3 that the death sentence be imposed. On October 25, 2010, this court sentenced Oyola to death. On November 17, 2010, Oyola appealed to the Florida Supreme Court. On September 20, 2012, the Florida Supreme Court rendered a per curiam opinion incident to its review of this court's death sentence, and on October 16, 2012, the Supreme Court issued its mandate for the enforcement of its per curiam opinion. By its opinion and mandate, the Supreme Court affirmed this court's "findings and underlying judgment of guilty," but reversed and remanded this court "for the limited purpose of requiring the trial court to perform a new sentence evaluation because the analysis of the mitigating circumstances in the trial court's sentencing order does not meet the requirements articulated in Campbell." Oyola v. State, 37 Fla. L. Weekly S580 (Fla. Sept. 20, 2012), at page 20. The Supreme Court ordered this court to provide it with a "revised sentencing order" that contains a separate evaluation of each nonstatutory mitigator which shows why this court gave each only slight weight. Id. at p. 31. This

court was ordered to submit a revised sentencing order which also evaluated the aggravating circumstances and weighed them against the statutory and nonstatutory mitigating circumstances.

By the Supreme Court's per curiam opinion dated September 20, 2012, and the mandate dated October 16, 2012, the convictions of Oyola for first degree murder, armed robbery with a deadly weapon, false imprisonment and grand theft of a motor vehicle were all affirmed. The sentence imposed for all convictions, except the murder charge, were all affirmed, including the sentence of life imprisonment for armed robbery with a deadly weapon. The death sentence for the murder conviction was reversed only for the limited purpose of requiring this court to enter a revised sentencing order, in compliance with Campbell, which properly articulates why this court imposed the death penalty as recommended by the jury.

On October 30, 2012, this court entered its Revised Sentencing Order, but on November 19, 2012, the defendant filed a Motion for Reconsideration of such Revised Sentencing Order, to which the state filed a response on November 29, 2012. On February 15, 2013, this court entered an order on defendant's Motion for Reconsideration and by such order this court held that the defendant was entitled to a new Spencer hearing, at which the defendant was entitled to be present and present argument regarding the proper sentence for the murder conviction, and at which the state was entitled to also present argument, but neither party was entitled to present any additional evidence. A new Spencer hearing was held on April 15, 2013, both parties being present and presenting argument, and Oyola making a separate presentation, pursuant to his request

therefor. Both parties have filed sentencing memoranda, and appeared at a new sentencing hearing in this cause on April 29, 2013.

Pursuant to the provisions of § 921.141, Fla. Stat. (2007); Campbell v. State, 571 So. 2d 415 (Fla. 1990); Ferrell v. State, 653 So. 2d 367 (Fla. 1995); Spencer v. State, 615 So. 2d 688 (Fla. 2003); and Oyola v. State, 99 So. 3d 431 (Fla. 2012), this court does hereby enter its Second Revised Sentencing Order. This order is based upon the evidence introduced in both the guilt and penalty phases, as well as presentations made by the state and the defendant on September 27, 2010, October 11, 2010, October 25, 2010, April 15, 2013, and April 29, 2013, and after considering all of the findings and conclusions of the Florida Supreme Court in its per curiam opinion dated September 2012, and its mandate entered on October 16, 2012.

#### A. AGGRAVATING CIRCUMSTANCES

1. The capital felony was committed by a person previously convicted of a felony and on community control or felony probation. § 921.141(5)(a), Fla. Stat. (2007), specifically provides for the consideration of these circumstances as aggravating circumstances. By his original appeal, Oyola did not challenge the sufficiency of the evidence regarding this aggravation, and its existence was affirmed on appeal. At the Spencer hearing held on April 15, 2013, Mr. Oyola made a statement to the court, against the advice of his lawyers, by which he may be challenging the sufficiency of the evidence to support this aggravator, for the first time. He stated that his family in Puerto Rico had hired a private investigator in recent months and he suggests that the documents discovered by their private investigator may prove his innocence in

the "first probation" case; p. 23, transcript, April 15, 2013 hearing. He does not contend that this "first probation" case is the same case for which he was on probation or community control at the time of the murder. His lawyers do not join in any similar argument, but do argue that only slight weight should be given to that aggravator, as will be discussed hereafter.

2. The capital felony was committed while the defendant was engaged in the commission of or an attempt to commit or flight after committing or attempting to commit a robbery. § 921.141(5)(d), Fla. Stat. (2007) specifically provides for a consideration of these circumstances as aggravating circumstances, and Oyola does not assert otherwise. § 921.141(5)(f), Fla. Stat. (2007), also provides that an additional, separate, aggravating circumstance can be considered if the capital felony was committed for pecuniary gain. Oyola does not assert otherwise. The state has proved both of these aggravating circumstances beyond a reasonable doubt, but because both of these aggravating circumstances relate to a single aspect of the case, they are considered to merge, and treated as one aggravator. Oyola does not challenge the sufficiency of the evidence regarding this merged aggravator, and its existence was affirmed on appeal.

3. The capital felony was especially heinous, atrocious or cruel. § 921.141(5)(h), Fla. Stat. (2007), specifically provides for the consideration of these circumstances as aggravating circumstances. Oyola challenges the sufficiency of the evidence regarding this aggravating circumstance. This aggravating circumstance has been proved beyond all reasonable doubt. More than one weapon was used by the defendant to murder the victim, multiple wounds were inflicted by such weapons, including at least seven stab wounds, which occurred at two locations, with the victim

being confined in a locked trailer, while still alive, while being transported to Jefferson County from another location. During the victim's confinement, while being transported to Jefferson County, after the initial extensive injuries, the victim attempted to escape, to avoid further injuries and death, to no avail, but fully conscious during such confinement. This court's finding regarding the existence of this aggravating circumstance was affirmed on appeal.

**B. WEIGHT GIVEN AGGRAVATING CIRCUMSTANCES**

Each of the three aggravating circumstances found to exist, as specified above, were all given great weight by this court in determining a proper sentence in this case. The defendant challenges only the weight given by this court to the heinous, atrocious and cruel aggravator. On appeal, the Florida Supreme Court held that this crime warranted the assignment of great weight to the heinous, atrocious and cruel aggravator. The court also, in its per curiam opinion, ordered that, on remand, this court should enter a Revised Sentencing Order which evaluated the aggravators and weighed them against statutory and nonstatutory mitigating circumstances.

1. Great weight was given to the statutory aggravator which recognized the significance of the fact that this murder occurred after the defendant had previously been convicted of at least one felony and was under supervision for a felony at the time of the murder. In fact, Oyola had previously been convicted of several felonies, had previously been placed on probation, and had been incarcerated before he committed these latest offenses, including the murder charge. He knew the minimum requirements of law, had been able to conform his conduct to the requirements of law, and had so conducted himself in the past. He knew he was a diabetic and suffered a mental

condition which required him to take prescribed medications in order to properly conduct himself. Oyola consciously and intentionally refused the assistance and requirements of the criminal justice system, which are most significant in determining a proper sentence.

2. Great weight was given to the statutory aggravating circumstance which recognizes the significance of the fact that the murder occurred while Oyola was engaged in the commission of or an attempt to commit a robbery, or flight after committing or attempting to commit a robbery, or was done for pecuniary gain. The fact that the person murdered was also the victim of the robbery is yet another reason why the legislature specified this circumstance as a justification for a death sentence in a murder case. Life imprisonment is a lawful sentence for an armed robbery. It is not a necessary element of the crime of armed robbery that the victim be killed. It is only required that the victim be put in fear at the time of the robbery. It is also not a necessary element of first degree murder that the victim be robbed. A life sentence is a possible sentence for either an armed robbery or first degree murder. If there is to be any additional consequence for actually murdering the person who is the victim of an armed robbery, the death penalty should be imposed. The per curiam opinion of the Florida Supreme Court affirmed this court's life sentence against Oyola for the armed robbery of Michael Lee Gerrard. The Supreme Court also affirmed the conviction of Oyola for Gerrard's murder. If there is to be any consequence for taking Gerrard's life, after Oyola robbed him, or during the robbery, while armed, the death penalty should be imposed. Great weight should be given this statutory aggravating circumstance in the consideration of a proper sentence in this case. The defendant has not asserted otherwise and the

Supreme Court has found no error in this court's giving great weight to the statutory aggravating circumstance.

3. Great weight was given to the statutory aggravating circumstance which recognizes the significance of the fact that the murder was especially heinous, atrocious or cruel. Oyola alleged on appeal that this court abused its discretion in giving great weight to this aggravating circumstance. On appeal, the Supreme Court held that this crime warranted the assignment of great weight to this aggravator.

The main thrust of Oyola's challenge to this court's giving great weight to this aggravating circumstance is the failure of this court to account for Oyola's mental health status in the assignment of weight to this aggravator. The Supreme Court ruled on appeal that this court properly found the weight of the aggravator from the perspective of the victim and not from the viewpoint of the defendant. The assignment of great weight to this aggravating circumstance is clearly supported by the evidence in this case. By his resentencing memoranda and by arguments made at the April 15, 2013 Spencer hearing, Oyola again argues that great weight should not be given to the HAC aggravator because the murder occurred only as a consequence of a sudden, violent, angry, confrontation, unplanned and unanticipated, which was not that rare, worst of the worst homicides where the murder is pitiless and unnecessarily tortuous to the victim. The evidence does not support this argument and the Supreme Court has held that the crime warranted the assignment of great weight to this HAC aggravator.

There is no good reason not to ascribe the greatest weight possible to this aggravating circumstance. Leaving Gerrard to die, in a helpless condition, when help was readily available, on two separate occasions, and for an extended period of time

between those occasions, is not only totally inconsistent with innocence, or self-defense, but it also shows a total indifference to Gerrard's suffering and total indifference to the fact that he could have spared Gerrard's life without any possible physical threat to himself. He did not spare him because to do so would have preserved valuable evidence which could have been used against him. Instead, he embarked upon a scheme to destroy any evidence inculpatory to him, and to fabricate evidence which might be exculpatory to him. This plan Oyola embarked upon belies any suggestion that he did not appreciate the criminality of his conduct or that his capacity to do so was substantially impaired. The greatest weight possible should be given to this heinous, atrocious and cruel aggravator.

### C. **MITIGATING CIRCUMSTANCES**

There are seven separate and distinct circumstances specified in § 921.141(6)(a)-(g), Fla. Stat. (2007), which this court must consider in the imposition of sentence in a capital case, if evidence is presented to show the existence of those circumstances. Those specified circumstances are referenced in this revised sentencing order as statutory mitigating circumstances. There is an eighth provision contained in § 921.141(6)(h), Fla. Stat. (2007), which this court is also required to consider in the imposition of sentence in a capital case. This eighth provision does not specify an eighth separate and distinct factual circumstance, but references any other factors in the defendant's background that would mitigate against imposition of the death penalty. Those other factors in the defendant's background are referenced in this revised sentencing order as nonstatutory mitigating circumstances.

#### 1. **STATUTORY MITIGATING CIRCUMSTANCES**



This court has reviewed each statutory mitigating circumstance and now finds that the evidence is not sufficient to support any statutory mitigating circumstance, and none is found to exist. The only statutory mitigating circumstance which Oyola relied upon at trial, and on appeal, is that contained in § 921.141(f), Fla. Stat. (2007). He maintained that his capacity to appreciate the criminality of his conduct, or to conform his conduct to the requirements of law, was substantially impaired, for a variety of reasons. The reasons for his impairment are not dispositive of the existence of this mitigator, if his capacity to appreciate and conform was not substantially impaired. No sufficient evidence was presented to prove substantial impairment, and none is found to exist.

On appeal, the Florida Supreme Court stated that this court "properly rejected the statutory mitigator because competent, substantial evidence of record supports that rejection." *Id.* at p. 26. The Supreme Court has not mandated that this court further explain why that statutory mitigator was rejected. The Supreme Court stated in its per curiam opinion that a reasonable judge could have rejected that statutory mitigator, given the defendant's intelligence, ability to understand his criminal conduct, and his actions in attempting to cover up the crime. No further explanation will be given in this revised sentencing order.

## 2. NONSTATUTORY MITIGATING CIRCUMSTANCES

Nonstatutory mitigating circumstances which this court must consider are specified in § 921.141(6)(b), Fla. Stat. (2007), as follows:

The existence of any other factors in the defendant's background that would mitigate against the imposition of the death penalty.

Factors in defendant's background which are entitled to consideration by this court, as nonstatutory mitigators, need not establish that they substantially impaired the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, as is required for a statutory mitigator specified in § 921.141(6)(f), Fla. Stat. (2007). It is not even required that such factors in the defendant's background impaired, in any way, his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. It is only required that such factors in defendant's background mitigate against the imposition of the death penalty.

On appeal, Oyola did not contend that this court erred in not considering any factors in defendant's background which Oyola presented for consideration. As to nonstatutory mitigators, Oyola only contends that this court erred by only giving slight weight to Oyola's mental condition as a nonstatutory mitigating circumstance, without an explanation for doing so based on the evidence. In its per curiam opinion on appeal, the Florida Supreme Court did not find that this court erred in not properly considering any factor in defendant's background which the defendant urged upon the court. By his resentencing memoranda, and by argument made at the Spencer hearing, Oyola argues that non-statutory mitigation should be found based upon the stated wishes of the victim's widow, that the death penalty not be imposed. Those wishes clearly have nothing to do with the defendant's background so as to qualify as a non-statutory mitigator contained in § 921.141(6)(h), Fla. Stat., and there is no other law that establishes that factor as a non-statutory mitigator. This court declines to create such at

law, which would be based upon arbitrary considerations, contrary to clearly established legal principles.

Prior to the imposition of sentence against Oyola, a sentencing memorandum was prepared by him, suggesting all nonstatutory mitigation he believed had been presented to the jury or the court at the separate sentencing hearing. The defendant submitted a transcript of an interview of Manuel Oyola and Leonardo Oyola, for this court's consideration. Such transcripts were reviewed and considered. The testimony of Dr. Michael D'Errico, Ph.D., a forensic psychologist, was presented by Oyola to this court. D'Errico performed two court-ordered psychological evaluations of Oyola, and incident thereto he examined Oyola's prison mental health records, Philadelphia Correctional Center records, Hartford, Connecticut public school records, and other records relating to defendant's background, education and health, including his mental health. All of the evidence produced by the defendant to the trial court showed that Oyola had a history of mental illness, drug abuse and an abusive home life as a child, each of which might mitigate against the imposition of the death penalty. As to non-statutory mitigation, the defendant only alleges error by the trial court for its giving only slight weight to Oyola's mental condition. A separate evaluation and analysis, assigning weight to nonstatutory mitigators was ordered by the Supreme Court and is set forth hereafter.

**D. EVALUATION AND ANALYSIS, ASSIGNING WEIGHT GIVEN TO NONSTATUTORY MITIGATORS**

Oyola's mental condition is the only mitigating circumstance which he contends to be deserving of greater weight than the slight weight given to it by this court at sentencing. Oyola asserted to this court, and to the Supreme Court, that his mental

condition satisfied the requirements of law to be considered a statutory mitigating circumstance specified in § 921.141(6)(f), Fla. Stat. (2007). That assertion was rejected by this court and such rejection was affirmed on appeal. Oyola also asserted at trial that his mental condition should be considered as a nonstatutory mitigating circumstance and be given great weight because his mental condition impaired his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. Substantial impairment need not be established to qualify for consideration as a non-statutory mitigator, but the lack of proof of substantial impairment is a significant factor considered by this court in assigning only slight weight to such mental condition.

Oyola did suffer from schizoaffective disorder, bipolar type, at the time of the murder. Medications had been prescribed for Oyola's mental condition as well as his diabetic condition. Some testimony was presented to show that Oyola was non-compliant with such prescribed medications at the time of the murder. Oyola had an extensive history of drug abuse which may have been affected by his abusive home life as a child, his low intelligence, as well as other factors. Although the evidence obtained by D'Errico from his review of numerous records, and his testing and evaluation of Oyola, did not establish that Oyola's capacity to conform his conduct to the requirements of law was substantially impaired, D'Errico presented testimony in which he stated that it was likely that Oyola was untreated at the time of the murder and that Oyola's untreated mental condition at the time of the murder caused impairment to his capacity to conform. D'Errico opined that, based upon statements made to him by Oyola, in preparation for sentencing, and not at trial, subject to cross-examination, and his other testing and review, due to Oyola's paranoia he may have overacted to a perceived dangerous

situation caused by Gerrard and his poor impulse and behavioral control might have caused him to stab Gerrard to death. D'Errico stated that Oyola's mental condition impaired his ability to conform his conduct to the requirements of law.

Slight weight is given to Oyola's mental condition, as a non-statutory mitigator. Such condition did not substantially impair Oyola's capacity to conform his conduct to the requirements of law. It is reasonable to conclude, therefore, that less than substantial weight should be given to Oyola's mental condition as a nonstatutory mitigator. D'Errico's opinion of impairment is based upon the truth of statements made to him by Oyola regarding the circumstance of the murder, in particular his claim of self-defense, which has no support whatsoever from all of the other evidence in the case. Because there is only slight evidence to support D'Errico's opinion of impairment, and all of the other evidence presented supports, at most, only slight impairment, this court finds that defendant's mental health is only deserving of slight weight as a nonstatutory mitigator.

**E. SENTENCING ANALYSIS, EVALUATING AGGRAVATING AGAINST MITIGATING CIRCUMSTANCES.**

For the reasons specified above, great weight is given to the aggravating circumstances found to exist in this case. For the reasons specified above, only slight weight is given to the mitigating circumstances found to exist. The aggravating circumstances far outweigh the mitigating circumstances. The scales of life and death tilt unquestionably to the side of death. There are clearly insufficient mitigating circumstances to outweigh the aggravating circumstances.

This court agrees with the jury's recommendation for imposition of the death penalty. The jury trial in this case was totally fair, impartial and dispassionate, and the jury's verdict was fully supported by the evidence and all reasonable inferences from the evidence.

The defendant was represented at trial by two of the best and most experienced criminal defense lawyers in this circuit. Each of such lawyers has represented many defendants charged with one or more capital offenses. They each conducted themselves in an exemplary fashion during trial and did nothing to distract from the jury's fair consideration of all evidence.

The prosecuting attorney conducting the trial of Oyola was an equally experienced and trained advocate as the two defense attorneys, and conducted himself in an extremely professional manner during the trial of this case. The tone and tenor of this trial, as a result of the lawyers involved at trial, was such that no one could ever reasonably conclude that the jury's decision was in any way based upon passion, prejudice, or bias, or any other unlawful matter.

The jury found the defendant guilty of armed robbery with a deadly weapon and it also found the defendant guilty of first degree murder of the same person who was robbed. This court does sentence the defendant to life imprisonment for the armed robbery. The premeditated murder of the victim of the robbery should result in some additional consequence. The imposition of a life sentence for the murder, overriding the jury's recommendation for the death penalty, would result in no additional consequence for the murder. The imposition of only a life sentence for the first degree murder committed by Oyola would be a reward to him for his elaborate scheme to use a

mental health expert to thwart justice. A life sentence for the first degree murder by Oyola would be contrary to this court's finding that the mitigating circumstances did not outweigh the aggravating circumstances.

**F. PENALTY IMPOSED**

As to Count I of the Indictment, the first degree murder of Michael Lee Gerrard, this Court sentences you, Miguel Oyola, to death.

As to the lesser included offense of Count II of the Indictment, the false imprisonment of Michael Lee Gerrard, this Court sentences you to five years in the Department of Corrections.

As to Count III of the Indictment, the armed robbery with deadly weapon of Michael Lee Gerrard, this Court sentences you to life imprisonment in the Department of Corrections.

As to Count IV of the Indictment, the grand theft motor vehicle of Michael Lee Gerrard, this Court sentences you to five years imprisonment in the Department of Corrections.

Each of these sentences will run consecutive to each other and consecutive to the sentence of death.

It is ordered that you, Miguel Oyola, be taken by the proper authority to the Department of Corrections, and there be kept under close confinement until the date of your execution is set.

It is further ordered that on such scheduled date, you, Miguel Oyola, be put to death.

You are hereby notified that this sentence is subject to automatic review  
by the Florida Supreme Court.

DONE AND ORDERED at Monticello, Jefferson County, Florida, this  
29<sup>th</sup> day of April, 2013.



L. Ralph Smith, Jr.  
Circuit Judge

Copies furnished to:

Neil Wade, Assistant State Attorney  
Gregory Cummings, Esq.  
Baya Harrison, Esq.  
Mr. Miguel Oyola, Defendant