

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

RICHARD R. COOCH  
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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***Re: State of Delaware v. Luis Sierra***  
**I.D. No. 1006013865A**

Submitted: September 6, 2012  
Decided: October 15, 2012

**FINDINGS AFTER PENALTY HEARING**

Dear Counsel:

**I. FACTUAL AND PROCEDURAL HISTORY**

On June 12, 2010, Anthony Bing was shot and killed in Allen's Alley in Wilmington. Luis Sierra, Gregory Napier, and Tywaan Johnson were arrested for Bing's murder. Napier pled guilty to a lesser included offense of Manslaughter, 11

*Del. C.* § 632, among other felonies and agreed to testify against his codefendants.

The State indicted Johnson on Murder in the First Degree charges and additional felonies. The Court severed the trials and proceeded with Johnson's case as a noncapital offense, while Sierra's case remained a capital prosecution. A jury found Johnson guilty on all counts in September 2011.

The State indicted Sierra on charges of Murder in the First Degree, 11 *Del. C.* § 636, Felony Murder in the First Degree, 11 *Del. C.* § 636(a)(2), Robbery in the First Degree, 11 *Del. C.* § 832, three counts of Possession of a Firearm During the Commission of a Felony, 11 *Del. C.* § 1447, Possession of a Firearm By Person Prohibited, 11 *Del. C.* § 1448, and Conspiracy in the Second Degree, 11 *Del. C.* § 512.

Napier testified as a State witness during both trials and told the jury that he, Sierra, and Johnson met Bing in Allen's Alley to purchase drugs. Napier testified that, unbeknownst to him, his codefendants were armed, and rather than purchase drugs, intended to rob Bing. Napier testified that after stealing the drugs, Sierra shot Bing several times and fled. On January 27, 2012, a jury convicted Sierra on all indicted charges except for Possession of a Firearm By Person Prohibited, which was severed and is currently scheduled for trial on January 10, 2013.

## **II. THE PENALTY HEARING**

Pursuant to 11 *Del. C.* § 4209(c), the Court directed the parties to give notice of aggravating and mitigating factors they would present at the penalty hearing on the punishment for Murder in the First Degree. The State gave notice of its intent to rely on two statutory aggravating circumstances:

- (1) The murder was committed while the defendant was engaged in the commission of, or attempt to commit or flight after committing or attempting to commit robbery in the first degree, pursuant to 11 *Del. C.* § 4209(j);
- (2) The defendant was previously convicted of a felony involving the use of, or threat of, force or violence upon another person, pursuant to 11 *Del. C.* § 4209(i).

In addition to the statutory aggravating circumstances, the State relied upon the following non-statutory aggravating circumstances:

1. The impact of Anthony Bing's murder on his family and friends.
2. The impact of the murder on Christopher Plunkett.
3. The defendant's prior criminal history and lack of rehabilitation following periods of incarceration and probation, including juvenile probation and supervision.
4. The defendant's uncharged criminal conduct, involving robberies and the selling of drugs.
5. The defendant's association with, possession of, and/or use of firearms, prior to June 12, 2010.
6. The defendant's history of disrespect for persons in positions of authority, including, but not limited to, teachers, school officials, correctional officers and law enforcement.
7. The defendant's disrespect and violent actions toward his family in displaying a gun at them.
8. The defendant's conduct, disruptive behavior and disciplinary history in correctional facilities.
9. The defendant's threats made about witnesses in the murder trial for Anthony Bing.
10. Tattoos on the defendant's arms, including but not limited to, a tattoo of "187," signifying the California Penal Code statute for murder, a tattoo of "007" with a gun, and a face with gun and the phrase "Top Shooter."

The defendant relied upon the following mitigating circumstances:

1. Racial identity and social deviance.
2. Social capital between Chester and Wilmington.
3. Poverty.
4. Academic problem.
5. Physical abuse.
6. Sexual abuse.
7. Muslim faith.
8. Mother's depression.
9. Mother's lupus.
10. Mother and Father's repeated separations
11. Sister's sexual abuse.
12. Dysfunctional family relationships and cumulative trauma
13. Relationship with cousin Brianna
14. Excessive drug use.
15. Excessive drug and alcohol use throughout the household while growing up.
16. Parent's encouraging fighting in school.
17. Psychological issues.
18. Father's criminal history.
19. No effective assistance from DYRS.
20. Lack of community currency.

21. Incarceration and its effect on development.
22. Victim involvement.

The penalty hearing began on January 31, 2012 and concluded February 6, 2012.<sup>1</sup> Sierra gave allocution. On February 7, 2012, the jury returned its findings. The jury unanimously found beyond a reasonable doubt the existence of both statutory aggravating circumstances. The jury then determined by an 11-1 vote that on both Murder First Degree convictions, “after weighting all relevant evidence in aggravation or mitigation which bears upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender,”<sup>2</sup> the mitigating circumstances outweighed the aggravating circumstances.

Because the jury unanimously found beyond a reasonable doubt the existence of a statutory aggravating circumstance, Defendant is eligible for the death penalty or a sentence of life imprisonment without eligibility for release. This is the Court’s decision pursuant to 11 *Del. C.* § 4209(d) on Defendant’s sentence for his two Murder First Degree counts.

### **III. DISCUSSION**

The law provides that if a jury finds the existence of one statutory aggravating circumstance beyond a reasonable doubt, the Court is to consider the findings and recommendation of the jury without hearing or reviewing any additional evidence.<sup>3</sup> A death sentence shall be imposed if the Court finds by a preponderance of the evidence, after weighing all relevant evidence in aggravation or mitigation which bears upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender, that the aggravating circumstances found by the Court to exist outweigh the mitigating circumstances found by the Court to exist.<sup>4</sup> Otherwise, the Court shall impose imprisonment for the remainder of the defendant’s life without benefit of probation or parole or any other reduction.<sup>5</sup>

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<sup>1</sup> See 11 *Del. C.* § 4209(b).

<sup>2</sup> 11 *Del. C.* § 4209(c)(3)(2).

<sup>3</sup> 11 *Del. C.* § 4209(d)(1).

<sup>4</sup> 11 *Del. C.* § 4209(d).

<sup>5</sup> *Id.*

Although the Court is not bound by the jury's recommendation<sup>6</sup>, the Court gives appropriate weight to a jury's penalty phase recommendation.<sup>7</sup> It is also notable that the jury was one vote short of a unanimous life sentence recommendation. Giving appropriate weight to the jury's recommendation, the Court finds that the mitigating circumstances outweigh the aggravating circumstances. The murder of Anthony Bing was intentional, brutal, and unnecessary; however, Defendant did present evidence of mitigating factors during the penalty hearing, which evidence was accepted by 11 members of the jury. Under the circumstances, and given the jury's overwhelming recommendation of a life sentence, it is not necessary to recount the evidence in support of the aggravating factors and in support of the mitigating factors.

Therefore, it is the sentence of the Court that Defendant is to be imprisoned for the remainder of his life without benefit of probation or parole or any other reduction on both counts of Murder in the First Degree.

**IT IS SO ORDERED.**

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Richard R. Cooch, R.J.

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<sup>6</sup> 11 *Del. C.* § 4209(d)(1).

<sup>7</sup> See *Starling v. State*, 882 A.2d 747 (Del. 2005) (holding that death penalty statute gives trial court authority to determine the appropriate weight to give the jury's sentencing recommendation).