

Research Associates, Inc: Final report, research study of the New York City involuntary outpatient commitment pilot program. New York, 1998). A longer term analysis of the same study demonstrated that committed patients had reduced hospitalizations and stayed significantly fewer days than inpatients (Telson H, Glickstein R, Trujillo M: Report of the Bellevue Hospital Center outpatient commitment pilot program. New York: Department of Psychiatry, 1999). Moreover, when involuntary outpatient treatment statutes are leveraged, successful outcomes hinge on the quality and accessibility of community services, along with oversight and the willingness of the court to enforce such legal mandates (Kisley S, Campbell L: Compulsory community and involuntary outpatient treatment for people with severe mental disorders. *Schizophr Bull* 41: 542–3, 2015).

Critics of involuntary outpatient treatment warn of the risk for abuse of broader commitment criteria and the challenges of program implementation. Additional criticism focuses on insufficient community and judicial resources, resistance from treatment providers and community residents, limited government funding and the challenge of effective enforcement of involuntary outpatient treatment (Schwartz SL, Costanzo CE: Compelling treatment in the community: distorted doctrines and violated values. *Loy. L.A. L Rev* 20:1329–429, 1987). The competence and accessibility of outpatient mental health services can vary widely. The effectiveness, benefits, and potential consequences of outpatient commitment should be carefully considered in each case.

Compelling T.S.S. to participate with the ONH required a showing that his condition would deteriorate and, as a result, he would be dangerous to himself or others in the near future. The state did not meet its burden.

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Serious Mental Illness and the Death Penalty

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Defendant with Mental Illness Successfully Appealed his Death Sentence for Murder Conviction on Grounds That It Was a Disproportionate Penalty

In *Delgado v. State*, 162 So. 3d 971 (Fla. 2015), the Supreme Court of Florida considered whether the trial judge used the correct standard relating to jury override and whether the death penalty in this case was disproportionate. The court found that the trial judge did apply the correct standard relating to jury override, and that the death penalty was a disproportionate punishment. It vacated the sentence and remanded the case to the trial court for imposition of a life sentence.

Facts of the Case

On August 19, 2009, Humberto Delgado, Jr., went to the storage facility where he had slept the previous night and transferred some of his belongings into a backpack, including a laptop computer and four firearms. Despite his chronic knee pain, Mr. Delgado decided to walk, using a cane, the roughly 17 miles to a veterans' hospital in Tampa to seek assistance and shelter.

Approximately eight hours later, police Corporal Michael Roberts observed Mr. Delgado pushing a shopping cart along the road in an area known for crimes committed by homeless individuals, particularly shopping cart theft. By then, Mr. Delgado had walked approximately 15 miles in hot and rainy weather. At 9:58 p.m., Corporal Roberts informed the police dispatcher that he was about to conduct a routine field investigation and then stopped Mr. Delgado for questioning. After Mr. Delgado presented his driver's license and veteran's card for identification, Corporal Roberts began to search his shopping cart and backpack. Mr. Delgado became concerned that his firearms would be discovered and tried to flee, whereupon Corporal Roberts tasered him. A fistfight ensued, ending when Mr. Delgado shot and killed Corporal Roberts. During the struggle, a transmission was received from Corporal Roberts's handheld radio, and another officer, Sergeant Mumford, was dispatched to the scene. By that time, Mr. Delgado had retrieved a firearm from his back-

pack and aimed it at Sergeant Mumford, but did not shoot. After Mr. Delgado was taken into custody, officers retrieved from his belongings four firearms, a cell phone, and a wallet. The wallet contained a note that consisted of disorganized writing as well as fragments of Mr. Delgado's paranoid ideas and delusions.

At trial, the defense presented testimony regarding Mr. Delgado's background and the events leading up to the shooting. Mr. Delgado had a long history of mental illness and bizarre behavior dating back to his first job as a police officer in the Virgin Islands. In 2003, because of his bizarre behavior and paranoid delusions, Mr. Delgado was hospitalized twice in psychiatric facilities. He joined the military approximately one year later, but his delusions and eccentric conduct continued. He was admitted to the inpatient unit at Womack Army Medical Center at Fort Bragg, NC, in 2005. During that admission he received a diagnosis of bipolar disorder with psychotic features. He was discharged from the military after the admission. From June of 2009 to approximately two weeks before the shooting, Mr. Delgado lived with his uncle in Oldsmar, FL, where his bizarre behavior continued. Just before the shooting he left his uncle's house and stayed with various friends. He made phone calls to his ex-girlfriend a few days before the shooting, telling her that someone was trying to kill him. He called his uncle immediately after the shooting begging for forgiveness for killing an officer and stating he was going to kill himself.

Six expert witnesses testified at various stages of trial, including the guilt phase and the *Spencer* hearing. In Florida, the purpose of a *Spencer* hearing is to ensure the reliability of the penalty and sentencing process (*Spencer v. State*, 615 So. 2d 688 (Fla. 1993)). All six experts returned a diagnosis of some form of bipolar disorder, and four of the experts also diagnosed comorbid conditions. Five of the six experts testified that both statutory mental health mitigators (extreme emotional disturbance and Mr. Delgado's substantially impaired capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law) applied in this case.

As to whether Mr. Delgado was operating under the influence of an extreme mental or emotional disturbance, they cited various psychosocial stressors including an inability to find a permanent residence, sleep deprivation, and financial stressors, among others. Several experts opined that Mr. Delgado's men-

tal illness, combined with these life stressors, created a heightened emotional state that made him even more paranoid and depressed. Five of the six experts also found that Mr. Delgado's capacity to appreciate the criminality of his conduct, or conform his conduct to the requirements of the law, was substantially impaired.

In November 2011, Mr. Delgado was convicted of carrying a concealed firearm, depriving a law enforcement officer of the officer's means of communication, and first-degree murder in the shooting death of Corporal Roberts in Hillsborough County. Mr. Delgado was also found guilty of aggravated assault on a law enforcement officer, Sergeant Paul Mumford, in connection with the same events that resulted in the death of Corporal Roberts.

At the penalty phase, the state presented victim impact statements from Tampa's Chief of Police, the victim's sister-in-law, and the victim's wife. At the conclusion of the penalty phase, the jury recommended death by a vote of eight to four. In its sentencing order, the court found two aggravating circumstances: prior violent felony based on the contemporaneous conviction for aggravated assault and that the victim was a law enforcement officer. In mitigation, the court found three statutory and 41 nonstatutory mitigating factors.

Mr. Delgado appealed, claiming, primarily, that his death sentence was disproportionate and also that the trial judge used an incorrect standard in his decision not to override the jury recommendation. Nonetheless, both parties agreed that there was sufficient evidence to uphold his first-degree murder conviction.

Ruling and Reasoning

In reviewing the appeal, the Florida Supreme Court identified the disproportionality of the sentence as the primary issue of the appeal. As to the jury override, the court held that the "trial judge clearly engaged in a detailed analysis of the aggravators and mitigators and properly weighed those factors to determine Delgado's sentence" (*Delgado*, p 981). The court then turned to the question of the disproportionate sentence. It first pointed out "that there was sufficient evidence here to uphold Delgado's first-degree murder conviction" (*Delgado*, p 981) and asserted that its review would not be a "comparison between the number of aggravating and mitigating circumstances" (*Williams v. State*, 37 So. 3d 187, 205

(Fla. 2010)). Rather, it mapped out a qualitative review of such factors, “considering the totality of the circumstances compared with other capital cases” (*Delgado*, p 982). Regarding the death penalty sentence, the court noted that the death penalty is proportionate only for those murders characterized as both the most aggravated and the least mitigated.

In its opinion, the supreme court discussed the two aggravating factors identified by the trial court: prior violent felony (moderate weight) and the victim was a law enforcement officer (great weight). The court allowed that the “law enforcement” aggravator was obviously very serious, but it held that the “prior violent felony” aggravator was less compelling in Mr. Delgado’s case, as it was “an act that did not result in an injury [and] was committed contemporaneous to the murder” (*Delgado*, p 982). Essentially, the court held that Mr. Delgado did not have actual “prior violent felonies.” The majority opinion then pointed out that the trial court had identified a total of 44 mitigators (3 statutory and 41 nonstatutory). The court concluded that, when compared with other capital murder cases, Mr. Delgado’s case was “one of the least aggravated and most mitigated of capital murders” (*Delgado*, 983). It held that the death penalty was disproportionate under the facts presented, and the case was remanded to the trial court with directions to impose a life sentence.

Discussion

In *Delgado*, the Supreme Court of Florida reviewed essential aspects of proportionality in capital sentencing cases. The court’s review sought to evaluate aggravating and mitigating factors in a qualitative manner. Several of the mitigators identified as having significant weight were at least related to mental health. These included that the murder was committed while Mr. Delgado was under the influence of extreme mental or emotional disturbance (substantial weight), that Mr. Delgado’s capacity to conform his conduct to the requirements of law was impaired (moderate weight), the reality that Mr. Delgado was homeless and under the stress of multiple psychosocial stressors (substantial weight), and that Mr. Delgado had a received a diagnosis of a disorder characterized by impulsivity (moderate weight). The courts’ disproportionality decision was based on a combination of reduction in one of the primary aggravating factors and the consideration of

mitigating factors, many of which involved mental health.

Delgado illustrates the ongoing importance of mental health testimony in educating courts on mental health concerns pertinent to capital sentencing. As there are often no predetermined criteria to define or limit mitigating evidence, great responsibility is placed on mental health evaluators to be as comprehensive as possible in their assessments. Forensic professionals are thus essential to the process of elucidating these factors for the courts. As clinical understanding of human behavior continues to advance, forensic psychiatrists should be aware of emerging knowledge that could qualify as mitigating evidence. Such an approach will provide the courts with a more complete picture of the defendant.

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Dismissal of Charges after Juvenile Found Not Competent to Stand Trial

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Charge of Possession of a Deadly Weapon on School Premises Sufficiently Meets the Definition of an “Act of Violence Against a Person,” Such That Charges Could Not be Dismissed

In *State ex rel. Smith v. Sims*, 772 S.E.2d 309 (W. Va. 2015), the Supreme Court of Appeals of West Virginia considered whether the circuit court erred in dismissing charges of possession of a deadly weapon on the premises of an educational facility after a 12-year-old defendant, J.Y., was found incompetent to stand trial. The West Virginia Supreme Court held that possession of a deadly weapon on the premises of an educational facility with the express intention to intimidate another student “involves an act of violence against a person,” as set forth in the definition of “violence,” and that the purpose of addressing it was in the reduction of future risk of harm to the public.