

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

THE STATE OF FLORIDA,

CRIMINAL DIVISION

Plaintiff,

Case No. **90-48092B**

v.

ANA MARIA CARDONA,

Defendant.

SENTENCING ORDER

On July 9, 2010, Ana Maria Cardona was convicted, after a jury trial, of the first degree murder and aggravated child abuse of her three year old son Lazaro Figueroa. The penalty phase commenced on October 4, 2010. On October 14, 2010 the jury, by a vote of 7 to 5¹, returned an advisory verdict for the imposition of the death penalty. The Court then conducted a *Spencer* hearing, pursuant to *Spencer v. State*, 615 So. 2d 688 (Fla. 1993), on December 6, 2010. The Court has also reviewed sentencing memoranda from the State and Defense.

The prosecution presented evidence and argued the existence of one statutory aggravator to both the jury and this Court: (1) the murder was especially heinous, atrocious and cruel. The jury and the Court did not consider any other aggravating factors. The Court has also considered the mitigating circumstances presented by the Defendant to determine the appropriate sentence pursuant to §921.141, Florida Statutes (2009). The Court's determination is based upon all of the evidence presented during the guilt and penalty phases before the jury.

FACTUAL BACKGROUND

In the 1980's, Ana Maria Cardona, lived with Fidel Figueroa, a well known drug dealer, in an upscale apartment in Miami. They had one two year old child together, but were also raising her other seven year old child from a prior relationship. The couple was expecting their second child who would be named Lazaro Figueroa. One month before Lazaro Figueroa was born, Fidel Figueroa

¹ This court filed a letter it received from one of the jurors, David Burcky. Mr. Burcky states in the letter that he believes the Defendant should be sentenced to life in prison. That is how he voted and it is reflected in the jury recommendation and does not change the vote count.

was murdered. Lazaro Figueroa was born on September 18, 1987. Fidel Figueroa left a substantial sum of cash upon his death. The Defendant spent the money in a short period of time. During this period, Lazaro and his siblings were taken by the Department of Health and Rehabilitative Services (HRS), due to neglect. The Defendant would drop the children off with various caretakers for days on end and not pick them up and could not be contacted. When the Defendant would leave Lazaro with the caretakers, he appeared skinny and malnourished. The caretakers would feed him and fatten him up. On one occasion, when Lazaro required medical attention, and the Defendant did not respond, to the caretaker's calls, he took Lazaro to the hospital and later contacted HRS who temporarily removed the children from the Defendant's custody. In November 1988, the children were returned to the Defendant. Upon his return to the Defendant, Lazaro weighed a healthy twenty (20) pounds. Lazaro weighed 18 pounds at the time of his death.

After the children were returned to the Defendant, she became romantically involved with Olivia Gonzalez-Mendoza. They lived with the children in a series of cheap hotels. The women survived by taking on various jobs and by shoplifting. During this period, the Defendant beat, starved, confined, emotionally abused, and systematically tortured Lazaro. His diaper was wrapped with duct tape to hold in the excrement for as long as possible and the consequences of this were well documented by the observations of the Medical Examiner.

In the last months of Lazaro's life, the women rented an efficiency from the Piloto family in Miami. During their stay there, no one ever saw or heard of Lazaro in that household. He remained hidden in the small room and only the other children were seen or heard from. On the night of November 1, 1990, Lazaro's body was removed from the efficiency by these two women and abandoned in the bushes of a Miami Beach residence where he was later found on November 2, 1990. When Lazaro's body was found, he was wearing a white t-shirt with multicolored lollipops on the front, and he became known in the South Florida community as "Baby Lollipops".

After disposing of Lazaro's beaten and malnourished body in some bushes, like trash, the Defendant fled to the Orlando/St. Cloud area, where she was later arrested. The Defendant told police several stories about what happened to Lazaro including that he had fallen off the bed and injured himself. The Defendant said she tried to revive Lazaro, but when she was unable, she took Lazaro to a Miami Beach residence and left him on a doorstep so that the people who owned the house could help him. The Defendant was charged with first degree murder and aggravated child abuse.

AGGRAVATING CIRCUMSTANCES

The capital felony was especially Heinous, Atrocious or Cruel (HAC) § 921.141(5)(h) Fla. Stat. (2009).

The HAC aggravator focuses on the means and manner in which death is inflicted and the immediate circumstances surrounding the death. *Brown v. State*, 721 So. 2d 274, 277 (Fla. 1998). This aggravator pertains more to the victim's perception of the circumstances than to the perpetrator's. *Hitchcock v. State*, 578 So. 2d 685 (Fla. 1990).

Autopsy results revealed that Lazaro had two front teeth missing. They were knocked out approximately six months apart. Forced trauma, such as a substantial blow to the face, would cause these teeth to come out. Such a blow to the face would cause a substantial amount of pain, bleeding and tears, along with prolonged discomfort if not addressed with proper medical care. The wound would take longer to heal for someone who was as malnourished as Lazaro. He would also have had trouble eating (on the rare occasions he was fed) and speaking due to the pain from having his teeth knocked out.

There was trauma on Lazaro's entire face. The injuries were not all caused at the same time. Two circles drawn on his face pointed to two anatomical areas of the skin that attach the lips to the face called the frenulum. The frenulum was torn to the point where the lips detached. There are two ways this detachment can occur: 1) a dentist would remove it with anesthesia; or 2) a serious blow to the mouth would cause this. This condition would cause severe pain. Lazaro would not be able to move his lips. Eating would be very painful. Even talking would be painful. Nevertheless, Lazaro, being severely malnourished would feel compelled to eat even if it caused severe pain.

The autopsy examination of Lazaro's body revealed that he was well below the growth, weight and height chart for a child his age. Dr. Hyma, the chief medical examiner testified that when the body is malnourished it does not have the proper building blocks resulting in slow growth. Lazaro weighed eighteen (18) pounds, about half the normal weight of an average child his age. He should have weighed at least thirty (30) pounds according to the chart. Lazaro would have been hungry and yearning for food as long as he was conscious.

The autopsy further revealed that Lazaro's body was wasted. His belly was sunken and the bones of his pelvis and individual ribs stuck out. There was very little in his digestive tract and there was a nine (9) month delay in his skeletal development. The pancreas indicated lack of hydration, as it was infected. This would cause Lazaro to feel a constant pain in his belly until he received medical attention. In addition, the thymus gland under the breastbone

was almost non existent. This gland helps the development of the immune system. This condition pointed to a much stressed immune system.

Lazaro's left arm had undergone ossification, that is, his scarred muscle had transformed into bone. His elbow was fixed at a ninety (90) degree angle. His left humerus had also undergone ossification. It was indicative of a crushing injury to the muscle that reached the surface of the bone. This meant that this injury also crushed the nerves in the area causing the victim chronic pain every time he was touched in that area. Lazaro's legs were asymmetric. His right leg was smaller than the left leg. The left leg was bigger because it had blood accumulation that resulted from some type of blunt injury to that leg. This would cause the victim to feel pain if he moved his left knee. It would be painful to walk and tender to the touch until such time that it would heal. However, the autopsy revealed fresh injuries to the left leg that would have aggravated the healing of the crushed nerves and muscles.

When Dr. Hyma examined Lazaro's ribcage, he found a collection of blood caused by a blunt injury to the lower chest. He opined that the blunt injury must have been substantial as it crushed tissue and caused bruising all the way down to his ribs. The soft tissue and muscle were crushed and there was blood seeping from the soft tissue. This indicated that the injury had not healed at the time of death. This condition would have caused a throbbing pain to the victim on the entire left side of his chest.

There was blood under the palm of Lazaro's left hand, which indicated a blunt injury had occurred. There was muscle ossification which meant it took weeks or months to heal. In addition, there was blood on the back side of the left hand from a more recently inflicted injury. This was also indicative of a blunt injury. Dr. Hyma explained that in receiving the injury it would have caused pain in the whole arm. This meant that the pain in Lazaro's left hand magnified the pain he already felt on the rest of his left arm. Dr. Hyma testified that touching the victim's front right forearm felt like bone crunching. The examination revealed a splintered ulna, the bone that runs inside of the arm. The splinter was in the middle of the ulna consistent with a direct impact on the forearm. In order to receive this injury the victim would have had to lift and turn his arm which is indicative that he was in a defensive position when he received this wound. Furthermore, because the bones of a child this age are more pliable than that of an adult, it would require a substantial amount of force to the right forearm in order for the ulna to splinter as it had. Assuming there was no medical attention given, this would be an escalating pain that would last for hours and any motion would intensify the pain.

Lazaro was wearing a diaper when found. The diaper was wrapped with multiple layers of synthetic duct tape. The diaper was soiled to the extent that it almost formed a cast of excrement around the victim's pelvis. When the excrement was removed and the area cleaned, an infection and a skin rash on

the scrotum and tip of his penis was revealed. Dr. Hyma explained that the infection occurred as a result of the area not being kept dry. This would cause the skin to break down and excrement full of bacteria to enter the broken skin. The tip of the penis had scar tissue from this infection indicating to the doctor that there was difficulty in urinating. Lazaro would have felt a burning sensation when urinating, along with pain every time he moved, as the skin in that area was so raw that the nerves were exposed.

Lazaro's left shoulder had a deep injury. There were multiple pressure sores on his left ear, the back and top of his neck, and left side of his scalp. These sores would be painful as the initial stages would cause a breakdown of the skin and nerve exposure. These sores were indicative of having the child restrained in one position for long periods of time. Lazaro's face had an injury consistent with a third degree burn. There was an abrasion on his forehead consistent with a blunt injury. On his right shoulder, there was an old injury that was not visible externally. Lazaro's forehead was asymmetric. It felt firm and rubbery, which is indicative of prior trauma. The pain would have been prolonged until the injury could heal. This injury had not healed when Lazaro died. The soft tissue around his right eye showed evidence of a right cheek/eye blunt force injury. Blood accumulation inside the eye was consistent with some object splitting the skin. This injury was more recent than the injury found on his forehead.

The back of Lazaro's head had an injury, as a result of a blunt object, that was in the process of healing. This type of injury would have taken days or weeks to heal. Without medical treatment Lazaro would have felt pain for days until the injury healed. There was also a laceration on the left side of his head associated with trauma and was sore where infection had already begun. There was no evidence of medical treatment for this injury and Lazaro would have felt pain from it until it healed.

Lazaro's right buttock had a deep injury that was not initially visible until the autopsy was performed, due to the amount of crusted excrement in his long unchanged diaper. The injury was consistent with the injuries found on his chest, leg, shoulder, foot and hand. This injury was approximately one inch in diameter deep in the buttock muscle.

The autopsy of the skull revealed a skeletal fracture from the middle of the skull to the left eye socket. Nerve damage had occurred to the point where Lazaro would have lost his sense of smell. The beginning stages of meningitis were evident. Blood accumulated as a result of the fracture on the brain which would have caused Lazaro to experience excruciating headaches. The autopsy further revealed that the fracture on the middle of the skull was approximately hours to days old and the additional collection of blood to the left side of the brain was a subdural hematoma that was consistent with the skull fracture. Lazaro suffered from a partial tearing of nerve tissue in the brain called the corpus

callosum. This is the nerve tissue that provides communication between the two sides of the brain. The corpus callosum had been stretched and torn. This was the injury that caused Lazaro to become unconscious. The estimated time of death was approximately twelve (12) hours before his body was found. The autopsy revealed that he did not have any symptoms of pneumonia. This indicated that Lazaro was conscious when this last injury occurred. This injury would have rendered him immobile and ultimately unconscious.

Lazaro was subjected to severe torture, pain and abuse. The autopsy revealed injury upon injury to this three year old child. A total of forty-one (41) injuries culminated prior to his death. Every part of his body was in excruciating pain for days, weeks and months until the time of his death. This child was malnourished, which made the pain even worse and caused the healing process from the inflicted wounds to be delayed. He was never given medical attention. His little body was wasted with a number of infections, crushed nerves and bones, and the beginning stages of meningitis. It was painful for Lazaro to even breathe. It would have been painful for him to eat, which given his emaciated body, didn't happen often. It would have been painful for him to urinate. The terror that this three year old child must have felt during these months of accumulated abuse is unfathomable. He was conscious during the infliction of all these wounds and during the times he was restrained; and he was conscious until the injury to his head was inflicted on October 31, 1990 which caused him to come in and out of consciousness until he died at approximately midnight on November 1, 1990. All these acts, including the final injury show that this murder was conscienceless, pitiless and unnecessarily torturous to the victim.

In her Sentencing Memorandum in Support of a Life Sentence, the Defendant argues that the HAC does not apply. This argument is disingenuous at best. She argues that none of the HAC injuries were linked to her, and in support of this argument, ignores all the evidence that was presented during the trial and relies instead on *Cardona v. State*, 826 So. 2d 968 (Fla. 2002). The Defendant alleges that Olivia Gonzalez committed the HAC acts and urges this Court to take into account the testimony from the first trial. However, this is a trial *de novo*. The Defendant could have called Gonzalez to testify. Double jeopardy has long since attached. Nothing would have prevented Gonzalez from testifying that she alone abused and murdered Lazaro, if it was true. Instead, the Defendant complains that the State did not call Gonzalez, and urges a mixture of trial testimony; this testimony from trial one and this testimony from trial two.

The Defendant also argues that HAC cannot be proven vicariously and the Court agrees with that proposition. *Perez v. State*, 919 So. 2d 347 (Fla. 2005). However, Defendant has chosen to omit or ignore the extensive testimony that she abused and neglected Lazaro for years before she became involved with Gonzalez, including HRS removal of the children. When the Defendant was arrested in the Orlando/St. Cloud area, she gave statements that she abused

Lazaro, and that Gonzalez was at work when he died. It was her plan to drop off the body in Miami Beach, and that Gonzalez simply went along with it.

Prior to her relationship with Gonzalez, Lazaro and his sister were removed from the Defendant's custody by HRS. Martha Fleitas testified that Lazaro looked skinny and much smaller than the average child his age. When the Defendant gave Lazaro to Fleitas to watch in 1988, Fleitas fed him mashed malanga to fatten him up. After she returned Lazaro to the Defendant, she never saw him again.

Carlos Lima testified that he took care of Lazaro several times overnight. The Defendant would leave her children with him and disappear for days. When he called her, she would curse at him for disturbing her. When he paged her, she would not call him back, even when he paged her with 911. Initially, Lazaro appeared to be a bouncing baby boy, full of energy and life, who liked to dance. He also ate well and took his bottle. When Lazaro needed medical attention, Mr. Lima took him to Miami Children's Hospital in June, 1988. The Defendant even refused to visit Lazaro after she cursed at Mr. Lima for taking Lazaro to the hospital. He also testified that he contacted HRS because the Defendant didn't care for her children and was indifferent to Lazaro. Mr. Lima eventually got temporary custody of the children from HRS for about one and a half months. That decision was ultimately reversed and HRS directed Mr. Lima to give the children back to the Defendant at an apartment in Hialeah. He never saw them again.

Suzy Hernandez also testified. She was a friend of Fidel Figueroa, Lazaro's father. She would also look after Lazaro. She testified that he was skinny and she would try to feed him. His ribs were sunken. She decided along with Mr. Lima, to take the children to HRS. The Defendant did not treat Lazaro well. He was skinny, dirty and smelly according to her testimony.

Fred Quintero testified that he worked at the Olympia Motel in 1989 when the Defendant lived there with her children and another woman. Lazaro was always in the corner, very skinny, and he looked scared. His mattress had been urinated on and smelled. Mr. Quintero testified that on multiple occasions he saw the Defendant drag Lazaro on the stairs, his legs bouncing off the steps. He saw the door close on Lazaro's arm. Mr. Quintero testified that he saw the Defendant discipline Lazaro by hitting him severely. Lazaro looked like skin over bones. The Defendant was never affectionate to Lazaro, but she was to her daughter.

Cristina Quintero Howard testified that in 1989, she was married to Fred Quintero, a handyman and desk attendant at the Motel. Sometimes, she would pick him up at the Olympia Motel after work. While she was in the lobby waiting for Fred, she saw Lazaro on two occasions. She heard screaming in the lobby and saw the Defendant pulling a skinny filthy child across the lobby. Lazaro would try to pull away. Mrs. Quintero was so troubled by seeing the Defendant

pulling Lazaro that she would go outside to wait for her husband. She could not bear the sight of the abuse.

Carla Ventrana and her husband stayed at the Olympia Motel for a short period of time when their car broke down. The couple had no money and the Defendant invited them over for something to eat and offered milk for her child. Ms. Ventrana testified that the Defendant was a large woman back then. The television in the Defendant's room was very loud. Lazaro was confined and not allowed to move around. She saw the Defendant punch Lazaro in the back and pull his hair very hard. The Defendant took Lazaro into the bathroom. While she couldn't see what happened in the bathroom, she could hear Lazaro screaming. He looked skinny and frail. She was so upset that when she left the motel, she called HRS. The Defendant systematically tortured the child during his entire life, the abuse did not commence when Gonzalez appeared in her life.

The Defendant also argues in the Memorandum that the HAC is overbroad and that this Court should only take into account Lazaro's last few hours, not the prolonged period of time that the Defendant abused and starved him. This argument does not merit discussion as he did not die from a single beating, but as Dr. Hyma testified, Lazaro died of the cumulative effects of the beatings, that he was systematically tortured to death. The case law cited by the State supports the conclusion that the HAC is not overbroad.

HAC is among the weightiest factors in Florida's sentencing scheme. *Aguirre-Jarquin v. State*, 9 So. 3d 593, 610 (Fla. 2009). The Court finds that this aggravating factor was proven beyond a reasonable doubt. The record is replete with evidence that this Defendant abused Lazaro for a prolonged period of time, starting before she became involved with Gonzalez. She considered Lazaro a bad birth and the cause of her going from riches to rags. She clearly abused him for this. After inflicting the final injuries that led to his death, after hiding him in a closet, starving him, taping a feces filled diaper onto him, and countless other tortures, the Defendant dumped his body in the bushes like garbage and fled the county. He was literally tortured to death. The Court gives this aggravating factor overwhelmingly great weight.

STATUTORY MITIGATING CIRCUMSTANCES

The Defendant has no significant history of prior criminal activity §921.141(6)(a), Fla. Stat.

The Defendant states that the lack of proof of convictions proves the no significant prior criminal activity mitigating circumstance. While the Defendant did not have any convictions, during the *Spencer* Hearing, her experts testified as to her drug use, shoplifting and prostitution. However, since there were no

convictions, the Defendant has proven the existence of this mitigating circumstance, but in light of all the facts in this case, the Court gives it little weight.

The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance. §921.141(6)(b), Fla. Stat.

The Defendant presented evidence at the *Spencer* hearing that she was under the influence of extreme mental or emotional disturbance. Dr. Giselle Hass, a clinical psychologist opined that the Defendant was under extreme emotional stress and was incapacitated in her ability to parent her children, which led to extreme drug usage as self-medication at the time of Lazaro's death. Dr. Hass picked and chose what information from other experts she relied upon, excluding the fact that four other experts concluded that the Defendant was malingering, she also ignored the facts. The Defendant always used drugs. She spent a large sum of money in a short period of time after Fidel's murder, presumably on drugs. She was never a good parent to Lazaro. Several people testified that he was skinny and dirty in 1989 and 1990, and how she neglected him.

The testimony of Dr. Weinstein totally lacked credibility.

The Defendant has not proven the existence of this mitigator. The testimony of the experts was not credible. The Defendant was using drugs and self-medicating long before Lazaro was born. The Defendant herself introduced her long term drug use. If the Defendant was under the influence of extreme mental or emotional disturbance, it started long before Lazaro's death. Even if the mitigating circumstance was proven, the Court would give it miniscule weight.

The defendant acted under extreme duress or under the substantial domination of another person. §921.141(6)(e), Florida Statutes.

The Defendant claims that she was under the influence of Gonzalez, who was abusive to her. Again, the Defendant relied upon the testimony of Dr. Hass. Dr. Hass concluded that Defendant was a battered woman and suffered from Dependent Personality Disorder. In support of this, the Defendant relied upon the jail incident reports of Gonzalez. While Gonzalez may have been aggressive at times, this does not prove she was aggressive towards the Defendant. Dr. Haber, in her report, concluded that the Defendant was the dominant partner in the relationship. The Defendant's statements to police indicated that she made the decision to drop Lazaro's body in Miami Beach, and that Gonzalez did not want to do it. Dr. Hass did not testify as to any specific acts of violence by Gonzalez against the Defendant.

The Defendant has not proven the existence of this mitigating circumstance. Even if she did, the Court would give it inconsequential weight.

The capacity of the Defendant to appreciate the criminality of her conduct or to conform her conduct to the requirements of law was substantially impaired. §921.141(6)(f), Florida Statutes.

In her Sentencing Memorandum, the Defendant suggests this is the end result of all the other statutory mitigating circumstance that she presents. This has not been proven. To the contrary, the evidence shows that the Defendant appreciated the criminality of her actions. She dumped Lazaro's body in Miami Beach so her other children would not be taken from her. She then moved out of the county to keep her remaining children and to hide from authorities. She clearly appreciated the criminality of her actions. Her ability to conform her conduct to the requirements of law was not substantially impaired. She was affectionate with her daughter. She did not starve her, tie her to a bed, lock her in a closet, beat her repeatedly, and dump her body in some bushes. The Defendant considered Lazaro a bad birth. She did not view her daughter in the same way as Lazaro. She knew what she was doing. The Defendant has failed to prove the existence of this mitigating circumstance. Even if she did prove the existence, the court would give it no weight.

The existence of other factors in the Defendant's character, background or life, or the circumstances of the offense that would mitigate against the imposition of the death penalty. §921.141(6)(h), Florida Statutes.

Limited educational background.

The Defendant dropped out of school at an early age, completing only fourth grade. She did not get good grades during her short formal education. The Defendant has proven the existence of this mitigator and the court gives it minimal weight.

Limited intelligence.

The Defendant claims that she suffers from severely low intelligence, exacerbated by brain damage as a result of substance abuse. While there is no valid test of her intelligence level, and there was an indication of malingering, the Defendant did show the existence of this mitigator. The court gives it little weight.

Lack of parenting biological father.

The Defendant grew up without a father. She did prove the existence of this mitigator. This mitigator has slight weight.

Emotional rejection by biological mother.

The Defendant's mother was cold and unloving towards her. Her mother was uncaring. Her mother did not pay attention to her and therefore, she did not learn any good parenting skills. The Defendant has proven the existence of this mitigator and the court gives it little weight.

Trauma suffered as a child: sexual assault, emotional abuse, multiple suicide attempts.

The Defendant was sexually and emotionally abused as a child. She was sexually assaulted at the home of a teacher. She attempted suicide more than once. The Defendant has proven the existence of this mitigator. As Dr. Toomer testified, not everyone with these traumas commits crimes. The court gives it minor weight.

Arrival in the U.S., pregnant and with no support system.

When the Defendant arrived in this country, she was pregnant and had no support system. She has proved the existence of this mitigator. This court gives it no weight, as the Defendant voluntarily came here pregnant and without a support system.

Lack of reunification with mother in the U.S.

The Defendant was not reunified with her mother after she arrived in the United States, despite her mother's promises to re-unite. The Defendant has proven the existence of this mitigator. The Court gives it no weight, as plenty of other people have come to this country, never seen their mother again, and not tortured and killed their children. Also, the Defendant claims emotional rejection by her mother as another mitigator. She was never close to her mother. This too has little or no weight.

Defendant was a battered woman.

Dr. Hass testified that due to Gonzalez' aggressive behavior, the Defendant suffered from the battered-woman factor, which led to the deterioration of the Defendant's ability to protect and nurture her children. However, HRS took the children away prior to her involvement with Gonzalez. She lacked the ability to protect and nurture her children prior to any alleged abuse by Gonzalez. There was no evidence presented that Gonzalez was more culpable. The Defendant has failed to prove the existence of this mitigating circumstance.

Defendant suffers from dependant personality disorder.

The Defendant alleges this mitigation relates to the statutory mitigating circumstance of "Domination of Another". Neither was shown to exist.

Influences of other people including the victim's father who was murdered.

The Defendant has presented evidence of the influence of various people, including Fidel Figueroa, who was Lazaro's father. Fidel was a drug dealer. He provided the Defendant with luxury living conditions. He gave her cocaine if she prepared meals. The Defendant has proven the existence of this mitigating circumstance. It is given miniscule weight.

Role of co-defendant companion Olivia Gonzalez.

The Defendant alleges that her co-defendant was more culpable in the death of Lazaro. No evidence was presented during this trial that Gonzalez was more culpable. The Defendant has not proven the existence of this mitigating circumstance. Even if she had, the Court would give it very slight weight as the Defendant was abusing Lazaro before she became involved with Gonzalez.

Sentence of Co-defendant to 40 years.

As the Defendant notes in her memorandum, the State did not call Gonzalez to testify in this trial. The Defendant complains that the jury did not have the opportunity to consider Gonzalez' credibility. There was no testimony to establish that Gonzalez was equally or more culpable than the Defendant. If a co-defendant takes a plea to a lesser offense, the Defendant has not established that the co-defendant is more or equally culpable. See *Wade v. State*, 41, So. 3d 857 (Fla. 2010). The Court gives this mitigating circumstance no weight.

Above average behavior during twenty (20) years of incarceration and recognition as a model inmate.

The Defendant presented evidence that she has behaved well while incarcerated and does not have any disciplinary reports. Correctional officers testified that she is well behaved in jail and has not been a disciplinary problem. The Defendant has proven the existence of this mitigating circumstance. The Court gives it slight weight.

Baptism in prison.

The Defendant was baptized in prison. She has proven the existence of this mitigating circumstance. The Court gives it minimal weight.

Work as a trustee on a voluntary basis.

The Defendant presented testimony that she works as a trustee in the jail. She has proven the existence of this mitigating circumstance. The Court gives it little weight.

Positive influence on fellow inmates, including helping them in difficult moments.

The Defendant presented testimony that she is good influence on other inmates and helps them out with their problems. Other inmates testified that she helped them with their adjustment to life in jail and would use biblical references. The Court gives this slight weight.

Makes correctional officer's job easier.

The Defendant, by behaving well while incarcerated, makes the correctional officer's job easier. The Court gives this minimal weight.

Sincere spiritual growth.

The Defendant presented evidence that she has grown spiritually. The Court gives this mitigation inconsequential weight.

Participation in substance abuse programs.

The Defendant participated in substance abuse programs. The Court gives this mitigation inconsequential weight.

Re-establishment of relationship with adult children and the importance of the bond between defendant and her children.

The Defendant has re-established her relationship with the children she did not torture and kill, and has bonded with them. This is the most compelling mitigation presented. The Court is reasonably convinced of the existence of this mitigating circumstance but in light of the facts in this case gives it little weight.

Remorse.

The Defendant contends that she is remorseful for what she did. To the contrary, the Defendant has not accepted responsibility for what she did. A jury of

twelve (12) people found her guilty of first degree murder. Even after this finding, she continued to place the blame on Gonzalez, despite all the evidence to the contrary. Defendant even claims the actions of Gonzalez as a mitigating circumstance. She does not have a deep, torturing sense of guilt for the evil acts she committed. Acknowledging her failure as a mother is not remorse for torturing and killing her child. This mitigating circumstance has not been proved. The fact that the Defendant still protests her innocence is irrelevant to this procedure. It is neither aggravating nor mitigating.

Redemption.

The Defendant found religion in prison. She was Baptized and claims to have been redeemed. The court gives this mitigating circumstance very little weight.

Death to Life Override Precedents.

The cases presented by the Defendant are not on point or analogous. In this case, the Defendant tortured her child to death over a prolonged period of time. Factually this case is much worse than the facts in any of the cases cited by the defense. The HAC in this case is overwhelming. The mitigation is minimal.

CONCLUSION

The Defendant also argues that this Court should give no weight to the jury recommendation since the vote was 7-5. There is no legal basis to ignore the jury recommendation, and this Court is legally required to do an independent weighing of the aggravator and mitigation, and has in fact done this. The weight of the aggravator is overwhelming. Lazaro was mistreated from just about the day he was born. The mitigation is simply underwhelming. The weight of all the mitigation combined is minimal at best.

Florida law requires a careful consideration and analysis of the relative nature and quality of aggravating and mitigating factors. Having taken into consideration the nature of the murder, along with the events in the Defendant's life, the Court finds that the one aggravator, HAC, far outweighs the totality of the mitigating circumstances set forth in this case. Lazaro was tortured to death. He was mistreated his entire short life by the Defendant. She duct taped a dirty diaper to him, starved him, tied him to a bed, locked him in a closet, dragged him by an arm, and beat him to death. The HAC in this case is incalculably high. Instead of protecting Lazaro as a mother should, she tortured him until his young body could no longer absorb the abuse. It was only then, that he was finally free of her and all the pain he had endured.

The Court has now analyzed and discussed the aggravating circumstance as well as the mitigation presented in this case. This Court agrees with the jury that in weighing the aggravating factor against the mitigation presented, the scales of life and death tilt heavily on the side of death.

Ana Maria Cardona, you have not only forfeited the right to live among us, but under the laws of the State of Florida, you have forfeited your right to live.

Accordingly, it is hereby

ORDERED AND ADJUDGED that for the murder of Lazaro Figueroa, I sentence you, Ana Maria Cardona, to death. It is further

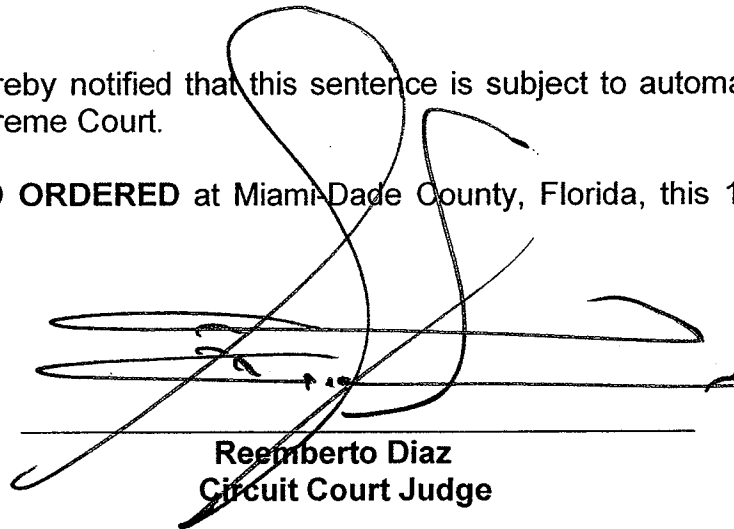
ORDERED that you Ana Maria Cardona, be taken by the proper authority and transported to Florida State Prison, and there be kept in close confinement until the date of your execution is set. It is further

ORDERED that on such scheduled date, you Ana Maria Cardona, be put to death. It is further

ORDERED AND ADJUDGED for the aggravated child abuse of Lazaro Figueroa, I sentence you, Ana Maria Cardona, to fifteen (15) years in prison, said sentence to be consecutive to the sentence imposed on this date on the Defendant.

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

DONE AND ORDERED at Miami Dade County, Florida, this 10th day of June, 2011.



Reemberto Diaz
Circuit Court Judge

Copies Furnished to: Susan Dannelly, Esq.
Kathleen N. Paulter, Esq.
Angelica Zayas, Esq.
Edith Georgi Houlihan, Esq.
Liesbeth C. Boots, Esq.
Andrew Stanton, Esq.